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September 9. 2010

VIA HAND DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: Natural Gas Distribution Companies and Promotion of Competitive Retail Markets; Docket No. L-2008-2069114; **COMMENTS OF SHIPLEY ENERGY COMPANY, DOMINION RETAIL, INC. AND INTERSTATE GAS SUPPLY, INC. TO ADVANCE NOTICE OF FINAL RULEMAKING ORDER ENTERED AUGUST 10, 2010**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and fifteen (15) copies of the Comments of Shipley Energy Company, Dominion Retail, Inc. and Interstate Gas Supply, Inc. to Advance Notice of Final Rulemaking Order entered August 10, 2010.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for Shipley Energy Company, Dominion Retail, Inc., and Interstate Gas Supply, Inc.

TSS/bks
Enclosure
cc: David E. Screven, Assistant Counsel (Via Electronic & Hand Delivery)
Richard Wallace (Via Electronic & Hand Delivery)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies and	:	
Promotion of Competitive Retail Markets	:	Docket No. L-2008-2069114

COMMENTS OF SHIPLEY ENERGY COMPANY, DOMINION RETAIL, INC. AND INTERSTATE GAS SUPPLY, INC. TO ADVANCE NOTICE OF FINAL RULEMAKING ORDER ENTERED AUGUST 10, 2010

Shipley Energy Company ("Shipley"), Dominion Retail, Inc., ("Dominion Retail") and Interstate Gas Supply, Inc. ("IGS") (collectively "NGS Parties"), hereby offer the following Comments to the Commission's *Advance Notice of Final Rulemaking Order*, entered August 10, 2010, in the above-captioned matter. The NGS Parties are grateful that the Commission has pressed on to finalize these rules as quickly as possible, while also providing further opportunity for additional input concerning what appear to be rather significant changes to the rules that were initially proposed by an Order entered March 27, 2009. While the NGS Parties do have a number of Comments regarding the newly-proposed changes to the rules, they wish to thank the Commission for its continuing efforts to increase the competitiveness of retail natural gas markets throughout Pennsylvania.

The NGS Parties also acknowledge Vice Chairman Christy's expression of concerns and questions and his request that parties address those in their Comments.[1] The NGS Parties will

[1] In particular, Vice Chairman Christy expressed concern with: the definition of natural gas procurement costs, the effort necessary to identify such costs outside of a base rate case, whether it is appropriate to have a definition for a natural gas procurement cost in the first instance, and whether such costs are truly avoidable as a result. The Vice Chairman also raised concerns generally with the merchant function charge ("MFC"), and in particular, with the notion that inclusion of an MFC within the price-to-compare could violate the prohibition contained in 66 Pa. C.S. § 1408 which prohibits reconciliation of uncollectible expense. The Vice Chairman also requests Comments on the apparent conflict between the Order's statement that the Commission possesses legal authority to order purchase of receivable ("POR") programs, and its continuation of the current policy of making the POR programs voluntary, as

endeavor to address the Vice Chairman's concerns in the context of their general comments but will otherwise respond separately as appropriate.

COMMENTS TO SPECIFIC SECTIONS

Section 62.222. Definitions.

With regard to the definition of PTC, the NGS Parties believe that it may be helpful to include within the definition the various components that are represented in the price to compare, including the MFC and the PGC. It may also be helpful, within those specific components, to identify which elements are reconcilable and which are not. While these elements are defined in the functional sections, it may not be clear how all the moving parts will work together. It is possible that some individuals may review the definitions and not understand from the subsequent text that the MFC and PGC are both part of the PTC, but that the MFC is not reconciled while the PGC is reconciled. This change is not critical from a validity perspective, but would aid by providing clarity.

Section 62.223. PTC.

The Commission has proposed a number of changes to the PTC, many of which appear to be aimed at simplifying the provision and making it more clear and certain in operation. The NGS Parties hope these changes will make the calculation of the PTC more transparent. The NGS Parties also are in agreement with the Commission's proposed revisions to the composition

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well as the final regulations' requiring the use of consolidated billing from the NGDC in order for an NGS to participate in the POR program, and the change to the March 27 Order's requirement of voluntary assignment of pipeline and storage capacity contracts to make such assignment mandatory which he believes may be contrary to the language of 66 Pa. C.S. § 2204(e). Vice Chairman Christy requests Comments on the removal of a provision that would have allowed NGDCs to recover completely the cost of implementing any of these changes through a surcharge mechanism; and whether, and what type of, information should be provided to customers in order to assist them in making foreign choices in making gas supply alternatives.

of the PTC. They are particularly gratified by the inclusion of the reconciliation for over- and under-collections, known as the *e-factor,* as part of the gas cost rate portion of the PTC. This change will allow for a more accurate comparison between competitive supplier offers and the rates for default service. The NGS Parties support increasing the frequency of the reconciliation of over/under collection as a way of reducing the negative impact of the migration rider on customers when they first transfer to service from an NGS. The migration rider imposes what can often be an unexpected cost on unsuspecting customers, who are required to pay the over/under adjustment mechanism for a full year after switching. The goal of more frequent adjustment is to reduce, on a more current basis, the balances that can accumulate as a result of the true-up between an NGDC's actual versus estimated costs.[2]

The NGS Parties believe that it also is important that the Commission specify the manner in which reconciliations will be performed. The NGS Parties believe that the goal of more frequent reconciliation should be the elimination of any over/under collection balance from the prior period(s) by the end of the subsequent period. The means by which this goal may be accomplished, including the possibility of more frequent reconciliation, however, may be subject to differences of opinion.[3] Nonetheless, it is hoped that by implementing more frequent reconciliation, that any over/under collection balance will remain relatively small by comparison to the overall gas cost, and large annual accumulations will be avoided. Through utilization of

[2] The NGSs want to ensure that at the end of this process no NGDC is permitted to continue the practice of hiding the recovery of reconciled gas costs or over/under adjustments in distribution rates. At least one NGDC currently recovers such charges in this manner, and it serves to further confuse new shopping customers with the sudden appearance of the heretofore unseen reconciliation adjustment. Recovering such charges in distribution charges hides the ball and does not allow customers to make accurate comparisons.

[3] The NGS Parties suggest that it might be useful to re-examine the over/under recovery mechanism through an industry collaborative (perhaps through the continuation of the SEARCH[2] initiative) to determine if a monthly adjustment would help to reduce the uncertainty that is caused by the current true-up mechanism.. The goal would be to provide better information to the market and consumers. If after review it was determined that monthly reconciliation of the over/under would assist in providing more efficient information to the market and consumers, then it would likely be prudent for this single component to be recalculated on a monthly basis and made available to all stakeholders consistent with the 1307(f) requirements .

this methodology, the period of time over which the migration rider is collected can be reduced—**that is, if the reconciliation period is a quarter, then the migration rider should only be imposed for one quarter**. In this way, charge poses less harm to competitive markets.

The NGS Parties support the Commission's requirement to unbundle all costs of natural gas procurement, including supply management, hedging and all other associated costs, and out of base rates, and to instead recover those expenses as part of the commodity rate, where they appropriately should be recovered, since these cost are, for the most part, fully avoidable when customers shop. Moreover, the NGS Parties agree that this unbundling should be done on a revenue-neutral basis.

As to whether the unbundling must, or should. be done in a base rate proceeding, the NGS Parties support the notion that so long as the process is simply to move collection of the same dollars from base rates to the MFC, no base rate proceeding should be required. That is, so long as the NGDC strictly unbundles collection of the avoidable customer costs associated with default service out of base rates, and does not seek to re-allocate other costs, such as charges to suppliers and/or to impose new fees, then the NGS Parties believe that the proceeding would not require the examination of the basis of those costs. But to the extent than an NGDC would seek to reallocate expenses, as between any groups, or to add new fees, or identify "new" costs, etc., the NGS Parties believe that a base rate proceeding would be necessary.

Section 62.224. Purchase of Receivables.

The NGS Parties applaud the Commission for its ongoing support of POR as possibly the important first step towards leveling the playing field and allowing for more robust competition at the retail level. The Commission has modified its March 27, 2009 Order to now include a

requirement that NGSs that participate in POR must also use consolidated billing offered by the NGDC with two exceptions. The NGS Parties support this change.

With regard to the use, in Section 3, of language defining discount rate as being designed to compensate the NGDC for "reasonably projected risk" of uncollectibles associated with the NGS's customer accounts, however, the NGS Parties are concerned that this quoted term lacks a definition. While the Order itself clarifies that the Commission "expects" that the discount will be the uncollectibles account expense experienced by the utility in providing POR and, in Section 9, requires the tracking of the costs, the proposed regulation does not make it clear that if either component of the discount rate – the portion related to uncollectibles or the portion to recover the incremental program costs – were to decrease, that the NGDC would be under an obligation to reduce those elements. Because NGSs will be prohibited from performing credit checks or otherwise excluding customers on the basis of credit, the NGSs' experienced uncollectible should approximate the default service uncollectibles on a rate class basis, and the NGSs would not expect large deviations. However, evidence suggests that there may be some self-selection at work, and that competitive supplier uncollectibles' experience, even without credit screening, tends to be better than that of a utility. **Accordingly, to the extent that the NGDCs will adjust POR discount rates for NGSs based upon experience, those adjustments should go both ways.**

The NGS Parties support the Commission's requirement that NGDCs comply with all applicable statutory and regulatory requirements in performing their billing and collection activities and, in particular, that they comply with the Commission's Regulations at 52 Pa. Code, Chapter 56, and 66 Pa. C.S.A., Chapter 14. The NGS Parties have no doubt that those regulations are being followed to the letter today. In that same vein, the NGS Parties agree with

the Commission's rejection of the position taken by the Office of Consumer Advocate that customers only be susceptible to termination for NGS charges that are below what the customer otherwise would have paid for default service. Any procedure relative to implementing the OCA's demand would have substantially increased the costs for no provable benefit. Moreover, such a requirement would have interfered with the NGDC's ownership of the receivable and made the programs largely unworkable.

With regard to the Commission's discussion concerning the voluntary or mandatory nature of POR programs, the NGS Parties believe that the Commission has stated a reasonable and persuasive legal argument in support of its authority to require mandatory POR programs. Nonetheless, most NGDCs in Pennsylvania have already complied with the Commission's request to implement voluntary programs. The NGS Parties expect that once these rules are finalized, the remaining noncompliant NGDCs will file such voluntary programs as well. The NGS Parties wish to address, however, the legal position taken by several NGDCs – that because the programs are "voluntary," the NGDC is able to impose whatever terms and conditions it may desire, even to the point of withdrawing the program, without recourse by NGSs. Contrary to this view, the NGS Parties believe that, so long as these programs are operated under the authority of a filed tariff, the Commission has the authority to determine what terms are reasonable and to address the NGDC's ability to terminate such programs. *See*, 66 Pa. C.S. § 1303.

Section 62.225. Release, Assignment or Transfer of Capacity.

The Commission has made significant and substantial changes to the requirements for release, assignment and transfer of capacity – both storage and pipeline. In their earlier

Comments, the NGS Parties suggested that the Commission require NGDC's to offer an "equitable share" of capacity assets to NGSs serving customers on their system, and that the share should be a bundle of the assets necessary to serve customers at a level necessary to meet customer needs. The NGS's did not demand a "slice of the system," which implies that they would receive a portion of all capacity assets, but rather, that they would at least be assigned a share of the necessary assets or comparable value, that are needed to serve customers, including storage, transportation and peaking assets. The suppliers also advocated for more input into the decision making process for entering new or renewed capacity contracts for default service. The NGS Parties continue to be concerned that NGDC's would be permitted to use mandatory assignment as a means of achieving a "free call" funded by NGSs to the benefit of non-shopping customers. That is, if NGDCs are permitted to assign to NGSs unneeded or uneconomic assets, which they may or may not require some day, and force NGSs to pay for those assets, default service customers will have received the benefit of a free call on those assets while NGSs will have footed the bill.

While the NGS Parties are sensitive to stranded cost issues, they do not feel it is in any party's best interest for NGDCs to hold unneeded or uneconomic assets. If a workable system were created, one that assigned an equitable share of assets at a reasonable level and actual cost, the NGSs would be able to accept such assignment on a mandatory basis. Unfortunately, that is not what the Commission proposed here.

The Commission has proposed to change a single word, from "may" to "shall" in the first sentence of § 62.225(a), which concerns the NGDCs' assignment of "new or renewed" contracts for firm storage and capacity. The seemingly minor change, however, appears to

reverse the intent of this provision and, while the Commission cites to 66 Pa. C.S. § 2204(e) as the basis for this change the resultant regulation, such a change would be legally incorrect.

The provision in question, 66 Pa. C.S. § 2204(e), provides that NGDCs "shall **offer** on a non-discriminatory basis, **new or renewed** contracts for firm storage or transportation capacity not subject to subsection (d),(1), (2).(3), or (4)." (Emphasis supplied). Subsection (d) does allow NGDCs to assign, on a mandatory basis, contracts which they held on the date that the *Natural Gas Customer Choice & Competition Act* ("Act"), 66 Pa. C.S. § 2201, *et seq.*, was effective or within 150 days thereafter, but, contrary to the provision proposed here, it does not allow for the mandatory assignment of contracts that were renewed thereafter or new contracts that are initiated thereafter. That is, the statute creates a clear dichotomy between which contracts may be assigned on a mandatory basis and which contracts may be offered. While it may be true that NGDCs still hold contracts that meet the condition precedent of 66 Pa. C.S. § 2204(d), it has now been more than 11 years past the implementation of the Act. It is likely that the list of those contracts is gradually diminishing and, consequently, that more and more contracts will fall into the latter category under subsection (e) – those that must be offered, not assigned mandatorily. Accordingly, a blanket requirement that the NGDC assign any capacity contract for storage or capacity to NGS on a mandatory basis, is legally incorrect and would violate the clear requirement of the statute.

The language of the statute does require, however, that an NGDC "shall offer" to an NGS such new or renewed capacity (66 Pa. C.S. § 2204(e)(1)). That is, the Commission can require the NGDCs to offer any capacity, but cannot require NGSs to take such storage and transportation capacity contracts under 2204(e). As the NGS Parties have maintained throughout this proceeding, they believe that NGDCs should be required to offer capacity, both storage and

transportation, based upon an equitable share of the assets used by the NGDC to serve those customers and said capacity should follow the customer. Under such circumstances NGSs also should have more input into the ongoing acquisition and renewal of capacity assets. While the NGS parties are sensitive to stranded cost issues, and in most cases may favor assignment of capacity, the Commission cannot simply write such an unambiguous requirement out of the Statute.

If the Commission's intention is to follow the requirements of the statute, it cannot impose the requirement that it seeks to impose here and the NGS Parties would actively oppose such a provision. While the NGS believe that there are many benefits to be had from the assignment of capacity on an equitable basis, they also are concerned that a blanket mandatory assignment requirement would empower NGDCs to foist uneconomic or excessive capacity on NGSs as a means of decreasing NGDC costs while raising NGS costs above what otherwise would be required to provide service to their customers. Such is not an acceptable result.

Response to Vice Chairman's Christy's Issues

1. **Vice Chairman Christy's expressed concerned about the definition of natural gas procurement costs, whether it is appropriate to identify and evaluate such costs outside of the base rate context, and whether such costs are truly avoidable.**

The NGS Parties share Vice Chairman Christy's concern with regard to what costs are considered to be natural gas procurement costs, but from a slightly different perspective. The NGS Parties believe there is a risk that the level at which these costs are unbundled could be susceptible to differences of opinion, and NGDCs could seek to impose some portion of such costs on NGSs and at the same time seek to make modifications to remove the present levels of those costs from base rates.

While the NGS Parties would ultimately not desire to pay any new costs, they realize that to the extent that new or incremental costs were to result, a result in which they do not presently concur, ordinary ratemaking principles would suggest that the cost causer pay. Consequently, the NGS Parties do not suggest that they should be excused from paying properly allocated new or incremental costs. However, to the extent that an NGDC would seek to re-allocate costs as between shopping and non-shopping customers, or as between NGSs and non-shopping customers, the NGS believe would be inappropriate to do so outside of the context of a base rate proceeding. Such an allocation would need to be done in an environment where all costs are on the table and where such costs can be fully examined. Accordingly, the NGS Parties see two alternatives: 1) either the Commission can prohibit the NGDCs from making any such adjustments in the context of the filing to unbundle these costs; or 2) the Commission must require that any such changes be made only in the base rate case context.

It appears that Vice Chairman Christy may also have a fundamental concern that there may be some costs of providing default service which are not avoidable. The concern appears to be based on the conclusion that there are certain costs of standing ready to serve customer when they shop. The NGS Parties disagree with the notion that there is a definable set of costs of this "standing ready" function. With a properly functioning capacity assignment program—one that assigns an equitable share of assts that follows the customer, those assigned assets are recallable, including gas in storage, and should eliminate the costs of standing ready.

NGSs already post security that is intended to make NGDCs whole in an NGS default or bankruptcy situation. 66 Pa. C.S. § 2208(c)(1)(i). NGDCs are permitted to move customers to actual default service rates at the end of the then-current billing cycle and to recover any excess costs from the NGS or to use the security. 66 Pa. C.S. § 2207(k).

There is likewise little evidence to support the notion of large scale backward migration where large numbers of shopping customer simultaneously return to default service.

Finally, most NGDCs engage in extensive use of excess capacity that exists today in the form of off system sales and capacity release. The majority of these off-system sales revenues generally are used to offset gas costs, and so serve to reduce the "stand ready" costs. However, a sizable portion, usually about 25%, of these revenues remain with the NGDC and appear to create an incentive for NGDCs to retain assets at a level higher than otherwise might be necessary. Accordingly, the NGS Parties do not believe that it is appropriate to saddle NGSs, or their customers, with any additional "stand-ready" costs.

2. Recovery of Implementation Costs Through Surcharge Mechanism

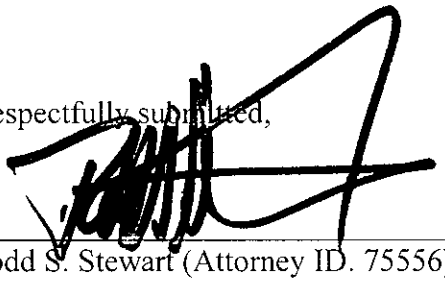
The NGS Parties submit that, to the extent NGDCs are required to make changes to their operations and systems to accommodate the requirements that result from this process or other future processes to enhance competition and which require NGDCs to make changes, the NGDCs should be able to recover those costs. Some of the requirements, like POR, should be self-funding. Others should not impose significant incremental costs and should actually reduce costs like capacity assignment. That is not to say, however, that all costs should be recovered without ratemaking recognition. Accordingly, to the extent that the Commission does not allow NGDCs to recover incremental costs through a surcharge mechanism, the NGDCs should be permitted to defer those costs on their books and recover them in a ratemaking context as a regulatory asset or some other manner that allows full recovery. It would be unfair to NGDCs that they be required to make potentially significant changes to the way they do business and yet not be permitted to recover these costs.

3. Customer Information

The NGS Parties continue to believe that providing customers with a historical record of gas costs on a trailing 12-month or 24-month basis would give customers perhaps the most important information that customers would need to make judgments about gas costs in the future. Providing forecasts, prepared by NGDCs or others, would be significantly unreliable and would have the potential to influence customer shopping decisions without recourse for bad forecasting. Moreover, consumers are not unfamiliar with the concept of using historic information in a variety of other contexts to inform their purchasing decisions. It would be paternalistic to suggest that customers who were interested in doing so would be unable to use this information in the context of purchasing natural gas commodity as well. Accordingly, the NGS Parties continue to support the notion of providing customers with a trailing 12-month commodity cost or even the trailing two year history of the NGDCs price-to-compare as a means of allowing the customer to conclude for themselves what the future price of commodity might be while comparing offers from NGSs.

The NGS Parties wish to thank the Commission for this opportunity to provide comments and look forward to continue to assist the Commission in the development of final form regulations.

Respectfully submitted,



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