

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: October 5, 2005	2. BUREAU AGENDA NO. OCT-2005-L-0105*
3. BUREAU: Law	
4. SECTION(S):	5. PUBLIC MEETING DATE: October 6, 2005
6. APPROVED BY: Director: Pankiw, B.R., 7-5000 Mgr/Spvr: Young, R.F., 7-4945 Legal Review:	
7. PERSONS IN CHARGE: Burket, P.K., 7-3464	9. EFFECTIVE DATE OF FILING: N/A
8. DOCKET NO.: I-00040103	

DOCUMENT
FOLDER

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

- (a) Investigation into the Natural Gas Supply Market: Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market
- (b) On May 28, 2004, the Commission initiated an investigation into the effectiveness of competition in the natural gas industry. Responses to data requests were submitted by all of the NGDCs and 16 licensed NGSs. Comments were filed by 24 participants

An *en banc* hearing was held on September 30, 2004 during which 10 witnesses testified. Nine participants filed reply comments.

(c) The Law Bureau recommends that adopt the proposed order that releases the investigatory report to the public; directs that the report be sent to the General Assembly; directs Natural Gas Industry Stakeholders to convene to examine ways to increase competition in the retail natural gas supply market; and closes this investigation docket.

11. MOTION BY: Commissioner Fitzpatrick	Commissioner Chm. Holland - Yes
SECONDED: Commissioner Cawley	Commissioner Shane – Concurring &
	Dissenting in part
	Commissioner Pizzingrilli - Yes

CONTENT OF MOTION: Staff recommendation adopted.

Statement of Commissioner Bill Shane attached.
Statement of Commissioner Kim Pizzingrilli attached.

DOCKETED
OCT 19 2005

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

**Investigation into the Natural Gas Supply Market: Report
to the General Assembly on Competition in Pennsylvania's
Retail Natural Gas Supply Market**

**PUBLIC MEETING
October 6, 2005
OCT-2005 L-0105
I-00040103**

STATEMENT OF COMMISSIONER BILL SHANE

**Statement in support of repealing the Natural Gas Choice and Competition
Act.**

**As the prime mover of the 1984 Natural Gas Transportation rules for
commercial and industrial customers (along with my colleagues Commissioner
Terry Fitzpatrick, Commissioner Frank Fischl and John Povilaitis), I have a long
standing interest in natural gas competition. Those rules are successful. Today over
90% of the industrial gas and half the commercial gas is self-help gas.**

**However, gas competition at the retail level for residential and small
commercial customers is a failure, with the exception of a small flurry in southwest
Pennsylvania that was functioning before the "competition" act.**

**I am not surprised at all. I participated in the gas competition collaborative
in January, 1998 as the representative of the major producers: Exxon, Mobil, Shell,
Chevron, and BP. The corporations who supply 80% of Pennsylvania's natural gas.**

**That collaborative was dominated by Natural Gas Distribution Companies
(NGDCs) whose 30 or 40 utility representatives loudly berated the ideas and
comments of the half dozen or so gas marketers and producers. The Pennsylvania
producers were sadly silent during this debate. Their silence had been purchased
by the NGDCs with a provision in the draft language that preserved their contracts.
A modest sensible amendment by a colleague from Exxon was hooted down by the
crowd.**

**The NGDCs put language in the draft that raised competition barriers and,
in my opinion, competition was stillborn. The process was so frustrating that it
seemed to me the process was designed to fail. And it has failed.**

So I believe the Natural Gas Choice and Competition Act should be repealed as useless "dead letter" law. Another collaborative would be a futile exercise.

To the extent competition takes place in the residential sector, where most of us don't feel like reading all that fine print in the bill insert to save a few cents per month anyway, the market will bring that competition. This dead letter law is no help at all.

Therefore,

- 1. I concur on the conclusion of the Report. There is no effective competition in the Natural Gas industry for residential and commercial customers. The Report should be released.**
- 2. I dissent from the Report's recommendation to reconvene the Stakeholders to readdress the Report's conclusions.**

10/05/05
Date

Bill Shane
Bill Shane, Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

PUBLIC MEETING
OCTOBER 6, 2005

INVESTIGATION INTO COMPETITION IN THE
NATURAL GAS SUPPLY MARKET

OCT-2005-L-0105*
Docket No. I-00040103

STATEMENT OF COMMISSIONER KIM PIZZINGRILLI

Today the Commission issues its *Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market*. The investigation was instituted in accordance with Section 2204(g) of the *Natural Gas Choice and Competition Act* (Competition Act) that required the Commission to initiate an investigation and to determine whether effective competition for natural gas supply services exists in the Commonwealth five years after the effective date of the Act and to report its findings to the General Assembly¹.

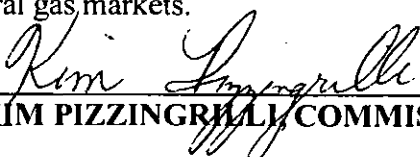
The *Report* is the culmination of an extensive review by the Commission and a significant number of stakeholders including natural gas distribution companies, natural gas suppliers, consumer advocates and industry representatives. The Commission's investigation included the submission and analysis of specific data relating to Pennsylvania's natural gas market, the presentation of stakeholder testimony in an *en banc* hearing before the Commission and the filing of comments and reply comments.

The Commission has concluded that there is not "effective competition" in the retail natural gas supply market on a statewide basis at this time due to the lack of participation in the market by many buyers and sellers, the existence of substantial barriers to market entry for suppliers, barriers that discourage customer participation, and the lack of presence of sellers offering buyers a variety of products and services.

The release of our report today is the first step of our review into the retail natural gas markets. Section 2204(g) of the Competition Act requires the Commission to reconvene the stakeholders in the natural gas industry to explore avenues, including legislative, for encouraging increased competition. I look forward to working with all of the stakeholders when we reconvene for additional discussions as to how we can enhance the competitive environment of natural gas supply services in Pennsylvania.

Finally, I commend our Staff for their efforts in assisting the Commission in completing this important step of our review into our retail natural gas markets.

October 6, 2005
Date


KIM PIZZINGRILLI, COMMISSIONER

¹ 66 Pa.C.S. §2204(g)



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

OCTOBER 6, 2005

I-00040103

DAN REGAN
ENERGY ASSOCIATION OF PA
800 NORTH 3RD ST SUITE 301
HARRISBURG PA 17102

DOCKETED
DEC 01 2005

Investigation into the Natural Gas Supply Market:
Report to the General Assembly on Competition in Pennsylvania's retail Natural Gas Supply Market.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on October 6, 2005 has adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

**DOCUMENT
FOLDER**

James J. McNulty
Secretary

fg
encls
cert. mail

See Attached Listing for Additional Parties of Record.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting Held October 6, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James Cawley, Vice Chairman
Kim Pizzingrilli, Statement attached
Terrance J. Fitzpatrick
Bill Shane, Concurring & Dissenting in part – Statement attached

DOCKETED
DEC 01 2005

Investigation into the Natural Gas Supply Market:
Report to the General Assembly On Competition In
Pennsylvania's Retail Natural Gas Supply Market

Docket No. I-00040103

**DOCUMENT
FOLDER**

**INVESTIGATORY ORDER
AND REPORT TO THE GENERAL ASSEMBLY**

BY THE COMMISSION:

In accordance with Section 2204(g) of the Public Utility Code, 66 Pa. C.S. §2204(g), by Order entered May 28, 2004 at Docket No. I-00040103, the Pennsylvania Public Utility Commission ("Commission") initiated an investigation into competition in Pennsylvania's retail natural gas supply market. Section 2204(g) directs the Commission to investigate and evaluate Pennsylvania's retail natural gas supply market to assess the resulting level of competition five years after the effective date of the "Natural Gas Choice and Competition Act" ("Act"). Section 2204(g) also directs the Commission to report its findings to the General Assembly. If the Commission determines that "effective competition" does not exist, the Commission is required to reconvene the stakeholders in the natural gas industry "to explore avenues, including

legislative, for encouraging increased competition in this Commonwealth.” 66 Pa. C.S. §2204(g). With this Order, the Commission is (1) issuing its *Report to the General Assembly on Competition in Pennsylvania’s Retail Natural Gas Supply Market* finding that “effective competition” in the retail natural gas supply services market does not exist on a statewide basis; (2) directing the Stakeholders to convene to consider means to increase competition in the retail natural gas market statewide; and (3) closing this investigation docket.

DISCUSSION

Procedural History

On May 28, 2004, the Commission initiated an investigation into the effectiveness of competition in the natural gas industry. In its Order the Commission directed natural gas distribution companies (“NGDCs”) and natural gas suppliers (“NGSs”) to file specific data relating to the natural gas market. Also, the PUC invited other interested parties to provide comments or written testimony addressing topics that are relevant in assessing the level of competition in that market. Twenty-four commenters,¹ including one pipeline company,² filed comments.

¹ Office of Consumer Advocate, Office of Small Business Advocate, Energy Association of Pennsylvania, the Mack Service Group, Equitable Gas Company (“Equitable”), Columbia of Pennsylvania, Independent Oil and Gas Association (“IOGA”), NRG Energy Center Pittsburgh (“NRG”), Constellation New Energy – Gas Division (“New Energy”), Amerada Hess Corporation (“Amerada Hess”), PEPCO Energy Services; Interstate Gas Supply Inc. (“Interstate Gas Supply”); Natural Fuel Resources, Inc. (“NRG”), UGI Utilities, Inc. – Gas Division (“UGI”); Peoples Natural Gas Co (“Dominion Peoples”); Texas Eastern Transmission, Inc. (“Texas Eastern”); Shipley Energy Company (“Shipley”); Dominion Retail, Inc. (“Dominion Retail”); National Energy Marketers Association; Agway Energy Services; PEPCO Energy Services; Utilitech, Inc.; Shell Energy Company (“Shell Energy”); and Direct Energy Services (“Direct Energy”).

² Texas Eastern.

Responses to data requests were filed by all of the NGDCs.³ Nineteen licensed NGSs⁴ filed responses to the Commission's questions.

The PUC held an *en banc* hearing on September 30, 2004 to further explore the level of competition in Pennsylvania. Ten witnesses⁵ representing the Energy Association of Pennsylvania (“EAP”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and various NGSs testified at the hearing. Representatives from the NGDCs did not present testimony but were available to be questioned by the Commissioners. Reply comments were permitted to be filed by October 12, 2004. Nine reply comments were filed.⁶

Report to the General Assembly

After extensive review of the record evidence presented in this investigation, the Commission has prepared the instant report for delivery to the General Assembly, and public release⁷.

³ The NGDCs filing responsive data include natural gas distribution companies with annual operating income greater than \$6,000,000, 66 Pa. C.S. §2202, and the Philadelphia Gas Works.

⁴ NGSs are defined at 66 Pa. C.S. §2202 to include entities other than NGDCs that provide natural gas supply service to retail gas customers utilizing the jurisdictional facilities of the NGDC. The number of suppliers varies as suppliers enter and exit the market. As of September 30, 2004, there were 82 licensed NGSs in Pennsylvania.

⁵ Witnesses testifying at the hearing represented EAP, Amerada Hess, Direct Energy, Dominion Retail, Interstate Gas, Shell Energy, Shipley, NRG, OCA and OSBA.

⁶ EAP; T.W. Phillips, Inc.; New Energy; Industrial Energy Customers of Pennsylvania; OSBA; Dominion Peoples; Equitable; and Amerada Hess filed separate comments. Joint Comments were filed by Direct Energy, Dominion Retail, Interstate Gas, Shell Energy, and Shipley Energy.

⁷ The report is incorporated by reference into this order.

It is the Commission's judgment that the existence of "effective competition" in the retail natural gas supply⁸ market in Pennsylvania would be demonstrated by participation in the market by many buyers and sellers, the lack of substantial barriers to market entry for suppliers, the lack of substantial barriers that would discourage customer participation, and the presence of sellers offering buyers a variety of products and services. Based on this standard and the record in this proceeding, there is not "effective competition" in the retail natural gas supply market on a statewide basis at this time. The Commission's competitive assessment is based on its findings, which are summarized as follows:

- (1) The record demonstrates a lack of participation by natural gas suppliers and buyers in the retail natural gas supply services market on a statewide basis.
- (2) The record indicates that natural gas distribution companies tend to act as price leaders in their respective service territories because many customers are not aware that the commodity price of natural gas, i.e., the "Price to Compare" or "PTC," is a quarterly reconcilable price, based on projections, rather than a fixed annual price.
- (3) According to suppliers, substantial barriers to entry in the retail natural gas supply market exist because of differing security requirements among natural gas distribution companies.
- (4) According to suppliers, substantial barriers to entry and continued participation by natural gas suppliers in the retail natural gas service supply market exist as the result of the omission of procurement, administrative and other costs from the natural gas distribution company's commodity price of natural gas, i.e., the "Price to Compare" or the "PTC."
- (5) According to suppliers, substantial barriers to supplier participation in the retail natural gas supply market exist because of penalties placed on suppliers that vary among natural gas distribution company systems and that are not cost-based.

⁸ The term "Natural Gas Supply Services" is defined at 66 Pa. C.S. §2202 as including "(i) the sale or arrangement of the sale natural gas to retail gas customers; and (ii) services that may be unbundled by the commission under section 2203(3)(relating to standards for restructuring of natural gas utility industry."

- (6) The regulatory lag in establishing and implementing quarterly price adjustments by natural gas distribution companies tends to mask the current market price of natural gas.
- (7) The marketplace lacks accurate and timely price signals; as a result, the market cost of natural gas supply service offered by natural gas distribution companies is not communicated immediately to customers.

In light of the above findings and conclusion the Commission directs, pursuant to its authority at 66 Pa. C.S. §2204(g), that the stakeholder group in the natural gas industry convene to explore avenues, including legislative (if appropriate), for increasing competition in Pennsylvania's retail natural gas supply service market. The Stakeholders shall examine the issues discussed in the report and other matters that are relevant to the retail natural gas supply service competitive market, and develop recommendations regarding changes that need to be made to the market structure and operation. Also, the stakeholders shall recommend any amendments that need to be made to the "Natural Gas Choice and Competition Act" and the Public Utility Code and revisions to the Commission regulations that would enhance competition.

The Commission will issue a Secretarial Letter announcing the date for this meeting and soliciting comments for a proposed agenda. We anticipate that the first stakeholders meeting will be held before the end of 2005;

THEREFORE,

IT IS ORDERED:

1. That the *Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market (Report)* is adopted and issued for public release.

2. That the Secretary shall cause a copy of this Order and the *Report* to be delivered to the Chief Clerks of the House of Representatives and the Senate of Pennsylvania, the Chairman of the Senate Consumer Protection and Professional Licensure Committee, the Chairman of the House Consumer Affairs Committee and the Governor.

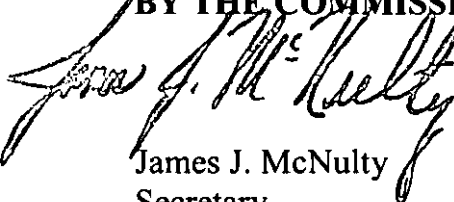
3. That the Secretary shall serve a copy of this Order and the *Report* to the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania, all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, and all other participants to this investigation.

4. That a copy of this Order and the *Report* shall be posted to the Commission Internet site at <http://www.puc.state.pa.us> .

5. That the Natural Gas Stakeholders shall convene to begin to examine avenues, including legislative, to increase competition in the retail natural gas supply services market before the end of 2005.

6. That the docket for this investigation be closed.

BY THE COMMISSION:



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 6, 2005

ORDER ENTERED: OCT 06 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

PUBLIC MEETING
OCTOBER 6, 2005

INVESTIGATION INTO COMPETITION IN THE
NATURAL GAS SUPPLY MARKET

OCT-2005-L-0105*
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Finally, I commend our Staff for their efforts in assisting the Commission in completing this important step of our review into our retail natural gas markets.

October 6, 2005
Date



KIM PIZZINGRILLI, COMMISSIONER

¹ 66 Pa.C.S. §2204(g)

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

**Investigation into the Natural Gas Supply Market: Report
to the General Assembly on Competition in Pennsylvania's
Retail Natural Gas Supply Market**

**PUBLIC MEETING
October 6, 2005
OCT-2005 L-0105
I-00040103**

STATEMENT OF COMMISSIONER BILL SHANE

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However, gas competition at the retail level for residential and small commercial customers is a failure, with the exception of a small flurry in southwest Pennsylvania that was functioning before the "competition" act.

I am not surprised at all. I participated in the gas competition collaborative in January, 1998 as the representative of the major producers: Exxon, Mobil, Shell, Chevron, and BP. The corporations who supply 80% of Pennsylvania's natural gas.

That collaborative was dominated by Natural Gas Distribution Companies (NGDCs) whose 30 or 40 utility representatives loudly berated the ideas and comments of the half dozen or so gas marketers and producers. The Pennsylvania producers were sadly silent during this debate. Their silence had been purchased by the NGDCs with a provision in the draft language that preserved their contracts. A modest sensible amendment by a colleague from Exxon was hooted down by the crowd.

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So I believe the Natural Gas Choice and Competition Act should be repealed as useless "dead letter" law. Another collaborative would be a futile exercise.

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Therefore,

- 1. I concur on the conclusion of the Report. There is no effective competition in the Natural Gas industry for residential and commercial customers. The Report should be released.**
- 2. I dissent from the Report's recommendation to reconvene the Stakeholders to readdress the Report's conclusions.**

10/05/05
Date

Bill Shane
Bill Shane, Commissioner