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October 31, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code § 62.225; Docket No. L-2017-2619223; **COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND SHIPLEY ENERGY TO ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

Dear Secretary Chiavetta:

Enclosed is the Comments of the Retail Energy Supply Association ("RESA") and Shipley Energy ("Shipley") to the above-captioned Rulemaking of the Pennsylvania Public Utility Commission.

If you have any questions concerning the enclosed Comments, please do not hesitate to contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel for
The Retail Energy Supply Association

TSS/jld
Enclosure
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BEFORE THE
PENNSYLANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking: Natural Gas	:	
Distribution Company Business Practices;	:	Docket No. L-2017-2619223
52 Pa. Code § 62.225.	:	

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
AND SHIPLEY ENERGY TO ADVANCE NOTICE
OF PROPOSED RULEMAKING ORDER

NOW COMES, the Retail Energy Supply Association ("RESA")[1] and Shipley Choice, LLC d/b/a Shipley Energy ("Shipley") (collectively "RESA/Shipley") and hereby jointly submit comments to the Pennsylvania Public Utility Commission's ("Commission") Advance Notice of Proposed Rulemaking Order issued August 31, 2017 ("ANOPR") in the above-captioned matter and published in the Pennsylvania Bulletin on September 16, 2017. Based on the publication date, comments to the ANOPR are due October 31, 2017. The Commission's ANOPR highlights four specific areas in which the Commission is proposing changes to the current practices of Natural Gas Distribution Companies ("NDGC"), in an effort to enhance the competitive market for natural gas in Pennsylvania. The subject matter of the proposals includes: providing uniform capacity costs for all customers; assigning capacity from all capacity assets including a requirement for

[1] The viewpoints expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

virtual products if actual capacity is not able to be assigned; imbalance trading; and, modifying penalty structures by creating a uniform statewide penalty structure for non-peak periods.

RESA/Shipley wish to share their views on these subjects with the Commission and offer their comments below. RESA/Shipley wishes to thank the Commission for the opportunity to provide comments on these issues, the fair resolution of which is vital to the continuing success of the natural gas restructuring in Pennsylvania. RESA/Shipley is ready and able to work with the Commission and other stakeholders in furtherance of these goals, and looks forward to the opportunity to do so. RESA/Shipley's comments to the specific proposals are as follows:

1. Uniform Capacity Costs for All Customers.

The Commission proposes that all customers pay for capacity at the system average cost for capacity, regardless of whether the customer is taking default service or is shopping. This model currently is employed by the Peoples Natural Gas ("Peoples"). The other NGDC's in Pennsylvania typically directly charge suppliers for capacity and the rates can differ as between what a supplier is charged per customer and what a default service customer is implicitly charged for the assets used to deliver gas to them.[2]

Access to capacity assets, both pipeline and storage, on a level playing field basis is critical if the natural gas market is ever going to be truly competitive. It is axiomatic that if NGSs and the default supplier are to receive an "equal" slice of capacity for each customer, as Peoples provides today, the payment for that slice should be the same for each. Charging customers directly for capacity assets allows suppliers to avoid the risk of recovery of capacity payments and will eliminate the complex systems that some NGDCs employ that charge suppliers and then credit

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[2] RESA/Shipley think it is important to confirm that the provisions discussed in these comments regard the applicability of the various proposals only to residential and small commercial customers, as the existing regulations specify. 52 Pa. Code § 62.221.

customers against an otherwise identical capacity charge. An equal charge also makes comparing rates more equal since capacity charges would no longer be part of the price equation for suppliers. Creating a more accurate comparison between natural gas supplier pricing and default service pricing enhances the customer experience by eliminating one more potential sticking point in the relationship -- the need to explain pricing differences. Accordingly, RESA/Shipley supports the Commission's proposal for a uniform capacity as means of leveling the playing field.

RESA/Shipley cautions, however, that the fundamental premise of charging all customers the same amount for capacity, at the system average capacity cost, is providing suppliers with a bundle of usable capacity assets that fairly represents the physical basis of the system average cost. Otherwise the system average cost basis for the charge would not be appropriate. As discussed below, RESA/Shipley supports the notion of assigning a representative slice of system capacity assets to suppliers, and support the notion that such slice should follow the customer. But NGDCs should not be permitted to provide a functionally inferior bundle of capacity assets, or a slice that includes "virtual" access to an asset which may have a vastly diminished value compared to the actual asset, and then still charge the system average cost for capacity. Such a result would be particularly offensive if the NGDC were to charge extra for use of a virtual asset. In short, charging the system average capacity cost is acceptable so long as the NGSs are receiving a representative system average bundle of assets in return.

2. Capacity Assignment from All Assets.

The Commission's regulations on the subject of capacity release at 52 Pa. Code § 62.225, appear to concede that the *Natural Gas Choice and Competition Act (the "Act")*, 66 Pa. C.S. § 2204(d)&(e), places the discretion of whether to release any capacity, in the first instance, with the NGDC, and that the requirements of the Commission's regulations apply only if the NGDC chooses to release, assign or otherwise transfer capacity to suppliers. Conversely, if the NGDC does choose to release capacity, the full panoply of the regulations arguably applies. Contrary to the ANOPR's contention, however, RESA/Shipley suggest that the *Act* requires more than the ANOPR acknowledges with regard to the level and type of assets that must be released. Specifically, the *Act* requires that:

> Such release, assignment or transfer shall be at the applicable contract rate for such capacity or Pennsylvania supply and shall be subject to applicable contractual arrangements and tariffs. **The amount so released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the natural gas distribution company has procured such capacity. . .**

66 Pa. C.S. § 2204(d)(3)(*emphasis supplied*). The quoted section suggests that if an NGDC releases capacity at all, it must indeed release the assets that the company would otherwise have used to serve the customer or group of customers. While this interpretation appears to be at odds with the ANOPR, for purposes of the following discussion, it may not be material, as the ANOPR does not propose to alter 52 Pa. Code § 62.225(a)(2), which requires that "capacity assets must follow the customer for which the NGDC has procured the capacity" nor the concept that NGDC's are prohibited from releasing capacity in a manner that discriminates as to price, reliability or functionality. 52 Pa. Code § 62.225(a)(1). Rather, the ANOPR proposes to require, as an extension of section 62.225(a)(2), that "[w]hen releases must be restricted due to reliability or other constraints, an NGDC shall develop a mechanism that provides proxy or virtual access to the assets." On its face, this appears to be an expansion of the requirements for NGDCs.

The ANOPR appears to recognize that the current assignment of capacity assets is not uniform, and in some cases, may discriminate – particularly as to functionality. For example, there could be an NGDC that turned over its entire capacity portfolio to an asset manager whose primary responsibility is to make additional profits for itself and the utility, after ensuring that the utility has sufficient capacity for providing default service. Consequently, that NGDC would not assign storage capacity to suppliers on its system, even while default service enjoys the use of storage assets. As a substitute for actual access to actual storage, the utility could provide an indexed virtual storage product that eliminates the potential for NGS to use that virtual product as a means of proving a more competitively priced service to its customers. While the virtual storage does address some of the downside risk, it also eliminates the potential for any upside. Rather, the upside (profit gained by selectively releasing the capacity) is shared between the asset manager and the utility. In this example, it should be obvious that virtual storage does not provide the same optionality as actual storage, even when considering the costs to the supplier of meeting the requirements of the storage operator for filling and withdrawing from that storage. It is not clear whether the utility claims that such storage is a critical capacity resource or is a legacy bundled product, but with such an obvious profit motive, the example cited above illustrates the need for serious examination of "critical" claims. If the NGDC were providing a "virtual" asset that is less valuable than the actual asset, then fairness would dictate that if the NGDC makes "profit" on the asset that it will not, or cannot assign, that the NGSs share in that profit. RESA/Shipley does not take issue with the use of an asset manager, but if the primary reason for the non-assignment of a fair slice of assets is the asset manager's need for profit, then we think the line of discrimination has been crossed.

RESA/Shipley also contend that assigned capacity must also be usable by the supplier to serve the customers whom it follows – that is, it must reasonably represent the same bundle of assets that the NGDC would use to serve the same customers. For example, if a utility had a non-contiguous foot print that required multiple pieces of capacity possibly on multiple pipelines with multiple delivery points, then the capacity that is assigned to a particular supplier should be capable of reaching those delivery points in the necessary quantities. Conversely, if the NGDC holds contracts for capacity assets that are not useful to serve a particular suppliers' customers, effort should be made not to assign those assets to a supplier who will never need to use them. Before we get to the consideration of expanding the capacity assignment regimen, the Commission and interested parties should ensure that the current regulations are sufficiently robust to accomplish the ends for which they were intended.

One other issue, not directly addressed by the ANOPR is the extent to which NGDC's today selectively assign assets in a fashion that in RESA/Shipley's view is inconsistent with the current requirements. There is at least one NGDC that assigns a minimum of transportation capacity to meet a daily fraction of a suppliers' expected delivery per customer multiplied by the number of customers. No storage is assigned, and in some cases, the assets assigned are not usable to efficiently deliver over the NGDC's diverse and dispersed footprint. Disregarding for a moment the system average cost argument discussed above, such a program simply cannot meet the non-discrimination requirements of the *Act*, even though the program has been in existence for many years. We recognize that suddenly disbanding such a program, assuming the Commission were so inclined, would impose hardships all around and are not inclined to insist on immediate change. For systems in this situation, particularly, where an NGDC's service territory is geographically dispersed and where providing a reasonable slice of capacity assets is more challenging, RESA/Shipley would be willing to consider an exception – at least temporarily. However, such an exception would necessarily ensure that shopping customers are paying no more for the assigned capacity than it is worth and would necessarily need to delineate a path to full and fair assignment within a reasonable timeframe.

While as a concept, RESA/Shipley does not object to proxy access or virtualization of pipeline or storage capacity – which seems to be the focus of the proposal -- it simply wants to point out that in most circumstances, products intended to take the place of actual capacity assets, so-called virtual assets, are always less useful, and less valuable than the real thing. Based upon this view, RESA/Shipley submit that virtualization/proxy access to capacity resources should be considered only as a last resort, and that there should be a rebuttable presumption that all assets are assignable. RESA/Shipley believe that it should be the NGDC's burden to demonstrate otherwise; i.e., why particular assets cannot be assigned to an NGS in the same manner used by the NGDC in the provision of default service. The reason for this approach is simple. As the ANOPR recognizes, some assets, storage in particular, provide opportunities to compete on price that substitutes simply cannot replicate. The only way to avoid what would otherwise appear to be valid claims of discrimination, would be to require the NGDCs to substantiate reasons for the non-assignment of assets that it uses for default service.

RESA/Shipley also understands that system reliability is higher on the Commission's list of priorities than competitive fairness, but urges the Commission to make sure that claims that a particular asset or group of assets are necessary for reliability are well documented. RESA/Shipley is happy to work with the Commission on rules for allowing use of such assets on a re-callable or restricted basis, so long as the restrictions do not substantially diminish the value of the asset. Otherwise there is little point to the exercise. Any such process must be uniform, fair, transparent and expedient, so that all suppliers have the real ability to access such assets.

3. Imbalance Trading.

RESA/Shipley have long championed more uniform and market rational penalties. They thank the Commission for bringing this subject to the conversation in the ANOPR. The ability to trade imbalances among suppliers in near real time will allow suppliers to "balance" the market without resort to penalties, when one supplier might be long and the other short on a particular day. RESA supports the effort. It is clear that for a "trade" to be possible, long parties and short parties must be willing and able to identify each other, and quickly and securely effect a trade. That requires some mechanism, possibly an electronic bulletin board or web portal that would allow suppliers to view imbalances in either direction in time to trade those imbalances with other parties before penalties apply. While imbalance trading can be a useful mechanism to promote economic efficiency, it should not be considered a panacea. Most problematic, however, is an issue the ANOPR alludes to – the fact that real-time imbalance trading will require significant system upgrades for many NGDCs. It is reality today that some NGDCs experience difficulty in providing accurate and timely monthly usage information. A real-time system will require that customers have smart meters with daily/hourly remote reading capability – something that is simply not part of the equation for the vast majority of customers. Hand-in-hand with daily read meters will be IT systems capable of collecting and processing the information – again, this capability is improving as more NGDCs replace legacy systems, but there is not yet universal deployment of such systems.

In short, RESA/Shipley support the notion of daily imbalance trading. However, RESA/Shipley also wish to be realistic, and acknowledge that such an aspiration may be more than a few year's out, due to the needed first step of upgrading metering capability on a statewide basis and all that such a task involves, even if consideration is given initially only to commercial customers.

4. Penalty Structure During Non-peak Times.

The Commission proposes to establish a uniform methodology for the setting of penalty amounts based upon local market prices. Under such a methodology, penalties for non-delivery during non-peak periods, could for example, be set at some uniform percentage above the average of the highest index price for that market and the lowest index price for that market during the time of the non-delivery. That basic structure, once adopted, could be used for each NGDC territory. RESA/Shipley agree that such a mechanism is a useful means of setting maximum penalties for under/over-deliveries on a statewide basis. Such a structure should also incorporate a no-harm, no-foul approach, so that if non-delivery, or over-delivery did not cause system harm, the penalty is either waived or reduced, and likewise, if the non-delivery or over-delivery improved system reliability no penalty would apply. Similarly, by stating these as maximum penalties, NGDCs would be free to consider other mitigating factors as well.

RESA/Shipley agree that at a basic level, penalties provide a meaningful tool to enforce delivery requirements. To the extent that penalties are based on actual market prices, however, with a rational multiplier, they will continue to provide an incentive to comply, while not exposing suppliers to extreme risk for non-compliance which can often be the result of mistakes, as opposed to intent to do so. The Commission's vision that such requirements and the consequences for non-compliance are uniform across all NGDCs, is a good way to avoid continual litigation of penalties because market prices will set the penalties. RESA/Shipley agrees that having a rational and uniform penalty structure on a statewide basis will eliminate barriers to entry and allow suppliers to better understand the risks of providing service. RESA/Shipley agree at a market price multiplied by 115% of would be a reasonable maximum penalty for non-delivery on a non-peak day. So long as the "market price" is determined by indices that are relevant to the service territory, i.e., specifically with major transmission lines or trading hubs to which they are attached, this should produce the appropriate incentives for compliance.

Respectfully submitted,

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