



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

IN REPLY PLEASE
REFER TO OUR FILE

March 25, 2010

TO ALL INTERESTED PARTIES:

Re: Marcellus Shale En Banc Hearing on
PUC Jurisdictional Issues
Docket No. I-2010-2163461

The Pennsylvania Public Utility Commission (PUC) will hold an *en banc* hearing on Thursday, April 22, 2010, to seek information from interested parties on PUC jurisdictional issues related to Marcellus Shale development. This development creates numerous issues and unanswered questions, many of which impact the Commission's core functions. The *en banc* hearing is to examine these questions sooner rather than later so that the Commission can fully protect the public while not stifling economic growth. The hearing will not examine issues outside of the Commission's jurisdiction such as water quality or other environmental issues.

The hearing will be held at 1 p.m. in Hearing Room 1 of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. The PUC's Office of Administrative Law Judge will manage the course of the hearing and the hearing will be transcribed and recorded. This hearing is not an adversarial proceeding and companies may be represented by a partner, *bona fide* officer or employee of the company, in lieu of an attorney. 52 Pa. Code § 1.21(c). Participants sharing substantially similar interests and positions may be grouped into panels to present comments. The public is invited to attend.

Representatives from the following organizations are requested to testify:

Chesapeake Energy
Energy Association of Pennsylvania
Energy Future Holdings
Independent Oil and Gas Association of Pennsylvania
Marcellus Shale Coalition
Office of Consumer Advocate
Office of Small Business Advocate
Pennsylvania Association of Township Supervisors
U.S. Department of Transportation – Office of Pipeline Safety

Invited parties must confirm their attendance and name a representative who will present comments and answer questions at the hearing by April 2, 2010. Information should be provided to Jennifer Kocher at jekocher@state.pa.us or (717) 787-5722. The representative may present comments on the issues identified in the attached list of questions. Other relevant topics also may be addressed. Presentations will be limited to 10 minutes, depending on the number of presenters. The Commissioners will question the representatives after all presentations have been made; no other questioning of a representative will be permitted.

Invited parties should file with the Secretary written comments and/or exhibits for inclusion in the record no later than 4p.m. on April 16, 2010. For interested parties who were not invited to testify, the PUC also will accept written comments filed by 4 p.m. on April 16, 2010. A courtesy electronic copy of the written comments and/or exhibits should be provided to Jennifer Kocher in the Office of Communications at jekocher@state.pa.us. All documents will be posted on the PUC's website.

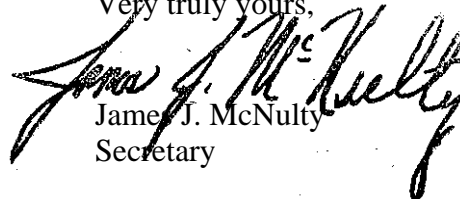
For invited parties testifying at the hearing, nine (9) paper copies of each document, including PowerPoint presentations, should be brought to the hearing for distribution to the Commission, Commission staff, the court reporter and the Secretary. Invited parties also may bring extra copies for public distribution.

Those testifying may use PowerPoint presentations as a visual aid. For clarity of the transcript, a representative must identify the content and number of each slide while presenting. The PowerPoint presentation will be marked as an exhibit and entered into the record at the hearing. To lessen the likelihood of technical difficulties, an electronic copy of a PowerPoint presentation must be submitted to Jennifer Kocher at jekocher@state.pa.us by 4 p.m. on April 16, 2010.

Any questions regarding this hearing should be directed to Rikardo Hull at rihull@state.pa.us or (717) 787-4301. The PUC will release a tentative agenda of the hearing on April 8, 2010.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the Scheduling Office at (717) 787-1399. The AT&T Relay Service number for persons who are deaf or hearing-impaired is 1-800-654-5988.

Very truly yours,



James J. McNulty
Secretary

cc: Karen Oill Moury, Director of Operations
Bohdan R. Pankiw, Chief Counsel, Law Bureau
Robert Wilson, Director, Bureau of Fixed Utility Services
Veronica A. Smith, Chief Administrative Law Judge, OALJ
June Perry, Director, Legislative Affairs
Thomas Charles, Manager, Office of Communications
Paul Diskin, Manager-Energy/Water/Wastewater, Bureau of Fixed Utility Services
Jennifer R. Kocher, Press Secretary, Office of Communications

MARCELLUS SHALE EN BANC HEARING

QUESTIONS

The definition of a public utility is set forth in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102. The definition reads as follows, in pertinent part:

Public utility.

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
 - (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
 - *****
 - (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.
- (2) The term does not include:
 - (i) Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself.
 - (ii) Any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.
 - (iii) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

This definition of public utility has been addressed in Commission decisions and court opinions numerous times.

The definitions of a natural gas supplier and a natural gas supply services are set forth in Section 2202 of the Public Utility Code, 66 Pa. C.S. § 2202. Chapter 22 is the Natural Gas Choice and Competition Act.

Natural gas supplier.

An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers, utilizing the jurisdictional facilities of a natural gas distribution company. The term includes a natural gas distribution company that provides natural gas supply services outside the certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

- (1) As provided prior to the effective date of this chapter pursuant to a certificate of public convenience if required under this title;
- (2) Total natural gas supply services in *de minimus* amounts;

- (3) Natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided, or
- (4) Natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.
The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company, is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the commission.

Natural gas supply services.

- (1) The term includes
 - (i) The sale or arrangement of the sale of 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).
- (2) The term does not include distribution service.

Considering the statutory definition of a person, a public utility, a natural gas supplier and natural gas supply services set forth above, and the questions posed below, provide an explanation of how you intend to operate your pipeline:

What will be the origin and ownership of all gas entering your pipeline? Will the gas only be from your well(s)? If not, identify the origin of each source of gas. Will the gas come from your well(s), and other entities that retain ownership of the gas? Will you only be transporting the gas of others? Will you be buying any gas and transporting it in your pipeline?

Will you sell any of the gas being transported in your pipeline to individual end use customers along your pipeline? Will any of the gas be delivered into an interstate transmission line? If the gas is delivered to an interstate pipeline and you use the interstate pipeline to transport the gas, where will the title pass and to whom? Will the gas be delivered into an intrastate transmission line? If it is delivered to an intrastate pipeline, will you sell it to the intrastate pipeline or use the intrastate pipeline to transport the gas and sell it further downstream? Will your pipeline be connected to and deliver gas to a utility subject to the jurisdiction of the Pennsylvania Public Utility Commission (Commission)?

Are the gathering systems and processing facilities that will be built be considered public utility service subject to Commission regulation?

The Commission regulates the rates that public utilities may charge their customers. Public Utilities are required by statute to provide safe service as set forth in Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. The Commission inspects pipelines within its jurisdiction to ensure the safety of these pipelines. In addition, the Commission's budget, in large part, comes from the assessment of public utilities.

Keeping in mind the type of pipeline that you intend to own and operate, provide answers to the following questions:

Do you intend to be subject to the jurisdiction of the Commission as it relates to the safety of your pipeline?

If you intend to be subject to the Commission's jurisdiction for safety regulation and assessment purposes only, what changes need to be made to the statutory definition of a public utility set forth above?

If you do not wish to be subject to the Commission's jurisdiction in any manner, what changes would you suggest be made to the statutory definition of a public utility set forth above?

Related to natural gas distribution companies' gas purchasing, Section 60.1 of the Public Utility Code reads, " The transportation of natural gas by jurisdictional gas utilities is in the public interest. Transportation service should be provided under terms, conditions and rates which minimize the shifting of costs to retail customers and provide the natural gas utility with an opportunity to recover the fixed costs incurred to serve the transportation service customers. The development of Pennsylvania natural gas should be promoted, because it will achieve benefits that accrue to gas utilities and their customers." 52 Pa. Code § 60.1.

What effect will the availability of natural gas from Marcellus Shale have on natural gas distribution companies' least cost fuel procurement policy?

Should the Commission encourage natural gas distribution companies' expansion efforts into the gas fields with the use of long-term contracts to support drilling and processing capital requirements?

Directed Question to the Pennsylvania Association of Township Supervisors

What is the effect that truck transport related to Marcellus Shale development will have on municipalities within the Commonwealth of Pennsylvania?

General Questions

How best can the Commission promote the production and use of natural gas from the Marcellus Shale formation?

How can we avoid crippling existing and new shallow natural gas production?

Where does responsibility for inspecting non-jurisdictional intrastate transmission pipelines for safety lie? PUC or U.S. DOT?

If the PUC enforces the federal gas safety regulations i.e. first metering station, last compressor station downstream, at what physical point should that enforcement begin?

How should that responsible agency recover the expense of ensuring the safety of these non-jurisdictional intrastate transmission pipelines?

How should jurisdictional gathering/intrastate transmission pipelines be assessed – total jurisdictional revues or pipeline mileage? Why?

What is the role of the PUC in siting gathering/intrastate transmission pipelines?

What should the requirements be for jurisdictional gathering/intrastate transmission pipelines to register with PA One Call and how should that be accomplished?