



**National Fuel**

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September 9, 2010

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Pursuant to the Advanced Notice of Final Rulemaking Order entered on August 10, 2010 at the above-referenced docket, enclosed for filing are an original and 15 copies of the Comments of National Fuel Gas Distribution Corporation. This document is also being filed electronically.

If you have any questions regarding this filing, please feel free to contact me at (814) 871-8060.

Very truly yours,

Christopher M. Trejchel

CMT/ejc

Enclosures

Cc: David E. Screven  
Richard Wallace  
Sherri Del Biondo

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Natural Gas Distribution Companies and  
the Promotion of Competitive Retail  
Markets** :  
: **COMMENTS**  
:  
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: **Docket Number: L-2008-2069114**  
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**COMMENTS OF  
NATIONAL FUEL GAS DISTRIBUTION CORPORATION  
TO THE ADVANCED NOTICE OF FINAL RULEMAKING ORDER**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

**I. Introduction.**

On August 10, 2010 the Pennsylvania Public Utility Commission (the “Commission”) entered an Advanced Notice of Final Rulemaking Order (the “Order”) in this matter containing proposed additional regulations to be added to 52 Pa. Code §§ 62.221 – 62.227 (the “Proposed Regulations”). The Order allows for the submission of comments within 30 days of the entry date of the Order regarding the various changes to the regulations proposed in the Order. A separate statement was published by Vice Chairman Tyrone J. Christy wherein he asked for comments on a number of specific topics.

For its response to the Order and Vice Chairman Tyrone J. Christy’s Statement, National Fuel Gas Distribution Corporation (“Distribution” or “the Company”) submits the following Comments. Distribution also supports the Comments of the Energy Association of

Pennsylvania (the “EAPA”), of which Distribution is a member, filed contemporaneously at this Docket.

## **II. Comments**

Distribution’s comments will generally follow the structure of the Proposed Regulations set forth in Annex A of the Order. Attached hereto as Appendix 1 is a copy of Annex A of the Order with Distribution’s proposed changes inserted.

### **A. § 62.222. Definitions**

The definition of “GPC” contains a minor typographical error. The term “NDGC’S” should be changed to “NGDC’S”.

The definition of “PTC” should be modified to delete the term “line item” and replace it with the term “single commodity rate.” This change will provide the clarification requested by the Independent Regulatory Review Commission (“IRRC”) as to whether the PTC is a rate or a cost. The term “single commodity rate” is the same language used by the Commission on page 11 of the Order.

The definition of “SOLR” should be modified to delete all language after the phrase in parenthesis. Thus, the definition would read, “A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve).” Consistent with other definitions in this regulation and the IRRC’s direction, the Commission should simply reference the Act where the term is already defined there.

### **B. § 62.223. PTC.**

As described on page 18 of the Order, the PTC shall have the following elements on a per MCF or DTH basis: (1) the gas cost rate determined in the NGDC’s Section 1307(f) proceeding;

(2) the reconciliation for over and under collections; (3) the NGDC's natural gas procurement costs; and (4) the merchant function charge.

Generally speaking, Distribution does not oppose the proposed structure and associated tariff filing mechanisms. Distribution also does not oppose revenue neutral rate designs that accommodate the proposed PTC structure. However, similar to Vice Chairman Christy, Distribution has concerns as to how natural gas procurement costs are to be determined. In particular, Distribution is concerned that the Commission is not recognizing the distinction between SOLR activities and associated costs with gas procurement function activities that are incurred solely for the benefit of sales customers. These two functions are not mutually exclusive.

The SOLR function provides benefits to both shopping and non-shopping customers.

The proposed definition of SOLR provided in the Order makes this abundantly clear:

*SOLR--Supplier of last resort--*A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve) to provide natural gas supply services to customers who:

- (i) Contracted for natural gas that was not delivered.**
- (ii) Did not select an alternative NGS.
- (iii) Are not eligible to obtain competitive natural gas supply.
- (iv) Return to the supplier of last resort after having obtained competitive natural gas supply.**

(emphasis added)

A plain reading of subparts (i) and (iv) of the proposed definition indicate that they are obligations of the SOLR that only benefit shopping customers. The conclusion to be drawn from

this fact is that shopping customers benefit from the management, contracting, scheduling, administrative and other costs associated with providing the SOLR function.

Because the SOLR operates to the benefit of both shopping and non-shopping customers it is inappropriate to place all SOLR gas procurement costs in the PTC. Such inappropriate cost shifting would cause discrimination against one customer class for the benefit of another in violation of 66 Pa. C.S. § 2203. To resolve this inequity, the Commission should clarify that the procurement costs to be included in the PTC are only those procurement costs incurred solely for the benefit of sales customers. To avoid the issue of stranded costs, Distribution recommends that those procurement costs should only include the avoidable procurement costs.

As currently drafted, the Proposed Regulations fail to recognize that the procurement costs of the SOLR are not the same as the procurement costs of an NGS. As a direct result of the SOLR function, a NGDC must meet the needs of small volume customers at any time. It is inherent in the Competition Act that there be two types of service providers: a NGS provider that has the ability to pick and choose its customer base, and a SOLR provider that cannot pick and choose its customer base and is subject to all consumer protection standards and universal service obligations. Furthermore, the service requirements placed on the SOLR by the statute provide tangible benefits (*e.g.*, standby benefits set forth in 66 Pa. C.S. § 2207(a)(2)(ii)) to shopping customers. The SOLR needs staff to administer the pipeline and storage (if applicable) releases to various NGSs for the benefit of shopping customers. These releases must be adjusted to match the capacity requirements of the NGS transportation customers on a monthly basis due to continual migration of customers to, from and between NGSs. Until the law is changed or SOLR functions are assumed by NGSs, SOLR costs will remain more a fixed cost of the NGDC's service that cannot and should not be expressed as a PTC. Therefore, in order to meet

the purpose of the statute, the PTC should be limited to the kind of avoidable costs incurred by an NGS.

If the Commission intends to include unavoidable procurement costs in the PTC, the Commission will be establishing a discriminatory pricing structure where sales customers are required to recover costs incurred solely for the benefit of shopping customers while shopping customers avoid costs of sales service that may benefit them.

Through the course of this proceeding, the Commission has focused solely on management, contracting, scheduling, administrative and other costs directly associated with the NGDC's natural gas procurement function. There has been little to no recognition that there is a similar and significant set of management, contracting, scheduling, and administrative costs directly associated with an NGDC's transportation management services that solely benefit shopping customers. Since all customers can potentially avail themselves of the benefits of transportation services, all customers should share in the recovery of those transportation service costs. Similarly, system-wide benefits accrue from an NGDC's gas procurement function. A system that allows system-wide benefits of the gas procurement function to be ignored to the financial detriment of non-shopping customers while at the same time allowing system-wide benefits of the transportation services management function to be recognized to the financial benefit of shopping customers and/or their natural gas suppliers would be unduly discriminatory in violation of 66 Pa. C.S. § 2203.

A solution to this potential for discrimination would be to recognize in the proposed 1308(a) tariff filing both transportation management costs (which would be recovered solely from shopping customers) and gas procurement costs. However, this potential solution is not necessarily ideal because it will add analytical and litigation costs to the 1308(a) tariff

proceedings for a set of costs that may simply off-set each other. Instead, Distribution recommends that the gas procurement costs included in the PTC are solely those gas procurement costs that are “avoided” by the NGDC/SOLR when a customer chooses an alternative supplier of natural gas.

Based on the above comments, Distribution recommends the following changes to the proposed § 62.223. PTC:

- Modify the first 2 sentences of subparagraph (b) as follows: “File a gas procurement charge (GPC) rider under 66 Pa. C.S. § 1308(a). The GPC will identify the avoidable natural gas . . . to remove those avoidable costs . . .” This change would establish a separate GPC rider that would only include avoidable costs.
- Add the following as new subparagraph (b)(4): “The GPC rate may be updated quarterly to ensure that the rate continues to reflect and recover gas procurement costs.” Consistent with the discussion on page 16 of the Order, this change clarifies when the GPC may be updated.
- Remove the word “retail” from the first sentence of subparagraph (c)(1). The write-off factor should be calculated based on total uncollectible expense and revenues. Because the accounts receivable purchased from an NGS are both legally and practically indistinguishable from the accounts receivable of NGDC ordinary delivery service and SOLR customers, the write-off factor should reflect all customers, both shopping and non-shopping.
- In subparagraph (d), make the word “rider” plural as we recommend separate GPC and MFC riders.

- Delete the phrase “and cost category” from subparagraph (d)(2)(i). Identifying costs by customer class is sufficient.

Vice Chairman Christy also requested comments as to whether the MFC violates 66 Pa. C.S. § 1408. The MFC does not violate § 1408 because it is not tracking specific uncollectible costs, reconciling them, and surcharging for any difference between costs incurred and revenues collected for that purpose. In other words, the MFC is just a rate that gets re-established in base rate proceedings like all other rates - there is no reconciliation of costs. The MFC adjusts with changes in gas costs not uncollectibles.

**C. § 62.224. POR programs.**

Distribution generally supports the POR provisions specified in the Order. While Distribution continues to believe that a risk factor is appropriate to include in a POR discount rate, the provision allowing POR discount rates to be updated is a reasonable alternative. Regardless, the proposed POR provisions need to be modified to consistently and clearly reflect what Distribution believes is the Commission’s intentions as articulated in the body of the Order.

Additionally, Distribution disagrees with the Commission’s interpretation of 66 Pa. C.S. § 2205(c)(5) set forth on page 29 of the Order. The first sentence of this statute clearly requires that the NGDC must be paid first where the NGS has chosen to use the billing services of the NGDC. This statutory provision also precludes the Commission from forcing an NGDC to make payments to an NGS where the NGDC has not yet received payment from the customer(s). Hence, contrary to the Commission’s arguments at pages 29-30 of the Order, under § 2205(c)(5) the Commission cannot mandate POR programs because it would be requiring NGDCs to pay NGSs before the NGDCs received any payment from the NGSs’ customers. Directing NGDCs to pay the NGSs first would violate the plain language of the statute. Although the

Commission's interpretation of § 2205(c)(5) is incorrect, the proposed regulation does not violate the statute because the Commission is maintaining POR as a voluntary program rather than "mandating" POR.

Distribution recommends the following changes to the proposed § 62.224. POR programs:

- Subparagraph (a)(2) should be changed to read, "An NGDC shall only purchase receivables associated with basic natural gas supply service charges and may not purchase other receivables that may be held by NGSs. The NGS shall certify that charges do not include receivables for any other products or services. In order to qualify for participation in a POR program, an NGS shall use consolidated billing from the NGDC. A NGS may separately bill a customer for additional natural gas supply services in the following limited circumstances, however, a NGDC will not be required to purchase the receivables related to these additional natural gas supply services:." The language proposed in the Order reads as if the NGS may have its receivable purchased when it provides its own customer billing function if it experiences the billing circumstances set forth in (a)(2)(i) and (ii), which was not the intent. The minor changes suggested above clarify this problem. The addition to the end of subparagraph (a)(2) clarifies that the NGDCs will not be required to purchase receivables for services separately billed by the NGSs under (a)(2)(i) and (ii).
- Subparagraph (a)(2)(i) should be deleted. All basic natural gas supply services should conform to the NGDC billing. In the alternative, subparagraph (a)(2)(i) should be changed to read, "An NGS participating in an NGDC's POR program

may separately bill a customer for basic natural gas supply service that the NGDC's consolidating billing system cannot accommodate; the NGS shall provide written certification to the NGDC that the basic natural gas supply service cannot be billed under the NGDC consolidated billing." Basic natural gas supply service that cannot be billed by the NGDC should not be required to be purchased by the NGDC. Requiring a certification from the NGS is consistent with the Petition of PECO Energy referenced by the Commission on page 25 of the Order. See, Petition of PECO Energy Company for approval of its Revised Electric Purchase of Receivables Program, Docket No. P-2009-2143607 (Order entered June 16, 2010 at page 8).

- Subparagraph (a)(2)(ii) should be changed to read, "An NGS participating in an NGDC's POR program may separately bill a customer for a specific service or product if that service or product does not meet the definition of basic natural gas supply service." Non-basic service should not be required to be purchased by the NGDC. The proposed language in the Order could be interpreted as allowing a NGS to completely avoid participation in the POR program if it billed for services or products that are not basic natural gas service. Such a result would be contrary to the Commission's intent as set forth in the Order.<sup>1</sup>
- Remove the term "collections experience" from subparagraph (a)(9) and where the word "shall" is used in this subparagraph, it should be changed to "may." As to tracking program costs, Distribution recommends that "shall" be changed to

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<sup>1</sup> Specifically on pages 24-25 of the Order the Commission states, "Nevertheless, to the extent an NGS is providing a service or product to customers that an NGDC's consolidated billing system cannot accommodate or the NGS wants to offer products that are bundled with non-basic services, the NGS may be permitted to issue a separate bill **for such service or product for that customer.**" (emphasis added)

“may,” so that utilities that may find tracking such costs to be administratively burdensome can avoid such costs. Similarly, utilities should not be forced to file an updated POR discount but instead should be given the option to file an updated POR discount so that the utility may file the update at a time it deems appropriate.

- Add the following as subparagraph (a)(10): “An NGS must accept all customers without using a credit check or requiring additional security deposits.” The Commission stated its intent to include a provision like this on page 25 of the Order but it was not included in the proposed regulation.

**D. § 62.225. Release, assignment or transfer of capacity.**

Distribution strongly disagrees with the proposed replacement of “may” with “shall” in §62.225. The word “shall” makes capacity release mandatory in all circumstances and would be in direct opposition to the directives of the General Assembly as set forth in 66 Pa. C.S. § 2204(e)(1), which states:

**(e) New and renewed capacity.-**

- (1) Subject to the service obligations imposed by this title, and to the extent such capacity is not needed to meet the natural gas distribution company’s least-cost fuel procurement and other applicable standards pursuant to this title, prior to entering into new or renewed contracts for firm storage or transportation capacity not subject to subsection (d)(1), (2), (3) or (4), each natural gas distribution company **shall offer** on a nondiscriminatory basis to each natural gas supplier licensed to do business on its system, and to large volume industrial or commercial customers of the natural gas distribution company being served by such contracts, **the opportunity** to renew such contracts, pursuant to the rules and regulations of the Federal Energy Regulatory Commission, or to enter into other contracts for capacity. (emphasis added)

The statute does not go so far as to mandate capacity release but instead requires it to be offered.

Because the statute stops well short of mandating capacity release, the Commission does not have the authority to go beyond the directives of the General Assembly and impose a more stringent rule via regulation.

It has long been settled that the power of the Commission is statutory, arising either from the express words contained in the enabling statutes or by a strong and necessary implication from those words. PECO Energy Co. v. Pa. PUC, 791 A.2d 1155, 1159 (Pa. 2002), citing Feingold v. Bell of Pa., 383 A.2d 791 (Pa. 1977). While the Commission is expressly authorized to supervise and regulate utilities in the public interest, its jurisdiction, powers, rules, orders and regulations are subject to and are limited by the Constitution and the pertinent statutory and decisional law. Pa. R. Co. v. Pa. PUC, 152 A.2d 422, 425 (Pa. 1959). Hence, the power of an administrative agency, like the Commission, to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute. Lancaster Transportation Co. v. Pa. PUC, 82 A.2d 291, 296 (Pa. Super. 1951). The construction of such rules and regulations, as well as the rules and regulations themselves, must be consistent with the law. Id. See also, 66 Pa. C.S. § 501(b). Because proposed regulation § 62.225 is not consistent with 66 Pa. C.S. § 2204 it must be modified or risk being challenged and stricken if adopted. Distribution suggests that the modifications included in its comments herein will both bring the proposed regulation into compliance with the law and result in a more reasonable and workable capacity release program to the benefit of all affected parties.

To be clear, Distribution supports mandatory capacity release where it holds capacity for existing residential, small commercial and/or essential human needs customers, whether they are shopping or non-shopping. Distribution further agrees that capacity should “follow the customer.” However, rather than harmonizing the regulation with the intent of the statute, replacement of “may” with “shall” in §62.225 creates uncertainty. In addition to the conflict explained above, the proposed text is unclear as to whether NGDCs should be acquiring capacity

for current shopping large commercial or industrial customers in order to carry out the mandate. The large commercial and industrial customer markets have been transportation customers for decades, and therefore, Distribution does not hold capacity for these customers in a meaningful amount for the purposes of § 62.225.

In addition to the legal obstacles to the proposed regulation, mandating capacity release removes any discretion an NGDC might have in crafting a capacity release program best suited to the assets available within the NGDC's capacity portfolio. Such discretion is critical and necessary to address the mutual operating interests and attendant efficiencies of concern to both NGDCs and NGSs. In effect, proposed § 62.225(a), in concert with subparagraph (a)(1), mandates a "slice of the system" approach to capacity release, *i.e.* a proportionate amount of each piece of an NGDC's capacity would be released to the NGS. While the "slice of the system" approach, on its face, seems to be fair, for complex capacity portfolios such as Distribution's the end result is a capacity release program that is operationally inefficient for NGSs and creates reliability concerns for Distribution in its role as the SOLR. Distribution offered alternative changes to § 62.225 in its Initial Comments but its comments were not addressed (even to be dismissed) in the Order. Distribution strongly recommends that the Commission closely review this issue and consider the vast disparity in assets held by each NGDC and the potential negative impacts on NGDCs, NGSs, system operations, SOLR obligations, and competition in general.

In addressing releases, assignments or transfers of capacity, the Commission states at page 31 of the Order that, "utility operated natural gas capacity release and storage programs in Pennsylvania must be administered in a competitive neutral manner." In the context of capacity release, 66 Pa. C.S. § 2204 and the proposed § 62.225(1) requires that capacity releases,

assignments or transfers shall be made on a nondiscriminatory basis. The text of the Order adds that the Commission wants to “ensure that usable capacity is released to marketers at fair and equitable rates, not just the most expensive and least usable capacity.” Contrary to the law and the Commission’s stated objective in the Order, making capacity release mandatory under proposed § 62.225 puts the above seemingly consistent concepts in conflict with each other. If a mandatory release mechanism requires release rates that provide discriminatory advantage to either shopping or non-shopping customers, or for some NGSs relative to others, it can hardly be considered competitively neutral.

For example, suppose an NGDC had equal amounts of capacity on four pipelines: A, B, C and D. Furthermore, suppose that the applicable contract rates for these pipelines were \$8, \$9, \$10 and \$11 respectively, but let’s assume Pipeline A has operational issues that make it less usable than the other three pipelines. Pursuant to the proposed regulation releases on Pipeline B or Pipeline C would be appropriate. If the NGDC released capacity on Pipeline B to NGSs at \$9, the result would be nondiscriminatory amongst those NGSs. If the number of shopping customers grew to the point where capacity on Pipeline B was fully released, the NGDC might start to release capacity on Pipeline C at \$10. At that time NGSs receiving capacity on Pipeline B would have a discriminatory advantage over those receiving capacity on Pipeline C. Additionally, NGSs receiving capacity on Pipeline B would have a discriminatory advantage over non-shopping customers (who pay a weighted average rate of \$9.50) who in turn, would have a discriminatory advantage over NGSs receiving capacity on Pipeline C.

Releases using the “slice of the system” approach would require that all NGSs receive a proportional share of capacity on each pipeline that would result in a composite rate equivalent to the weighted average cost of capacity. Ultimately, releases at the weighted average cost of

capacity are the most practical means to ensure that shopping and non-shopping customers are treated equally.<sup>2</sup> While some NGDCs may have simple portfolios of one or two pipelines that make “slice of the system” feasible, most NGDC capacity portfolios are far more complex than the simple 4-pipeline example above. Based upon relatively recent changes in Federal Energy Regulatory Commission (FERC) capacity release rules (see, 18 C.F.R. § 284.8(h)(1)(ii) (2008)), NGDCs may release capacity on individual pipelines under a Retail Choice exemption that removes releases of capacity to marketers participating in a state regulated retail access program (as defined in 18 C.F.R. § 284.8(h)(4)) from FERC’s bidding requirements, thus allowing capacity to be released at a rate equal to the NGDC’s weighted average cost of capacity, whether or not the capacity contract rate is higher or lower than the release rate.

The issue of how proposed § 62.225(a)(1) interplays with capacity release is not new. At the inception of Distribution’s Small Aggregation Transportation Service in 2000, Distribution had a tariff mechanism to surcharge or credit the difference between its weighted average cost of capacity at the applicable contract rate of the pipeline capacity released to the NGS.<sup>3</sup> The issue of alternative capacity release mechanisms was also recently addressed in Docket R-2010-2151205. On July 15, 2010, the Commission approved a Distribution tariff filing implementing

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<sup>2</sup> Releases at weighted average cost of capacity rates would also prevent shifting of costs between customer classes or any increase in rates to customers who continue to purchase natural gas supplies from the NGDC acting in its SOLR function. Just as important, each NGS would be closer to achieving gas supply economies of scale on pipelines than they would be under the “Slice of the System” approach.

<sup>3</sup> In *Georgia Public Service Commission*, 107 FERC ¶ 61,024 (2004) (April 15, 2004), a case involving Atlanta Gas Light’s customer choice program which presented many of the same circumstances as faced by Pennsylvania NGDCs, a similar mechanism was seen by FERC as a circumvention of its capacity release bidding rules. Subsequently, Distribution removed the mechanism from its tariff. As noted above, under current FERC regulations at 18 C. F. R. § 284.8(h)(1)(ii), the intent of the former surcharge/mechanism can be carried out through an exemption specifically aimed at state regulated retail access programs.

a “weighted average cost” approach as an alternative for NGSs to the “slice of the system” approach.<sup>4</sup>

In addition to rate concerns, when ensuring nondiscriminatory access to capacity it is necessary to consider equal access to different pipeline receipt points and delivery points. For Distribution’s capacity portfolio upstream of National Fuel Gas Supply Corporation, this leads to over 25 different slices of capacity in varying proportions. Appendix 2 attached to these comments is a pie chart that shows how “slice of the system” would be implemented for Distribution’s portfolio. While any number of these slices is usable, collectively the slices are unmanageable because they are too small to be coordinated in a meaningful matter.

In summary, proposed § 62.225 should be modified consistent with the Initial Comments submitted by Distribution.<sup>5</sup> If the Commission does not provide for some NGDC flexibility, the end result will serve as a barrier to the entry of NGSs into the competitive market.

Distribution recommends the following changes to the proposed § 62.225. Release, assignment or transfer of capacity:

- In subparagraph (a), the word “shall” should be changed to “may.” The explanation for this proposed change is described at length above.
- Subparagraph (a)(2) should be changed to read, “A release, assignment or transfer shall be based upon the applicable contract rate(s) for capacity or Pennsylvania supply and be subject to applicable contractual arrangements and tariffs.” By

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<sup>4</sup> In addition to Pennsylvania, Distribution received approval from the New York State Public Service Commission in March 2009 to release capacity to marketers in its New York retail choice program at a weighted average cost of capacity rate. All marketers taking assignment of capacity in Distribution’s New York program are allocated capacity at the same rate, which is currently slightly below the contract rate but equal to the rate paid by Distribution’s retail sales customers.

<sup>5</sup> In its August 25, 2009 Comments in this docket, Distribution proposed modifying § 62.225(a)(2) as follows: As determined by the NGDC, a release, assignment or transfer shall be at the applicable contract rate for capacity or Pennsylvania supply or the NGDC’s weighted average cost of transportation (“WACOT”) capacity contracts, and be subject to applicable contractual arrangements and tariffs.

adding the words “based upon” flexibility is added to the regulation while still requiring that the method selected by the NGDC be founded upon the applicable contract rates. This change would permit the use of a weighted average cost of transportation method as suggested by Distribution.

- Add the following sentence to the end of subparagraph (a)(3): “Assets of gas pipeline and storage capacity, as applicable, should follow the customers for which the NGDC has procured the capacity.” Adding this last sentence helps to ensure that capacity is portable, *i.e.*, released to the NGS serving the customer, even as customers shop amongst competing NGSs, or is returned to the NGDC if the customer chooses not to shop.

**E. § 62.226. NGDC costs of competition related activities.**

Distribution disagrees with the Commission’s decision to strike this proposed regulation. The Commission’s statement on page 33 of the Order that “these costs are already a part of NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature” is theoretical at best. The reality is that costs incurred to promote competition will vary in nature from company to company and to make a broad statement that they are neither large nor volatile is presumptuous. Similar to the Customer Education and Information Program that was required as part of the initial Restructuring filings, these costs should be outlined by the individual companies, with detailed activities that will be undertaken and then acted upon individually by the Commission in well-established § 1308(a) proceedings. IRRRC’s comments that “the subjective nature of determining costs related to competition may expose customers to paying costs that may not be in their best interest, their responsibility, spent effectively or that are redundant to advertising costs already reflected in base rates” are not

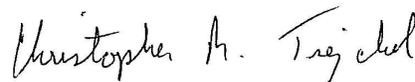
addressed by eliminating the rider. The elimination of the rider only serves to ignore these costs. By allowing for a rider in the regulations, the costs will be fleshed out, fully analyzed and reviewed by all parties and the outcome will be a determination of costs that are deemed to be prudent, cost effective and appropriately allocated.

### **III. Conclusion**

Wherefore, Distribution respectfully requests that the Commission consider the foregoing comments in its deliberations over the Proposed Regulations.

Dated: September 9, 2010

Respectfully submitted,



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\*NOTE- Distribution's proposed changes are in **HIGHLIGHTED BOLD TYPE**.

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**

**Subchapter G. NATURAL GAS DISTRIBUTION COMPANIES AND  
COMPETITION**

**§ 62.221. Purpose.**

To foster a competitive retail marketplace for natural gas service to CUSTOMERS ELIGIBLE FOR SOLR SERVICE, WHICH IS A CLASS OF CUSTOMER THAT CONSISTS LARGELY OF residential and small ~~commercial~~ BUSINESS customers, it is essential that THESE consumers be able to compare the price of gas purchased from their incumbent NGDCs with that offered for sale by NGSs. This subchapter sets forth a number of regulatory changes which will ~~provide a more level playing field between NGDCs and NGSs and, therefore,~~ promote competition for natural gas supplies.

**§ 62.222. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act--66 Pa.C.S. §§ 2201--2212* (relating to THE Natural Gas Choice and Competition Act).

*GPC -- Gas procurement charge* —AN ELEMENT OF THE PTC, EXPRESSED ON A PER MCF OR DTH BASIS, THAT REFLECTS THE **NDGC'S NGDC'S** TOTAL NATURAL GAS PROCUREMENT COSTS. ~~A mechanism by which the effect of natural gas procurement costs removed from an NGDC's base rates are recovered.~~

~~*GPRR -- Gas procurement reduction rate* —An equal offsetting credit to the GPC MFC, billed to all residential and small commercial customers.~~

APPENDIX 1

*MFC--MERCHANT FUNCTION CHARGE*—AN ELEMENT OF THE PTC, EXPRESSED ON A PER MCF OR DTH BASIS, THAT REFLECTS THE COST OF UNCOLLECTIBLES ASSOCIATED WITH THE NGDC'S GAS COSTS.

*NGDC--Natural gas distribution company*--As defined in section 2202 of the act (relating to definitions).

~~*NGPA--Net gas procurement adjustment*—A tariff rider designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC by shifting SOLR costs related to procurement from the base rate cost of distribution to the PTC.~~

*NGS--Natural gas supplier*--As defined in section 2202 of the act.

~~*Natural gas supply service*-- The provision of natural gas to end users as defined in §62.72 (relating to definitions).~~ AS DEFINED IN SECTION 2202 OF THE ACT.

*PGC--Purchase gas cost*--Natural gas costs which are collected, with adjustments, by NGDCs from their customers under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments).

*POR--Purchase of receivables*--Program by which an NGDC purchases the accounts receivable of NGSs.

*PTC--Price to compare*—A **line item SINGLE COMMODITY RATE** that appears on a retail customer's monthly bill for ~~SOLR NATURAL GAS SUPPLY service AND USED BY THE CUSTOMER TO MAKE A COMPARISON WITH THE NATURAL GAS SUPPLY RATE OFFERED BY AN NGS.~~ ~~The PTC is equal to the sum of all unbundled natural gas costs and natural gas procurement costs related charges to a default service customer for that month of service.~~

*SOLR--Supplier of last resort*--A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve) **to provide natural gas supply services to customers who:**

~~(i) Contracted for natural gas that was not delivered.~~

~~(ii) Did not select an alternative NGS.~~

~~(iii) Are not eligible to obtain competitive natural gas supply.~~

~~(iv) Return to the supplier of last resort after having obtained competitive natural gas supply.~~

*Small business customer*--As defined in § 62.72.

**§ 62.223. PTC.**

(A) THE PTC RATE SHALL BE EXPRESSED ON A PER MCF OR DTH BASIS AND CONSIST OF THE FOLLOWING ELEMENTS:

(1) THE GAS COST RATE DETERMINED IN THE NGDC'S SECTION 1307(F) PROCEEDING, INCLUDING THE RECONCILIATION FOR OVER AND UNDER COLLECTIONS.

(2) THE GAS PROCUREMENT CHARGE.

(3) THE MERCHANT FUNCTION CHARGE.

~~(a) (B) An NGDC shall establish a GPC. The GPC shall be added to the cost of supply rate developed under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments) to create a comparable PTC. The GPC shall be adjusted and reconciled annually in conjunction with the § 1307(f) process to become effective with new PGC rates. FILE A~~ **TARIFF CHANGE GAS PROCUREMENT CHARGE (GPC) RIDER** UNDER 66 PA. C.S. § 1308(A). **THE GPC WILL TO IDENTIFY THE AVOIDABLE** NATURAL GAS PROCUREMENT COSTS INCLUDED IN BASE RATES AND SHALL PROPOSE TARIFF REVISIONS DESIGNED TO REMOVE THOSE **AVOIDABLE** COSTS FROM BASE RATES AND TO RECOVER, ON A REVENUE NEUTRAL BASIS, THOSE ANNUAL COSTS UNDER 66 PA. C.S. §1307 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS). NATURAL GAS PROCURMENT COSTS SHALL INCLUDE THE FOLLOWING ELEMENTS:

(1) NATURAL GAS SUPPLY MANAGEMENT COSTS, INCLUDING NATURAL GAS SUPPLY BIDDING, CONTRACTING, HEDGING, CREDIT, RISK MANAGEMENT COSTS, ANY SCHEDULING AND FORECASTING SERVICES PROVIDED EXCLUSIVELY FOR SOLR SERVICE BY THE NGDC, AND APPLICABLE ADMINISTRATIVE AND GENERAL EXPENSES RELATED TO THOSE ACTIVITIES.

(2) ADMINISTRATIVE COSTS, INCLUDING EDUCATION, REGULATORY, LITIGATION, TARIFF FILINGS, WORKING CAPITAL, INFORMATION SYSTEM AND ASSOCIATED ADMINISTRATIVE AND GENERAL EXPENSES RELATED EXCLUSIVELY TO SOLR SERVICE.

(3) APPLICABLE TAXES, EXCLUDING SALES TAX.

**(4) THE GPC RATE MAY BE UPDATED QUARTERLY TO ENSURE THAT THE RATE CONTINUES TO REFLECT AND RECOVER GAS PROCUREMENT COSTS.**

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~~(b)-(C) An NGDC shall remove all natural gas procurement costs from its base rates as part of its next filing under 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates). The expenses shall be recovered through a separate GPC surcharge. The NGDC shall include a proposed tariff rider to establish a GPC within the requirements of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments). FILE A MERCHANT FUNCTION CHARGE (MFC) RIDER. THE MFC MUST REMOVE THE COST OF UNCOLLECTIBLES APPLICABLE TO CURRENT GAS COST RATES FROM ITS DELIVERY RATES AND APPLY IT TO THE PTC ON A REVENUE NEUTRAL BASIS UNDER 66 PA. C.S. § 1307 (RELATING TO SLIDING SCALE OF RATES; ADJUSTMENTS).~~

(1) A WRITE-OFF FACTOR SHALL BE DETERMINED BY DIVIDING THE **RETAIL** UNCOLLECTIBLE EXPENSE BY **RETAIL** REVENUES. THE FACTOR APPLIED TO CURRENT APPLICABLE PGC RATES SHALL BE THE IMPLEMENTATION MFC AMOUNT THAT WILL BE REMOVED FROM DELIVERY RATES.

(2) AFTER IMPLEMENTATION, UNBUNDLED DELIVERY CHARGES MAY NOT BE ADJUSTED FOR THE WRITE-OFF FACTOR OUTSIDE OF A BASE RATE CASE.

(3) The MFC SHALL BE UPDATED QUARTERLY TO REFLECT NEW PGC RATES EFFECTIVE WITH EACH APPLICABLE 1307(F) FILING.

~~(e) (D) An NGDC, in its next purchased gas cost filing under 66 Pa.C.S. § 1307(f), shall submit a proposed tariff rider to establish a NGPA within the requirements of 66 Pa.C.S. § 1307. THE GPC AND MFC-TARIFF RIDERS~~ **S** MUST IDENTIFY:

(1) HOW THE SURCHARGES WILL BE CALCULATED.

(2) WHICH COSTS WILL BE RECOVERED THROUGH THE SURCHARGE BY:

(I) CUSTOMER CLASS **AND COST CATEGORY**

(II) FEDERAL ENERGY REGULATORY COMMISSION ACCOUNT NUMBER, INCLUDING THE SPECIFIC SUB-ACCOUNTS USED TO RECOVER ELIGIBLE PROCUREMENT COSTS.

~~(d) (E) The NGPA shall be designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC by shifting SOLR costs related to procurement from the base rate cost of distribution to the PTC. THE GPC AND MFC MAY NOT BE SUBJECT TO RECONCILIATION~~

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~~(e)(F) The proposed NGPA tariff rider shall establish a GPC on a per MCF/DTH basis to be applied to customers' bills receiving SOLR service for the recovery of gas procurement costs currently recovered through base rates, and a GPRR on a per MCF/DTH basis, as an equal offsetting credit to the GPC, billed to all residential and small commercial customers. THE GPC AND MFC SHALL BE SUBJECT TO AUDIT.~~

~~(f) The GPC and NGPA riders must identify:~~

~~—(1) How the surcharge will be calculated.~~

~~—(2) Which costs will be recovered through the surcharge by:~~

~~—(i) Customer class and cost category~~

~~—(ii) Federal Energy Regulatory Commission account number including the specific sub-accounts used to recover eligible procurement costs.~~

~~—(g) The NGPA rider shall remain in effect until establishment of new base rates and a PGC rider following a base rate proceeding under 66 Pa.C.S. § 1308(d).~~

~~—(h) The GPC shall be adjusted monthly.~~

~~—(i) The GPC shall be subject to audit.~~

~~—(j) An NGDC shall adjust its PGC monthly.~~

**§ 62.224. POR programs.**

(a) *Program design.*

(1) An NGDC may purchase accounts receivable from licensed NGSs which operate on the NGDC system and who wish to sell the THEIR receivables.

(2) An NGDC may SHALL **ONLY** purchase receivables **ONLY** associated with **BASIC** natural gas supply service charges and may not purchase other receivables that may be incurred HELD by NGSs. The NGS shall certify that charges do not include receivables for any other products or services. **IN ORDER TO QUALIFY FOR PARTICIPATION IN A POR PROGRAM, AN NGS SHALL USE CONSOLIDATED BILLING FROM THE NGDC, EXCEPT IN ONE OR BOTH OF THE FOLLOWING INSTANCES. A NGS MAY SEPARATELY BILL A CUSTOMER FOR ADDITIONAL NATURAL GAS SUPPLY SERVICES IN THE FOLLOWING LIMITED CIRCUMSTANCES, HOWEVER, A NGDC WILL NOT BE REQUIRED TO PURCHASE THE RECEIVABLES RELATED TO THESE ADDITIONAL NATURAL GAS SUPPLY SERVICES:**

~~(1) AN NGS PARTICIPATING IN AN NGDC'S POR PROGRAM MAY SEPARATELY BILL FOR BASIC SUPPLY SERVICE THAT THE NGDC'S CONSOLIDATED BILLING SYSTEM CANNOT ACCOMMODATE;~~

(1) AN NGS PARTICIPATING IN AN NGDC'S POR PROGRAM MAY SEPARATELY BILL A CUSTOMER **FOR A SPECIFIC SERVICE OR PRODUCT IF THE NGS IS PROVIDING A THAT** SERVICE OR PRODUCT **THAT** DOES NOT MEET THE DEFINITION OF BASIC NATURAL GAS SUPPLY SERVICE.

~~(3) An NGDC-NGDC'S may voluntarily purchase NGS accounts receivable at a discount~~ POR PROGRAM SHALL USE A DISCOUNT RATE DESIGNED to recover COMPENSATE THE NGDC FOR REASONABLY PROJECTED RISK OF UNCOLLECTIBLES ASSOCIATED WITH THE NGS' CUSTOMER ACCOUNTS AND THE incremental costs associated with ~~POR program~~ THE development, implementation and administration OF THE POR PROGRAM.

~~(4) When an NGDC chooses to purchase accounts receivable at a discount, it shall negotiate the discount rate with the NGS on its distribution system.~~

~~—(i) It shall give fair notice to the NGSs of the time and place of negotiation.~~

~~—(ii) It shall apply the same discount rate to all accounts receivable it purchases on its system.~~

~~—(iii) It shall renegotiate the discount rate not less than once every 5 years.~~

(4) AN NGDC MAY APPLY DIFFERING DISCOUNT RATES TO PURCHASE RECEIVABLES BASED ON DIFFERENT CUSTOMER CLASSES.

(5) POR programs must AT A MINIMUM include receivables on residential and small business customer accounts.

(6) When an NGDC purchases accounts receivable from an NGS through a Commission-approved POR program and the accounts receivable are comprised only of charges for basic natural gas supply, the NGDC may terminate service to customers for failure to pay NGS supply charges.

(7) To ensure that an NGDC's affiliated suppliers do not receive an advantage over nonaffiliated suppliers, a POR program shall be designed and implemented in accordance with §§ 62.141 and 62.142 (relating to standards of conduct).

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(8) An NGDC POR program shall be included in a supplier coordination tariff, as defined by Commission rules, regulations and orders, and approved by the Commission prior to implementation.

~~(9) An NGDC may include the difference between its cost of the purchased receivables and the amounts it has actually collected as part of its uncollectible expense in its next base rate case when it agrees to share with its customers the losses or gains associated with POR program collections.~~ TO ENSURE THAT THE POR DISCOUNT RATE ACCURATELY REFLECTS ITS PROGRAM COSTS, THE NDGC **SHALL MAY** TRACK ITS POR PROGRAM COSTS **AND COLLECTIONS EXPERIENCE**. IF THE DISCOUNT RATE NO LONGER REASONABLY COMPENSATES THE NGDC FOR ITS POR PROGRAM COSTS **AND COLLECTIONS EXPERIENCE**, THE NDGC **SHALL MAY** FILE AN UPDATE TO THE POR DISCOUNT RATE WITH THE COMMISSION.

**(10) The NGDC shall track its POR program purchases and collections AN NGS MUST ACCEPT ALL CUSTOMERS WITHOUT USING A CREDIT CHECK OR REQUIRING ADDITIONAL SECURITY DEPOSITS.**

(b) *Customer care.*

(1) An NGS shall follow Commission regulations relating to customer service including Chapter 56 (relating to standards and billing standards), §§ 62.71--62.80 (relating to customer information disclosure) and § 62.114 (relating to standards of conduct and disclosure for licensees).

(2) An NGS shall respond to customer complaints regarding rate disputes in not more than 30 days consistent with §§ 56.141, 56.151 and 62.79 (relating to dispute procedures; general rule; and complaint handling process).

(3) An NGDC shall follow 66 Pa.C.S. Chapter 14 (relating to responsible utility customer protection) and Chapter 56 when terminating service to a customer for failure to pay THE APPLICABLE NGS natural gas supply charges purchased under the POR program. An NGDC MAY TERMINATE SERVICE TO AN NGS CUSTOMER ONLY FOR THE CUSTOMER'S FAILURE TO PAY THE PORTION OF THE ACCOUNTS RECEIVABLE PURCHASED UNDER THE POR PROGRAM THAT IS COMPRISED OF CHARGES FOR BASIC NATURAL GAS SUPPLY SERVICE.

(4) Reconnection of service to NGS customers following termination shall be made in accordance with 66 Pa.C.S. Chapter 14 and applicable regulations in Chapter 56.

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(5) An NGDC shall agree to inform all customers that service may be terminated for failure to pay NGS supply charges by a separate bill insert that specifically describes the policy for termination of service.

(6) An enrollment letter issued by an NGDC at the time of selection of the NGS must inform customers that service may be terminated for failure to pay BASIC NGS supply charges.

~~—(c) Satisfaction of the security requirements for licensing. An NGS's accounts receivable may be used to satisfy in full or in part the security required for licensing as a natural gas supplier.~~

**§ 62.225. Release, assignment or transfer of capacity.**

(a) An NGDC holding NEW OR RENEWED contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may **SHALL MAY** release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system, AS SET FORTH IN 66 PA. C.S. § 2204 (E).

(1) A release, assignment or transfer shall be made on a nondiscriminatory basis.

(2) A release, assignment or transfer shall be **at BASED UPON** the applicable contract rate **(S)** for capacity or Pennsylvania supply and be subject to applicable contractual arrangements and tariffs.

(3) The amount released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the NGDC has procured the capacity determined in accordance with the NGDC's tariff or procedures approved in its restructuring proceedings. **ASSETS OF GAS PIPELINE AND STORAGE CAPACITY, AS APPLICABLE, SHOULD FOLLOW THE CUSTOMERS FOR WHICH THE NGDC HAS PROCURED THE CAPACITY.**

**§ 62.226. NGDC costs of competition COST RECOVERY related activities.**

(a) **As part of its next annual filing under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments), an NGDC may include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa.C.S. § 1307 designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition within this Commonwealth.** A NGDC MAY FILE A COMPETITION COST RECOVERY TARIFF RIDER TO ESTABLISH A NONBYPASSABLE, COMPETITIVELY NEUTRAL, AND

**RECONCILABLE COST-RECOVERY MECHANISM THAT FULLY RECOVERS THE REASONABLE AND PRUDENTLY INCURRED NATURAL GAS COMPETITION COSTS OF THE NGDC.**

~~(b) The surcharge shall be calculated annually and adjusted to account for past over or under collections in conjunction with the § 1307(f) process to become effective with new PGC rates.~~

~~—(c) The surcharge **COMPETITION COSTS OF A NGDC** shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.~~

~~(d) Before instituting the surcharge, an NGDC shall remove the amounts attributable to promoting retail competition from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed at least 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism.~~

~~—(e) Until an NGDC which seeks a nonbypassable recovery of its costs of promoting retail competition files a base rate case under 66 Pa.C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of these costs in base rates though the filing of a credit to its base rates equal to the amount in base rates. This may be established through the filing of a fully allocated cost of service study and a proposed tariff rider in the NGDC's proceeding under 66 Pa.C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the costs associated with promoting retail competition that are currently reflected in base rates and to recover fully those costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted at least annually through the 66 Pa.C.S. § 1307(f) process.~~

~~—(f) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa.C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.~~

~~—(g) The surcharge shall be subject to audit.~~

**§ 62.227. Regulatory assessments.**

~~—(a) As part of its next annual filing under 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments), an NGDC shall include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa.C.S. § 1307 designed to recover the NGDC regulatory assessment payments made under to 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).~~

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~~—(b) The surcharge shall be calculated annually and include costs associated with regulatory assessments for the Commission in 66 Pa.C.S. § 510, the Office of Consumer Advocate under section 904 A.1 of The Administrative Code of 1929 (71 P. S. § 309 4.1) regarding assessment upon public utilities, disposition, appropriation and disbursement of the assessments, and the Office of Small Business Advocate under section 6 of the Small Business Advocate Act (73 P. S. § 399.46) regarding assessment upon public utilities; disposition, appropriation and disbursement of the assessments. The NGDC shall include the following in its annual filing:~~

~~—(1) Copies of its most recent annual bills for the Commission for each assessment.~~

~~—(2) Copies of adjusted bills or refunds received since its prior filing.~~

~~—(3) Proof of payment of each bill.~~

~~—(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.~~

~~—(d) The surcharge shall be adjusted annually to account for past over or under collections in conjunction with the § 1307(f) process to become effective with new PGC rates.~~

~~—(e) Before instituting the surcharge, an NGDC shall remove the amounts attributable to the regulatory assessments from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed at least 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism.~~

~~—(f) Until an NGDC which seeks a nonbypassable recovery of its regulatory assessments files a base rate case under 66 Pa.C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of assessment payments in base rates though the filing of a credit to its base rates equal to the amount of assessment costs in base rates. This may be established through a fully allocated cost of service study and a proposed tariff rider in the NGDC's next proceeding under 66 Pa.C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the assessment costs reflected in rates and to recover fully those assessment costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted at least annually through the 66 Pa.C.S. § 1307(f) process.~~

~~—(g) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa.C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.~~

~~(h) The surcharge shall be subject to audit.~~

APPENDIX 2

NFGDC PA Slice of the System Capacity Releases

