

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Natural Gas Distribution Companies  
And the Promotion of Competitive  
Retail Markets**

**Public Meeting – January 13, 2011  
2069114-LAW  
Docket No: L-2008-2069114**

**STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY**

Before the Commission for consideration is the Final Rulemaking Order to promulgate regulations to encourage increased natural gas supply competition among our jurisdictional Natural Gas Distribution Companies (NGDCs) and licensed Natural Gas Suppliers (NGSs). The genesis of this rulemaking is the Commission's *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market* that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our SEARCH Final Order and Action Plan issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition. After analysis of all the comments presented to the Commission in response to our proposed rulemaking order issued on March 27, 2009 (March 27 Order), the Commission issued an Advance Notice of Final Rulemaking (ANOFR) on August 10, 2010, requesting further comment on the many revisions it had made to the proposed regulations. The final regulations before us today are the result of this recent round of comments submitted by fifteen different parties. I wish to thank each of the commenters for providing the excellent comments received.

This Final Rulemaking Order is an extremely important rulemaking for this Commission to enhance the competitive natural gas market in Pennsylvania. While the final regulations reflect an improvement to the regulations as originally proposed, I continue to have some concerns that the regulations will result in increased costs to non-shopping customers of NGDCs, as well as cost shifting among customers that shop and those that decide to stay with the local NGDC. It is important to realize that the Commission is bound by certain standards in its efforts to enhance competition in the retail natural gas market. These standards are set out in 66 Pa. C.S. § 2203, *Standards for restructuring of natural gas utility industry*. Two of these standards are particularly appropriate in the context of these regulations. For example, 66 Pa. C.S. § 2203(3) states:

(3) The commission shall require natural gas distribution companies to unbundle natural gas supply services such that separate charges for the services can be set forth in tariffs and on retail gas customers' bills. In its restructuring filing, the natural gas distribution company shall establish system reliability standards and capacity contract mitigation parameters and address the

unbundling of commodity, capacity, storage, balancing and aggregator services. **The commission may address the unbundling of other services only through a rulemaking. In conducting the rulemaking, the commission shall consider the impact of such unbundling on the labor force, the creation of stranded costs, safety, reliability, consumer protections, universal service and the potential for unbundling to offer savings, new products and additional choices or services to retail gas customers.** The commission's decisions shall assure that standards and procedures for safety and reliability, consumer protections and universal service are maintained at levels consistent with this chapter. (emphasis added)

Furthermore, 66 Pa. C.S. § 2203(5) states:

5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

My overriding concern with these regulations is that they may violate the aforementioned standards that this Commission is bound to uphold. For this reason, I am voting to respectfully dissent on the Chairman's Motion and to partially dissent on the final regulations, specifically with regard to the following issues:

#### **Section 62.223 Price to Compare – Gas Procurement Charge**

The proposed final regulations would have required each NGDC to identify and remove the avoidable natural gas procurement costs included in base rates in the context of a 1308(a) tariff filing, and include these costs in a new rider to be called the Gas Procurement Charge (GPC) Rider. The GPC Rider was to be designed to remove non-SOLR avoidable costs from base rates, and to include those costs as a part of the PTC on a revenue neutral basis. I wholeheartedly support that approach as it would serve to level the playing field between NGDCs and alternative natural gas suppliers. This would have represented a significant improvement to the regulations originally proposed. However, the majority today has determined to eliminate the concept of avoidable gas procurement costs from the GPC Rider. In my opinion, it is only the avoidable gas costs which are properly included within the PTC. If unavoidable costs are included in the PTC, shopping customers will be improperly subsidized by those customers that choose to remain under the regulated SOLR service.

The Natural Gas Choice and Competition Act at 66 Pa. C.S. §2207(a) required that the NGDC serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers until such time as the Commission approves an alternative SOLR. As of today, an alternative SOLR has not been approved by the Commission for any NGDC. NGDCs shoulder this regulatory requirement. SOLR

service benefits both shopping and non-shopping customers and the costs to provide this service should not be avoided by customers when purchasing alternative supply from an NGS. SOLR related costs should be paid by all customers. Furthermore, as I mentioned in my prior statements on this proposed rulemaking, if these costs are not avoidable and are included within the PTC, then they may not be recovered by the NGDCs. Unavoidable costs, regardless of whether 50,000 customers or 500 customers shop, do not go away. Inclusion of such unavoidable costs in its PTC will inflate the PTC and could result in more customers leaving the NGDC, thereby placing the unrecoverable gas procurement-related costs on an even smaller customer base. Such an unbundling of unavoidable expenses could result in stranded costs, which is an impact we must consider pursuant to 66 Pa. C.S. §2203(3).

I also am concerned that the attempt to identify the amount of the costs to be included within the GPC in the context of a 1307(a) tariff filing will be difficult and controversial. The quantification of gas procurement related costs presently embedded in base rates should be accomplished within a base rate proceeding. There are significant factual and legal hurdles associated with removing costs from base rates outside of a base rate proceeding. This is especially significant since the majority of recent base rate proceedings have not been fully litigated and instead have been approved based on a total allowable revenue increase pursuant to a 'black-box' settlement. In such settlements, the individual components of the various cost components are not established and are not readily quantified. I am concerned that that the process established under these regulations will lead to confusion and excessive litigation, and potentially result in an inefficient and unwise use of the Commission's resources as well as the resources of the affected parties. Simply stated, are the desired benefits to be achieved worth the potential costs of these additional proceedings?

### **Section 62.223 Price to Compare – Inclusion of the Reconciliation for Over and Under Collections**

The final regulations provide that the reconciliation for over and under collections, i.e. the E-factor, be included as a component of the PTC because this will purportedly provide a more accurate indication of the current cost of SOLR service when comparing offers from alternative suppliers. I disagree because this results in consumers comparing an NGS offer to a NGDC rate adjusted for prior period over/under collections. The latter is not the current gas cost of the NGDCs. The result is not an apples to apples cost comparison. Furthermore, any cost that is included within the PTC should be avoidable when a customer shops. The E-factor is not an avoidable cost as shopping customers are subject to the E-factor charge or credit within the context of the migration riders for a one-year period after switching to an alternative NGS. Including the E-factor in the PTC is doing a disservice to consumers as it is misleading and misinforms them of the current market prices of natural gas. Inappropriate pricing signals are going to be given to consumers as a result. Also, consider that when a shopping customer returns to SOLR service that customer is not subject to the E-factor for one full year. Consumers need clear pricing signals, not more confusion.

## **Section 62.224 Purchase of Receivables Programs**

The ANOPR Order contained a lengthy discussion of whether the Commission possesses the legal authority to mandate that NGDCs implement purchase of receivables programs. The debate centers around 66 Pa. C.S. § 2205(c) (5) of the Code, which reads as follows:

No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers. The commission shall issue guidelines addressing the application of partial payments.

The Final Order finds that the Commission does possess legal authority to mandate POR programs for NGDCs despite the above section of the Code, yet maintains the current policy of making POR programs voluntary. While I agree with the commenters that challenge the Commission's legal analysis on this issue, the regulations do not rely upon this analysis to mandate the implementation of NGDC POR programs. I support this end result, but agree with the commenters who argue that the Commission's legal analysis is flawed.

## **Section 62.226 NGDC Costs of Competition Related Activities**

The March 27 Order originally provided for the creation of a surcharge mechanism to allow NGDCs to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition in this Commonwealth. For various reasons, this entire section has been eliminated entirely. The Final Order does state that if an NGDC makes changes to its operations and systems as a result of this rulemaking, it may request from the Commission the authority to defer those costs on its books and to seek recovery of those alleged costs in a litigated base rate case. While I am sympathetic to the concerns of various parties that the creation of the proposed surcharge would be subject to claims of impermissible single issue ratemaking, I believe that there should be some type of mechanism to allow a more timely recovery of the costs incurred to comply with this rulemaking by our incumbent NGDCs. It seems to me that by not providing this recovery, there is an inherent disincentive for NGDCs to promote competition in Pennsylvania.

## **Customer Information**

In my statements issued in response to the Commission's March 27 Order and in response to the August 10 ANOFR, I expressed my concern that natural gas consumers lack the necessary information to make an informed decision as to whether they should switch to an alternative supplier. They currently receive an offer from an NGS, know what the currently effective PTC is for their NGDC and possess little more information. For example, consider a NGDC customer that receives a one-year fixed price offer from

an NGS. Other than knowing the current PTC, this customer has no information on the effect of forecasted gas prices on the NGDC's PTC for the coming year. Thus, the customer makes a decision in a vacuum while the NGS is well aware of projected market conditions. Worse yet, with the adoption of today's decision to include a historic E-factor within the PTC, comparing fixed price offers from NGSs to the NGDC PTC will be like comparing apples to oranges to pears.

I had suggested that consumers be provided some form of a monthly projection of natural gas prices based upon the best available market information and requested parties to address this proposal or offer other proposals that would inform Pennsylvania consumers. Several commenters submitted responses to this request.

In its comments, the Office of Consumer Advocate stated that customers would benefit from additional information, but that it is not clear how this information can be provided in a timely and accurate manner. In their Joint Comments, the NGS parties state that, while forecasts are unreliable, customers should be provided with a historical record of gas costs on a past 12-month or 24-month basis. Columbia Gas avers that this information should be provided by the Commission, but that the appropriate format could be addressed in a future proceeding.

The final regulations before us today do not address this issue, but I strongly believe this information is critical to permitting natural gas consumers to make educated decisions in a more competitive natural gas market. Absent this necessary information, and considering that NGDC costs are changed quarterly, consumers are making decisions based on incomplete information. While this rulemaking may not be the proper vehicle to address this concern, I would request that the Commission, in the future, consider how best to further educate consumers and provide them with the additional resources needed to make informed decisions.

1-13-11

DATE

Tyrone J. Christy  
TYRONE J. CHRISTY, VICE CHAIRMAN

