

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

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:

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v. :

Docket No. R-2018-3006818

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Peoples Natural Gas Company, LLC :

:

Direct Testimony of Jason Harchick on Behalf of
Duquesne Light Company

Subject: Natural Gas Service, Rate Classifications and Tariff Issues

DIRECT TESTIMONY OF JASON HARCHICK

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Q. Please state your full name and business address.

A. My name is Jason A. Harchick. My business address is 2839 New Beaver Avenue, Pittsburgh, PA 15233.

Q. By whom are you employed and in what capacity?

A. Duquesne Light Company (“Duquesne Light”) as General Manager, System Planning, Protection, and Compliance.

Q. What are your current responsibilities in that position?

A. I am responsible for system planning, which includes the performance of economic, investigative, and operational assessments related to Duquesne Light's transmission and distribution system and its interaction with other transmission entities. I am also responsible for determining the appropriate relay protective devices and relay settings to detect and clear electrical faults on Duquesne Light’s transmission and distribution systems. I am also responsible for Duquesne Light’s generation interconnection process, which includes the interconnection of Distributed Energy Resources (DER), as well as supporting compliance with the North American Electric Reliability Corporation (NERC) reliability standards.

Q. Please state your educational and professional qualifications.

A. I received a B.S. degree in Electrical Engineering, with a concentration in power, from the University of Pittsburgh in April 2008 and a M.S. degree in Electrical Engineering

1 from the University of Pittsburgh in April 2013. I have been a registered professional
2 engineer in the Commonwealth of Pennsylvania since January 2014.

3
4 I began working as a Transmission Planning Engineer at Duquesne Light in 2008 and I
5 was promoted to Manager, Transmission Planning in November 2013. I was promoted to
6 Senior Manager, System Planning and Protection in October 2015 and was promoted to
7 Senior Manager, System Planning, Protection, and Compliance in April 2018. I assumed
8 my current responsibilities as General Manager, System Planning, Protection, and
9 Compliance in August 2018.

10
11 **Q. Have you previously testified before the Pennsylvania Public Utility Commission?**

12 A. Yes. I provided direct testimony on behalf of Duquesne Light in the Siting and
13 Construction of the 138 kV Transmission Lines Associated with the Brunot Island-
14 Crescent Project (Docket No. A-2019-3008589) and the Siting and Construction of the
15 138 kV Transmission Lines Associated with the Universal-Plum Project (Docket No. A-
16 2018-3000708).

17
18 **Q. What is the purpose of your direct testimony?**

19 A. The purpose of my testimony is explain the critical nature of Duquesne Light Company
20 operations as an Electric Distribution Company (“EDC”) providing electric service to
21 approximately 600,000 customers, how Duquesne Light Company’s facilities support
22 essential services, and how these relate to natural gas service curtailment.

1 **Q. Are you sponsoring any exhibits as part of your direct testimony?**

2 A. Yes. I am sponsoring one Exhibit, which has been marked as **Exhibit JAH-1** and which
3 is attached hereto.

4

5 **Q. Please describe the critical nature of Duquesne Light's operations as an EDC.**

6 A. Duquesne Light performs an essential public service by providing electric service
7 through its electric distribution and transmission facilities. As the Pennsylvania
8 Legislature stated in the Electricity Generation Choice and Competition Act's declaration
9 of intent, 28 Pa. C.S. § 2802(9), "Electric service is essential to the health and well-being
10 of residents, to public safety and to orderly economic development" The U.S.
11 Department of Energy has similarly observed:

12 [t]he electric power industry is the backbone of America's economic
13 sectors, generating the energy that empowers its people and businesses in
14 global commerce. Transportation, water, emergency services,
15 telecommunications, and manufacturing represent only a few of the power
16 grid's critical downstream dependencies. Reliance on the electric grid is a
17 key interdependency (and vulnerability) amongst all Critical Infrastructure
18 and Key Resource (CIKR) sectors, plus supporting infrastructures, making
19 grid reliability and resilience a fundamental need for national safety and
20 security.¹
21

22 In addition to its over 500,000 residential customers, Duquesne Light provides electric
23 service to each of these types of critical downstream dependencies (including Peoples'
24 facilities in its service territory), as well as many essential service facilities such as
25 hospitals, police stations, and other first responder facilities.

26

¹ U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, *United States Electricity Industry Primer* at 4 (July 2015, available at <https://www.energy.gov/sites/prod/files/2015/12/E28/united-states-electricity-industry-primer.pdf>).

1 **Q. Is Duquesne Light a customer of Peoples Natural Gas?**

2 A. Yes. Duquesne Light receives natural gas service from Peoples at six (6) facilities; three
3 (3) located at Duquesne Light's Woods Run operational headquarters on New Beaver
4 Avenue in the City of Pittsburgh, one (1) on Preble Avenue in the City of Pittsburgh, one
5 (1) on Seymour Street in the City of Pittsburgh, and one (1) on Center Street in the City
6 of McKeesport.

7
8 **Q. Please describe these facilities and the activities that Duquesne Light conducts there.**

9 A. These facilities include service centers, a transportation building, and a stores
10 building. Duquesne Light dispatches linemen and other technical employees from its
11 service centers to respond to electric system emergencies, as well as to maintain and
12 repair electric transmission and distribution facilities. The transportation building is used
13 for repairs to Duquesne Light's fleet of vehicles and equipment. The stores building
14 distributes critical equipment to Duquesne Light personnel. Each of these facilities
15 directly supports Duquesne Light's emergency response activities, as well as its
16 inspection, maintenance, and repair functions.

17
18 **Q. How does Duquesne Light use natural gas at these facilities?**

19 A. Natural gas, delivered by Peoples, provides heating and domestic hot water to these
20 facilities. These facilities rely on natural gas service. Particularly during winter months,
21 these facilities may become unusable in the event of a prolonged interruption in natural
22 gas service.

23

1 **Q. For the purposes of natural gas service curtailment priority, how does Peoples**
2 **classify the six Duquesne Light facilities it serves?**

3 A. I am not sure. Peoples' tariff does not provide clear guidance regarding curtailment
4 priority for customers in Duquesne Light's position (for example, whether Duquesne
5 Light's facilities' access to electricity renders them ineligible for Category 2a), and as I
6 discuss further below, Peoples apparently has no internal procedure for assigning
7 curtailment priorities. In the absence of clear standards from Peoples, I conservatively –
8 and tentatively – infer that Duquesne Light's facilities may be classified as Category 2c,
9 firm critical large commercial and industrial requirements.

10
11 **Q. If Duquesne Light's facilities were Category 2c, which Peoples customer**
12 **classifications would have a higher curtailment priority than (i.e., would not be**
13 **curtailed until after) Duquesne Light's facilities?**

14 A. According to Rule 17 of Peoples' tariff, customer categories prioritized above Category
15 2c are: 1a., Residential; 1b., Firm critical commercial essential human needs; 2a., Firm
16 small commercial requirements, excluding critical essential human needs requirements in
17 category 1., and firm large commercial and industrial requirements for plant protection;
18 and 2b., Firm small industrial requirements.

19
20 **Q. Do you have any concerns regarding the Duquesne Light facilities' curtailment**
21 **priority categorization?**

22 A. Yes. Any categorization of Duquesne Light facilities' below the highest allowable under
23 applicable law would not reflect those facilities' critical functions. As I discussed above,

1 Duquesne Light relies on its facilities – and, in turn, on the natural gas service they
2 receive – to provide electric service in its service territory. For example, Duquesne Light
3 uses these facilities to conduct essential emergency response and electric system
4 maintenance operations. Such activities are necessary to maintain both the safety of the
5 electric grid itself, and the reliable delivery of essential electric energy to Duquesne
6 Light’s customers.

7 Duquesne Light requires a minimum usage of natural gas at these six facilities to
8 support the physical safety of its personnel and equipment, as well as to help prevent
9 physical harm to the people and businesses to whom Duquesne Light provides electric
10 service.

11
12 **Q. Do you have any concerns regarding the scenarios that may result in natural gas**
13 **curtailment?**

14 A. Yes. Although I am not a physical or cybersecurity expert, I understand that some types
15 of events, such as acts of terrorism and cyberattacks, may affect both electric and natural
16 gas delivery systems. Those events (and their aftermath) are when Duquesne Light would
17 most need all its operational resources to restore and protect the electric grid – and yet
18 they also represent times when Duquesne Light would face a higher risk of gas service
19 curtailment. Such curtailment would impair Duquesne Light’s ability to conduct critical
20 system repair activities at the precise times when they are most needed.

21
22 **Q. Does Peoples have a systematic approach for assigning gas curtailment priority**
23 **among commercial customers?**

1 A. Apparently not. In DLC-I-16, attached as **Exhibit JAH-1**, Duquesne Light asked
2 Peoples to provide “all Peoples’ policies, procedures, manuals and/or guidelines
3 governing the service conditions, identification and/or definition of the following priority
4 service categories”: firm critical commercial essential human needs (category 1b.); firm
5 small commercial requirements (included within category 2a), and firm large commercial
6 and industrial requirements for plant protection (also included within category 2a).
7 Peoples’ witness Carol Scanlon’s response states, essentially, that Peoples follows the
8 Commission’s regulations at 52 Pa. Code §§ 59.71-59.75. She did not provide any
9 internal policies or procedures governing how Peoples identifies the appropriate customer
10 assignment among these service curtailment categories, so I conclude that such
11 documents do not exist. But without such policies or procedures in place, Peoples may
12 not – and, indeed, perhaps cannot – assign service curtailment priorities in a reasonable
13 and evenhanded manner.

14

15 **Q. What do you recommend?**

16 A. Peoples should revise its tariff to expressly provide the highest legally-available
17 curtailment priority, no lower than Category 2a or its equivalent, to EDC operational
18 facilities. Peoples should expressly affirm that such categorization applies to Duquesne
19 Light’s six (6) facilities served by Peoples. Such categorization is appropriate in light of
20 the critical functions of those facilities.

21

22 **Q. Does this conclude your testimony?**

1 A. Yes. However, I reserve the right to supplement my testimony at some point in the future
2 based on the review of further information and discovery responses from Peoples, and/or
3 to address additional issues that may arise during the course of this proceeding.

EXHIBIT JAH-1

People's Response to Duquesne Light Company Discovery Request Set I, No. 16

Docket No. R-2018-3006818
Peoples Natural Gas Company LLC
Data Requests

Respondent: Carol Scanlon

DLC-I-16: Provide a copy of all Peoples' policies, procedures, manuals and/or guidelines governing the service conditions, identification and/or definition of the following priority service categories referenced in Rule 17 of Peoples Natural Gas Tariff Supplement No. 2 to Gas-PA PUC No. 45:

- a. Firm critical commercial essential human needs
- b. Firm small commercial requirements
- c. Firm large commercial and industrial requirements for plant protection.

Response: In a gas emergency situation, the Company's procedure is to follow the mandatory reduction measures set forth in 52 Pa. Code §59.73(c).

Following that, priority-based curtailments could be implemented upon issuance of a Commission order as outlined in sections (e) – (h) of §59.73. In that case, the Company would follow the Priority of Service categories in its currently approved tariff. The Commission's Curtailment Policies of Jurisdictional Gas Utilities (Curtailment Policies), which were superseded by the Regulations at 52 Pa. Code §§59.71 – 59.75, were guidelines for these Priority of Service categories. A copy of the Curtailment Policies is attached.

In the Company's proposed combined retail tariff in this proceeding, the Company is proposing changes to the Rules and Regulations related to Emergency Curtailment and Priority of Service Curtailment to conform the tariff language with the regulation language.

(h) Any person named in subsection (g) of this section, within five days of receipt of the summary and recommendations of the Complaint Officer may file with the Superintendent a written objection to the recommendations of the Complaint Officer, stating the basis for the objection. If no such objection is filed, the recommendation shall become effective unless vetoed by the Superintendent.

(i) Within ten days of receipt of the recommendations, the Superintendent shall notify all persons named in subsection (g) of this section in writing of his approval or disapproval or of a modification or reversal of the recommendations.

§ 95.132, Bureau level.

(a) If the complainant is not satisfied by the disposition of the complaint at the institutional level, a Bureau of Correction review may be requested. A request for a Bureau review must be made in writing to the Commissioner of Correction or his designee no later than seven days after the Superintendent has acted on the recommendations of the Complaint Officer.

(b) The Bureau of Correction review will be conducted by a panel of three persons comprised of the Commissioner, his Deputy or their designee and by an Assistant Attorney General assigned to the Bureau.

(c) Within 21 days after a request for a Bureau of Correction review is received by the Commissioner of Correction, the three-person panel will affirm, modify or reverse the decision of the Complaint Officer. The Superintendent shall then notify the persons named in § 95.131(g) of this Title (relating to institution level).

(Pa. B. Doc. No. 78-1993, Filed October 9, 1976, 11:00 a.m.)

Title 52—PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

[52-PA. CODE CH. 69]

[76 PRM 19]

Curtailment Policies of Jurisdictional Gas Utilities

By order dated July 7, 1976 the Pennsylvania Public Utility Commission, under authority of §§ 901 and 902 of the Public Utility Law (68 P. S. §§ 1341 and 1342), and pursuant to §§ 201 and 202 of the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2, hereby gives notice of adoption of the following amendment to its regulations, entitled "Mandatory State-Wide End-Use Natural Gas Curtailment Scheme", as set forth in Annex A to this

order. Pursuant to § 501 of the Commonwealth Documents Law (45 P. S. § 1501), the amendment will be contained at 52 Pa. Code §§ 69.21 through 69.27, and shall constitute a new subchapter entitled Gas Curtailment, in Chapter 69, General Orders, Policy Statements and Guidelines on Fixed Utilities. The regulation shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

The Commission finds that the entire country's natural gas supply position has continued to worsen since the initiation of its investigation into the adequacy of natural gas supplies in Pennsylvania (by order of March 8, 1971, published at 1 Pa. B. 1063, March 20, 1971), that the gas supply in Pennsylvania mirrors the national trend, and that a majority of the larger distributors will curtail their customers severely over at least the next several years. Therefore the Commission finds it necessary and proper, in order to provide for the accommodation, convenience and safety of said customers, and the general public, to adopt regulations which will minimize the impact of future curtailments on Pennsylvania industry, and to distribute that impact as equitably as possible among all classes of customers.

This regulation was first issued by order of the Commission on August 19, 1975, as a proposed rule making proceeding at 75-PRMD-19, entitled "Amendments to Curtailment Policies of Jurisdictional Gas Utilities", and published at 5 Pa. B. 2325 on September 6, 1975. Hearings were held, and both supporting and opposing testimony received. As a result, the final regulation reflects some significant changes which are set forth and discussed in the Commission's order.

Order of July 7, 1976

Commissioners Present:
Chairman Carter;
Commissioners Kelly, Bloom, O'Bannon and Johnson

In re: 75 Proposed Rule Making Docket No. 19 -- Amendments to Curtailment Policies of Jurisdictional Gas Utilities

By the Commission:

On March 8, 1971, we instituted an investigation into the adequacy of natural gas supplies in Pennsylvania. Pursuant thereto, hearings were held throughout the Commonwealth with jurisdictional natural gas distribution utilities as well as other interested parties participating.

As a result of our investigation, we issued an Order at Investigation Docket No. 124 dated February 1, 1972; in that order, each gas utility was directed to file as part of its tariff, procedures for the curtailment of service. Subsequently, the Commission issued an Order Nisi dated October 10, 1972, indicating a possible set of guidelines to be followed in

future gas curtailment tariffs. Hearings were held and testimony was presented by major gas utilities and interested industrial customers; however, no formal Commission action ensued.

Since then, the entire country's natural gas supply position has continued to worsen. A Federal Power Commission report on the subject, dated December, 1974 was entitled "A Realistic View of U.S. Natural Gas Supply", states that in the United States, conventional gas production has reached its peak and will decline for the indefinite future, and that natural gas reserves are far less than earlier anticipated. The supply situation in Pennsylvania mirrors the national trend and the gas utilities' supply projections indicate that a majority of the larger distributors will curtail their customers severely over at least the next several years.

This Commission believes that the impact of future gas curtailments on Pennsylvania industry will be minimized by allocating the available commercial and industrial gas preferentially to those uses where conversion to an alternate fuel is not feasible, i.e., pursuant to an "end-use" type curtailment policy. Because gas curtailment policies on file with the Commission generally do not follow this criterion, the Commission prepared an end-use policy proposal which, if found feasible, would have been adopted by all jurisdictional gas utilities pursuant to Commission mandate. The Commission issued the proposed policy as an Order Nisi at 75 Proposed Rule Making Docket No. 19, published September 6, 1975, at 5 Pa. B. 2325. Hearings on the proposal were held December 4 and 5, 1975, and January 7, 8, 22, and 23, 1976, to provide an opportunity for gas utilities and customers to comment on the proposed rule; testimony was received from 31 witnesses representing industrial and commercial customers as well as jurisdictional gas utilities and the Commonwealth of Pennsylvania.

In general, the broad context of the proposed amendments was supported. However, a significant and compelling amount of testimony was received concerning the infeasibility of certain features of the proposal and the need for flexibility in any state-wide curtailment plan.

The Commission remains convinced that three concepts should form the basis for our state-wide curtailment policy:

(1) A mandatory state-wide system with certain built-in flexibility should be adopted, but that upon good cause shown, exceptions should be allowed where necessitated by particular local problems or situations. A state-wide policy is required to insure that all jurisdictional gas utilities follow the mandated priorities of service and document, in their tariffs, the procedures and policies followed with respect to the establish-

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ment of base periods, penalty provisions, hereinafter defined, etc. as to assure equitable treatment of similar classes of customers throughout Pennsylvania.

(2) Priorities of service and curtailment should be based on the "end-use" principle, the most socially and economically efficient manner in which to regulate the distribution of available gas supplies.

(3) For purpose of curtailment, large commercial customers should be treated similarly to large industrial customers since generally, conversion to alternate fuels is equally feasible for both; in those cases where conversion is for some reason not practical, special exception should be allowed upon good cause shown.

In our Order Nisi, the Commission proposed, inter alia:

(1) That residential, small commercial and small industrial customers be subjected to a limited curtailment after curtailment of large customers reached a specified "trigger" level.

(2) That within categories of priority, an absolute priority be established for certain industrial customers based on end-product considerations.

We conclude on the basis of the testimony that these two proposals should be withdrawn. Curtailment of small customers would be impractical because of their sheer numbers in relation to the minor amount of gas conserved and costs entailed; inclusion of end-product classifications would represent an approach to curtailment diametrically opposed to the principles of an end-use system and would lead to an administrative nightmare. Consequently, these two concepts do not appear in the attached mandate for priorities of service.

Several of the jurisdictional gas utilities participating in the 75 P.R.M.D. No. 19 proceedings sought to retain their existing curtailment plans or alternatively, suggested that the Commission adopt the FPC's curtailment plan at Order 467-B. Neither approach has been followed; however, the Commission's plan is basically a modified and condensed 467-B end-use policy. While the FPC's Order 467-B assigns priority to "feed stock" and "process use", our plan achieves the same result through the classification of various uses as "critical", hereinafter defined; similarly, in both the 467-B plan and our order, lowest priority is assigned to interruptible users and then to boiler fuel use. The major difference is that the 467-B plan grants priority to all commercial uses whereas our plan subjects large commercial uses to curtailment along with the analogous industrial use.

Moreover, the attached mandatory priority scheme incorporates the following major changes from the Order Nisi proposal:

(1) Boiler fuel use, which in the Order Nisi was included with other non-critical

use, has been segregated and assigned second-lowest priority. This step is occasioned by testimony evidencing the fact that boiler fuel use can be converted to alternate fuel most easily and at the lowest unit cost.

(2) Essential human needs (Category 1) has been restricted to such customers without alternate fuel capability; also, the volumetric restriction was removed from Category 1.

(3) Priority for plant protection in Category 2 has been restricted to large users because small users generally do not require this express priority protection. The change will obviate the necessity of determining such volumes for numerous small commercial and industrial users.

(4) A penalty provision has been added in Section 6 (now renumbered as Section 7) to assist in enforcement during emergency curtailments.

Other changes are generally minor and primarily for clarification.

The attached curtailment rule has been adopted pursuant to the order of the Pennsylvania Public Utility Commission dated February 1, 1972, and for the protection of the gas utilities' customers existing as of February 15, 1972, and those customers who may have been lawfully connected thereafter. It is the Commission's intent that the current gas curtailment policies of all jurisdictional gas utilities be amended as rapidly as possible in accordance with this order and the following schedule of priorities.

At any time, natural gas customers shall have the right to make an application to their distributor for a temporary or permanent change of priority classification upon a showing that alternate fuel capability is not feasible. In analyzing the appropriateness of any application for such relief, the distributor shall take into account, inter alia, the following criteria which must be addressed in the customer's application for special relief:

1. Economic and technical feasibility of conversion—Although the technical feasibility of conversion to alternate fuels is necessarily taken into account in the classification of a particular end-use as "critical" or "non-critical", the applicant showing technical difficulty of conversion is more appropriately awarded special relief; similarly, where an applicant can demonstrate that under its particular circumstances, the economic implications of required conversion are especially onerous.

2. Applicant's attempts at conservation—Where the applicant can establish that due diligence has been exercised toward conservation of its own requirements for natural gas, special relief is more appropriate.

3. Applicant's attempts to locate other sources of supply, both gas and alternate fuels—Special relief should be more likely where the applicant can demonstrate that alternate fuel, as well as natural gas from other sources and supply,

is not available. While the cost of such alternate fuels is generally irrelevant, it may be afforded some limited significance in the distributor's decision on a special relief application.

4. Extent and duration of requested relief—Implicitly, the smaller the total volume of requested relief gas, the more appropriate a grant of that request.

5. End-use to which the relief gas will be applied—The higher the priority of the end-use for the requested gas, the more proper a grant of relief. The importance of the particular "end-product" involved is usually irrelevant, except where the social utility of that product is so vitally important to the economy that end-product considerations cannot reasonably be ignored.

6. Impact of the requested relief upon other customers—A grant of relief cannot be affirmatively justified by showing the absence of substantial harm to other customers of the distributor; however, the showing of adverse impact on those customers will militate against the granting of relief.

The unreasonable denial of any application for relief will constitute grounds for review by the Commission, upon formal petition, of the propriety of the distributor's decision in light of the criteria set forth above in this order. The utility may likewise entertain applications for emergency relief; in such applications, the customer must show that the requested deliveries are needed to forestall irreparable injury to life or property and a specific payback provision should be attached as a condition to any grant of emergency relief, except where such is shown to be inappropriate.

Every customer shall likewise have the right to make application to its distributor for an extension of time in which to implement alternate fuel capability; any statement or representation made by a customer or any other person to a gas utility, in the course of investigation of an application for change of priority or extension of time, shall constitute a statement or representation made to this Commission itself.

Moreover, whenever a public utility believes that the application of this curtailment tariff rule works an undue hardship or is otherwise inappropriate, either generally or in a particular instance, such utility may petition the Commission for special exception. Such petition for allowance of deviations from the above-described curtailment mandate may be approved upon good cause shown. The allowance of variation will be to reflect non-typical load profiles and/or other unique characteristics of the specific distributor involved.

In the Order Nisi, a 12-month grace period was proposed as necessary (a) to permit the gas utilities to compile the detailed end-use data needed to categorize their customers' usage as "critical" or "non-critical" and to determine base

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period allotments, all as hereinafter defined; and (b) to give all natural gas customers the opportunity to install on-site alternate fuel facilities wherever possible. However, the Commission notes that four of the major utilities currently have or are scheduled to adopt end-use plans, resembling in many particulars the instant end-use plan. Additionally, the Commission was informed by one major distributor that its end-use plan was designed and implemented over a six-month period by temporarily categorizing non-critical users without existing alternate fuel facilities as critical users. Consequently, the Commission finds that the attached priority mandate should become effective immediately.

In light of evidence adduced at hearings on the Commission's proposal at 75 P.R.M.D. No. 19 and the culmination of our investigation into the matter of a mandatory state-wide natural gas curtailment policy: *Therefore,*

It is ordered:

1. That the attached curtailment priority mandate shall become effective immediately.

2. That all jurisdictional gas utilities shall immediately begin development of curtailment policies pursuant to the mandate of Annex A to this order and shall submit revised tariffs as quickly as possible, but in no event later than twelve months after the entry of the instant Order. Any gas utility not filing such an amended curtailment tariff within six months of the entry of this order shall at that time, and quarterly thereafter until such filing is made, report in writing to the Commission concerning the status of preparations for completion of the mandated filing.

3. That amended individual curtailment plans submitted pursuant to this order shall become effective after review and approval by this Commission, but until such time, the filed curtailment tariff of each utility shall be effective for that particular distributor.

4. That after the individual utility's modified curtailment plan becomes effective, all its customers shall be curtailed thereunder with the following temporary exception:

Customers with alternate fuel capability but without existing alternate fuel facilities, will be granted a period of time to be determined jointly by the utility and the customer, in which to install alternate fuel facilities. During that period, the customer shall be considered a user without alternate fuel capability.

By the Commission

C. J. McELWEE,
Secretary

The Pennsylvania Public Utility Commission finds:

(1) That public notice of intention to adopt the administrative regulations adopted by this order has been given pursuant to §§ 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) That the adoption of the regulations of the Pennsylvania Public Utility Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

The Pennsylvania Public Utility Commission, acting pursuant to the authorizing statutes, orders:

(A) The regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code, are amended by adopting §§ 69.21 through 69.27 (relating to gas curtailment to read as set forth in Annex A to this order.

(B) The Secretary of the Pennsylvania Public Utility Commission shall submit this order and Annex A hereto to the Department of Justice for approval as to legality as required by law.

(C) The Secretary of the Pennsylvania Public Utility Commission shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

By the Pennsylvania Public Utility Commission

C. J. McELWEE,
Secretary

Annex A
[52 PA. CODE CH. 69]
GAS CURTAILMENT
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69.27.	Emergency curtailment.

§ 69.21. Priority of service.

The available gas supplies to the utility should be allocated among its customers in accordance with the priorities of use listed below. Customers in a higher priority will not be curtailed until all customers falling into the lower classifications have been completely curtailed; where only partial curtailment of any one classification is required, implementation should be *pro rata*, that is, weighted in accordance with the base allotments of the customers within that classification. Following are the priority categories listed in descending order:

(1) Residential and firm critical commercial essential human needs.

(2) Firm small commercial requirements, excluding critical essential human needs requirements covered in paragraph (1) of this section, and firm large commercial and industrial requirements for plant protection.

(3) Firm small industrial requirements.

(4) Firm large critical commercial and industrial requirements, excluding firm critical commercial essential human needs requirements covered in paragraph (1) of this section.

(5) Firm large non-critical commercial and industrial requirements other than requirements for boiler fuel use.

(6) Firm large non-critical commercial and industrial requirements for boiler fuel use.

(7) Contractually interruptible use.

Note: Definitions of "large" and "small" in paragraphs (2)-(6) of this section are to be formulated by the individual gas distribution utility based on peak day usage or such daily, monthly or annual volume level as may be selected by the utility. It is recognized by the Commission that gas utilities in this Commonwealth are a widely disparate group as to number, type and size of customers, that is, as to "customer mix". Uniform volumetric definitions of "small" and "large" would not take disparities of customer mix into account. Additionally, because the supply entitlement of an individual gas utility may be predicated on a peak day, daily, monthly, seasonal or annual supply arrangement, flexibility in volumetric definitions is likewise appropriate.

§ 69.22. Definitions applicable.

The definitions for terms used in the priority of service categories are as follows:

Alternate fuel capability — The ability to use an alternate fuel whether or not the facilities for such use have actually been installed. For purposes of this definition, alternate fuel means any fuel other than natural gas, propane or other gaseous fuel.

Commercial Use — Gas usage by customers engaged primarily in the sale of goods or services including, but not limited to, consumption by office buildings, institutions and governmental agencies. Commercial use shall not include use of gas for manufacturing or electric power generation.

Critical uses — Gas usage where natural gas, propane or other gaseous fuel is the only feasible form of energy due to its combustion characteristics, controllability or chemical properties.

Essential human needs use — Gas usage by customers for service to any buildings where persons normally dwell including, but not limited to, apartment

houses, dormitories, hotels, hospitals and nursing homes, as well as the use of natural gas by sewage plants.

Firm service — Service pursuant to schedules or contracts under which the utility is expressly or impliedly obligated to deliver specific volumes within a given time period or which anticipate no interruptions, but which may permit unexpected interruptions in case service to higher priority customers is threatened. A utility shall be deemed to be impliedly obligated to deliver specific volumes where such utility has by any means previously or presently established periodic allocations for its customers.

Industrial use — Gas usage by customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of electric power.

Interruptible service — Service pursuant to schedules or contracts under which the utility expressly or impliedly reserves the option to interrupt or curtail deliveries.

Non-critical use — Gas usage where natural gas, propane or other gaseous fuel is not the only feasible form of energy, that is where the user has alternate fuel capability.

Plant protection use — Minimum volumes of natural gas required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternative fuel. Plant protection requirements include volumes necessary for the protection of such material in process as would otherwise be destroyed, but does not include deliveries required to maintain production.

Residential use — Gas usage in a residential dwelling or unit for space heating, air conditioning, cooking, water heating, or other domestic purposes.

§ 69.23. Base period volumes.

(a) To provide for the equitable allocation of gas available for sale to firm customers, base period volumes for peak day, daily, monthly, seasonal (winter and summer) or annual periods, as the utility may select, shall be established for each customer whose usage exceeded such peak day, daily, monthly, seasonal or annual volume level during the base period of 24 months from January 1, 1971 through December 31, 1972 except as modified in this section.

(b) The base period volume shall be further divided by the utility into the base volumes for each priority of use listed in § 69.21 of this title (relating to priority of service). For the purpose of breaking down base period volumes into their appropriate curtailment priority category, each affected commercial and industrial customer shall furnish such historic consumption and equipment data as the utility may require.

(c) Base period volumes shall be ad-

justed: (1) to recognize abnormalities in plant operations during the base period as well as deletions or approved installations of equipment during or subsequent to the base period; (2) to include volumes of gas equivalent to volumes conserved during the base period when the customer converted gas burning equipment to alternate fuel in anticipation of future curtailment; and (3) to exclude volumes of gas consumed by equipment for facilities installed after January 1, 1970 without the approval of the utility as well as volumes consumed under temporary authorization.

(d) Where a gas utility has entered into a contract specifying an annual volume of gas to be delivered, and that volume is less than the calculated base period volume, the annual contractual volume shall be deemed to be the annual base period volume.

Note: Some Pennsylvania gas utilities already have existing curtailment plans in which the base period volume concept is an integral part. Those utilities are permitted to substitute that base period for the base period outlined in this section, provided that the procedure used to establish base period volumes is explained in the curtailment policy to be filed with the Commission. Additionally, if any gas utility presently has established peak day, daily, monthly, seasonal or annual allocations, as the case may be, for certain customers and has previously notified these customers of such allocations, then that utility will be permitted to use these allocations as the base period volumes for such customers.

§ 69.24 Gas shortage curtailment.

(a) Base period volumes shall be used as the basis for determining the authorized entitlement of each customer in the event of curtailment. Authorized entitlement shall be determined by multiplying the customer's base period volume for the priority to be curtailed by the ratio of the total gas available for that priority category to the total of all base period volumes of all customers in that priority category.

(b) When, in the judgment of the utility its supply of gas is insufficient to meet the base period volume requirements of all customers on a continuing basis, or when continued delivery of gas to customers would prevent the injection of gas into underground storage pools for the protection of winter supply, deliveries may be curtailed in accordance with the seven priorities of service outlined in § 69.21 of this title (relating to priority of service).

(c) Whenever any curtailment for § 69.21 (6) of this title (relating to priority of service) is in effect, all customers covered by § 69.21 (4) and (5) of this title (relating to priority of service); shall be limited to the lesser of their base period volumes or their authorized entitlement.

(d) Maximum possible notice of a gas shortage curtailment or of a change in

curtailment level shall be given. If such notice is by telephone, then it must be followed by a written notice to the customer, specifying the curtailment percentage of the customer and resulting peak day, daily, monthly, seasonal or annual authorized entitlement as the case may be.

(e) Each gas utility may curtail or discontinue gas service in accordance with this subchapter without thereby incurring any liability for any loss, injury or expense that may be sustained by the customer.

§ 69.25. Penalty provisions for excess takes.

(a) The tariffs, operating practices and billing periods of the Pennsylvania distributors and their suppliers differ significantly. Therefore, each utility is permitted to utilize its own appropriate billing periods for calculating over-run penalties and its own procedure for imposing penalties and for recovering over-run volumes if desired, provided that any deviations from the guidelines listed in subsection (b) of this section concerning penalties and allowable over-run provisions, are fully explained and justified in supporting material submitted with the curtailment policy to the Commission.

(b) The following is a guideline for assessment of penalties for unauthorized over-runs of allocated volumes:

(1) General.

(i) The provisions of these or any other penalty sections do not serve to reduce any charge, assessments or penalties otherwise payable or applicable under provisions of any effective rate schedule or contract.

(ii) Penalties shall be assessed on over-run volumes: (A) in excess of 103% of the authorized entitlement when the period concerned is daily, monthly, or seasonal as described in this subsection; and (B) in excess of 101% of the authorized entitlement when the period concerned is 12 months and the utility invokes an annual as well as a daily, monthly or seasonal penalty.

(2) Winter penalty clause.

(1) If at the end of the five month period ending with the March billing period, a customer has exceeded the sum of its monthly authorized entitlement for such a period, that customer shall pay on demand a penalty according to the following schedule:

Actual Usage as Percentage of Total Monthly Authorized Entitlements	Penalty for Excess Take
Greater than 103% but not in excess of 110%	\$10/Mcf
Greater than 110% but not in excess of 125%	\$20/Mcf
Greater than 125%	\$50/Mcf

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(ii) There shall be excluded from the volumes subject to penalty under this paragraph, volumes for which the buyer has previously been penalized pursuant to over-runs of emergency curtailment. Reference should be made to § 69.27 of this Title (relating to emergency curtailment).

(3) Summer penalty clause.

(i) If at the end of the seven month period ending with the October billing month, a customer has exceeded the sum of its monthly authorized entitlements for such period, that customer shall pay on demand a penalty according to the following schedule:

Actual Usage as Percentage of Total Monthly Authorized Entitlements	Penalty for Excess Takes
Greater than 103% but not in excess of 110%	\$10/Mcf
Greater than 110% but not in excess of 125%	\$20/Mcf
Greater than 125%	\$30/Mcf

(ii) There shall be excluded from the volumes subject to penalty under this paragraph, volumes for which the buyer has previously been penalized pursuant to over-runs of emergency curtailment.

(4) Yearly penalty clause.

(i) If at the end of the 12-month period ending with the October billing month, a customer has exceeded the sum of its monthly authorized entitlements for such 12-month period, that customer shall pay on demand a penalty according to the following schedule:

Actual Usage as Percentage of Annual Authorized Entitlement	Penalty for Excess Takes
Greater than 101% but not in excess of 110%.	\$10/Mcf
Greater than 110% but not in excess of 125%.	\$30/Mcf
Greater than 125%.	\$50/Mcf

(ii) There shall be excluded from the volume subject to penalty under this paragraph, volumes for which the buyer has previously been penalized during such 12-month period pursuant to winter or summer over-runs or emergency curtailments.

(5) Availability of excess gas.

(i) If in the judgment of the utility, sufficient gas supply is available to permit deliveries in addition to the monthly authorized entitlement in any month, the utility shall provide all buyers with as much advance notice as possible of the amount of such additional gas anticipated to be available. Such gas shall

be apportioned by the utility to all customers of the highest priority being curtailed, on the basis of the total of the base period volumes for all buyers in that priority for that month.

(ii) To the extent that a customer has exceeded the sum of its authorized entitlements for any period, penalties shall not be assessed for any excess volumes authorized pursuant to the provisions of this paragraph.

§ 69.26. Disposition of penalties.

The following provisions for disposition of penalties are suggested as guidelines; however, the Commission will permit deviations only for good cause shown. In those instances where circumstances dictate different disposition of penalties, utilities are directed to formulate and submit for Commission approval a method of distributing, with interest, the excess penalty receipts to their customers.

(1) As of December 31 of each year, the utility shall subtract the total of all over-run penalties paid that year to the utility's suppliers, from penalties collected that year from customers. The utility shall then distribute among its curtailed customers who did not incur over-runs, all penalties collected in excess of those paid by the gas utility to its suppliers.

(2) To determine the amount of reimbursement due a customer, the total amount to be redistributed shall be divided by the total volume of sales during the twelve month period to all customers eligible for reimbursement. This quotient shall represent the factor, which when multiplied by an eligible customer's total purchase volume during the twelve month period will equal the amount to be credited to that customer. However, no reimbursement shall be made to customers who have terminated service during the year.

(3) The utility should specify a reasonable minimum for the amount of penalties that will be distributed, below which excess penalties shall be retained until the distributable amount is accumulated. The utility shall make periodic reports to the Commission containing itemized statements, status of penalty accounts and the extent and nature of disbursements from such accounts made during that period.

§ 69.27. Emergency curtailment.

(a) When the utility is unable to fulfill the daily requirements of all its customers because of reasons unrelated to long range supplies, the utility may require each large commercial and industrial customer to reduce its consumption of gas. The reduction required shall be determined by the utility without regard to priorities of use; however, the authorized volume shall not be lower than the minimum volume necessary for the prevention of damage to plant equipment.

(b) The utility shall specify in the notice of the emergency curtailment, the authorized consumption for a specified period or until further notice. An emergency curtailment may be made after oral notice to the customer, effective when so given, but such oral notice must be confirmed in writing within 48 hours. The Commission shall be notified immediately of the declaration of an emergency situation.

(c) If a customer exceeds its authorized consumption during a period of emergency curtailment, then the customer shall pay a penalty according to the following schedule:

Actual Usage as a Percentage of Emergency Authorized Consumption	Penalty For Excess Takes
Greater than 103% but not in excess of 110%.	\$10/Mcf
Greater than 110%.	\$25/Mcf

[Pa. B. Dec. No. 76-1975, Filed October 8, 1976, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

Medical Assistance; Early Periodic Screening, Diagnosis and Treatment

September 30, 1976

The Department of Public Welfare, Office of Medical Programs, by this order amends Medical Assistance Manual Section 9428 (relating to early periodic screening, diagnosis and treatment).

The purpose of the revision of the Medical Assistance Manual Section is to comply with Federal terminology.

Notice of proposed rulemaking was published in 6 Pa. B. 1908, on August 14, 1976.

The Department received comments from medical providers concerning § 9428 of the EPSDT regulations which contained the recommended periodicity schedule. The suggestion was to clarify the language of the 0-18 month periodicity from approximate three-month intervals to the American Academy of Pediatrics recommendation of 2-4-6-9-12 and 18 months which is in line with common pediatric practice for post natal office visits.

A comment was received concerning the definition of a Screening Provider in § 9428.2. There were concerns about it being too limiting. The Department is retaining the language which was suggested by the State EPSDT Med-Tech Committee since the intent of the wording is to insure that "screening only centers" do not crop up in response to the program but rather that Medicaid eligible children will be serviced in this pro-