

Testimony in the Gas Competition Investigation

On Behalf of the
Office of Small Business Advocate

INTRODUCTION

- Section 2204(g) of 66 Pa. C.S. provides that within five years of the Gas Choice Act's effective date, the Commission “shall initiate an investigation or other appropriate proceeding ... to determine whether effective competition for natural gas supply services exists on the natural gas distribution companies' systems”
- If the Commission concludes that “effective competition” does not exist, Section 2204(g) requires the Commission to reconvene “the stakeholders in the natural gas industry in this Commonwealth to explore avenues, including legislative, for encouraging increased competition”
- The Act does not define “effective competition” or otherwise specify a procedure for measuring it.

“UGLY” SOLR RATES ARE NOT PERMITTED.

- Nothing in the Gas Choice Act exempts an NGDC from review of its natural gas costs under 66 Pa. C.S. §1307(f), of its least cost procurement policy under 66 Pa. C.S. §1317, and of the justness and reasonableness of its rates under 66 Pa. C.S. §1318.
- If the Commission were to approve an alternative SOLR, 66 Pa. C.S. §2207(f) would require that SOLR to charge “just and reasonable” rates.
- An NGDC has the advantage of being a bulk purchaser when it contracts for natural gas and for the transportation and storage of that gas. If the Commission is adequately enforcing the least cost procurement requirement and is correctly determining the justness and reasonableness of gas cost rates, it would be surprising if NGSs were able to beat an NGDC’s rates for most customers.
- Whether there is “effective competition” can not be determined simply by counting the number of customers who are shopping or by measuring the percentage of gas sold by NGSs. Instead, the determination must rest on whether there are unjustifiable barriers which impede a customer from purchasing from an NGS if that is what the customer chooses to do.

PENALTIES FOR NON-DELIVERY SHOULD BE REEXAMINED.

- As required by 66 Pa. C.S. §2203(12), the Commission has established penalties which an NGS must pay when it fails to deliver the required quantity of natural gas. Those penalties generally include the application of a multiplier to a calculated cost of replacement gas which may far exceed the amount the NGDC actually paid. The penalties vary from NGDC to NGDC.
- It is reasonable to have simple rules for calculating and imposing penalties without having to make evidentiary findings regarding the NGS's motives. Nevertheless, levying the same penalties when there is suspicion of "gaming" as when there is no such suspicion could constitute an unreasonable barrier to entry, in that an NGS must build an excessive premium into its contract price.
- The Commission should consider establishing a two-tier penalty structure for non-delivery, with the higher penalty applicable only in the case of "gaming."
- The Commission should also consider establishing uniform penalties to replace the patchwork of penalties which vary from NGDC to NGDC.

MANDATORY CAPACITY ASSIGNMENT HAS WORKED WELL.

- Section 2204(d) of 66 Pa. C.S. required that all NGSs serving priority customers take mandatory capacity assignment from the NGDC for a period of three years.
- Section 2204(e) allows NGSs to provide their own capacity as the NGDC's existing capacity contracts expire.
- The end result is that NGSs compete on the commodity – rather than the capacity – portion of the price of natural gas. This approach to capacity has worked very well, allowing NGSs to serve a significant share of the gas market in the Commonwealth, without jeopardizing service reliability or creating stranded costs.
- The Commission should be wary of any proposal which would alter the existing capacity assignment paradigm.

THE COMMISSION SHOULD MAINTAIN SHOPPING STATISTICS.

- As part of this investigation, the Commission directed the NGDCs and the NGSs to provide shopping statistics for each customer class from 1999 through 2004. This data should not only assist in measuring how much competition there actually is, but could also assist in determining the effect, if any, which specific events and specific changes in regulatory policy have had on competition.
- The Commission should compile and report similar data on a going-forward basis.