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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held July 29, 2010 |
| Commissioners Present: |  |

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| James H. Cawley, Chairman |  |
| Tyrone J. Christy, Vice Chairman, Statement, Concurring in Result Only |  |
| John F. Coleman, Jr.  Wayne E. Gardner |  |
| Robert F. Powelson |  |

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| Natural Gas Distribution Companies and Promotion of Competitive Retail Markets | Docket No. L-2008-2069114 |
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**ADVANCE NOTICE OF FINAL RULEMAKING ORDER**

On March 27, 2009, the Commission issued a proposed rulemaking order to adopt regulations governing the relationships between Natural Gas Distribution Companies (NGDCs) and the Natural Gas Suppliers (NGSs) which sell, or seek to sell natural gas to end users on the NGDC distribution systems. We initiated this rulemaking to comply with the Legislature’s directive, explained below, and to ensure that retail consumers of natural gas will be able to choose among natural gas suppliers on reasonable and non-discriminatory terms, while, at the same time, maintaining the safety and reliability of natural gas distribution service to all retail gas customers. *See* 66 Pa. C.S. §§ 2203(1), (2) and (3).

Consequently, as part of this ongoing effort to create a more level playing field in the retail natural gas market, we initiated this instant rulemaking to establish, *inter alia*, rules regarding the formulation of an appropriate Price to Compare (PTC), reconciliation of gas cost rates and quarterly adjustments and the implementation of Purchase of Receivables (POR) programs. The Commission requested comments on the proposed regulations from participants in the competitive natural gas market. The public comment period concluded on August 25, 2009, and the due date for the delivery of final form regulations to the Independent Regulatory Review Commission (“IRRC”) is August 25, 2011. This Order constitutes an advance notice of final rulemaking for which the Commission is seeking further public comment.

**Background**

The *Natural Gas Choice and Competition Act*, 66 Pa. C.S. §2201-12 (the “Competition Act”), was enacted by the Legislature in 1999 with the purpose of restructuring the natural gas industry to allow the retail sale of natural gas in an open market. The Competition Act allows individual customers to choose from independent suppliers of natural gas which are not necessarily affiliated with the local natural gas utility. Additionally, the Competition Act in section 2204(g) required the Commission to initiate a look-back appraisal of how retail competition is progressing after passage of the Act. This investigation was to include participation of all interested parties so that a thorough examination of retail competition might be completed. *Id.*

In October 2005, we issued our *Report to the General Assembly on Pennsylvania’s Retail Natural Gas Supply Market* (*Report to the General Assembly*),[[1]](#footnote-1) in which we determined that effective competition did not exist in Pennsylvania’s retail natural gas market. If the Commission found that “effective competition” did not exist, it was to reconvene the stakeholders in the natural gas industry to “explore avenues…for encouraging increased competition in this Commonwealth.” 66 Pa C.S. § 2204(g)*.* As the Report to the General Assembly noted:

Based on the factors we have adopted to consider whether "effective competition" exists for purposes of Section 2204(g), these findings support the ultimate conclusion that there is a lack of "effective competition" in Pennsylvania's retail natural gas supply market at this time.

*Report to the General Assembly* at 67. We,therefore*,* convened the Natural Gas Stakeholders Group, named “SEARCH,”[[2]](#footnote-2) to explore avenues for increasing competition.

The work and report of that stakeholders' working group is detailed in our Final Order and Action Plan[[3]](#footnote-3) (“SEARCH Order” or “Action Plan”) issued in September 2008. We concluded that there were a number of steps which the Commission could take to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. There were three primary areas in which we believed it was appropriate to commence rulemakings to adopt regulations which were consistent with the goal of nurturing a robust retail market for natural gas. *Action Plan* at 7. These rulemakings were to address three (3) groups of issues: Natural Gas Distribution Company (NGDC) issues, Natural Gas Supplier (NGS) issues, and business practices issues.

In the rulemaking regarding NGDC issues, the Commission would address rules for: (1) Price to Compare formulation, (2) reconciliation and quarterly adjustments, (3) Purchase of Receivables programs, (4) mandatory capacity release and non-discrimination, (5) cost recovery of competition-related activities, and (6) cost recovery of regulatory assessments.

In the rulemaking regarding NGS issues, the Commission would address rules for: creditworthiness of suppliers and reasonable security requirements.

Finally, in the rulemaking regarding business practices issues, the Commission would address rules for: standardization of NGDC system operating rules, specific operation rules regarding nomination and delivery requirements, tolerance bands and cash out/penalties, and standardization of electronic bulletin boards.

This instant proposed rulemaking addresses issues relating to NGDCs and their relation to the retail supply market. *Action Plan* at 13-23. The intent of the proposed rulemaking was to make it easier for consumers to compare natural gas prices offered by NGDCs and NGSs. Specifically, the proposed rulemaking addressed five issues related to the duties, rights, and obligations of NGDCs. Those areas are as follows:

* Reformulate the NGDCs’ “price to compare” to better reflect all costs related to natural gas supply and procurement.
* Establish permanent rules for NGDC purchase of receivables programs.
* Ensure that the release, assignment or transfer of capacity by an NGDC is nondiscriminatory and at the applicable contract rate.
* Change the handling of costs related to NGDCs’ competition activities.
* Allow NGDCs to recover the cost of their annual regulatory assessments under Section 510 of the Code via an automatic adjustment surcharge.

The proposed rulemaking order was entered on March 27, 2009, and was published on July 11, 2009, in the *Pennsylvania Bulletin* at 39 *Pa.B.* 3461. The order established a 45-day comment period. Reply comments were not permitted to be filed.

Comments were filed by twenty interested parties: the NGS Parties[[4]](#footnote-4); Equitable Gas Company (“Equitable”); Independent Oil and Gas Association of Pennsylvania (“IOGA”); Office of Consumer Advocate (“OCA”); Pennsylvania Utility Law Project (“PULP”); PECO Energy Company (“PECO”); Columbia Gas of Pennsylvania (“Columbia”); Direct Energy Services (“DES”); Peoples Natural Gas Company d/b/a Dominion Peoples (“Dominion Peoples”); Industrial Consumers Group[[5]](#footnote-5); National Energy Marketers Association; Energy Association of Pennsylvania (EAPA)[[6]](#footnote-6); National Fuel Gas Distribution Company (“NFG”); Office of Small Business Advocate (“OSBA”); Office of Trial Staff (“OTS”); T.W. Phillips, UGI Gas Company (“UGI”); Shipley Energy; Interstate Gas and Dominion Retail (“Joint Commenters”), the Retail Energy Supply Association (RESA)[[7]](#footnote-7); and Philadelphia Gas Works (PGW). The Independent Regulatory Review Commission (“IRRC”) also filed comments.

We have reviewed and addressed these comments below.

**SUMMARY OF CHANGES**

This rulemaking revises Sections 62.221-62.225 to include, *inter alia*, the development of a price to compare so that consumers can make a determination of whether the price offered by the NGS is more or less than the default service rate. Also established is a regulation setting forth permanent rules for POR programs. Based on the comments, the Commission has made significant changes to the proposed regulations issued on March 27, 2009. The Commission believes that these regulations as revised will help the development of a competitive gas retail market. As more fully explained below, we determined that we will require NGDCs to remove *all of* their total gas procurement costs from base rates and have added a Merchant Function Charge to address concerns regarding cross-subsidization between shopping and non-shopping customers and among customer classes. Additionally, we determined that the new components of the PTC can be best determined in the context of a Section 1308(a) tariff proceeding so as not to impose any additional costs on customers in the name of competition. We believe these revisions will allow customers to simply use the corresponding PTC as a means to compare the commodity prices of the Supplier of Last Resort (“SOLR”) and NGSs and make an informed decision regarding shopping for natural gas supply service.

We also eliminated several of the adjustment clauses previously proposed in the regulations. In sum, the final regulation attempts to strike an appropriate balance between fostering competition for natural gas supply and avoiding discrimination among customers.

**DISCUSSION**

The Commission has reviewed each of the comments filed in this proceeding. For purposes of this Order, we will focus on revisions to the proposed regulations and the issues raised by the IRRC in their comments of September 24, 2009.

**Comments**

**General Comments**

IRRC’s comments suggest that the proposed regulations may be overly complex and difficult for retail natural gas consumers to comprehend and, as such, may ultimately discourage them from participating in competition. *IRRC Comments* p. 1. In addition, the IRRC comments advise that, in crafting our final regulations, we should avoid single issue ratemaking and make sure that the regulations protect against cross-subsidization between shopping and non-shopping customers and among customer classes. *IRRC Comments*, p. 2.

***Resolution***

In considering all of the comments to the proposed rulemaking, including IRRC’s, we believe that we have improved our approach to meeting the statutory goals set forth in the Competition Act of fostering competition in the natural gas market in Pennsylvania.

We have simplified the manner in which the “price to compare” is computed and have revised its components in order to reduce complexity for NGDCs and their customers. Additionally, as more fully discussed below, we have ensured that the regulations avoid single issue ratemaking and protect against cross-subsidization. We believe these revisions to the proposed regulations adequately address IRRC’s concerns.

**§ 62.221. Purpose.**

IRRC states that the definition of retail gas customer as set forth in Section 2202 of the Act, 66 Pa. C.S. § 2202, is “a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier…” IRRC notes that this definition is not limited to any customer class. IRRC further notes, however, that this section of the proposed regulation limits its purpose to fostering competitive service to “residential and small commercial customers.” IRRC states that the Commission should explain why this section and the regulation is limited to “residential and small commercial customers” only, and how this proposed regulation does not affect all service provided to “retail gas customers” as defined in the Act. *IRRC Comments*, p. 3.

In its comments, NFG makes a similar observation regarding the phrase “residential and small commercial customers.” NFG states this phrase is confusing and it is unclear why the purpose should be limited to only these customers when all NGDC customers will be impacted by the regulation. *NFG Comments*, p. 3. EAP states that the phrase should be eliminated so that the purpose of the regulation reflects legislative intent. *EAP Comments*, p. 2-3. EAP suggests using the phrase “retail and transportation gas customers.” *Id*. PGW states that the wording of this section should just be revised to read “retail natural gas service customers” from “natural gas service to residential and small commercial customers.” *PGW Comments*, p. 3.

Additionally, IRRC states that this section uses the term “small commercial customer.” IRRC notes, however, that the term defined in Section 62.222 is “small business customer.” *IRRC Comments*, p. 3. IRRC states that this section should use the defined term. *Id.*  The OSBA also makes this observation concerning the term small commercial customer. The OSBA states that the term “small commercial customer” is ambiguous and recommends that this term be clarified throughout the regulations so that it is consistent. *OSBA Comments*, p. 10.

***Resolution***

Consistent with our authority and obligations under the Act, particularly, Section 2204(a) of the Code, 66 Pa. C.S. § 2204(a), the Commission is establishing rules and regulations that will bring the benefits of natural gas competition to retail consumers. The purpose of the regulations is to eliminate barriers to supplier entry and participation in the marketplace.

A “retail gas customer” is defined in the Act as “a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier.” 66 Pa. C.S. § 2202. As IRRC notes, this definition is not limited to any customer class. As mentioned above, the real focus of this regulation is the elimination of barriers to supplier entry in the competitive natural gas market. However, the Commission purposely limited the scope on this regulation to affect only those customers eligible for supplier of last resort (SOLR) service . The Commission notes that for many years large industrial and commercial customers have pursued and obtained competitive natural gas supply alternatives, even before the enactment of the Act in 1999. *See Comments of Industrial Consumer Groups*, p. 3. These types of consumers, large industrial consumers, are already actively engaged and participating in the competitive natural gas market and have been doing so for years through natural gas transportation tariffs and direct purchases of supply. In most areas, these types of customers no longer receive or rely on SOLR service. Further, the Competition Act created a SOLR obligation for NGDCs that was limited to supply service for residential, small commercial, small industrial and essential human needs customers. For this reason, the focus of this section and the overall regulation is limited to customers eligible for SOLR service, which are largely “residential and small commercial customers” as opposed to involving all customers receiving natural gas service. Therefore, the scope of this regulation does not need to entail the breadth of the “retail gas customers” statutory definition.

Additionally, in light of the comments we received on this issue, we have deleted those provisions from the proposed regulation that would impose a surcharge on all customer classes.

As to IRRC’s and the OSBA’s comments regarding the use of the term “small commercial customer” in this section, we agree with the comments and will revise this section so that it accurately reflects the statutory term, “small business customer.”

**Section 62.222 - Definitions**

In its comments, OSBA states the definition of “gas procurement charge” (GPC) is in need of clarification because there is no limiting language indicating which customers the GPC would be applied to, which is in direct contrast to its reference in the definition of “gas procurement reduction rate.”

In its comments, IRRC notes that there are several definitional terms set forth in this section that either are not consistent with their corresponding statutory definition or are vague and in need of clarification. The first term discussed is GPC. IRRC states that this term is vague because it describes a “mechanism” and its effect, and that it should directly state what costs the charge encompasses.

IRRC also states that the term “gas procurement reduction rate” (GPRR) is redundant and unnecessary. Additionally, Equitable states that it is not clear from the definition what is intended by this “equal offsetting credit to GPC” or how this rate is to be determined, or what the cost element is that will be reflected in the GPRR. *Equitable Comments*, Appendix A, p. 1. PGW states this definition should be revised from “residential and small commercial customers” to “retail gas customers.” *PGW Comments*, p. 4

Additionally, IRRC states that the term “net gas procurement adjustment” (NGPA) is vague because it describes a concept or goal, but does not increase the understanding of the term or its components. Furthermore, IRRC states that the term “natural gas supply service” should reference the Act similar to other definitions in this section. IRRC further states that the definition of “purchase gas cost” is unclear and not useful because it uses the term being defined. IRRC states that the definition should provide descriptions or examples of the costs that may be included under this definition. Also, IRRC states that this term is unclear as to whether “purchase gas cost” include procurement costs that are mentioned in the GPC definition.

Lastly, IRRC states that the term “price to compare” is not clear as to whether it is a rate or a cost. IRRC notes that a customer would need a rate to make a comparison, or at least a volume of gas associated with the cost. IRRC states that we should revise the definition so that it is clear what will result from this regulation and how a customer can use the PTC to shop among the SOLR and NGSs.

***Resolution***

The Commission notes the concerns and suggestions by the various commenters and IRRC regarding several of the definitions set forth in the regulation. We agree and have made revisions to the PTC definition so that it is understandable and will assist customers in comparing prices of the NGDC and other alternative suppliers. Further, the definition now makes it clear that the PTC is a single commodity rate that will be set forth on a customer’s bill. The Commission has also deleted the following terms from the final regulation: gas procurement costs, gas procurement reduction rate, and net gas procurement adjustment, as they are no longer necessary in light of the revisions we have made to the definition of PTC which is explained more fully in the following section.

We have also revised the definition of “natural gas supply service” so that it now references the Act. However, we believe that the definition of “purchase gas cost” in the proposed regulation is sufficient. IRRC suggested that we provide descriptions or examples of the costs that may be included under this definition. Nevertheless, we do not believe that it is necessary; it would be confusing to market participants for us to attempt to provide descriptions or outline gas procurement costs as such costs vary from NGDC to NGDC. Thus, we decline to make a change to that term.

**Section 62.223- Price to Compare**

IRRC notes that in the preamble, we state that we are requiring NGDCs to adjust their purchased gas cost monthly to better reflect market fluctuations. IRRC further notes that several commenters, such as the OCA and UGI, do not believe that this proposed regulation complies with 66 Pa. C.S. § 1307(f)(1)(ii) which states, in part:

“In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to a reconciliation…”

IRRC suggests that we should explain how the regulation complies with this statutory section. The OCA and UGI share similar concerns in their comments. *See OCA Comments*, p. 5; *UGI Comments*, pp. 5-8.

Further, IRRC states that under 66 Pa. C.S. §§ 2206 (c) and (d), we are required to establish customer information “to enable retail gas customers to make informed choices” and guidelines for consumer education to “provide retail gas customers with information necessary to help them make appropriate choices as to their natural gas service.” IRRC states that it agrees that accurate comparisons are needed, but it questions whether monthly adjustments will result in further confusion for customers.

IRRC further states that price comparison is critical to competition and notes that establishing a mechanism to provide valid comparisons of rates is a very difficult proposition given the fluctuations in gas market prices. IRRC recommends that we revisit monthly comparisons to determine the best way to fulfill the Act’s requirements relating to customer information and consumer education. The EAP also raised similar concerns regarding whether monthly adjustments were the best mechanism to provide valid price comparisons in its comments. *EAP Comments*, pp. 4-5.

Additionally, IRRC notes that the Act requires that there be a “supplier of last resort.” 66 Pa. C.S. § 2207. IRRC states that the readiness and availability of a SOLR requires that there be adequate procurement. IRRC notes that Vice Chairman Christy’s statement and the OCA’s comments both raised similar concerns that “non-shopping consumers” will be forced to pay higher costs that in effect subsidize consumers who shop. IRRC states that it is not clear in the regulation that all customers will share in the cost of the SOLR, even though a SOLR would have to be available to most customers. IRRC states that the Commission should explain how this proposed regulation will insure that procurement costs for SOLRs are distributed equitably among all consumers who may have to rely on a SOLR at some point.

The EAP makes a similar assessment and states the process as currently established in the regulation is complicated, will foster litigation, and does not recognize that expenses related to the NGDC SOLR function are not borne by the suppliers. *EAP Comments*, pp. 4-5. Moreover, NFG, the OCA, PECO and T.W. Phillips assert that directing the removal of all fuel procurement costs, even unavoidable SOLR costs, from an NGDC’s base rates and charging those SOLR costs only to NGDC sales customers, *i.e.* non-shopping customers, will shift those costs to a smaller subset of customers and possibly conflict with the non-discriminatory language set forth in 66 Pa. C.S. §2203(5).

Further, NFG claims that the gas procurement costs incurred by NGS and by the NGDC, as the SOLR, are not the same. NFG also claims that the SOLR costs will remain more of a fixed cost of the NGDC’s service that cannot be shown as a PTC. NFG suggests that the PTC should be limited to the kind of avoidable costs incurred by an NGS. In its comments, NFG supports the establishment of a Merchant Function Charge (“MFC”). A MFC removes the costs of uncollectible expense associated with current gas costs from delivery rates and includes them in the PTC. Further, NFG proposes the following regulations:

(a) An NGDC may establish a Merchant Function Charge (MFC) Rider.

The MFC will remove the cost of uncollectibles applicable to current gas

cost rates from delivery rates and apply it to the PTC.

(b) A write-off factor is defined as the retail uncollectible expense divided

by retail revenues. This factor applied to current applicable PGC rates

will be the implementation MFC amount that will be removed from

delivery rates.

(c) After implementation, unbundled delivery charges will not be adjusted

for the write-off factor outside of a base rate case.

(d) The MFC will be updated quarterly to reflect new PGC rates effective

with each applicable 1307(f) filing.

(e) The MFC is not reconcilable.

Lastly, IRRC states that this proposed subsection lacks clarity. IRRC states that the Commission should modify it so that it clearly sets forth what the PTC is, how the PTC is established, what the underlying formulas are and what must be filed with the Commission. IRRC makes the following suggestions which they believe will assist in making the section more clear:

* Separate the filing requirements of 66 Pa. C.S. §§ 1307(f) and 1308(d) from the description of the components in this subsection.
* Establish whether a Section 1307(f) filing would continue to be required after a Section 1308(d) filing.
* Clarify the development of the PTC in this subsection.
* Explain the phrase set forth in Subsection (a) so that it is either replaced by the defined term PGC, which it tracks verbatim, or is differentiated from the defined term.
* Determine whether Subsection (b) is written in reverse order.
* Combine language discussing the GPC into one subsection. Language discussing the GPC is scattered throughout five different subsections.
* Combine Subsections (c) and (d). Both of these sections address the NGPA.
* Re-write Subsections (e) and (f) so that the intent of both sections is clarified and supported by the revised language.

***Resolution***

In our *Action Plan*, we determined that there were two obstacles to market entry, originally identified by suppliers that impede the growth of the retail gas market: (1) the costs that are incurred in the acquisition of natural gas supply, but that were excluded from the NGDC’s PTC, and (2) the quarterly adjustment of the PTC pursuant to Section 1307(f). 66 Pa. C.S. § 1307(f). One purpose of the proposed regulation is to create a mechanism that allows for the removal of natural gas procurement costs now included in NGDC base rates which mask and understate the full cost of the commodity. We refer to this mechanism as the PTC. The Commission believes that the PTC lies at the heart of retail choice and should be an easily understandable means by which consumers can compare the price offered by an NGS to the SOLR or default service rate.

Section 62.223 is intended to make it easier for consumers to compare prices and make choices among those offers of natural gas for sale. The purpose of this section is to make the PTC rate reflect the same type of commodity costs which are incurred and charged to their customers by the NGSs, and allow consumers to make an “apples to apples” comparison. However, several commenters expressed concerns regarding the complexity of the procedure outlined for unbundling gas procurement costs from base rates and the establishment of the various GPC, NGPA, and GPRR clauses in the proposed regulation.

1. **Gas Procurement Costs**

The first issue that we shall discuss is shifting gas procurement costs from the NGDC’s base rates to the PTC. In accordance with our directive that the PTC reflect the same type of commodity costs incurred and charged to customers by the NGSs, we initially proposed the removal of *all* fuel related procurement charges from each NGDC’s individual base rates by means of a gas procurement reduction rate. We acknowledge, however, that our initial approach may have been overly complex and, accordingly, we have revised the mechanics to make the removal of gas procurement costs more transparent and easier to understand for consumers.

In addition, some comments suggested that a sub-set of natural gas procurement costs of the NGDC, particularly the costs incurred to provide SOLR, are unavoidable and will continue to be incurred, we agree with the comments of NEMA that the removal of all commodity-related costs, including gas procurement costs is essential to yield a PTC that better reflects the commodity costs incurred by NGS firms seeking to sell natural gas to retail consumers. NEMA Comments at 5-6. If, in the future, the NGDC’s SOLR function decreases to such an extent that its gas procurement costs recovered through SOLR rates are not adequate to support it residual gas procurement role, that situation can be addressed by future rate changes or designation of an alternative SOLR supplier under the provisions of Section 2207(a)(1). 66 Pa. C.S. § 2207(a)(1).

Accordingly, in the final regulation, the Commission will direct NGDCs to file, within 60 days, tariff revisions that will identify and remove, from delivery rates, its natural gas procurement costs and will include and recover those same costs as part of its PTC or commodity rate on a per MCF or DTF revenue neutral basis. Since these costs will be identified and shifted from delivery rates to commodity rates on a revenue neutral basis, this avoids the prospect of single-issue ratemaking in which the utility seeks increased rates for a single element of increased expenses without examination of other expenses that may have decreased. Also, because these are costs that are being moved from base rates to the NGDC’s PTC or commodity rate, these costs shall not be subject to reconciliation. However, the NGDC may file an updated rate, with its quarterly gas cost rate adjustments, to make sure that the rate continues to reflect and recover its gas procurement costs.

In addition, to reduce litigation and uncertainty as to the scope of gas procurement cost to be shifted from the delivery rates to commodity rates, the final form regulation will specify the management, contracting, scheduling, administrative and other costs that are directly associated with the NGDC’s natural gas procurement function. The cost shift shall be revenue neutral and can be updated in subsequent tariff flings or in the context of the NGDC’s next base rate case and fully allocated cost of service study. Lastly, it is important to stress that the fixed increment for gas procurement costs will, for billing purposes, be embedded within the PTC so that the consumer will see a single commodity rate on the bill. While not perfect, this will make it easier for the consumer to make “apples to apples” comparisons to commodity offers from NGS firms.

1. **Quarterly Adjustments**

The Commission also notes the concerns of some of the commenters regarding the use of monthly adjustments to the PTC. We recognize that SOLR rates are based on least-cost purchasing practices that include a mix of short and longer term contracts for SOLR supply and include positive and negative reconciliation adjustments. As such, the mandate for monthly adjustments to the PTC will not materially come closer to the spot market prices. As explained by EAP, the PGC does not represent current wholesale prices and monthly adjustments will not alter this fact. *EAP Comments*, p. 4. Therefore, the Commission determines that quarterly rate adjustments should be adequate to reflect changes in market rates over time. Additionally, the use of quarterly adjustments will avoid added complexity, and further, the legal issue of requiring NGDCs to offer a fixed rate option. Accordingly, we will delete this monthly adjustment subsection from the regulation. At the same time, to avoid the potential for large positive or negative reconciliation adjustments when a customer switches to an alternative supplier, we shall direct NGDCs to file tariff revisions that provide for quarterly reconciliation adjustments to their gas cost rates as well.

1. **Implementation of a Merchant Function Charge**

As stated above, NFG, in its comments, suggests that the Commission implement a MFC. *NFG Comments,* p. 16. In lieu of a fully allocated cost of service study, the MFC is proposed as a reasonable mechanism to identify and remove from delivery rates the cost of uncollectible expenses associated with natural gas procurements and include them in the PTC. According to NFG, this mechanism would provide additional incentives for NGS firms to serve the smaller markets and would remove a perception that shopping customers are “paying twice” for uncollectibles, once through the delivery charge and again through the NGS rate. *NFG Comments,* p.16.

For the reasons expressed by NFG, the Commission agrees that implementation of the MFC, as a component of the PTC or commodity rate, is reasonable and will allow the PTC to be a better approximation of the costs incurred by NGS firms to provide commodity service. Implementation of the MFC will unbundle supply-related uncollectible costs from base rates and add them to the price to compare. Moreover, for non-shopping customers, the MFC mechanism will be revenue neutral because the same write-off rate used to remove costs from base rates will be used to calculate the MFC as part of the PTC for commodity rates. Accordingly, the final form regulation includes the MFC provisions recommended by NFG in its comments. Also, as with gas procurement costs, because these are costs that are being moved from base rates to the NGDC’s PTC or commodity rate, these costs shall not be subject to reconciliation. However, the NGDC may file an updated rate, with its quarterly gas cost rate adjustments, to make sure that the rate continues to reflect and recover its supply-related uncollectible costs.

In sum, the PTC or commodity rate will be adjusted on a quarterly basis and will consist of the following elements on a per MCF or DTH basis: the gas cost rate determined in the NGDC’s Section 1307(f) proceeding; the reconciliation for over and under collections; the NGDC’s natural gas procurement costs (determined via a Section 1308(a) tariff filing); and the Merchant Function Charge (determined via a Section 1308(a) tariff filing). All of these elements shall be embedded in a single PTC rate on the customer’s bill.

**Section 62.224-Purchase of Receivables Programs**

This section proposes rules for the establishment of POR programs. IRRC states that it has three general questions and concerns relating to POR programs and the potential positive and negative effects. First, IRRC states that the Commission should explain further why it is proper for the NGDC to collect unregulated NGS charges. Second, IRRC raises the question of how the NGDC will separate its operating costs from those related to collecting revenues for an unregulated entity. Additionally, in a more specific manner, IRRC states that paragraph 10 of subsection (a) sets forth the requirement that an NGDC “track its POR program purchases and collections.” IRRC states that this requirement is vague because it is not clear how an NGDC is to comply with it. IRRC suggests that the regulation should state a purpose for the tracking, specify what information is required and how long the information must be kept.

IRRC also questions how the costs and revenues from a POR program will be considered in the filings envisioned in this rulemaking, including a base rate filing.

Lastly, IRRC questions why the provision relating to licensure requirement is placed under this section. IRRC suggests that the Commission delete this provision or explain why it is needed under this particular section.

Columbia, T.W. Phillips, UGI, EAP and PECO all expressed concerns regarding our decision not to require NGSs participating in PORs programs to use only NGDC consolidated billing services. In particular, T.W. Phillips states that the lack of consolidated billing is likely to create significant confusion among utility customers used to receiving a single bill and constitute a substantial burden on the NGDC, which will have to rely upon the NGS to deliver timely and accurate gas supply billing information in order to generate NGDC customer bills. *T.W. Phillips Comments*, p. 4. Additionally, PECO states that consolidated billing from the NGDC will minimize uncollectibles since the NGDC will have an existing customer account that it can monitor to track any delinquency the moment it occurs. *PECO Comments*, p. 5. PECO states that the proposed regulation shifts uncollectible supplier risk to the NGDCs. *Id*. PECO further states that NGDC billing also supports the purpose of Chapter 14, 66 Pa. C.S. § 1402, which is to protect good paying customers from increased rates due to uncollectibles. *Id*. Furthermore, UGI states that uncollectible expenses could arise if NGSs do not engage in aggressive collection processes with customers that become delinquent in paying their gas bill. *UGI Comments*, pp. 9-10.

In its comments, NFG states that under the model purportedly set forth by our regulations, an NGS essentially would be able to pick and choose which receivables are sold to the NGDC performing a consolidated billing service, and which receivables are not sold to the NGDC. *NFG Comments*, p. 14. Additionally, the system requirements for operating a dual POR and non-POR billing system would be costly and time consuming to implement, given the different consumer protections and shut-off procedures that would presumably apply to the separate customer groups. *Id*.

In their comments, Equitable, Dominion Peoples, OSBA, NFG and UGI also address the discount rate offered for accounts receivables. All of these comments reference the fact that the differences between NGSs customer bases could warrant differences in the discount rate between marketers within a POR program. Further, both EAP and NFG state that there is an inconsistency in the proposed regulation regarding the potential discount at which an NGDC will purchase receivables from an NGS. *NFG Comments* at pp. 14-15. *EAP Comments*, p. 6. In particular, both commenters note that section 62.224(a)(3) references a standardized discount while section 62.224(a)(4) states that the NGDC will establish a negotiated discount on a case-by-case basis. *Id*. NFG states that these two concepts are incompatible because either there is a discount that covers the various costs or there is a negotiated discount. *Id*. NFG asserts that the NGDC should be permitted to calculate a discount rate based on its experience with uncollectibles in its service territory and the Commission should then approve that rate. *Id*.

In their comments, the OCA and PECO state that the NGDC should be allowed to offer discounts so as to recover the NGS uncollectible expenses and the implementation, operating, administrative, and incremental costs associated with the POR.

NFG further states that the regulation should provide for a “risk factor” component to the discount rate established by the NGDC. *Id*. NFG explains that in any area of business, companies who purchase accounts receivable do not do so at a dollar-for-dollar basis. Rather, a discount is always applied to the risk the purchasing entity takes with respect to uncollectibles. NFG further explains that among the risks an NGDC would take in implementing a POR program are the risk of uncollectible accounts and the uncertainty of program implementation costs. NFG states that the application of a risk factor to POR discounts is standard practice in jurisdictions where POR programs are offered.

Also, in their comments, the OCA and NFG note that the POR program regulation as proposed does not provide appropriate customer protections. NFG states that the wording of section 62.224(b)(4) is confusing and misleading and suggests a rewording of this section to make its intent clear. *NFG Comments*, p. 15. The OCA also proposed several modifications to the proposed regulations to incorporate necessary customer protections. *OCA Comments*, pp. 17-23. In particular, the OCA states that the “right” to terminate must be limited to the portion of the NGS receivables that are equal to or less than the amount the customer would have been billed for commodity service if the customer had received SOLR services from the NGDC during the non-payment period. *Id*. OCA also had concerns regarding a customer’s right to reconnection of service. *Id*. Lastly, OCA states that as a condition of the POR program, the NGS should be required to agree not to reject a new customer based on credit-related issues. As a result, the NGS is not permitted to seek a separate security deposit. *Id*.

The OSBA and the OCA are opposed to the requirement that the NGDC must agree to share with distribution customers the amount by which the discount exceeds the uncollectible costs. *OSBA Comments*, p. 13; *OCA Comments*, p. 24. The OSBA states that this concept is inconsistent with the principle of the NGDC recovering the costs of acquiring gas for non-shopping customers through the GCR and the stated principle of Chapter 14 of the Code. *OSBA Comments*, p. 5. The OCA states that Chapter 22 of the Code, 66 Pa. C.S. § 2205(c)(5), protects ratepayers from having to bear the cost of uncollectible expense associated with unregulated supply charges by ensuring that the NGDC does not have to make payments to the NGS before receiving payment from the customer. *OCA Comments*, p. 25. OCA further states that if an NGDC offers a POR program, the increased uncollectible expense it incurs should not be borne by ratepayers as that would circumvent the protection inherent in Section 2205(c)(5), 66 Pa. C.S. § 2205(c)(5).

Lastly, the EAP and NFG suggest that the Commission strike the provision of the proposed regulation that allows NGS accounts receivable to be used to satisfy the security requirement for NGS licensing at 66 Pa. C.S. § 2208(c)(1). Both commenters state that this concept is being addressed in another rulemaking proceeding regarding NGS licensing and security issues at Docket No. L-2008-2069115.

***Resolution***

Before we discuss the specific regulatory provisions regarding the POR program, we will address IRRC’s comment regarding why it is proper for us to allow the unregulated charges by an NGS to be collected by the regulated NGDC. In our *Action Plan*, we determined that the use of POR programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers. *Action Plan*, p. 17.

Generally, in POR programs, the NGDC is responsible for billing the customer, collecting payment, and then reimbursing the NGS, even if the customer does not pay. In turn, the NGDC is compensated both for the risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.

We agree with DES that the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC’s service territory, especially with respect to the residential/small business customer market. Absent a POR program, the NGS may have to initiate costly litigation to recover its uncollectibles from non-paying customers, increasing its overall expenses. NGSs might be hesitant to offer competitive gas service to consumers if they determine that the risk of non-payment from customers, and not being able to recover their investment after incurring costs to obtain shopping customers from the NGDC is too great. A POR program minimizes that risk to some degree.

Additionally, because NGSs receive payment from the NGDC regardless of whether or not the customer pays, POR programs encourage NGSs to market to all of the utility’s customers, not just those with the most favorable credit and bill payment histories. POR programs bring the benefits of competition to customers who may not otherwise have competitive options available.

Lastly, POR programs, particularly when used in conjunction with utility consolidated billing, rely on the utility’s billing, remittance, and collection systems for which customers already pay through utility rates. Therefore, POR programs lower

costs for customers, utilities and NGSs by avoiding unnecessary duplication of

assets for which all customers have already paid.

For these reasons, we determine that the implementation of POR programs, which allow the unregulated NGSs’ accounts receivables for natural gas costs to be purchased and collected by the regulated NGDC and which allow NGDCs to be fully compensated for the risks and costs, is essential to facilitate effective competition in Pennsylvania’s retail natural gas supply services market consistent with our obligations under the Act. Indeed, under Section 2204(a) of the Code, 66 Pa. C.S. § 2204(a), the Commission is obligated and empowered to “adopt orders, rules, regulations and policies as shall be necessary and appropriate to implement [the Act].” In the Commission’s judgment, POR programs offer the best means to increase supplier participation in the retail natural gas supply market, compensate NGDCs for their risks and costs, and are in the public

interest.

In our proposed regulation regarding POR programs, we essentially adopted the interim guidelines with a few minor modifications. In the proposed regulation, and in a departure from the interim guidelines, we stated that we will not require NGSs participating in POR programs to use only NGDC consolidated billing services. We determined that forcing NGSs to use the utility’s billing system could have the unintended effect of stifling innovative products such as demand response, efficiency or green products. Nevertheless, several commenters opposed this change from the interim guidelines.

In regards to the comments on this issue, upon further consideration, we agree with the commenters that requiring NGSs participating in POR programs to use consolidated billing from the NGDC is a prudent and necessary step. We believe that consolidated billing eases an NGDC’s costs and operations. We note that POR programs are normally provided in conjunction with consolidated billing in which the utility issues a single bill to the end user that contains the utility’s delivery charges and the NGS’ supply charges. Thus, we will amend Section 62.224(a)(2) of the regulation so as to now require that an NGS use consolidated billing in order to qualify for participation in a POR program. Nevertheless, to the extent an NGS is providing a service or product to customers that an NGDC’s consolidating 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. *See generally 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). Also, in lieu of simply providing for a waiver opportunity and its attendance cost, delay and uncertainty, we have revised the final form regulation to specify the two (2) circumstances in which consolidated billing is not required to qualify for the POR program: (1) the NGDC’s billing system cannot accommodate the NGS bill for basic supply service; and (2) the NGS is providing a service or product that does not meet the definition of basic natural gas supply.

Additionally, we note NFG’s concerns about allowing NGSs to "cherry pick" customers, based on credit risk, to benefit the NGS at the expense of the NGDC and its customers. Thus, in our final regulations, we will direct that an NGS must include all of its accounts receivable related to commodity sales in the POR program, to deter any “cherry picking” of best accounts for itself and worst accounts to the POR program. Also, an NGS will be required to accept all customers without using a credit check or requiring an additional security deposit.

Several commenters also referenced the discount rate that an NGDC can offer to purchase receivables. As we noted above, a POR program involves the utility purchasing the receivables of an NGS at a discount rate. We note that several commenters believe that the discount rate applied to purchase receivables should allow for the recovery of the reasonably anticipated risk of uncollectibles expenses associated with NGS’ customers, as well as, the cost of implementing and operating the POR program. We agree with this concept. We believe that the NGDC should be fully compensated both for the reasonably projected risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.[[8]](#footnote-8)

However, consistent with our prior decision in the proceeding, *Petition of National Fuel Gas Distribution Corporation Requesting Approval of a Program for Purchase of Natural Gas Supplier Accounts Receivable*, Docket No. P-2009-299182, (Order adopted June 3, 2010), we will not allow NGDCs to incorporate a further generic “risk factor” for the recovery of risks over and above those associated with uncollectible expenses. The discount rate should reflect the NGDC’s actual uncollectible rate. Moreover, an NGDC can track its uncollectible expenses and administrative cost and adjust its discount rate accordingly in any future POR program update.

Additionally, in our proposed regulation we required the same discount rate to be applied to the purchase of all accounts receivable an NGDC purchases from an NGS, regardless of customer class. Many of the commenters believe that we should allow for differences in the discount rate offered by the NGDC to be reflected on a customer class basis. Upon further consideration, we agree that a successful POR program will offer a discount rate that can vary by customer class. Accordingly, we will delete the portion of the regulation that requires the same discount rate to be applied to the purchase of all accounts receivables and amend it so that the NGDC is allowed to offer discount rates that vary by class if substantial risk and costs differences exist.

We will also delete proposed Section 62.224(a)(9), which allows the NGDC to recover or collect losses from distribution customers if the discount exceeds the uncollectibles costs. We agree with the OSBA and OCA concerns on this issue. We believe that if an NGDC offers a POR program, the increased uncollectible expense it incurs should not be borne by ratepayers. *See* 66 Pa. C.S. §1402. The ratepayers should not be guarantors of the business risk of an NGS. Variations between projected and actual uncollectible expenses can be addressed by tariff updates to the POR program.

Further, we will amend the proposed subsections of Section 62.224(b) so that those subsections incorporate appropriate customer protections. We note that the Pennsylvania General Assembly sought to continue the consumer protections outlined in the Public Utility Code and Chapter 56 of the Commission’s regulations in the introduction of competition in the natural gas industry. *See* 66 Pa. C.S. § 2206(a). Accordingly, we will ensure in the final regulation that NGDCs continue to follow Chapter 14 and Chapter 56 requirements when terminating natural gas service to shopping customers. We believe that this policy promotes equity and fairness as between shopping and non-shopping customers and helps reduce the cost of NGDCs.

We do not agree with OCA’s position that would not allow a customer to be terminated by an NGDC for non-payment of NGS charges. We believe that there is no authority that mandates or suggest adoption of the OCA’s proposal to restrict the ability of NGDCs to terminate service to POR customers based upon non-payment of an amount equal to the customer’s default service. Additionally, permitting the NGDC to terminate for non-payment will increase collection rates and reduce the overall uncollectible expense experienced by the NGDC resulting in a lower discount rate for the POR program and thus lower competitive supply offers for customers. *See* *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502 (Order entered November 19, 2009).

Further, we believe that since the NGDC has purchased an NGS’s accounts receivable, the NGDC would own those accounts and should have all of the suspension and termination tools available for those customers as it has for its default service customers. An NGDC should not be prevented from terminating service to customers for failure to pay NGS charges purchased by the NGDC or prevent it from requiring full payment of purchased NGS accounts receivable before reconnecting natural gas service to a customer, as long as it is subject to Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations. We will modify Section 62.224(b) of the regulation accordingly.

Another concern regarding the implementation of POR programs is how an NGDC will separate its operating costs from those related to collecting revenues for an unregulated entity. We will specify in the regulation at Section 62.224(a)(9) that each NGDC track the costs of implementing and administering its POR program including uncollectibles, so that the NGDC can make sure that its POR discount rate covers its program costs. At the same time, because the NGDC will be compensated for the costs associated with POR uncollectibles in the discount rate, those costs are not recoverable from base rates. However, we will not set forth a limited timeframe in the regulation for an NDGC to retain records of these costs beyond what is required by normal business practices.

In the *SEARCH Order*, we directed that the NGDCs only voluntarily file interim POR programs before December 31, 2008. We also adopted interim guidelines for these voluntary POR programs.[[9]](#footnote-9) However, because of their vital importance in creating and sustaining a viable, competitive marketplace, we will next address whether to mandate that all NGDCs establish a POR program that will conform with the permanent rules we are establishing in these final regulations.

We note that some commenters argue that the Commission cannot mandate the implementation of POR programs. These commenters reference 66 Pa. C.S. § 2205(c)(5) of the Code as support for their assertion. This section reads as follows:

**(c) Customer billing –**

\* \* \* \*

(5) 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.

66 Pa. C.S. § 2205(c)(5). We acknowledge that in addressing PPL’s purchase of receivables program, we addressed similar language applicable to the electric industry and determined that Section 2807(c)(3) operated to prohibit the imposition of mandatory PORs. *See* *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502 (Order entered November 19, 2009).

However, upon further analysis and consideration of this legislative language, it appears that Section 2205(c)(5) is directed to the mechanics of customer billing on behalf of suppliers, *i.e.*, the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. It does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts. Indeed, in a POR program, the customers’ accounts receivable purchased from the NGS (at a discount designed to compensate the NGDC for program costs and risks) become both legally and practically indistinguishable from the accounts receivable of its ordinary delivery service and SOLR customers. The NGS customers’ debt is now owed directly to the NGDC and, just like any other NDGC customer, failure to pay the amount due will subject the NGS customer to termination of service pursuant to Chapter 14 of the Code and the Commission’s service termination regulations at Chapter 56. Accordingly, there is a substantial distinction between a business arrangement in which the NGDC is the billing agent for the NGS, and a business arrangement in which the NGDC becomes the new creditor for the debt owed by the NGS customer. Section 2205(c)(5) appears to address only the former.

Notwithstanding the above analysis regarding our legal authority to mandate POR programs for NGDCs, we shall continue our current policy and continue, in these regulations, to make these POR programs *voluntary*. Several NGDCs have filed voluntary POR programs consistent with the interim guidelines and have received Commission approval. The guidelines have provided for flexibility and a cooperative approach among stakeholders to addressing and removing a substantial impediment to NGS participation in the retail market for natural gas supply. At the same time, however, the lack of final regulations to date has likely discouraged other NGDCs from developing voluntary PORs programs.

The Commission believes that the provisions in these final regulations providing for, *inter alia*, full recovery of POR risks and costs and the ability of NGDCs to terminate NGS customers for non-payment of purchased receivables, should be sufficient to encourage the remaining NGDCs subject to Section 1307(f) to voluntarily file PORs that are consistent with these regulations. If, however, the Commission determines that additional NGDCs have not filed voluntary PORs and that the lack of access to voluntary PORs is likely creating a substantial barrier to retail natural gas competition in their service territories, we reserve the right to re-visit this issue in the future to consider whether these regulations should be amended to make the offering of POR programs *mandatory* for all such NGDCs.

We acknowledge that some NGDCs have Commission-approved voluntary POR programs in place. The Commission appreciates the good faith efforts of these NGDCs and their stakeholder to develop voluntary POR programs and, as such, their settled expectations should be respected. Therefore, we shall establish a reasonable transition plan for NGDCs with existing PORs to conform to the final form POR regulations, as follows. If the NGDC has already implemented a POR program that has a specific term, expressed in years or months, the Commission-approved POR program will be allowed to continue, but the NGDC should file a tariff that is consistent with the final regulations to commence after the initial term of the POR program expires. Alternatively, if the NGDC has implemented a Commission-approved POR program with no specific term limit, the NGDC should update its POR plan within 24 months of the effective date of the final regulations.

**Section 62.225- Release, assignment or transfer of capacity.**

We noted in our *Action Plan* that it might be helpful to the development of the gas retail markets if the ability of an NGDC to control its capacity on interstate natural gas pipelines was not as strong. This section was created in order to give NGDCs and NGSs guidance and to ensure that the requirements for the release, assignment and transfer of capacity by an NGDC shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity.

In its comments, IRRC states that this section is very similar to the Act at 66 Pa. C.S. § 2204(d). IRRC notes that there is no explanation for repeating the statute in the proposed regulation. IRRC states that the Commission should either explain the need for this section or delete it in its entirety. In its comments, UGI expresses the same concern. *UGI Comments*, p. 12.

***Resolution***

The Commission declines to revise or delete this proposed section of the regulation. Until the gas market matures, utility operated natural gas capacity release and storage programs in Pennsylvania must be administered in a competitive neutral manner. We determine that the assets of gas pipeline and storage capacity should follow the customers of each utility, regardless of where they purchase their natural gas supply. Additionally, we want to ensure that useable capacity is released to marketers at fair and equitable rates, not the most expensive and least usable capacity. Accordingly, we have decided to formalize this regulation in harmony with the existing law in order to give both NGDCs and NGSs some guidance and to ensure that requirements that the release, assignment or transfer of capacity by an NGDC for any new or renewed capacity contract for firm storage or transportation capacity shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity.

**Section 62.226 – NGDC costs of competition related activities.**

The Commission concluded that NGDCs “should be able to recover *reasonable* costs that are *prudently* incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market." We determined that we would allow NGDCs to recover these costs through a surcharge with an automatic adjustment mechanism and set forth such a mechanism in this section.

In its comments, IRRC notes that since the cost of “competition related activities” is not established or defined in this section, it is not possible to determine the components, limits, or impact of this provision. IRRC states that without direction from the Commission, 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 the NGDC base rates. IRRC states that the Commission must provide guidance in the regulation on what specifically are NGDC costs of competitive related activities.

Also, IRRC states that it has concerns relating directly to 66 Pa. C.S. § 2203(5)(a), under which the Commission must “require that restructuring of the natural gas industry be implemented in a manner that does not reasonably discriminate against one customer class for the benefit of another.” IRRC states that it is not clear how the profits produced by the advertising will be considered by this statutory section.

IRRC states that the Commission should either delete the section in its entirety or amend the regulation to strictly interpret what costs may be claimed and to protect customers from paying imprudent costs, redundant costs or costs borne by one customer class for the benefit of another.

***Resolution***

Based on the comments, we will delete this section of the proposed regulation. We agree with IRRC that the cost of “competition related activities” is not defined and is too broad and vague of a term. We also believe that these costs are already a part of the NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature. As such, a separate automatic adjustment clause for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. *See* *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

**Section 62.227- Regulatory assessments**

This section creates a surcharge to allow NGDCs to recover the costs of their annual regulatory assessment to fund the Commission, the OCA and OSBA.

In its comments, IRRC notes that a commentator raised serious questions regarding the inclusion of this section in the proposed regulation. IRRC states that commenters questioned the need for this assessment stating that the costs associated with the regulatory assessment are not large expenses that would require special ratemaking treatment. Thus, IRRC questions the need for any change in the practice of having NGDCs recover these costs through their base rates. Additionally, IRRC states that the section is unclear because it does not appear to have any relationship to or impact upon the “price to compare” or competition. Lastly, IRRC states that the Commission provides no justification for the additional expense that NGDCs would incur as a result of making filings and separating these costs from their base rates. IRRC states that the Commission should delete the section in its entirety or provide rationale for its inclusion.

***Resolution***

Based on the comments, we will delete this section of the proposed regulation. We agree with IRRC and the OCA that the regulatory assessment is not a large or volatile expense that would warrant special ratemaking treatment. These costs are already a part of the NGDC’s base rates and we do not believe that there are adequate legal or policy justifications for singling out this minor cost item as a separate surcharge. Therefore, we conclude that a separate automatic adjustment clause for regulatory assessments would not be appropriate and, as with a separate clause for competition related costs, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth.1995).

**CONCLUSION**

The Commission welcomes public comments on all revisions to the proposed regulations. We emphasize that parties should use this opportunity to focus on the revisions to the proposed rule, and not to revisit issues already addressed in previously submitted comments. We look forward to preparing and delivering a final form regulation to the IRRC after we have reviewed these comments; **THEREFORE**,

**IT IS ORDERED:**

1. That the Secretary shall serve a copy of this Order and Annex A on all jurisdictional natural gas distribution companies, natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at Docket No. L-2008-2069114, Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets*.*

2. That the contact persons for this final-form rulemaking is David E.

Screven, Assistant Counsel, (717) 787-2126 (legal) and Richard Wallace, (717) 787-7236 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

3. An original and fifteen copies of any written comments referencing the docket number of this advance notice of final rulemaking shall be submitted no later than thirty days from the entry date of this Order to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA, 17105-3265.

4. That the parties serve a courtesy copy of their comments on the contact persons mentioned above.



BY THE COMMISSION,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 29, 2010

ORDER ENTERED: **August 10, 2010**

**Annex A**

**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 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.~~

*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 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.

1. (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 under 66 Pa. C.S. § 1308(a) to identify the natural gas procurement costs included in base rates and shall propose tariff revisions designed to remove those 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.

~~(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.

~~(c)~~ (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 MFCTARIFF RIDER 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

~~(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 purchase receivables ONLY associated with 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:

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;
2. AN NGS PARTICIPATING IN AN NGDC’S POR PROGRAM MAY SEPARATELY BILL A CUSTOMER IF THE NGS IS PROVIDING A 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).

   (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 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 FILE AN UPDATE TO THE POR DISCOUNT RATE WITH THE COMMISSION.

~~(10)~~ ~~The NGDC shall track its POR program purchases and collections~~

   (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.

   (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 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 the applicable contract rate 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.

**~~§ 62.226. NGDC costs of competition 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.~~

~~(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 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).~~

~~(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.~~

1. *The Report to the General Assembly* was released in October 2005 at Docket No. I-00040103 and may be accessed at <http://www.puc.state.pa.us/PcDocs/570097.pdf>. [↑](#footnote-ref-1)
2. SEARCH is an acronym for “Stakeholders Exploring Avenues for Removing Competition Hurdles.” [↑](#footnote-ref-2)
3. *Investigation into the Natural Gas Supply Market: Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market,* Docket No. I-00040103F0002, Final Order and Action Plan entered September 11, 2008. [↑](#footnote-ref-3)
4. The NGS Parties include Agway Energy Services, LLC, Gateway Energy Services Corporation, Interstate Gas Supply, Inc., and Vectren Retail, LLC. [↑](#footnote-ref-4)
5. Industrial Consumer Group consists of the Industrial Energy Consumers of Pennsylvania, the Central Penn Gas Large Users Group, the Columbia Industrial Intervenors, and the PNG Industrial Intervenors. [↑](#footnote-ref-5)
6. Natural gas industry members of EAPA include Columbia Gas of PA, Dominion Peoples, Equitable Gas, National Fuel Gas Distribution Corp., PECO Energy Co., Philadelphia Gas Works, and UGI Utilities, Inc. [↑](#footnote-ref-6)
7. RESA is a non-profit trade association whose members are involved in the wholesale generation of electric generation and the competitive supply of natural gas to residential, commercial and industrial customers. RESA’s members include Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Exelon Energy Company, Gexa Energy, Green Mountain Energy Company, Hess Corporation, Integrys Energy Services, Inc., Liberty Power Corporation, RRI Energy, Sempra Energy Solutions LLC, SUEZ Energy Resources NA, Inc., and US Energy Savings Corporation. [↑](#footnote-ref-7)
8. The Commission anticipates that, in practice, the” reasonably projected risk” of non-payment for the accounts receivables will be based on the NGDC’s most recently updated uncollectibles rate for each customer class. [↑](#footnote-ref-8)
9. Establishment of Interim Guidelines for Purchased of Receivables (POR) Programs, Docket Nos. M-2008-2068982 and I-0004103F0002. (Order entered December 18, 2008) (*Interim Guidelines Order*). [↑](#footnote-ref-9)