McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Carl J. Zwick
Direct Dial: 717.237.5271
Direct Fax: 717.260.1788
czwick@mwn.com

September 9, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Natural Gas Distribution Companies and Promotion of Competitive Retail Markets; Docket No. L-2008-2069114

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and fifteen (15) copies of the Comments of Valley Energy, Inc., in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By
Carl J. Zwick

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Enclosure
c: David E. Screven, Esq., Law Bureau (via E-mail and Hand Delivery)
Richard Wallace, Bureau of Audits (via E-mail and Hand Delivery)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF VALLEY ENERGY, INC.

Pamela C. Polacek (Pa. I.D. No. 78276)
Carl J. Zwick (Pa. I.D. No. 306554)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to Valley Energy, Inc.

Dated: September 9, 2010

I. INTRODUCTION

On March, 27, 2009, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Proposed Rulemaking Order to adopt regulations governing the relationship between Natural Gas Distribution Companies ("NGDCs") and Natural Gas Suppliers ("NGSs"), and provided for a public comment period.[1] On August 10, 2010, the Commission entered its Advance Notice of Final Rulemaking Order ("Rulemaking Order") setting forth revisions to its proposed regulations for further comment.[2] The purpose of this proceeding, according to the Commission, is to ensure that retail customers of natural gas will be able to choose among NGSs on reasonable and nondiscriminatory terms, while maintaining the safety and reliability of natural gas distribution service.[3] Specifically, through this proceeding, the Commission seeks to establish, among other things, rules regarding: (1) the formulation of an appropriate Price to Compare ("PTC"); (2) the reconciliation of gas cost rates and quarterly adjustments; and (3) the implementation of Purchase of Receivables ("POR") programs.[4]

II. COMMENTS

Section 2204(g) of the Natural Gas Choice and Competition Act ("Competition Act" or "Act") required the Commission, within five years of the Competition Act's enactment, to investigate whether there was "effective competition for natural gas supply."[5] If finding no effective competition, the Commission was required to "explore avenues . . . for encouraging

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[1] *See Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*, Docket No. L-2008-2069114, Proposed Rulemaking Order (Order entered Mar. 27, 2010). The PUC provided for a public comment period on the Proposed Rulemaking Order, which concluded on August 25, 2009. The Energy Association of Pennsylvania ("EAPA") commented on the proposed regulations on behalf of Valley Energy, Inc. and its other NGDC members.

[2] *See Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*, Docket No. L-2008-2069114, Advance Notice of Final Rulemaking Order (Order entered Aug. 10, 2010), p. 1.

[3] *Id.*

[4] *Id.*

[5] 66 Pa. C.S. § 2204(g).

increased competition in the Commonwealth."[6] As indicated in the Commission's October 2005 *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market*, the PUC found that, as of the date of the report, "effective competition" did not exist in Pennsylvania's natural gas market. As a result, the Commission convened a Natural Gas Stakeholders' group, otherwise known as "SEARCH" (Stakeholders Exploring Avenues for Removing Competition Hurdles), which released a final report in May of 2008. Shortly thereafter, the Commission issued the SEARCH Order in September 2008, which detailed the work of the SEARCH Committee and concluded that the Commission could take a number of steps to help promote the development of competition in Pennsylvania's retail markets for natural gas supply.[7] One of these steps was to make it easier for consumers to compare natural gas prices offered by NGDCs and NGSs.

Valley Energy, Inc. ("Valley" or "Company") is one of smaller jurisdictional NGDCs in Pennsylvania, serving eleven communities in Bradford County, Pennsylvania and Tioga County, New York. All of Valley's stock is owned by a holding company, C&T Enterprises, Inc. ("C&T"). C&T is jointly owned by Tri-County Rural Electric Cooperative ("Tri-County") and Claverack Rural Electric Cooperative ("Claverack"). Valley provides service to approximately 5,671 customers in Bradford, Pennsylvania, and the surrounding area. Of Valley's 5,671 total customers, approximately 4,954 of these customers are residential customers, while 717 are commercial or industrial. Valley also serves approximately 1,200 customers in New York. Valley's supply of natural gas for all of its customers is delivered through a single city gate in Pennsylvania, and a local production well located in the Pennsylvania poriton of its territory.

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[6] *Id.*

[7] *See 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, (Order entered Sept. 11, 2008).

Currently, Valley has a limited number of accounts receiving supply from NGSs, most of which are for the largest customers on the system; however, that small number of accounts purchasing from NGSs use approximately 70% of the total throughput of customers on the system. To date, NGSs have expressed little interest in serving smaller commercial and residential customers on the system. As discussed below, Valley can substantially comply with the Rulemaking Order's proposed regulations regarding unbundling and the PTC; however, certain modifications may be necessary to reflect the differences in the Public Utility Code and PUC regulations that apply to smaller NGDCs that are categorized as "Group I" Gas Utilities in comparison to the larger NGDCs that submit gas cost rate filings under Section 1307(f). In addition, Valleys' use of a third party for gas management and other activities requires the addition of a reconciliation mechanism for these costs to ensure that Valley fully recovers its reasonable costs of providing natural gas supply service to its customers.

A. The Commission Should Revise the Proposed Regulations to Confirm the Responsibilities of Group I Gas Utilities.

The Competition Act applies to NGDCs with annual operating revenues of $6,000,000 or more.[8] The Commission's regulations contain different gas cost recovery filing requirements for the larger and smaller gas utilities that fall within the definition of NGDC. Specifically, the regulations have distinct processes for "Section 1307(f) Gas Utilities," "Group I Gas Utilities," and "Group II Gas Utilities" for the purpose of recovering purchased gas costs under 66 Pa. C.S. § 1307.[9] As defined by the Commission, a "Section 1307(f) Gas Utility" is "[a] natural gas distributor with gross intrastate annual operating revenues in excess of $40 million."[10] A "Group I Gas Utility," on the other hand, is defined as "[a] natural gas utility with gross intrastate annual

[8] 66 Pa. C.S. § 2202.
[9] *See* 52 Pa. Code § 53.63.
[10] *Id.* at § 53.63(1).

operating revenues of between $2.5 million and $40 million."[11] A Section 1307(f) Gas Utility is subject to more extensive filing requirements than a Group I Gas Utility. Section 1307(f) Gas Utilities submit quarterly gas cost rate filings, while Group I Gas Utilities submit only an annual filing (unless an interim filing is justified due to a substantial overcollection or undercollection).[12]

The proposed regulations contemplate quarterly gas cost filings, as the Section 1307(f) gas utilities submit.[13] Because the Commission has not proposed in the Rulemaking Order to modify the annual gas cost recovery filing requirements in Section 53.66 of the regulations applicable to Group I Gas Utilities, Valley assumes that the Commission intends for the unbundled gas procurement cost charge and merchant function charge ("MFC") to be updated by Group I Gas Utilities as part of the annual gas cost rate filings. Alternatively, the Commission may have already determined that the unbundling is not applicable to Group I Gas Utilities at this time.[14] Valley respectfully requests that the Commission clarify the treatment of Group I Gas Utilities in its Final Order.

B. Proposed Section 62.223 - The Commission Should Provide That Valley, and Other Similarly-Situated Small NGDCs, May Continue To Fully Reconcile Gas Procurement Expenses.

Through its Rulemaking Order, the Commission seeks to shift natural gas procurement costs from the NGDCs' base rates to the PTC, in order to better reflect the full cost of the commodity.[15] As such, the PUC intends to direct NGDCs to file tariff revisions, within 60 days,

[11] *Id.* at § 53.63(2). A "Group II Gas Utility" is defined as "[a] natural gas utility with gross intrastate annual operating revenues of less than $2.5 million." *Id.* at § 53.63(3).
[12] Compare 52 Pa. Code § 53.64 to 52 Pa. Code § 53.66.
[13] *See*, e.g. Advance Notice of Final Rulemaking Order, p. 15 ("...the NGDC may file an updated rate, with its quarterly gas cost rate adjustment...").
[14] Valley is providing suggested changes to the proposed regulations that will better accommodate the annual filing cycle for Group I Gas Utilities. Valley would also support applying the proposed regulations only to Section 1307(f) Gas Utilities.
[15] *See* Advance Notice of Final Rulemaking Order, p. 15.

that will: (1) identify and remove from delivery rates, each NGDCs' natural gas procurement costs; and (2) include and recover those same costs as part of the NGDCs' PTC or commodity rate on a per Mcf or Dth revenue neutral basis.[16] Moreover, because these procurement-related costs will be moved from base rates to the PTC, the Commission suggests that these costs will not be subject to reconciliation.[17]

Valley currently uses a third-party gas procurement manager and collects the costs of that service through its Gas Cost Rate ("GCR"). Although Valley's employees perform some gas supply functions such as the processing of payments to wholesale suppliers and coordination with NGSs serving on the system, the vast majority of the procurement, scheduling, nomination and reconciliation activities are performed by a third party. Valley does not object to unbundling those third party procurement costs from the GCR and separately stating them in the tariff.

Valley's third party management contract does not include a uniform monthly charge for the procurement services. Rather, the contract includes a performance incentive clause for the procurement manager. In addition, because Valley's service territory includes customers in New York, the monthly compensation paid to the procurement manager is allocated between the two jurisdictions each month based on the relative sales in each area of the territory. As a result of the performance incentive clause and the inter-jurisdictional allocation, Valley cannot accurately project the gas procurement costs that it will incur to serve Pennsylvania customers each month over the course of the year. As a result, it will be difficult to accurately establish a binding gas procurement charge in Valley's annual Section 1307 proceeding.

Currently, Valley includes the third party gas procurement costs in projected gas costs for the year, and also addresses the costs in its E-factor reconciliation process to ensure that the

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[16] *Id.* at 16.
[17] *Id.*

Company fully recovers its actual procurement costs and does not overcollect (or undercollect) from ratepayers. The costs paid to the third party procurement manager are reasonable and necessary for Valley to perform its duties as the Supplier of Last Resort. As such, Valley is entitled to fully recover the costs. In the PUC's final regulations, Valley respectfully requests that the Commission provide that Valley: (1) shall, in its annual Section 1307 filing, make its best projection of the Company's gas procurement-related costs for the future year; and (2) shall maintain the ability to fully reconcile its projected gas procurement expenses in the subsequent annual Section 1307 filing.[18]

Valley submits that maintaining the ability to reconcile its projection of procurement-related costs is necessary to ensure that the Company does not substantially overcollect or undercollect these expenses. As discussed above, because Valley does not have the ability to project these costs with accuracy and because the Company, as a small NGDC, has a lower tolerance to withstand financial risks, the Commission's final regulations should permit Valley, as well as other similarly-situated small NGDCs, to reconcile these costs annually.[19]

C. Proposed Section 62.223 - Group I Gas Utilities Should Adjust Supply-Related Uncollectible Costs On an Annual Basis.

For the reasons discussed above, as a Group 1 Gas Utility, Valley should not be required to submit quarterly filings, but rather should continue to submit an annual Section 1307 filing as a Group I Gas Utility. For the uncollectible expense collected through the MFC, Valley suggests that Group I Gas Utilities should update the charge each year based on the uncollectible expenses incurred during the previous 12-month period. In addition, because Valley's uncollectible

[18] Because this projection occurs once each year, Valley also suggests that reconciliation apply to other administrative costs for gas supply, such as legal and credit costs. This will ensure that the ratepayers pay only the actual incurred costs, rather than an estimate.

[19] Denying Valley the ability to fully collect these costs would constitute a taking of property under the Constitutions of both Pennsylvania and the United States, and would deprive Valley of the opportunity to earn a fair return.

expense is very small (*i.e.*, approximately 1% to 1.5% of total revenue), the Company does not separately track what portion of the uncollectible account is related to the supply charges on the customer's bill and what portion is related to the delivery charges. As a result, Valley proposes to allocate its uncollectible expense among the two functions by using the relative allocation of a typical customer bill (e.g., if the annual charges for a typical residential customer are 80% supply and 20% delivery, the uncollectible factor would reflect an 80/20 split of the total uncollectible expenses).

III. CONCLUSION

The Commission's issuance of regulations to make it easier for consumers to compare natural gas prices offered by NGDCs and NGSs is a critical step for the Commonwealth to promote competition in the retail gas market. In doing so, however, the Commission must balance the interests of NGDCs of all sizes. With the modifications discussed in these Comments, the proposed regulations constitute an appropriate balance that will extend the benefits of competitive supply markets to customers in Pennsylvania.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By ______________________

Pamela C. Polacek (Pa. I.D. No. 78276)
Carl J. Zwick (Pa. I.D. No. 306554)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to Valley Energy, Inc.

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