

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

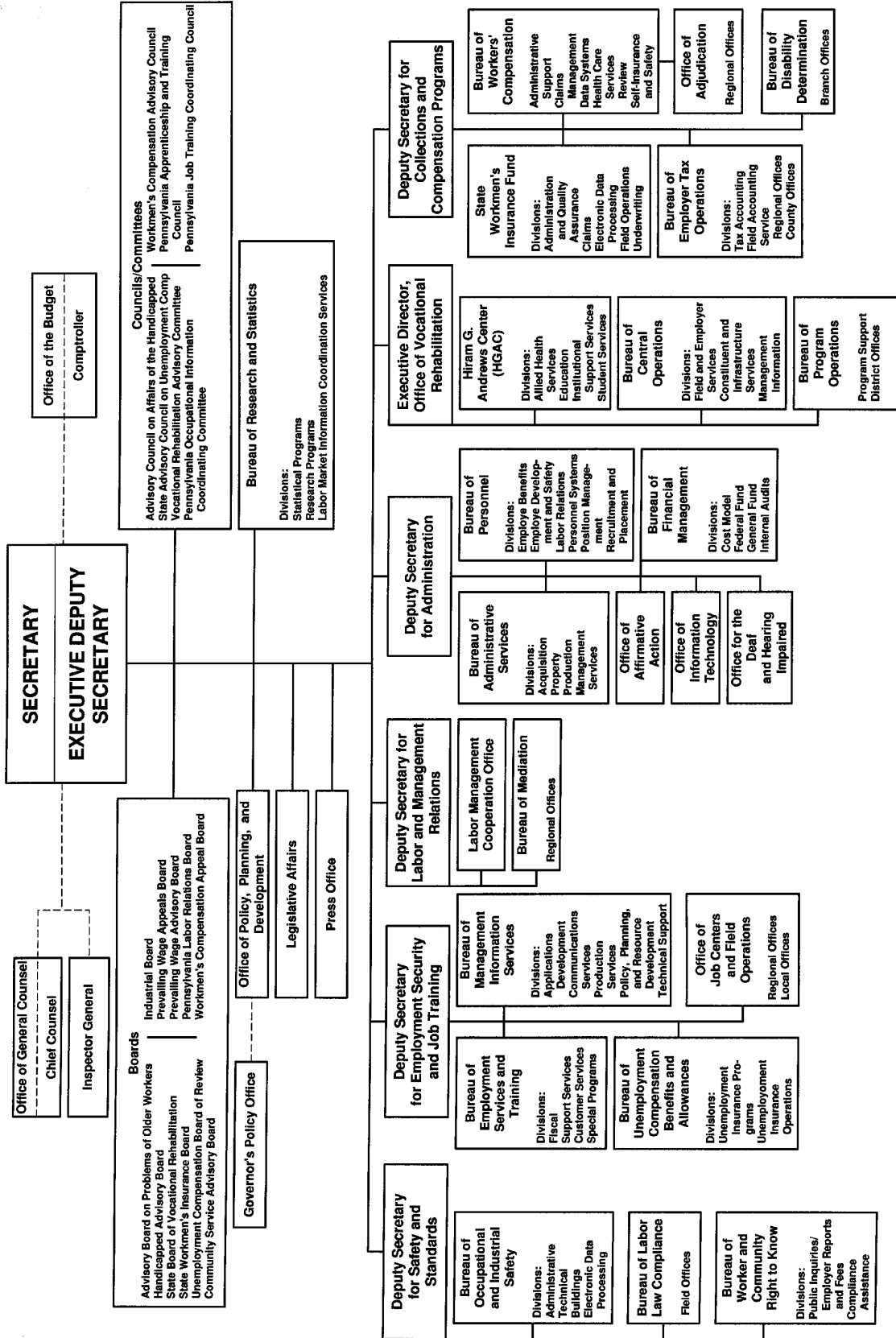
#### Reorganization of the Department of Labor and Industry

The Executive Board approved a reorganization of the Department of Labor and Industry effective November 13, 1996.

The organization chart at 26 Pa.B. 5719 (November 23, 1996) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

DEPARTMENT OF LABOR AND INDUSTRY



[Pa.B. Doc. No. 96-1966. Filed for public inspection November 22, 1996, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-00960838]

## Affiliated Interest Issues of Natural Gas Marketers

The Pennsylvania Public Utility Commission (Commission) on October 3, 1996, adopted a proposed policy statement to provide guidance to local distribution companies (LDCs) providing natural gas service in this Commonwealth with regard to uniform standards for affiliated interests of the LDCs and for gas marketing divisions of LDCs. The contact person is Jonathan Zorach, Assistant Counsel, Law Bureau, (717) 783-2818.

Public Meeting held  
October 3, 1996

*Commissioners present:* John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson, Concurring in result; John Hanger; David W. Rolka; and Robert K. Bloom

### Proposed Policy Statement

*By the Commission:*

Since the fall of 1995, parties in this Commonwealth have tried to reach a consensus on the "rules of the road" for retail choice in natural gas. As part of the evolution of the unbundling of natural gas services, this Commission has adopted various policies addressing state issues following in the wake of policy changes established by the Federal Energy Regulatory Commission (FERC). Central to the Commission's clarification of policy is a strong statement that the Commission will not permit unreasonable discrimination in retail offerings either by the LDC in favor of its marketing affiliate or, if there is no formally organized affiliate, its marketing division.

As we have previously stated with regard to regulatory changes resulting from FERC Order 636, it is our intent by publishing our policy statement to clarify our position regarding affiliated interests and subsidiaries to facilitate unbundling and reduce or eliminate nondiscriminatory practices. We believe it imperative that we clarify our policies so as to insure a level playing field for the participants.

The Commission has already addressed some of these concerns in our Final Rulemaking for Regulation Regarding Gas Transportation Tariffs. Under the proposed rules at § 60.2(3), for example, transportation rate discounts to customers may not be conditioned upon any obligation to purchase gas supply from a utility or its affiliated interest. Additionally, we rejected the idea of structural separation for LDCs. Some LDCs have separate marketing divisions, whereas some do not; but whether or not the marketing is done by a separate affiliate, we are concerned that the LDC not discriminate unreasonably in favor of its marketer.

Although the Commission's statute at 66 Pa.C.S. §§ 1317(b) and 1318(b) addresses gas purchases by affiliates of natural gas companies, it does not specifically address divisions that are not organized as separate affiliates. However, under 66 Pa.C.S. §§ 1307, 1308, 1317 and 1318, the Commission regulates gas costs and determines the reasonableness of rates. In addition, under 66 Pa.C.S. § 1304, we have broad authority to ensure that LDCs do not engage in discriminatory practices.

Accordingly, under our authority under sections 501, 504—506, 1301—1309, 1317, 1318, 1501, 1502 and 2101—2107, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301—1309, 1317, 1318, 1501, 1502 and 2101—2107, and the Commonwealth Documents Law (45 P.S. § 1201 et seq.), the Commission has authority to promulgate this policy statement addressing affiliated interest issues set forth in Annex A. *Therefore,*

*It is Ordered that:*

1. The proposed policy statement regarding affiliated interests of Pennsylvania gas utilities, as set forth in Annex A, is hereby proposed at §§ 69.191 and 69.192 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for a 30-day comment period starting with publication in the *Pennsylvania Bulletin*.

JOHN G. ALFORD,  
*Secretary*

**Fiscal Note:** 57-180. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

#### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

#### NATURAL GAS MARKETERS

#### § 69.191. General.

(a) Given the unbundling of monopoly distribution services in the natural gas industry and the development of customer access to commodity gas and transportation services, the Commission has developed policies for local distribution companies (LDCs), marketers and customers with regard to the affiliated and nonaffiliated interests of LDCs. This section and § 69.192 (relating to affiliated interest—statement of policy) are intended to clarify additional aspects of the Commission's authority in this area. The Commission has a strong policy against direct or indirect discrimination by LDCs in favor of their marketing affiliates or marketing divisions and against independent gas marketers. This discrimination would impermissibly hinder both the unbundling of services and the entry of new competitors into the marketplace.

(b) Although many LDCs have affiliated marketing divisions, some may have divisions or marketing sections that are not separately organized as affiliates as defined in 66 Pa.C.S. (relating to Public Utility Code) (code). In order to be effective, the Commission's antidiscrimination policies must also apply without regard to the structural relationship of the LDC's marketer to the LDC. Thus this section and § 69.192 cover both the LDC's affiliates and gas marketing divisions or marketing sections that do not have affiliate status. Although some states have considered requiring these divisions to be separately organized as affiliates, the Commission does not believe this is necessary as long as the parent company fairly allocates costs to the division, and does not give the division an unfair advantage vis-a-vis other marketers. The Commission previously rejected the idea of structural separation for LDCs.

(c) The Commission's authority with respect to affiliate and marketing divisions derives from different portions of the code. Chapter 21 of the code (relating to relations with affiliated interests) directly governs affiliated interests. Section 1318(b) of the code (relating to just and reasonable natural gas rates) addresses gas purchased from affiliates. Other provisions of the code govern natural gas costs, such as sections 1307, 1308, 1317 and 1318. The code requires adherence to tariffs under section 1303 of the code (relating to adherence to tariffs) and thus prohibits a lack of uniformity or discrimination in the application of tariff provisions. Likewise under section 1304 of the code it prohibits rate discrimination. Other provisions of the code reenforce these policies: section 1501 (relating to character of service and facilities) requires utilities to furnish "adequate, efficient, safe and reasonable service," while section 1502 (relating to discrimination in service) prohibits "any reasonable preference or advantage" and forbids "any unreasonable preference or disadvantage." These provisions clearly require equal treatment of similarly situated parties dealing with the LDC.

(d) Under sections 505 and 506 of the code (relating to duty to furnish information to Commission; cooperation in valuing property; and inspection of facilities and records), the Commission has authority to require utilities to keep and furnish information in accordance with requirements set forth by the Commission. As part of this section and § 69.192, the Commission has set forth certain recordkeeping requirements to help ensure that parties are fairly treated.

#### § 69.192. Affiliated interest—statement of policy.

The following policies should be applied by the LDCs:

(1) The LDC must apply its tariffs in a nondiscriminatory manner to its affiliate, its own marketing division and any nonaffiliate.

(2) The LDC shall likewise not apply a tariff provision in a manner that would give its affiliate or division an unreasonable preference over other marketers with regard to matters such as scheduling, balancing, transportation, storage, curtailment or nondelivery.

(3) If a tariff provision is mandatory, the LDC may not waive the provision for its affiliate or division absent prior approval of this Commission.

(4) If a tariff provision is not mandatory or provides for waivers, the LDC shall grant the waivers without preference to affiliates and divisions or nonaffiliates.

(5) The LDC shall maintain a chronological log of tariff provisions for which it has granted waivers. Entries shall include the name of the party receiving the waiver, the date and time of the request, the specific tariff provision waived and the reason for the waiver.

(6) The LDC shall process requests for transportation promptly and in a nondiscriminatory fashion with respect to other requests received in the same or a similar period.

(7) Transportation discounts provided to the LDC's or its marketing affiliate's favored customers shall be offered to other similarly situated customers.

(8) The LDC should not disclose customer proprietary information to its marketing affiliate or division, and to the extent that it does disclose customer information, it shall do so to other similarly situated marketers in a similar fashion so as not to selectively disclose, delay disclosure, or give itself or its affiliate any undue advantage related to the disclosure.

(9) An LDC shall fairly allocate to its marketing affiliate or division costs or expenses for general administration or support services so as not to give either the LDC or the affiliate an unfair advantage over competitors through an unfair allocation of these costs.

(10) An LDC selling surplus gas supplies or upstream capacity on a short-term basis to its affiliate shall make supplies available to similarly situated marketers on a nondiscriminatory basis.

(11) The LDC may not condition or tie agreements to release interstate pipeline capacity to a service in which the LDC or affiliate is involved.

(12) The LDC may not directly or by implication unfairly represent to a customer, supplier or third party that an advantage may accrue to a party through use of the LDC's affiliate or subsidiary.

(13) The LDC shall establish and file with the Commission a complaint procedure for dealing with alleged violations of this section.

(14) Parties alleging violations of this section may pursue their allegations through the Commission's established complaint procedures.

[Pa.B. Doc. No. 96-1967. Filed for public inspection November 22, 1996, 9:00 a.m.]

## [52 PA. CODE CH. 69]

[M-960839]

### Fitness of Natural Gas Marketers

The Pennsylvania Public Utility Commission (Commission) on October 3, 1996, adopted a proposed policy statement to provide guidance to local distribution companies (LDCs) providing natural gas service in this Commonwealth with regard to uniform standards for brokers and marketers. The contact person is Jonathan Zorach, Assistant Counsel, Law Bureau, (717) 783-2812.

Public Meeting held  
October 3, 1996

*Commissioners present:* John M. Quain, Chairperson; Lisa Crutchfield; John Hanger; David W. Rolka; and Robert K. Bloom

### Corrected Proposed Policy Statement

*By the Commission:*

As the gas industry unbundles and transportation service is made available to all retail customers, it is necessary for the Commission to insure that brokers and marketers operating in this Commonwealth possess the financial and technical fitness necessary to meet their contractual obligations. In order to insure such fitness and protect the public interest, this Commission believes it appropriate that the LDCs establish guidelines in their tariffs addressing these matters. The guidelines would govern the qualifications of entities seeking to transport gas through an LDC's distribution system.

The Commission believes that the establishment of the guidelines will benefit the LDC and all of its customers. The inability of a marketer or broker to meet its financial or operational commitments potentially poses a serious threat to the operation of the gas distribution system. This inability to perform may result in an improper taking of gas belonging to other retail and transportation

customers or hinder an LDC's ability to operate its distribution system in an orderly manner. While the Commission recognizes that it does not have the authority to address the issue of "damages," we are charged with insuring that the LDC provides safe, reliable and adequate service to all of its customers. We believe that the issuance of the policy statement, which calls for the establishment of guidelines by the LDC in dealing with marketers, brokers, and the like, will enable the Commission to meet its statutory obligations.

The Commission is also concerned that the guidelines not be improperly employed as a hindrance to entry into the gas supply marketplace. Our interest here goes only to insuring that all entrants be able to meet their financial and operational commitments. Firms wishing to deliver gas to retail customers through LDCs must demonstrate financial and technical fitness to meet peak demands. In addition, they must have adequate financial reserves to insure that they may provide the services they offer to the public.

Accordingly, under the authority under sections 102, 501, 508, 1301—1304, 1317, 1318 and 1501, 66 Pa.C.S. §§ 102, 501, 508, 1301—1304, 1317, 1318, 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), the Commission has authority to promulgate this proposed policy statement addressing the fitness of natural gas marketers set forth in Annex A. *Therefore,*

*It is Ordered that:*

1. The proposed policy statement regarding the fitness of natural gas marketers as set forth in Annex A, is hereby promulgated for comment.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. The public is invited to submit written comments, an original and 15 copies, regarding the proposed policy statement with the Secretary of the Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 within 30 days after publication in the *Pennsylvania Bulletin*. Reply comments may be submitted within 60 days after publication in the *Pennsylvania Bulletin*.

5. A copy of this order, initial views of any Commissioner and Annex A are to be served upon all jurisdictional gas utilities, the Office of Consumer Advocate and the Office of Small Business Advocate.

JOHN G. ALFORD,  
*Secretary*

**Fiscal Note:** 57-181. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

##### NATURAL GAS MARKETERS

#### § 69.193. Fitness of natural gas marketers—statement of policy.

(a) To retain reliable service when the gas industry unbundles, the Commission seeks to insure that brokers and marketers operating in this Commonwealth possess the financial and technical fitness necessary to meet their contractual obligations. Since assurance of reliable service is a prerequisite for opening this Commonwealth's gas markets to full retail competition, providers of gas should be fully capable of providing reliable service. LDCs must address the issues of financial and technical fitness in their tariffs in order to assure the reliability of supplies to the end user.

(b) Firms that wish to deliver gas to retail customers shall demonstrate that they have both the financial and technical fitness to meet the peak demand of contracted customers on peak days. This demonstration of fitness is vital for any firm that wishes to serve retail customers, whether commercial or residential. To insure financial fitness, the LDC shall insure that the marketer or broker has the financial reserves necessary to provide the services it offers to the public.

(c) Accordingly, the LDCs may offer nondiscriminatory tariff rules subject to Commission approval governing the qualifications of marketers and brokers. These rules should be consistent with registration requirements for marketers of the Federal Energy Regulatory Commission. The tariff rules should address:

(1) Financial fitness, including the ability of the entity to comply with a financial penalty in the event of non-performance.

(2) Operational fitness, including gas reserves and the ability of the firm to meet the peak demand of contracted customers.

[Pa.B. Doc. No. 96-1968. Filed for public inspection November 22, 1996, 9:00 a.m.]