

# STATEMENTS OF POLICY

## Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-00001351]

### Maintaining Safety and Reliability for Natural Gas Supply and Distribution Service

The Pennsylvania Public Utility Commission (Commission) on October 25, 2000, adopted a final policy statement order setting forth procedures the Commission intends to follow in executing its responsibilities under the Natural Gas Choice and Competition Act (act) 66 Pa.C.S. §§ 2201—2212, related to safety and reliability for natural gas supply and distribution service. The contact persons are William Hall, Bureau of Conservation, Economics and Energy Planning (717) 783-1547 and David Screven, Law Bureau (717) 787-2126.

Public Meeting held  
October 25, 2000

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell; Terrance J. Fitzpatrick

#### Order

*By the Commission:*

#### *Introduction*

By order entered April 28, 2000, the Commission adopted a proposed policy statement setting forth safety and reliability guidelines for the supply and distribution of natural gas. The Commission proposed to incorporate the guidelines into §§ 69.11—69.19. The Commission further directed that the proposed policy statement be published in the *Pennsylvania Bulletin* for comment by interested parties. This order addresses the comments received by the Pennsylvania Office of Consumer Advocate (OCA) and the Pennsylvania Gas Association (PGA) and adopts a final policy statement.

#### *Background*

On June 22, 1999, Governor Tom Ridge signed into law the act. The act revised the Public Utility Code, 66 Pa.C.S., by, *inter alia*, adding Chapter 22 (relating to restructuring of the natural gas utility industry). The Commission is the agency charged with implementing the act. The act sets forth various responsibilities for the Commission to fulfill in restructuring the natural gas industry.

(1) The Commission shall enforce standards as necessary to ensure continuation of the safety and reliability of the natural gas supply and distribution service to all retail customers. In adopting the standards the Commission shall consider the absence of any applicable industry standards and practices or adopt standards in conformity with industry standards and practices meeting the standards of this chapter. The application of such standards shall be in such a manner that incorporates the operational requirements of the different natural gas distribution companies.

66 Pa.C.S. § 2203(1).

Further, the Act provides that:

(12) The Commission shall make its determinations pursuant to this chapter and shall adopt such orders or regulations as necessary and appropriate to ensure that natural gas suppliers meet their supply and reliability obligations, including but not limited to, establishing penalties for failure to deliver natural gas and revoking licenses. Any affected entity may at any time petition the Commission to amend or rescind any such order or regulation issued or promulgated under this chapter.

66 Pa.C.S. § 2203(12).

The Commission established a collaborative working group as the appropriate vehicle to proceed with the implementation of the responsibilities set forth in section 2203(1) and (12) of the act. The working group agreed that the act, at section 2203(1), recognizes the different operational characteristics of natural gas distribution companies (NGDCs) and that this allows certain issues to be addressed in tariffs. The working group determined that regulations or policies containing detailed uniform rules for all companies might be inappropriate and unworkable.

A subgroup drafted the suggested safety and reliability guidelines, which were delivered to the whole working group and considered at the meeting on September 21, 1999. The working group agreed that the generic guidelines should be presented to the Commission for consideration as interim safety and reliability guidelines.

By order entered October 20, 1999, the Commission approved the initial work product of the working group and adopted them as *Interim Safety and Reliability Guidelines* (Interim Guidelines) at Docket No. L-00990144. The Commission stated:

“After a review of the suggested interim safety and reliability guidelines, we agree that they appropriately address those issues that can be determined to be generic guidelines applicable to all NGDC systems in Pennsylvania and is [sic] consistent with the reliability provisions of the Act. We believe that the proposed guidelines are appropriate to ensure that safety and reliability are maintained, while recognizing that the details of these requirements need to be further developed in each NGDC’s restructuring proceeding. We also believe that these requirements fairly balance the obligations of NGDCs, NGSs, and end-users in the process of ensuring system reliability.”

October 20, 1999 Order at 2.

The Interim Guidelines addressed a number of matters that are critical to reliability, including: (1) delivery standards for natural gas suppliers; (2) the definition, use, and verification of “comparable capacity” for supplying firm service; (3) the distinctions between firm and interruptible service; (4) the roles of the supplier of last resort and the NGDC’s role as system operator; (5) requirements to ensure that sufficient firm capacity remains committed to NGDC firm service customers; (6)

appropriate guidelines for the establishment of penalties; (7) critical day procedures necessary to maintain system safety and reliability; (8) the establishment of communication protocols on all matters which may affect system reliability; and (9) the establishment of Operational and Capacity Councils to meet the requirements of section 2204(f) of the act. The Interim Guidelines provided a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures. Further, in its October 20, 1999, order, the Commission directed that an additional docket be opened so as to incorporate the Interim Guidelines into Chapter 69 (relating to general orders, policy statements and guidelines on fixed utilities).

The Commission opened this docket for the purpose of incorporating the principles set forth in the Interim Guidelines into a policy statement. By order entered April 28, 2000, the Commission adopted the Interim Guidelines as a proposed policy statement, and amended Chapter 69 to include §§ 69.11—69.19, which incorporated the guidelines for maintaining safety and reliability for natural gas supply and distribution service. The Commission further directed that the proposed policy statement be published in the *Pennsylvania Bulletin* for comment by interested parties. Under Ordering Paragraph No. 4 of the Commission's April 28, 2000, order, the OCA and the PGA filed comments in response to the proposed policy statement. This order addresses the comments received by the OCA and the PGA and sets forth the final form policy statement.

#### Comments

##### *Pennsylvania Office of Consumer Advocate*

The OCA filed comments in response to the proposed policy statement. In its comments, the OCA agrees that the safety and reliability guidelines, which were incorporated into the proposed policy statement, provide "a strong framework" for addressing issues related to continued safety and reliability for natural gas supply and distribution service within individual NCDG tariffs and operational procedures. Nevertheless, the OCA was concerned with wording changes appearing within the proposed policy statement. The OCA expressed that the Commission's approach in such a critical area as safety and reliability in the newly restructured gas industry must be mandatory and regulatory. The OCA noted that such mandatory words as "shall" and "must," which appeared in the Interim Safety and Reliability Guidelines, which were approved by the Commission by order entered October 20, 1999, were replaced by more discretionary words such as "should" and "may" in the proposed policy statement. OCA believes that such "discretionary" wording in this critical area weakens the proposed policy statement and may "convey an incorrect message regarding the importance of the requirements of each safety and reliability provisions." OCA Comments at 3.

Additionally, the OCA seeks clarification of proposed § 69.12(c) (relating to delivery standards for NGSs). The OCA notes that the parallel provision within the Interim Guidelines included a reference to "any residential customer" as well as essential human needs customer. The OCA requests clarification on why the reference to "any residential customer" was deleted from § 69.12(c) in the proposed policy statement.

##### *Pennsylvania Gas Association*

In its comments, the PGA suggests amending the definition of "interruptible gas service" as set forth in the proposed policy statement in § 69.11 (relating to definitions) so as to conform with the definition of "interruptible service" appearing in the Commission's *Glossary of Gas Terms for the Consumer* which was subsequently released after adoption of the proposed policy statement. The PGA noted that there is a great deal of overlap between the parties who participated in developing the *Glossary* and those who participated in developing the proposed policy statement. The PGA is of the opinion that this change to the definition in the proposed policy statement would "maintain consistency and cohesion across the various dockets implementing the Natural Gas Choice and Competition Act." Further, the PGA stated that "definitional consistency" would result in the reduction of compliance costs for everyone.

#### Discussion

To ensure the continued safety and reliability of natural gas service in Pennsylvania in the newly restructured gas industry, the Commission proposed to establish guidelines setting forth the obligations of all NGDCs and NGSs. By Order entered October 20, 1999, the Commission adopted Interim Guidelines drafted by a collaborative working group and directed that the Interim Guidelines be incorporated into a policy statement. By Order entered April 28, 2000, the Commission sought to add §§ 69.11—69.19, which incorporated the concepts established by the Interim Guidelines adopted in the October 20, 1999, order. The OCA strongly suggests that the proposed policy statement should fully conform to the original Interim Guidelines and include mandatory language.

We agree with the OCA regarding the importance of each safety and reliability provision. Nevertheless, we reject its proposal to include mandatory language in the final policy statement. By their very nature, policy statements are generally precatory rather than mandatory. The Commonwealth Court has commented in relevant part, as follows:

... a statement of policy does not have the force of law, and is merely interpretive in nature and is not binding upon a reviewing court. The value of a policy statement is only persuasive, so long as it represents an accurate interpretation of the relevant statute or other authorities from which it is derived.

*Shenago Township Board of Supervisors v. Pa.PUC*, (No. 1387 C.D., filed December 20, 1996). Where an agency's guidelines are intended to provide a general statement of policy, they are not treated as binding administrative rules or regulations. *Willman v. Children's Hospital of Pittsburgh*, 459 A.2d 855, 859 (1983) citing, *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 374 A.2d 671 (1977).

Although we will not include mandatory language in the final policy statement regarding the specific manner in which safe and reliable service must be provided, we emphasize that all participants in the natural gas industry have a statutory obligation to provide safe and reliable service. Through compliance with the guidelines set forth in the final policy statement, an NGDC or NGS would be adhering to the Commission's approach for maintaining safe and reliable service. Departures from

the guidelines are likely to be viewed as actions inconsistent with their statutory duty to provide safe and reliable service in any future proceedings where those issues are raised.

Through the adoption of safety and reliability guidelines by policy statement rather than regulations, the Commission maintains greater flexibility to respond to changes in the industry. Also, NGDCs and NGSs are afforded some discretion to adjust their operations as necessary while still acting in a manner that optimizes the safety and reliability of their services. Our intent is not, however, to in any way minimize the importance of maintaining safe and reliable natural gas distribution and supply service.

As to the OCA's comment regarding the omission of a reference to "any residential customer" in § 69.12(c) of the proposed policy statement, we note that the definition of "essential human needs customer," in § 69.11, includes residential customers. No change is warranted.

With respect to the PGA's comment regarding the definition of "interruptible gas service," we agree that it should be amended to conform with the definition of "interruptible service" set forth in the *Glossary of Gas Terms for the Consumer*. As stated by the PGA, we believe that "definitional consistency" will result in the reduction of compliance costs for everyone.

Based upon the comments received and our consideration of the issues raised, we adopt this final policy statement as set forth in Annex A; *Therefore, It Is Ordered that:*

1. The regulations of the Commission, 52 Pa. Code Chapter 69, as amended by adding a statement of policy in §§ 69.12—69.19 to read as set forth at 30 Pa.B. 2911 and by adding § 69.11 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 certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. A copy of this order and Annex A shall be served upon the OCA, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional Natural Gas Distribution Companies and all licensed Natural Gas Suppliers.

5. This Policy Statement shall be come effective upon publication in the *Pennsylvania Bulletin*.

6. Alternative formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, at (717) 772-4597.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** Fiscal Note 57-216 remains valid for the final adoption of the subject regulations.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

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

##### SAFETY AND RELIABILITY GUIDELINES

###### § 69.11. Definitions.

The following words and terms, when used in this section and §§ 69.12—69.19, have the following meanings, unless the context clearly indicates otherwise:

*Act*—66 Pa.C.S. §§ 2201—2212 (relating to Natural Gas Competition Act).

*Design day conditions*—The extreme weather conditions that an NGDC uses to project customer requirements.

*Essential human needs retail gas customer*—Customers consuming gas service in buildings where persons normally dwell including apartment houses, dormitories, hotels, hospitals and nursing homes, as well as the use of natural gas by sewage plants. (See § 69.22 (relating to definitions).)

*Firm capacity*—Assigned capacity or comparable capacity that can be called upon to serve customer requirements on a reliable basis even under design day conditions.

*Gas supply assets*—Includes all sources and components associated with the acquisition and delivery of natural gas.

*Interruptible gas service*—Indicates natural gas service that can be interrupted under the terms and conditions specified by tariff or contract.

*Interstate capacity*—Services provided by a Federal Energy Regulatory Commission-regulated entity, including pipeline transportation, storage, peaking, balancing and no-notice services.

*NGDC*—Natural gas distribution company.

*NGS*—Natural gas supplier.

*Operational flow order*—An order issued by an NGDC to protect the safe and reliable operation of its gas system, either by restricting service or requiring affirmative action by shippers.

*Reliability plan*—A plan provided for in 66 Pa.C.S. § 1317(c) (relating to regulation of natural gas costs).

*Residential retail gas customer*—As defined in the tariff of each NGDC.

*SOLR*—Supplier of last resort.

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