

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Lake Redesignations

The Environmental Quality Board (Board) proposes to amend §§ 93.9e, 93.9f and 93.9m (relating to drainage list E; drainage list F; and drainage list M) to read as set forth in Annex A.

This proposed rulemaking was adopted by the Board at its meeting of February 17, 2004.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. *Statutory and Regulatory Authority*

This proposed rulemaking is made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Proposed Rulemaking*

Water quality standards are in-stream water quality goals that are implemented by imposing specific requirements (such as treatment requirements and effluent limits) on individual sources of pollution. The standards are codified in Chapter 93 (relating to water quality standards).

The purpose of this proposed rulemaking is to provide the correct aquatic life use designation in the water quality standards for three Commonwealth lakes. In most cases within Chapter 93, lakes have been classified according to the aquatic life use designation of their associated streams. In many of these cases, however, a lake is incapable of supporting the same use as the stream. One example of this is the presence of a lake in a basin designated for Cold Water Fishes (CWF). Because

the impounded water is warmed by solar radiation, it is too warm to support fish species indigenous to a cold water habitat. This type of lake typically supports a Warm Water Fishery (WWF) and is so managed. This normal condition should be recognized in the drainage lists. In some cases, the Fish and Boat Commission (Commission) may stock a warm water lake with trout at certain times of the year to provide a put-and-take recreational fishery. Because trout cannot be supported year round, this is a seasonal fishery use. Those lakes should be designated Trout Stocking (TSF) to recognize this seasonal use. For both of these types of lakes, the designated use in the water quality standards should mirror the existing use.

The three lakes included in this proposed rulemaking are:

Blue Marsh Reservoir, Berks County
Lake Luxembourg, Bucks County
Walker Lake, Snyder County

The Department's Bureau of Water Supply and Wastewater Management reviewed fishery data on these three lakes from surveys conducted by the Commission, as well as physical data from a number of sources. A description of the conditions in each lake and the recommended use designations follows.

Blue Marsh Reservoir—Blue Marsh Reservoir is a multipurpose impoundment owned and operated by the United States Army Corps of Engineers and is located near Reading. The reservoir has never supported CWF species. The Commission manages this lake as a WWF through natural reproduction of species such as largemouth bass, white and black crappie, bluegill, channel catfish and carp. They also supplement the natural population with stocking of white-striped bass hybrids and walleye. The Commission has never stocked the reservoir with trout. Physical data indicate that water temperature often exceeds levels tolerated by CWF species. It is recommended that Blue Marsh Reservoir be redesignated from TSF to WWF. All tributaries to the lake will retain their current designations.

Lake Luxembourg—Lake Luxembourg is a primary feature in Bucks County's Core Creek County Park. The lake has never supported CWF species. The Commission has always managed the lake as a WWF that includes naturally reproducing populations of yellow perch, white and black crappie, bluegill and carp. Because the largemouth bass population is suboptimal, fingerlings are stocked. Channel catfish and walleye are stocked to supplement the population. The presence of American eel shows that Lake Luxembourg harbors Migratory Fishes (MF). Physical data show temperatures inimical to survival of CWF species. The Commission stocks adult trout in Lake Luxembourg several times each year for angler recreation. The designation of Lake Luxembourg should be changed from CWF, MF to TSF, MF. Tributaries to the lake will retain their CWF, MF designation.

Walker Lake—Walker Lake is owned and managed by the Commission and is located near Troxelville. This lake supports a WWF with reproducing populations of largemouth bass, white and black crappie, yellow perch, bluegill and carp. These species are supplemented by stocking of fingerling northern pike by the Commission.

Lake water temperatures often exceed values that can support survival of CWF species. It is proposed that the use designation of Walker Lake be changed from TSF to WWF. Tributaries to the lake will retain their CWF designation.

As part of its continuing water quality management program and ongoing review of water quality standards, the Department recommends that the Board adopt the following amendments to §§ 93.9e, 93.9f and 93.9m as set forth in Annex A and summarized as follows:

<i>Lake</i>	<i>County</i>	<i>List</i>	<i>Present* Designation</i>	<i>Recommended* Designation</i>
Blue Marsh Reservoir	Berks	F	TSF	WWF
Lake Luxembourg	Bucks	E	CWF, MF	TSF, MF
Walker Lake	Snyder	M	TSF	WWF

*WWF = Warm Water Fishes
 CWF= Cold Water Fishes
 TSF = Trout Stocking
 MF = Migratory Fishes

Section 93.4(b) (relating to Statewide water uses) requires that less restrictive uses may only be adopted when it is demonstrated that the designated use is more restrictive than the existing use, the use cannot be attained by implementing controls on point and nonpoint sources and one or more of a number of conditions exist. One of those conditions is that dams, diversions or other hydrologic modifications preclude the attainment of the use and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in attainment.

The Department's review of the Commission's fishery data determined that the designated fish and aquatic life use in these three lakes is more restrictive than the existing use in all cases. The warm water conditions and the resulting WWF communities are the result of impoundment of the streams. The impounded water is warmed by solar radiation.

All of the lakes are managed primarily as WWF and provide recreational angling opportunities. Lake Luxembourg is stocked with adult trout by the Commission to provide a seasonal recreational fishery. Blue Marsh Reservoir is operated as a flood control impoundment to reduce the potential for downstream property damage. All of these lakes provide benefits to the citizens of this Commonwealth. In addition, it is not feasible to remove these dams or to operate them in a way that would achieve attainment of the designated use in the impoundment. As a result, the Board proposes the redesignations described in this preamble and set forth in Annex A.

The Department's evaluation report for these lakes is available electronically through the Department's website. The report can also be obtained from Edward R. Brezina whose address and phone number are listed in Section B of this preamble.

The redesignations proposed in this rulemaking will be implemented through the Department's National Pollutant Discharge Elimination System (NPDES) permit and approval actions. Impacts on current or future NPDES permits associated with the lakes in this package are anticipated to be negligible, since effluent limitations in these permits are established to protect the water quality of the existing and revised designated water uses of the lakes in this rulemaking. Furthermore, the changes in designated and existing uses for these lakes will not compromise tributaries or downstream uses; they will remain protected from new and expanded permitted discharges.

In developing this proposed rulemaking, the Department discovered a minor error that resulted from a

previous rulemaking. The turbidity criterion for the lower segment of Mill Creek, from Watson Creek to Mouth, was proposed as Tur₃ at proposed rulemaking (see 28 Pa.B. 4431 (August 29, 1998)), but recommended for change to Tur₁ at final rulemaking (see 30 Pa.B. 6059 (November 18, 2000)). However, due to an oversight, the change to Tur₁ was not made. The error is corrected in Annex A.

E. Benefits, Costs and Compliance

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these proposed changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each lake in accordance with the existing use.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for, the Commonwealth or its political subdivisions. No costs will be imposed directly upon local governments by this proposal.

Persons conducting or proposing activities or projects that could impact a lake must comply with the regulatory requirements relating to the designated use. For discharges, treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the lake and many other factors.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program and is consistent with water quality standards requirements established by the Federal Clean Water Act and The Clean Streams Law (35 P. S. §§ 691.1—691.1001). All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect designated and existing water uses.

The proposed redesignations will be implemented through the Departments's permit and approval actions. For example, the NPDES permitting program bases effluent limitations on the use designation of the stream or lake. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing and revised designated water uses.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These regulatory revisions are based on existing Department regulations.

F. *Pollution Prevention*

The water quality standards program is a major pollution prevention tool because the objective is to protect in-stream and in-lake water uses. The proposed designated use changes will ensure protection of the existing use in these lakes.

G. *Sunset Review*

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 7, 2004, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In addition to the proposed rulemaking, IRRC and the Committees have been provided a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of

these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. The Board must receive comments by June 1, 2004. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 1, 2004. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed rulemaking will be considered. If sufficient interest is generated as a result of this publication, public hearings will be scheduled at appropriate locations to receive additional comments.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. The Board must also receive comments submitted electronically by June 1, 2004.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-388. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9e. Drainage List E.

Delaware River Basin in Pennsylvania

Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * *	* * *		
3—Mill Creek	Basin, Watson Creek to Mouth	Bucks	WWF, MF	Add [Tur ₃] Tur ₁
3—Core Creek	Basin, Source [PA Rte 620 Dam] to Inlet of Lake Luxembourg	Bucks	CWF, MF	Add Tur ₂
3—Core Creek	Lake Luxembourg	Bucks	TSF, MF	Add Tur₂
4—Unnamed Tributaries to Lake Luxembourg	Basins, Source to Slackwater of Lake Luxembourg	Bucks	CWF, MF	Add Tur₂
3—Core Creek	Basin, [PA Rte 620] Lake Luxembourg Dam to Mouth	Bucks	WWF, MF	Add Tur ₁
3—Mill Creek	Basin	Bucks	WWF, MF	Add Tur ₁
	* * *	* * *		

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania

Schuylkill River

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
3—Tulpehocken Creek	Basin, Source to T 560 near Ramona				[Berks]		CWF	None
3—Tulpehocken Creek	Main Stem, T 560 to [Tailwaters] Inlet of Blue Marsh Reservoir				Berks		TSF	None
4—Unnamed Tributaries to Tulpehocken Creek	Basins, T 560 to [Tailwaters] Inlet of Blue Marsh Reservoir				Berks		TSF	None
4—Owl Creek	Basin				Lebanon		WWF	None
3—Tulpehocken Creek	Blue Marsh Reservoir				Berks		WWF	None
4—Unnamed Tributaries to Blue Marsh Reservoir	Basins, Source to Slackwater of Blue Marsh Reservoir				Berks		TSF	None
4—Northkill Creek	Basin, Source to I-78 Bridge				Berks		EV	None
4—Northkill Creek	Basin, I-78 Bridge to [Mouth] Slackwater of Blue Marsh Reservoir				Berks		CWF	None
4—Licking Creek	Basin, Source to Slackwater of Blue Marsh Reservoir				Berks		TSF	None
4—Spring Creek	Basin, Source to Furnace Creek				Berks		CWF	None
5—Furnace Creek	Basin, Source to Water Authority Dam				Berks		HQ-CWF	None
5—Furnace Creek	Basin, Water Authority Dam to Mouth				Berks		CWF	None
4—Spring Creek	Basin, Furnace Creek to Hospital Creek				Berks		CWF	None
5—Hospital Creek	Basin				Berks		TSF	None
4—Spring Creek	Basin, Hospital Creek to [Mouth] Slackwater of Blue Marsh Reservoir				Berks		TSF	None
[3—Tulpehocken Creek	Basin, Blue Marsh Reservoir				Berks		TSF	None]
3—Tulpehocken Creek	Main Stem, Blue Marsh Reservoir Dam to T 921				Berks		CWF	None
		*	*	*	*	*		

§ 93.9m. Drainage List M.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
4—North Branch Middle Creek	Main Stem, Source to Inlet of Walker Lake				Snyder		TSF	None
5—Unnamed Tributaries to North Branch Middle Creek	Basins, Source to Inlet of Walker Lake				Snyder		CWF	None
4—North Branch Middle Creek	Walker Lake				Snyder		WWF	None

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
5—Unnamed Tributaries to Walker Lake	Basins, Source to Slackwater of Walker Lake	Snyder	CWF	None
5—Moyers Mill Run	Basin, Source to Slackwater of Walker Lake	Snyder	CWF	None
4—North Branch Middle Creek	Main Stem, Walker Lake Dam to Mouth	Snyder	TSF	None
5—Unnamed Tributaries to North Branch Middle Creek	Basins, Walker Lake Dam to Mouth	Snyder	CWF	None
5—Swift Run	Basin	Snyder	HQ-CWF	None
5—Stony Run	Basin	Snyder	CWF	None

* * * * *

[Pa.B. Doc. No. 04-650. Filed for public inspection April 16, 2004, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-00030162]

Permanent Standards of Conduct

The Pennsylvania Public Utility Commission, on September 18, 2003, adopted a proposed rulemaking order which sets forth standards of conduct governing the relationships among natural gas distribution companies and affiliated natural gas suppliers.

Executive Summary

Sections 62.141 and 62.142 of the Commission's regulations establish permanent standards of conduct to govern the relationships between natural gas distribution companies (NGDCs) and their affiliated natural gas suppliers (NGSs). The regulations have the effect of transforming what had been binding interim standards into a permanent code of conduct, thus satisfying the Commission's statutory mandate to create permanent standards pursuant to the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212.

By Order entered on September 18, 2003 at Docket No. L-00030162, the Commission adopted a Proposed Rulemaking Order to add 52 Pa. Code §§ 62.141 and 62.142. The Commission held that adopting the binding interim guidelines without substantive change into formal and permanent regulations would be the best course of action. Further, this was consistent with the recommendation of the industry working group which had originally been formed to draft the binding interim standards of conduct. Those in the working group stated that the industry has approximately 3 years of operating experience under the binding interim guidelines and have successfully adjusted thereto. The Commission is confident that under the regulations, consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

Although the Commission is adopting permanent standards of conduct, the Commission shall leave in place its policy statements found at 52 Pa. Code §§ 69.191—69.192. The Commission does so because there will

remain a number of local NGDCs which, because of their small size, are not subject to the Competition Act, which is a prerequisite to the applicability of these regulations. In this way, all customers shall be protected from unfair market conditions when buying gas from an affiliated supplier.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 6, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
September 18, 2003

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

Permanent Standards of Conduct Pursuant to 66 Pa.C.S. § 2209(b); Doc. No. M-00991249 F0004; L-00030162

Proposed Rulemaking Order

By the Commission:

The Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212 (Competition Act), was signed into law by former Governor Tom Ridge on June 22, 1999. The Competition Act revised the Public Utility Code, 66 Pa.C.S. §§ 101, et. seq., to restructure the natural gas industry to allow the retail sale of natural gas in an open market. Today we are initiating a rulemaking proceeding to adopt regulations governing the relationships between Natural Gas Distribution Companies (NGDCs) and their

affiliated Natural Gas Suppliers (NGSs). We initiate this rulemaking to comply with the Legislature's directive, explained below, and to ensure that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

The Competition Act allows individual customers to choose from independent suppliers of gas which are not necessarily affiliated with the local gas utility. Additionally, the Competition Act in section 2209(a) requires the Pennsylvania Public Utility Commission (Commission) to establish interim Standards of Conduct governing natural gas distribution companies and their affiliated natural gas suppliers.

On November 22, 1999, the Commission fulfilled the requirements of section 2209(a) and adopted binding interim Standards of Conduct. *Binding Interim Standards of Conduct Pursuant to 66 Pa.C.S. § 2209(a)*, Docket No. M-00991249 F0004, Final Order, entered November 22, 1999, as amended, Order entered March 30, 2000. Pursuant to the Competition Act, the Standards of Conduct are to remain in effect until the Commission promulgates regulations setting forth permanent Standards of Conduct governing these same activities. 66 Pa.C.S. § 2209(b). Now that the industry has three years of operating experience under the Binding Interim Standards of Conduct, the Commission believes it is appropriate to adopt permanent Standards of Conduct.

To this end, we reconvened the working group that assisted us in drafting the Interim Standards of Conduct. The working group convened on April 28, 2003, and consisted of representatives from natural gas distribution companies, natural gas suppliers, the Office of Consumer Advocate, other interested parties and our staff. The working group indicated that the Interim Standards of Conduct are working well and that they are now invested in the current regulatory framework. Therefore, we propose to carry out the mandate of 66 Pa.C.S. § 2209(b) and establish regulations governing the relationship among natural gas distribution companies, their natural gas suppliers, and the rest of the natural gas industry. These proposed regulations are substantially the same as the binding Interim Standards of Conduct.

We note that, although we are proposing new regulations governing the conduct of natural gas distribution companies, we shall leave in place our policy statements found at 52 Pa. Code §§ 69.191—69.192. We adopted these two policy statements prior to the passage of the Competition Act. Once the proposed regulations are effective, they will have the force of law and will supercede the policy statements with respect to those NGDCs which are subject to the Competition Act. Nonetheless, there will remain a number of local natural gas distribution companies which, because of their small size, are not subject to the Competition Act and, therefore, these regulations. We leave these policy statements in place so that the customers of these companies shall have protection from unfair market conditions when buying gas from an affiliated supplier.

The proposed regulations, which are adopted directly from the binding interim Standards of Conduct and the Competition Act, successfully address all of the statutory requirements delineated in 66 Pa.C.S. § 2209(c). We invite comments from interested parties on these regulations. It is important that these regulations help to promote and not impede the open market for natural gas.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and sections 201—204 of the act

of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1204) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we amend the regulations in 52 Pa. Code §§ 62.141—62.142 as noted above and as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed rulemaking at the L-docket will consider the regulations set forth in Annex A.

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

3. The Secretary shall submit this order and Annex A for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.

4. The Secretary shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. The Secretary shall specify publication of the order.

5. An original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. Copies of all comments must also be submitted to the contact persons identified herein at the same address.

6. The contact persons for this rulemaking are Lawrence F. Barth, Law Bureau, (717) 772-8579 and Blair Hopkin, Law Bureau, (717) 783-6152.

7. A copy of this order and Annex A shall be served upon the Energy Association of Pennsylvania, all jurisdictional natural gas utilities, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-229. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter E. STANDARDS OF CONDUCT

Sec.
62.141. Definitions.
62.142. Standards of conduct.

§ 62.141. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Affiliated NGS—

(i) An NGS engaging in marketing activities related to natural gas supply services by the marketing division or marketing operation of an NGDC.

(ii) The term does not include a utility's marketing department or division to the extent that it informs existing or prospective customers of the availability and

price of the regulated sales service that utility furnishes in its role as supplier of last resort.

Commission—The Pennsylvania Public Utility Commission.

NGDC—*Natural gas distribution company*—A public utility or city natural gas distribution operation that provides natural gas distribution services and which may provide natural gas supply services and other services. For purposes of this standard of conduct, the term does not include:

(i) A public utility subject to the jurisdiction of the Commission which has annual gas operating revenues of less than \$6 million per year, except:

(A) When the public utility voluntarily petitions the Commission to be included within the definition of NGDC.

(B) When the public utility seeks to provide natural gas supply services to retail gas customers outside its service territory.

(ii) A natural gas public utility subject to the jurisdiction of the Commission that is not interconnected to an interstate gas pipeline by means of a direct or indirect connection through the distribution system of another natural gas public utility or through a natural gas gathering system.

NGS—*Natural gas supplier*—

(i) An entity other than an NGDC, but including NGDC marketing affiliates without regard to structural relationship, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC. The term includes:

(A) An NGDC that provides natural gas supply services outside its certificated service territories.

(B) A municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(I) As provided prior to July 1, 1999, the effective date of 66 Pa.C.S. Chapter 22 (relating to natural gas competition), under a certificate of public convenience if required under this title.

(II) Total natural gas supply services in de minimis amounts.

(III) Natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided.

(IV) Natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of 66 Pa.C.S. Chapter 22.

(ii) The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of 66 Pa.C.S. (relating to the Public Utility Code), an NGS that is not an NGDC is not a public utility as defined in 66 Pa.C.S. § 102 (relating to definitions) to the extent that the NGS is utilizing the jurisdictional distribution facilities of an NGDC or is providing other services authorized by the Commission.

§ 62.142. Standards of conduct.

(a) *General requirements.* NGDCs and NGSs shall comply with the following requirements:

(1) An NGDC shall apply its tariffs in a nondiscriminatory manner to its affiliated NGS and a nonaffiliated NGS.

(2) An NGDC may not apply a tariff provision in a manner that would give its affiliated NGS an unreasonable preference over other NGSs with regard to matters such as scheduling, balancing, transportation, storage, curtailment, capacity release and assignment, nondelivery and other services provided to its affiliated NGS.

(3) Mandatory tariff provisions may not be waived by an NGDC for an NGS absent prior approval of the Commission.

(4) When a tariff provision is not mandatory or provides for waivers, an NGDC shall grant the waivers without preference to its affiliated NGS or nonaffiliated NGS.

(5) An NGDC shall maintain a chronological log of tariff provisions for which it has granted waivers. Entries must 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. The chronological log must be open for public inspection during normal business hours.

(6) An NGDC shall process requests for distribution services promptly and in a nondiscriminatory fashion with respect to other requests received in the same or a similar period. An NGDC shall maintain a chronological log showing the processing of requests for transportation services. The chronological log must be open for public inspection during normal business hours.

(7) If an NGDC provides a distribution service discount, fee waiver or rebate to its favored customers, or to the favored customers of its affiliated NGS, the NGDC shall offer the same distribution service discount, fee waiver or rebate to other similarly situated customers. Offers may not be tied to an unrelated service, incentive or offer on behalf of either the NGDC or its affiliated NGS. A chronological log must be maintained showing the date, party, time and rationale for the action. The chronological log must be open for public inspection during normal business hours.

(8) Subject to customer privacy or confidentiality constraints, an NGDC may not disclose, directly or indirectly, any customer proprietary information to its affiliated NGS unless authorized by the customer. To the extent that an NGDC does disclose customer information without customer authorization, it shall contemporaneously provide this same information to other similarly situated NGSs in a similar fashion so as not to selectively disclose, delay disclosure or give itself or its affiliated NGS an advantage related to the disclosure. A chronological log must be maintained showing the date, party, time and rationale for the disclosure. The chronological log must be open for public inspection during normal business hours.

(9) An NGDC shall reasonably allocate to its affiliated NGS the costs or expenses for general administration or support services provided to its affiliated NGS.

(10) NGDCs may not condition or tie the provision of a product, service or price agreement by the NGDC, including release of interstate pipeline capacity, to the provision of a product or service by its affiliated NGS.

(11) An NGDC may not give its affiliated NGS preference over a nonaffiliated NGS in the provision of goods and services including processing requests for information, complaints and responses to service interruptions. An NGDC shall provide comparable treatment in its provision of goods and services without regard to a customer's chosen NGS.

(12) An NGDC and its affiliated NGS shall maintain separate books and records. Transactions between the NGDC and its affiliated NGS may not involve cross-subsidies. Shared facilities must be fully and transparently allocated between the NGDC function and the affiliated NGS function. The NGDC accounts and records must be maintained so that the costs incurred on behalf of an affiliated NGS are clearly identified.

(13) NGDC employees who have responsibility for operating the distribution system, including natural gas delivery or billing and metering, may not be shared with an affiliated NGS, and their offices shall be physically separated from the offices used by those working for the affiliated NGS. NGDC employees may transfer to an affiliated NGS provided the transfer is not used as a means to circumvent these standards of conduct.

(14) Neither the NGDC nor its affiliated NGS may directly, or by implication, falsely and unfairly represent to a customer, NGS or third party that an advantage may accrue to a party through use of the NGDC's affiliates or subsidiary, such as:

(i) The Commission-regulated services provided by the NGDC are of a superior quality when services are purchased from its affiliated NGS.

(ii) The merchant services for natural gas are being provided by the NGDC when they are in fact being provided by an affiliated NGS.

(iii) The natural gas purchased from a nonaffiliated NGS may not be reliably delivered.

(iv) Natural gas must be purchased from an affiliated NGS to receive Commission-regulated services.

(15) When an affiliated NGS markets or communicates to the public using the NGDC name or logo, it shall include a legible disclaimer that states that:

(i) The affiliated NGS is not the same company as the NGDC.

(ii) The prices of the affiliated NGS are not regulated by the Commission.

(iii) A customer does not have to buy natural gas or other products from the affiliated NGS to receive the same quality of service from the NGDC.

(16) When an affiliated NGS advertises or communicates verbally through radio or television to the public using the NGDC name or logo, the affiliated NGS shall include at the conclusion of the communication a legible disclaimer that includes all of the disclaimers in paragraph (15)(i)–(iii).

(17) Except in competitive bid situations, an NGDC may not:

(i) Jointly market or jointly package its Commission-regulated services with the services of an affiliated NGS.

(ii) Offer or provide to its affiliated NGS products or services, including bill inserts in its NGDC bills, promoting an affiliated NGS's services or a link from the NGDC's website, unless the NGDC offers or provides the products or services to nonaffiliated NGSS on the same terms and conditions.

(18) An NGDC may not offer or sell natural gas commodity or capacity to its affiliated NGS without simultaneously posting the offering electronically on a source generally available to the market or by otherwise making a sufficient offer to the market. The NGDC shall maintain a chronological log of these public disseminations. The chronological log must be open for public inspection during normal business hours.

(19) An NGDC shall establish and file with the Commission complaint procedures for dealing with alleged violations of the standards of conduct, with the exception of paragraph (9), which is exclusively under the purview of the Commission. These procedures shall be developed in consultation with interested parties during consideration of tariffs guided by this section and § 69.191 (relating to general). The Commission may grant an exception to these requirements if warranted by the facts or circumstances.

(20) An NGDC shall keep a chronological log of any complaints filed, excepting those filed to paragraph (9), regarding discriminatory treatment of NGSS. This chronological log must include the date and nature of the complaint and the resolution of the complaint. The chronological log must be open for inspection during normal business hours.

(b) *Dispute resolution procedures.* In addition to the procedures in subsection (a)(19):

(1) When a dispute between an NGDC, an affiliated NGS or a nonaffiliated NGS alleging a violation of the standards of conduct provisions occurs, the NGS shall provide the NGDC or affiliated NGS, as applicable, a written notice of dispute that includes the names of the parties and customers, if any, involved and a brief description of the matters in dispute.

(2) Within 5 days of an NGDC's or affiliated NGS's receipt of a notice of dispute, a designated senior representative of each party shall attempt to resolve the dispute on an informal basis.

(3) If the representatives are unable to resolve the dispute by mutual agreement within 30 days of receipt, they shall refer the complaint to the Commission's Office of Administrative Law Judge for mediation. A party may request mediation prior to that time if informal resolution is not productive.

(4) If mediation is not successful, the Office of Administrative Law Judge will convert the matter to a formal proceeding before a Commission administrative law judge.

(5) A party may file a complaint concerning the dispute with the Commission under relevant provisions of 66 Pa.C.S. (relating to the Public Utility Code).

(6) Parties alleging violations of the standards of conduct may pursue their allegations through the Commission's complaint procedures. A complainant bears the burden of proof consistent with 66 Pa.C.S. § 332 (relating to procedures in general) in regard to the allegations and may request penalties for violations under 66 Pa.C.S. § 3301 (relating to civil penalties for violations).

(c) *Adoption as company policy.* An NGDC and its affiliated NGS shall formally adopt and implement these provisions as company policy and take appropriate steps to train and instruct employees in their content and application.

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