

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

### Safe Drinking Water Program Fees; Withdrawal of Proposed Rulemaking

The Environmental Quality Board (Board), at the direction of Chairperson Michael L. Krancer, is withdrawing the proposed safe drinking water program fees rulemaking from further consideration. The proposed rulemaking, which was approved by the Board at the Board's November 16, 2010, meeting, proposed new and revised fees for community water systems, bottled, vended, retail and bulk water systems and public water systems to supplement State costs for administering the Commonwealth's Drinking Water Program. In subsequent review of the proposed rulemaking after Board action, it was determined that there is no compelling justification for an increase in fees that would most likely be passed on to the customers of public water systems. The rulemaking is currently being reviewed for form and legality by the Office of Attorney General; however, by the Board's formal withdrawal of the rulemaking, further action on the proposed rulemaking is suspended.

Questions concerning the withdrawal of the safe drinking water program fees rulemaking should be directed to Michele Tate, Regulatory Coordinator, Department of Environmental Protection, (717) 783-8727, mtate@pa.gov.

*(Editor's Note: The safe drinking water program fees rulemaking was not deposited with the Legislative Reference Bureau and was not printed in the Pennsylvania Bulletin.)*

MICHAEL L. KRANCER,  
Chairperson

[Pa.B. Doc. No. 11-2141. Filed for public inspection December 16, 2011, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181—62.185; SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market

Public Meeting held  
December 1, 2011

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson, statement follows; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer, Statement

*Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181—62.185; Doc. No. L-2009-2069117;*

*SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market; Doc. No. I-00040103F0002*

### Order Withdrawing Rulemaking

*By the Commission:*

On December 16, 2011, the proposed rulemaking initiated at this docket on natural gas distribution company (NGDC) business practices and standards will expire and will be deemed to have been withdrawn by operation of law. In light of the work already accomplished by natural gas stakeholders in this area, the input offered by commenters, the partial overlap with another pending rulemaking, and the advice provided by the Independent Regulatory Review Commission, by this order, we are discontinuing this rulemaking and directing that a new rulemaking proceeding be initiated consistent with the direction set forth in this order.

### Discussion

#### Background

In its October 2005 *Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Market*, Docket No. I-00040103, the PUC determined that there was not effective competition in the market based on the low participation rate of NGSs in the market. The lack of uniformity among NGDC business standards, operating rules, and business barriers was identified as a possible barrier to market entry and participation. A collaborative of stakeholders (Stakeholders Exploring Avenues to Remove Competitive Hurdles—SEARCH) was convened to discuss various ways to increase effective competition. The SEARCH Report proposed that some standardization of business rules among NGDCs could increase the number of NGSs participating in the statewide retail market. The Commission accepted this proposal in its Final Search Order and Action Plan, and directed that a proposed rulemaking be initiated to revise and, when feasible, to standardize NGDC business practices, operating rules and supplier coordination tariffs. See Final SEARCH Order entered September 11, 2008 at Docket No. I-00040103F0002.

#### Proposed Rulemaking Order

On May 1, 2009, the Commission issued the instant proposed rulemaking consistent with the direction provided in the Final SEARCH Order. The proposed rulemaking order set forth business practices and standards that would govern the business relationship between NGDCs and NGSs in regard to financial transactions, communications (information and data and exchange) and system operational rules for the management of gas on an NGDC's system (imbalance trading, tolerance bands, cash out and penalties, and nominations and capacity). The order also directed (1) the initiation of a stakeholder working group to develop these standards and a model Supplier Coordination Tariff format, and (2) the establishment of a standing working group to develop electronic data communication standards and formats. Proposed Rulemaking Order at p. 12, O.P. 7 & 8. Finally, the proposed rulemaking order permitted NGDCs to recover reasonable costs directly attributable to implementing these standards.

The proposed rulemaking order provided for public comment. Specifically, the order stated that comments

could be submitted no later than 45 days after its publication date in the *Pennsylvania Bulletin*. Reply comments could be submitted no later than 15 days thereafter. The order was published in the *Pennsylvania Bulletin* on October 17, 2009 at 39 Pa.B. 6078. The public comment period ended December 16, 2009. Seventeen comments<sup>1</sup> were filed; eight reply comments were filed.<sup>2</sup>

#### IRRC Comments

On January 15, 2010, the Independent Regulatory Commission (IRRC) provided its comments on the proposed rulemaking to the Commission. In its comments, IRRC was especially critical of the proposed regulations, citing the lack of data provided by the Commission to support the need for standardizing NGDC business practices, and to quantify the potential costs for NGDCs and their ratepayers to implement the various proposals in the rulemaking. IRRC Comments, pp. 1-2. IRRC complained that:

[w]ithout this information, we cannot determine the potential benefit if this regulation could reduce or eliminate the barrier. It is also difficult to determine whether any such benefits outweigh the costs in time and effort imposed on NGDCs and their ratepayers by this regulation.

IRRC Comments, p. 2.

IRRC also focused on the Proposed Rulemaking Order's stakeholder process which was to run concurrently with the rulemaking process, and advised that:

[g]iven the numerous concerns expressed by commentators with this regulation, the PUC needs to initiate an extensive stakeholder process that includes meetings and opportunities for the review of and comments on draft revisions. It would be prudent for the PUC to complete this process before it moves to submit a final-form version of this regulation.

IRRC Comments, p. 2.

Finally, IRRC was concerned about the overlap of the subject matter of the instant proposed rulemaking with that of the proposed rulemaking order on Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets that it recently disapproved on November 3, 2011:

According to the [order], the language in Section 62.184 is similar to that of language found in another PUC proposed rulemaking which appeared in the July 11, 2009 *Pennsylvania Bulletin*. See § 62.226 of proposed PUC Regulation #57-269 (IRRC #2772) (PUC Docket #L-2008-2069114). This is not the only similarity. In addition, Section 62.224(a)(8) of the earlier proposed regulation includes provisions concerning supplier coordination tariffs (SCTs). These tariffs are also addressed in this current proposed regulation in Section 62.185(b).

Promulgating two separate regulations with similar provisions and intent might lead to possible confusion

<sup>1</sup> Comments were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate, National Fuel Gas Distribution Corporation (NFG), Retail Energy Supplier Association, Columbia Gas of Pennsylvania (Columbia), Equitable Gas Company, PECO Energy Company, Peoples Natural Gas Company, UGI Distribution Companies, Agway Energy Services, LLC, Gateway Energy Services Corporation, and Vectren Retail, LLC, Interstate Gas Supply, Dominion Retail, Inc., Shipley Energy Company, National Energy Marketers Association, Independent Oil and Gas Association of PA (IOGA), Valley Energy, Inc., Philadelphia Gas Works, and Agway Energy Services, et al., the Energy Association of Pennsylvania (EAP), and Industrial Customer Groups, including Industrial Energy Consumers of Pennsylvania, Central Penn Gas Large Users Group, Columbia Industrial Intervenor, Philadelphia Area Industrial Energy Users Group, Philadelphia Industrial and Commercial Gas Users Group, the PNG Industrial Intervenor and the UGI Industrial Intervenor.

<sup>2</sup> Reply comments were filed by OCA, NFG, RESA, IOGA, EAPA, Industrial Customer Groups, Columbia, and Dominion Peoples.

and conflict between the two. The PUC should either explain the need for the two separate rulemakings, or give strong consideration to combining the two into one rulemaking.

IRRC Comments, p. 3.

#### Disposition

According to Section 745.5a(b) of the Regulatory Review Act, 71 P.S. §§ 745.1—745.15, if an agency does not deliver a final-form regulation within two years from the close of the public comment period, the regulation is deemed withdrawn and the rulemaking ends. 71 P.S. § 745.5a(b) (relating to final-form regulations and final-omitted regulations; procedures for review). "Delivery" involves delivery of the final-form regulation by the agency and its response to all comments received, or just the final-omitted regulation, to the Committees and IRRC.

The instant rulemaking on standardizing NGDC business practices expires on December 16, 2011. Considering the concerns with the proposed regulations identified by IRRC, and the overlap of subject matter between this rulemaking and the one at Docket No. L-2008-2069114, it would seem reasonable to permit the rulemaking to expire and be deemed withdrawn by operation of law.

However, because this Commission has a duty to oversee the competition in the retail natural gas market, we prefer to be proactive. In our judgment, certain efficiencies can be achieved by standardizing some NGDC business practices that will benefit all participants in the retail market. The SEARCH stakeholders have invested considerable time and effort in their review of the issues related to NGDC business practices and it seems inefficient not to use their work as a platform upon which to build. For this reason, we believe that the better course of action is to discontinue this rulemaking and direct that a new rulemaking on NGDC business practices and standards, including system operating rules and supplier tariffs, be commenced within six months from the entry date of this order.

We acknowledge and accept that the biggest problem with the instant rulemaking is the lack of supporting data to demonstrate the need for standardizing business practices and the costs relating to various proposals in the rulemaking. IRRC Comments, pp. 1-2. The need for standard business practices was first explored in the PAPUC' Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market (Report) which was written in 2005, four years previous to the initiation of the proposed rulemaking. Also, SEARCH, which was convened in accordance with Section 2204(g) of the Public Utility Code,<sup>3</sup> was an exploration committee rather than a collaborative group or an on-the-record proceeding, where costs for the various proposals to increase competition were considered but not quantified.

We also acknowledge IRRC's comment about the need to engage stakeholders in a collaborative process. IRRC's Comments, p. 2. It is noted that the instant rulemaking did call for a collaborative to be convened to work on issues relating to a business practices rulemaking. The Office of Competitive Market Oversight did convene the SEARCH stakeholders for the purpose of finding common

<sup>3</sup> Section 2204(g) directed that five years after the effective date of Chapter 22, the Commission was to initiate an investigation on whether effective competition existed in Pennsylvania's retail natural gas market. If the Commission found that effective competition did not exist, the Commission was to reconvene the stakeholders to explore avenues for encouraging increased competition in the market. 66 Pa.C.S. § 2204(g) (relating to investigation and report to the General Assembly).

ground, and began to move forward on one proposal to create an index to the NGDCs' supplier coordination tariffs to allow for easy reference to the tariffs during 2010. However, these efforts did not achieve the consensus needed to move forward on this matter.

We acknowledge IRRC's criticisms and comments, and will ensure that a new rulemaking on NGDC business practices and standards, including system operating rules and supplier tariffs, is drafted and promulgated consistent with this advice.

#### *Conclusion*

The use by NGDCs of a common set of business practices and standards should increase efficiency in industry operations and may increase the participation of NGSs in the retail natural gas supply market. Consequently, by this order, the Commission directs that the instant rulemaking, set to expire on December 16, 2011, be discontinued and that a new rulemaking proceeding to review NGDC business practices and standards be initiated within six months of the entry date of this order; *Therefore,*

#### *It Is Ordered That:*

1. The Proposed Rulemaking regarding Natural Gas Distribution Company Business Practices at Docket No. L-2009-2069117 is hereby discontinued.
2. A copy of this Order shall be served on all parties that filed comments to the Proposed Rulemaking at this docket and on all jurisdictional natural gas distribution companies and licensed natural gas suppliers.
3. The Office of Competitive Market Oversight shall electronically send a copy of this order to all persons on

the contact list for Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

4. A copy of this order shall be posted at the Commission's website at the SEARCH Order Action Plan webpage: [http://www.puc.state.pa.us/naturalgas/naturalgas\\_search\\_order\\_action\\_plan.aspx](http://www.puc.state.pa.us/naturalgas/naturalgas_search_order_action_plan.aspx).

5. A notice of withdrawal of the Notice of Proposed Rulemaking shall be published in the *Pennsylvania Bulletin*.

6. The Office of Competitive Market Oversight working with the Law Bureau shall initiate, within six months of the entry date of this order, a rulemaking proceeding on natural gas distribution company business practices and standards, including system operating rules and supplier tariffs, consistent with the direction provided herein.

7. Docket No. L-2009-2069117 is closed.

ROSEMARY CHIAVETTA,  
*Secretary*

#### *Statement of Vice Chairperson John F. Coleman, Jr.*

Prior to joining my staff, Matthew Totino was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any appearance of impropriety arising from his previous employment, I wish to note that I have not been advised by Matthew Totino regarding this matter.

JOHN F. COLEMAN, Jr.,  
*Vice Chairperson*

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