

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2008-2069114]

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets

The Pennsylvania Public Utility Commission (Commission), on June 23, 2011, adopted a final rulemaking order which ensures that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

Executive Summary

The purpose of this Revised Final Rulemaking Order is to remove barriers to retail competition in the market for natural gas supplies in the Commonwealth pursuant to the Natural Gas Choice and Competition Act (Act), 66 Pa.C.S. §§ 2201—2212. Section 2204(g) of the Act required the PUC to investigate as to whether there is “effective competition for natural gas supply” five years after passage of the Act. If the Commission found there is no effective competition, the Act required it to explore avenues for encouraging increased competition in the Commonwealth. Section 2204(a) of the Act, 66 Pa.C.S. § 2204(a), gives the Commission the authority to propose and adopt regulations to implement the principles of the Act. Having found that there was no effective competition in the Commonwealth, the Commission initiated three different rulemaking proceedings to encourage competition.

This particular rulemaking reformulates the NGDCs’ “price to compare” to better reflect all costs related to natural gas supply and procurement so that there will be a more accurate price to compare for shoppers, establishes permanent rules for NGDCs’ purchase of receivables programs and ensures that the release, assignment or transfer of capacity by an NGDC is nondiscriminatory and at the applicable contract rate. As it relates to the “price to the compare,” the rulemaking requires NGDCs to remove natural gas procurement costs from base rates, excluding those costs related to the administration of firm storage and transportation capacity, and to recover those fuel acquisition costs as part of the “price to compare” on a revenue neutral basis. Moreover, rules for programs by which NGDCs purchase the accounts receivables of natural gas suppliers are also included as are rules requiring that the release of interstate pipeline capacity held by NGDCs be nondiscriminatory and at the applicable pipeline rate.

Commissioners: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Tyrone J. Christy, partial dissenting statement follows; Wayne E. Gardner, partial dissenting statement follows; James H. Cawley

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

Revised Final Rulemaking Order

By order entered February 23, 2011, the Commission issued a Final Rulemaking Order (Final Rulemaking Order) on specific issues intended to promote effective competition for natural gas supply service pursuant to Chapter 22 of the Public Utility Code (Code). In particu-

lar, the Commission reformulated the price to compare (PTC), adopted permanent rules for voluntary purchase of receivables (POR) programs, and adopted rules for the non-discriminatory release, assignment and transfer of capacity when customers chose a competitive natural gas supplier.

The Commission submitted the Final Rulemaking Order to the Independent Regulatory Review Commission (IRRC) for its review and approval. Based upon comments from IRRC Staff and also some supplemental comments submitted to the IRRC from interested parties, the Commission voluntarily withdrew the final rulemaking from IRRC’s review in order to give consideration to the various clarification issues raised by IRRC’s Staff and the supplemental comments. In order to address those clarification issues, the Commission made some revisions to Annex A and advised the parties of these revisions via a Secretarial Letter. Parties were invited to file comments to these proposed changes. This Order specifically addresses those comments, as well as the comments to the proposed rulemaking and the ANOFR.

Background

Much of the background of this instant rulemaking proceeding is set forth in the prior Proposed Rulemaking Order and ANOFR Order. Therefore, we will not go into much detail in this order. The Natural Gas Choice and Competition Act, 66 Pa.C.S. § 2201—12 (the “Competition Act”), was enacted by the Legislature in 1999 with the purpose of restructuring the natural gas industry to allow the retail sale of natural gas in an open market. In particular, the Competition Act allows individual customers to choose from independent suppliers of natural gas which are not necessarily affiliated with the local natural gas utility. Additionally, the Competition Act in section 2204(g) required the Commission to initiate a look-back appraisal of how retail competition is progressing after passage of the Act. This investigation was to include participation of all interested parties so that a thorough examination of retail competition might be completed. *Id.*

In October 2005, the Commission issued its Report to the General Assembly on Pennsylvania’s Retail Natural Gas Supply Market (Report to the General Assembly),¹ in which we determined that effective competition did not exist in Pennsylvania’s retail natural gas market. If the Commission found that “effective competition” did not exist, it was to reconvene the stakeholders in the natural gas industry to “explore avenues . . . for encouraging increased competition in this Commonwealth.” 66 Pa.C.S. § 2204(g). As the Report to the General Assembly noted:

Based on the factors we have adopted to consider whether “effective competition” exists for purposes of Section 2204(g), these findings support the ultimate conclusion that there is a lack of “effective competition” in Pennsylvania’s retail natural gas supply market at this time.

Report to the General Assembly at 67. We, therefore, convened the Natural Gas Stakeholders Group, named “SEARCH,”² to explore avenues for increasing competition.

¹ The Report to the General Assembly was released in October 2005 at Docket No. I-00040103 and may be accessed at <http://www.puc.state.pa.us/PcDocs/570097.pdf>.

² SEARCH is an acronym for “Stakeholders Exploring Avenues for Removing Competition Hurdles.”

The work and report of that stakeholders' working group is detailed in our Final Order and Action Plan³ ("SEARCH Order" or "Action Plan") issued in September 2008. We concluded that there were a number of steps which the Commission could take to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. Accordingly, we initiated this rulemaking with the goal of nurturing a robust retail market for natural gas. Action Plan at 7.

Specifically, this rulemaking addresses five issues related to the duties, rights, and obligations of NGDCs. Those areas are as follows:

- Reformulate the NGDCs' "price to compare" to better reflect all costs related to natural gas supply and procurement.
- Establish permanent rules for NGDC purchase of receivables programs.
- Ensure that the release, assignment or transfer of capacity by an NGDC is nondiscriminatory and at the applicable contract rate.
- Change the handling of costs related to NGDCs' competition activities.
- Allow NGDCs to recover the cost of their annual regulatory assessments under Section 510 of the Public Utility Code via an automatic adjustment surcharge.

The Proposed Rulemaking Order was entered on March 27, 2009, and was published on July 11, 2009, in the *Pennsylvania Bulletin* at 39 Pa.B. 3461. The order established a 45-day comment period. Comments were filed by IRRC and other interested parties.⁴

We reviewed and addressed those comments and on August 10, 2010, issued the ANOFR Order which incorporated the revisions we had made to the proposed regulations based on the first round of public comments. In the ANOFR Order, we requested interested parties to file further comments on these revisions. We received additional comments on the ANOFR Order from fifteen interested parties.⁵ We have reviewed and addressed these comments below.

Thereafter, by order entered February 23, 2011, the Commission adopted a Final Rulemaking Order in this matter based upon its review of the additional comments submitted in response to the ANOFR Order. That order constituted the final rulemaking for these key elements necessary for creating an effective market for retail natural gas competition in Pennsylvania. Subsequently,

³ 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 entered September 11, 2008.

⁴ The NGS Parties (Agway Energy Services, LLC, Gateway Energy Services Corporation, Interstate Gas Supply, Inc., and Vectren Retail, LLC); Equitable Gas Company (Equitable); Independent Oil and Gas Association of Pennsylvania (IOGA); Office of Consumer Advocate (OCA); Pennsylvania Utility Law Project (PULP); PECO Energy Company (PECO); Columbia Gas of Pennsylvania (Columbia); Direct Energy Services (DES); Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion Peoples); Industrial Consumers Group (consisting of "Industrial Energy Consumers of Pennsylvania," the "Central Penn Gas Large Users Group," the "Columbia Industrial Intervenor," and the "PNG Industrial Intervenor"); National Energy Marketers Association; Energy Association of Pennsylvania (EAPA) (a non-profit trade association whose members include "Columbia," "Dominion Peoples," "Equitable," "National Fuel Gas Distribution Company" (NFG), "PECO," "Philadelphia Gas Works," and "UGI Utilities, Inc."); NFG; Office of Small Business Advocate (OSBA); Office of Trial Staff (OTS); T.W. Phillips, UGI Gas Company (UGI); Shipley Energy, Interstate Gas and Dominion Retail (hereinafter referred to as "Joint Commenters"), the Retail Energy Supply Association (RESA) (a non-profit trade association whose members include Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Exelon Energy Company, Gexa Energy, Green Mountain Energy Company, Hess Corporation, Integrys Energy Services, Inc., Liberty Power Corporation, RRI Energy, Sempra Energy Solutions LLC, SUEZ Energy Resources NA, Inc., and UGI Energy Savings Corporation); and Philadelphia Gas Works (PGW).

⁵ EAPAA, Equitable, National Energy Marketers Association, NFG, OCA, OSBA, Pennsylvania Energy Marketers Coalition, IOGA, Shipley, Valley Energy, Inc., Columbia, PECO, Peoples, PGW, and UGI.

the Commission submitted the Final Rulemaking Order to the Independent Regulatory Review Commission (IRRC) for its review and approval. Nevertheless, IRRC Staff requested that the Commission clarify various aspects of the proposed final regulations. Based upon IRRC Staff's comments and further supplemental comments submitted to the IRRC by interested parties, such as the EAPA and the OCA, the Commission voluntarily withdrew the rulemaking from IRRC's consideration in order to address the various clarification issues raised by IRRC and the additional comments.

In light of the latest comments to the Final Rulemaking Order, the Commission, via a Secretarial Letter dated June 9, 2011, proposed several revisions to Annex A. Parties were invited to file comments to the proposed revisions by June 16, 2011. The Commission has reviewed those comments⁶ and now intends to approve the version of the final form regulation set forth in Annex A.

Summary of Changes

Based on the comments to the Proposed Rulemaking Order and the further comments requested by the ANOFR Order, the Commission has made some further refinements to the proposed final regulations. In this Revised Final Rulemaking Order (RFRO), the substantive revisions made to Annex A may be summarized as follows:

- Revised Sections 62.221—62.225 to include, inter alia, the development of a price to compare (PTC) that will appear on the NGDC's bill so that consumers can make an informed choice of whether the price offered by the competitive NGS is more or less than the default service rate charged by the incumbent NGDC.
- Clarified the section of the regulation setting forth permanent rules for POR programs which are critical to the ability of NGS firms to enter the market.
- Revised the section of the regulation concerning capacity release to ensure that the capacity released to serve shopping customers is non-discriminatory both as to availability and price.
- Eliminated several of the adjustment clauses previously proposed in the regulations.

In addition, the clarification revisions made to Annex A in response to IRRC's clarification comments and the supplemental comments to the Final Rulemaking Order include the following:

- Include a definition of "base rate" in Section 62.222 and make consistent reference to "distribution" rates in the regulation.
- Make consistent reference to "gas costs" in the MFC definition, Section 62.222, and elsewhere, versus using other similar terms.
- Correct definition of SOLR in Section 62.222 to be consistent with the definition at Section 62.101.
- Rephrase Section 62.223(b)(1) to clarify what procurement-related costs are to be considered, and that costs related to transportation and storage are not included.
- Add phrase to end of 62.223(e) to specify that there will be no reconciliation for "any prior period over/under collections."
- Delete word "only" in Section 62.224(a)(7).

⁶ Comments were filed pursuant to the June 9, 2011 Secretarial Letter by the EAPA, the OCA, Valley Energy, Inc., PECO, the OSBA, Columbia, NFG, Pennsylvania Energy Marketers Coalition and the NGS Parties.

- Used existing definitions where available, rather than to create new ones.

In sum, the Commission believes that these regulations, as revised, will foster the development of competition in the retail markets for natural gas supply in the Commonwealth in accordance with Chapter 22.

Discussion

As a general commentary, IRRC's initial comments suggested that the proposed regulations may be overly complex and difficult for retail natural gas consumers to comprehend and, as such, may ultimately discourage them from participating in competition. IRRC Comments p. 1. In addition, the IRRC comments advise that, in crafting our final regulations, we should avoid single issue ratemaking and make sure that the regulations protect against cross-subsidization between shopping and non-shopping customers and among customer classes. IRRC Comments, p. 2. Lastly, IRRC sought clarification to some aspects of the proposed final regulations.

In considering all of the comments filed in response to the Proposed Rulemaking Order the ANOFR Order, and the Final Rulemaking Order, including IRRC's, we believe that we have improved our approach to meeting the statutory goals set forth in the Competition Act of fostering competition in the natural gas market in Pennsylvania. As more fully discussed below, we have simplified the manner in which the "price to compare" is computed and have revised its components in order to reduce complexity for NGDCs and their customers. Additionally, we have ensured that the regulations avoid single issue ratemaking and protect against cross-subsidization. We believe these revisions to the proposed regulations adequately address IRRC's concerns.

For purposes of this Revised Final Rulemaking Order, we will focus on IRRC's comments to each iteration of the proposed rulemaking and the additional comments that were requested in the ANOFR Order. We will proceed section by section.

62.221. Purpose.

Proposed Rulemaking Order Comments

IRRC stated that the definition of retail gas customer as set forth in Section 2202 of the Act, 66 Pa.C.S. § 2202, is "a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier . . ." IRRC noted that this definition is not limited to any customer class. IRRC further noted, however, that this section of the proposed regulation limits its purpose to fostering competitive service to "residential and small commercial customers." IRRC stated that the Commission should explain why this section and the regulation is limited to "residential and small commercial customers" only, and how this proposed regulation does not affect all service provided to "retail gas customers" as defined in the Act. IRRC Comments at 3.

In its comments, NFG made a similar observation regarding the phrase "residential and small commercial customers." NFG stated this phrase is confusing and it is unclear why the purpose should be limited to only these customers when all NGDC customers will be impacted by the regulation. NFG Initial Comments at 3. EAPA stated that the phrase should be eliminated so that the purpose of the regulation reflects legislative intent. EAPA Initial Comments at 2-3. EAPA suggested using the phrase "retail and transportation gas customers." Id. PGW stated that the wording of this section should just be revised to read "retail natural gas service customers" from "natural

gas service to residential and small commercial customers." PGW Initial Comments at 3.

Additionally, IRRC stated that this section uses the term "small commercial customer." IRRC noted, however, that the term defined in Section 62.222 is "small business customer." IRRC Comments at 3. IRRC stated that this section should use the defined term. Id. The OSBA also made this observation concerning the term small commercial customer. The OSBA stated that the term "small commercial customer" is ambiguous and recommends that this term be clarified throughout the regulations so that it is consistent. OSBA Initial Comments at 10.

ANOFR Order Comments

In its additional comments, PECO states that the Commission should clarify that the proposed PTC regulations are applicable, at a minimum, to residential and small business customers (defined as using less than 300 Mcf⁷ per year). PECO further states that clarity is also needed to ensure that these regulations will apply to commercial customers whose usage exceeds 300 Mcf per year but who are not considered large commercial and industrial customers. PECO ANOFR Comments at 2.

Resolution

Consistent with our authority and obligations under the Act, particularly, Section 2204(a) of the Code, 66 Pa.C.S. § 2204(a), the Commission is establishing rules and regulations that will bring the benefits of natural gas competition to retail natural gas supply consumers. The purpose of the regulations is to eliminate barriers to supplier entry and participation in that marketplace.

A "retail gas customer" is defined in the Act as "a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier." 66 Pa.C.S. § 2202. As IRRC notes, this definition is not limited to any customer class. However, as mentioned above, the real focus of this regulation is the elimination of barriers to supplier entry in the competitive retail natural gas supply market. Accordingly, the Commission has purposely limited the scope on this regulation to affect only those customers eligible for supplier of last resort (SOLR) service. The Commission notes that for many years, large industrial and commercial customers have pursued and obtained competitive natural gas supply alternatives, even before the enactment of the Act in 1999. See Comments of Industrial Consumer Groups at 3. These types of consumers, large industrial consumers, are already actively engaged and participating in the competitive natural gas market and have been doing so for years through natural gas transportation tariffs and direct purchases of supply. In most areas, these types of customers no longer receive or rely on SOLR service.

Further, the Competition Act created a SOLR obligation for NGDCs that was limited to supply service for residential, essential human needs customers and small commercial and small industrial customers (who usage generally exceeds 300 Mcf per year but are not necessarily considered or designated as "large" commercial and industrial customers). For this reason, the focus of this section and the overall regulation is limited to those customers eligible for SOLR service which, at a minimum, are largely "residential and small commercial and small industrial customers" as opposed to necessarily applying it to all customers receiving natural gas service. Therefore, as set forth in the final-form regulation, we will

⁷ MCF = 1,000 cubic feet, a unit of measure in the oil and gas industry for natural gas, more often written Mcf.

clarify that the scope of this regulation does not entail the breadth of the “retail gas customers” statutory definition.

As to IRRC’s and the OSBA’s comments regarding the use of the term “small commercial customer” in this section, we agree with the comments and will delete this term so that the final-form regulation accurately reflects the statutory term, “small business customer” as set forth and defined in Section 62.72 of the Pa. Code.

Section 62.222—Definitions

Proposed Rulemaking Order Comments

In its initial comments, OSBA stated the definition of “gas procurement charge” (GPC) is in need of clarification because there is no limiting language indicating which customers the GPC would be applied to, which is in direct contrast to its reference in the definition of “gas procurement reduction rate.”

In its comments, IRRC noted that there are several definitional terms set forth in this section that either are not consistent with their corresponding statutory definition or are vague and in need of clarification. The first term discussed is GPC. IRRC stated that this term is vague because it describes a “mechanism” and its effect, and that it should directly state what costs the charge encompasses.

IRRC also stated that the term “gas procurement reduction rate” (GPRR) is redundant and unnecessary. Additionally, Equitable stated that it is not clear from the definition what is intended by this “equal offsetting credit to GPC” or how this rate is to be determined, or what the cost element is that will be reflected in the GPRR. Equitable Initial Comments, Appendix A, p. 1. PGW stated this definition should be revised from “residential and small commercial customers” to “retail gas customers.” PGW Initial Comments at 4.

Additionally, IRRC stated that the term “net gas procurement adjustment” (NGPA) is vague because it describes a concept or goal, but does not increase the understanding of the term or its components. Furthermore, IRRC stated that the term “natural gas supply service” should reference the Act similar to other definitions in this section. IRRC further states that the definition of “purchased gas cost” is unclear and not useful because it uses the term being defined. IRRC also stated that the definition should provide descriptions or examples of the costs that may be included under this definition. Furthermore, IRRC stated that this term is unclear as to whether “purchased gas costs” include procurement costs that are mentioned in the GPC definition.

Lastly, IRRC stated that the term “price to compare” is not clear as to whether it is a rate or a cost. IRRC noted that a customer would need a rate to make a comparison, or at least a volume of gas associated with the cost. IRRC stated that we should revise the definition so that it is clear what will result from this regulation and how a customer can use the PTC to shop among the SOLR and NGSS.

ANOFR Order Comments

Based on these initial comments, the Commission made significant revisions to the definitions set forth in the proposed regulation. In the ANOFR Order, we revised the definition of the PTC so that it is clear that the PTC is a single commodity rate that will be set forth on a customer’s bill and will assist them in comparing prices for natural gas supply charged by the incumbent NGDC with the prices offered to consumers by competitive NGS firms.

The Commission also deleted the terms “gas procurement reduction rate” and “net gas procurement adjustment” from the proposed regulation as they were no longer necessary in light of the revisions we had made to the definition of PTC. Additionally, the Commission revised the definition of “gas procurement charge” (GPC) and incorporated the new term “merchant function charge” (MFC) as a component of the PTC.

We also revised the definition of “natural gas supply service” so that it references the Act. However, we retained the definition of “purchased gas cost” from the proposed regulation as we determined that the definition was sufficient.

In its additional comments, EAPA states that the definition of price to compare (PTC) that is set forth in the revised regulation should be further revised so that the term “natural gas procurement costs” is deleted from the definition because it would allow unavoidable natural gas procurement costs to be included in the PTC. EAPA ANOFR Comments at 4. Additionally, in its additional comments, NFG stated that the definition should be further revised by deleting the term “line item” and replacing it with the term “single commodity rate.” NFG ANOFR Comments at 2. NFG states that this further revision would provide clarification to IRRC as to whether the PTC is a rate or cost and noted that this term was used by us in the body of the ANOFR Order. Id.

In its additional comments, Equitable states that the definition of gas procurement charge (GPC) in the revised regulation should be further revised so that the word “total” should be removed from the definition to avoid cross-subsidization between shopping and non-shopping customers. Equitable ANOFR Order, Appendix A at 2. In its additional comments, NFG noted that this definition contained a minor typographical error. Id.

NFG also requests that the definition of SOLR should be modified by deleting all language after the phrase in parenthesis. NFG states that this would make this definition consistent with the other definitional terms in that it would simply reference the Act. Id.

In its additional comments, the OCA states that the Commission should remove the term “natural gas supply service” and replace it with the term “basic natural gas supply service.” OCA ANOFR Comments at 17-18. The OCA states that making this replacement and including a definition of “basic natural gas supply service charges” will bring clarity as to what should be included in a POR program. Id. The OCA further states that a precise definition of what is and is not included in basic natural gas supply service charge will avoid any unnecessary confusion as the POR programs proceed into the future. Id. The OCA states that ancillary costs, such as charges to carbon neutral products, appliance maintenance services, security deposits and other products and services not related to the physical delivery of natural gas are not includable in the POR programs.

IRRC’s Clarification Comment and Supplemental Comments

In its clarification comments, IRRC Staff noted that the definition of GPC set forth in the Final Rulemaking Order included the term “base rate” but no definition of that term is set forth in the proposed regulation. IRRC states that since a definition of “base rate” is not defined, the definition of GPC may not be clear to the affected parties. Additionally, IRRC noted that our definition of SOLR in the Final Rulemaking Order is inconsistent with its statutory definition set forth in 66 Pa.C.S. § 2207(a).

EAPA states in its supplemental comments to the Final Rulemaking Order that proposed Section 62.222 contains terms and definitions which are either undefined or which differ from existing terms and definitions found in other sections of the *Pennsylvania Code* (the Code). EAPA notes that Section 62.72 of the Code defines “basic services” and “non-basic services” as well as “natural gas supply charges”, but nothing in the Code defines the term “basic supply service” which is set forth in proposed Section 62.222.

Moreover, EAPA notes that other definitions contained within the proposed Section 62.22 of the Final Rulemaking Order expressly contradict those found in other sections of the Code. EAPA states that the proposed definition for “price to compare” contained within Section 62.222 conflicts with the existing definition contained in Section 62.80 of the Code. Likewise, EAPA states that the term “supplier of last resort” in proposed Section 62.222 is defined in a manner that differs from its existing definition in Section 62.101 of the Code. EAPA suggests that for consistency sake only when an existing term is not already defined in current regulations should a new definition be created.

Resolution

We agree with all of the comments concerning the definitional section of the regulation. Accordingly, in the final-form regulation, we will revise the definitions of the terms “GPC” and “PTC” in accordance with the comments. We will delete the definitional terms “gas procurement reduction rate” and “net gas procurement adjustment” and “purchased gas cost” from the final-form regulation as they are no longer necessary in light of the revisions made to the definition of PTC. Additionally, we will include a definition of “merchant function charge” to explain its elements and revise the definition of “gas procurement charge” to identify specifically the natural gas procurement costs to be included. Furthermore, we will include a definition of the term “base rate” so as to make the definition of “GPC” clearer.

We agree with the OCA that natural gas supply costs should be limited to those “directly related to the physical delivery of natural gas to a retail customer” and not include ancillary costs or other products and services not related to the physical delivery of natural gas. However, we believe that instead of using OCA’s proposed undefined term “basic natural gas supply service” the existing term “basic services” as already defined in Section 62.72 of the Code is sufficient and will bring clarification as to what is includable in the POR programs. Moreover, as stated by EAPA, we believe that the same definitions set forth in the current regulations should be used in this final-form regulation. Accordingly, the definition of the terms “NGDC,” “PTC” and “SOLR” in the final-form regulation will be consistent with the current definitions set forth in Sections 62.72, 62.80 and 62.101 of the Code, respectively.

Lastly, IRRC suggested that we provide descriptions or examples of the costs to be included under the definition of “purchased gas cost.” However, this suggestion is now moot since we have deleted the term “purchased gas cost” from the final form regulation.

Section 62.223—PTC

Proposed Rulemaking Order Comments

IRRC noted that in the order, we state that we are requiring NGDCs to adjust their purchased gas costs monthly to better reflect market fluctuations. IRRC further noted that several commenters, such as the OCA and

UGI, do not believe that this proposed regulation complies with 66 Pa.C.S. § 1307(f)(1)(ii) which states, in part:

“In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to a reconciliation . . .”

IRRC suggested that we should explain how the proposed regulation complies with this statutory section. The OCA and UGI share similar concerns in their comments. See OCA Comments, p. 5; UGI Comments, pp. 5-8.

Further, IRRC stated that under 66 Pa.C.S. §§ 2206(c) and (d), we are required to establish customer information “to enable retail gas customers to make informed choices” and guidelines for consumer education to “provide retail gas customers with information necessary to help them make appropriate choices as to their natural gas service.” IRRC stated that it agreed that accurate comparisons are needed, but it questioned whether monthly adjustments would result in further confusion for customers.

IRRC further stated that price comparison is critical to competition and notes that establishing a mechanism to provide valid comparisons of rates is a very difficult proposition given the fluctuations in gas market prices. IRRC recommended that we revisit monthly comparisons to determine the best way to fulfill the Act’s requirements relating to customer information and consumer education. The EAPA also raised similar concerns regarding whether monthly adjustments were the best mechanism to provide valid price comparisons in its comments. EAP Comments, pp. 4-5.

Additionally, IRRC noted that the Act requires that there be a “supplier of last resort.” 66 Pa.C.S. § 2207. IRRC stated that the readiness and availability of a SOLR requires that there be adequate procurement. IRRC noted that Vice Chairman Christy’s statement accompanying the Proposed Rulemaking Order and the OCA’s comments both raised similar concerns that “non-shopping consumers” will be forced to pay higher costs that in effect subsidize consumers who shop. IRRC stated that it is not clear in the proposed regulation that all customers will share in the cost of the SOLR, even though a SOLR would have to be available to most customers. IRRC stated that the Commission should explain how this proposed regulation will insure that procurement costs for SOLRs are distributed equitably among all consumers who may have to rely on a SOLR at some point.

The EAPA made a similar assessment and stated that the process as currently established in the regulation is complicated, will foster litigation, and does not recognize that expenses related to the NGDC SOLR function are not borne by the suppliers. EAPA Initial Comments at 4-5. Moreover, NFG, the OCA, PECO and T.W. Phillips assert that directing the removal of all fuel procurement costs, even unavoidable SOLR costs, from an NGDC’s base rates and charging those SOLR costs only to NGDC sales customers, i.e. non-shopping customers, will shift those costs to a smaller subset of customers and possibly conflict with the non-discriminatory language set forth in 66 Pa.C.S. § 2203(5).

Further, NFG claimed that the gas procurement costs incurred by NGS and by the NGDC, as the SOLR, are not the same. NFG also claimed that the SOLR costs will remain more of a fixed cost of the NGDC’s service that cannot be shown as a PTC. NFG suggested that the PTC

should be limited to the kind of avoidable costs incurred by an NGS. In its comments, NFG supported the establishment of a Merchant Function Charge (MFC). NFG noted that a MFC removes the costs of uncollectible expense associated with current gas costs from delivery rates and includes them in the PTC. Accordingly, NFG proposed language regarding the MFC for inclusion in the regulation.

Lastly, IRRC stated that the proposed subsection lacks clarity. IRRC stated that the Commission should modify it so that it clearly sets forth what the PTC is, how the PTC is established, what the underlying formulas are and what must be filed with the Commission. IRRC made the following suggestions which they believe would assist in making this section of the proposed regulation more clear:

- Separate the filing requirements of 66 Pa.C.S. §§ 1307(f) and 1308(d) from the description of the components in this subsection.
- Establish whether a Section 1307(f) filing would continue to be required after a Section 1308(d) filing.
- Clarify the development of the PTC in this subsection.
- Explain the phrase set forth in Subsection (a) so that it is either replaced by the defined term PGC, which it tracks verbatim, or is differentiated from the defined term.
- Determine whether Subsection (b) is written in reverse order.
- Combine language discussing the GPC into one subsection. Language discussing the GPC is scattered throughout five different subsections.
- Combine Subsections (c) and (d). Both of these sections address the NGPA.
- Re-write Subsections (e) and (f) so that the intent of both sections is clarified and supported by the revised language.

ANOFR Order Comments

In the ANOFR Order, we stated that the purpose of this section of the proposed regulation is to make the PTC rate on the NGDC bill reflect, to the extent practicable, the same type of commodity costs which are incurred and charged to customers by the NGSs, and to allow consumers to make an improved “apples to apples” comparison when shopping for natural gas supply. In the ANOFR Order, we determined that we would require NGDCs to remove all of their total gas procurement costs from base rates and added a Merchant Function Charge to address concerns regarding cross-subsidization between shopping and non-shopping customers and among customer classes. Additionally, we determined that the new components of the PTC can be best determined in the context of a Section 1308(a) tariff proceeding so as not to impose any additional costs on customers in the name of competition. We believed that those revisions would allow customers to simply use the corresponding PTC as a means to compare the commodity prices of the SOLR and NGSs and make an informed decision regarding shopping for natural gas supply service.

In its additional comments, EAPA states the changes proposed in the ANOFR Order regarding the PTC have simplified the process somewhat of establishing the PTC, but also states that the proposed revisions fail to recognize that the NGDC’s SOLR function provides benefits to both shopping and non-shopping customers and that those unavoidable procurement costs are fixed costs that

are not appropriate for inclusion in the PTC. EAPA ANOFR Comments at 4. Consequently, EAPA maintains that only those SOLR gas procurement costs intended solely for the benefit of sales customers should be included in the PTC, essentially eliminating the gas procurement costs from the PTC. Id.

Additionally, NFG states that due to the revisions made to the PTC, it is concerned that the Commission is not recognizing the distinction between SOLR activities and the associated costs with gas procurement function activities that are incurred solely for the benefit of sales customers. NFG ANOFR Comments at 2-5. NFG states that these two functions are mutually exclusive. Id. Further, NFG asserts that the SOLR function provides benefits to both shopping and non-shopping customers. NFG asserts that since the SOLR function is mutually beneficial to both shopping and non-shopping customers, it is inappropriate to place all SOLR gas procurement costs in the PTC. Id. NFG states that such cost shifting would cause discrimination against one customer class for the benefit of another in violation of 66 Pa.C.S. § 2203. In order to resolve this so-called inequity, NFG states that the Commission should clarify in its regulation that the procurement costs to be included in the PTC are only those procurement costs incurred solely for the benefit of sales customers and should only include the avoidable procurement costs. Equitable agrees with this assessment and states that only those procurement costs that are avoidable should be reflected in the GPC. Id.

In its additional comments, the OCA also states that the proposal to create a gas procurement charge (GPC) that includes all procurement costs is flawed. OCA ANOFR Comments at 6-10. As it had stated in its initial comments, the OCA asserts that if the GPC component is bypassable, as proposed in the regulation, then only the avoidable costs associated with procurement activity should be included in these costs. Id. The OCA states that it is only avoidable costs of procurement that are “bypassed” or not incurred when a customer shops. The OCA further states that the proposal to include all procurement related costs in the GPC, rather than just avoidable costs, will result in non-shopping customers subsidizing shopping customers. Id.

IRRC’s Clarification Comment and Supplemental Comments

IRRC notes that the term “PGC” in the Final Rulemaking Order is defined as “natural gas costs which are collected . . . under 66 Pa.C.S. § 1307(f).” However, proposed paragraph 62.223(a)(1) uses the term “gas commodity rate” determined in the NGDC’s 1307(f) proceeding. IRRC questions why the defined term “PGC” was not used in paragraph 62.223(a)(1) and also questions whether the term “gas commodity rate” is defined in the enabling statute or another regulation in Title 52 of the Code.

IRRC further notes that the definition of MFC in the Final Rulemaking Order states it “reflects the costs of uncollectibles associated with an NGDC’s *SOLR costs*.” [Emphasis added] However, proposed Section 62.223(c) states “. . . the MFC rider must remove the cost of uncollectibles applicable to *current gas cost rates* from its delivery rates . . .” [Emphasis added]. IRRC states that it appears that the SOLR costs and current gas costs are not the same thing and requests us to explain how the definition of MFC and proposed Section 62.223(c) are compatible. EAPA made a similar observation in its supplemental comments to the Final Rulemaking Order.

Lastly, IRRC notes that paragraph 62.223(b)(2) requires the NGDC to update costs in its next “base rate case.” IRRC raises the question what specific filing does this provision contemplate. IRRC states that the regulation should reference the specific filings provision in the statute rather than using the phrase “base rate case.” IRRC also raises a question in reference to proposed Section 62.223(e). IRRC questions what does it mean when we state that the GPC and MFC “may not be subject to reconciliation.”

In its supplemental comments to the Final Rulemaking Order, EAPA notes that while the Preamble states the “regulations do not provide for the unbundling of pipeline and storage procurement” the specific language of the proposed regulations fail to include any reference to these exclusions. Therefore, EAPA states that accounting for the administration of pipeline and storage release to NGSs is not a moot issue as implied by the Final Rulemaking Order.

Resolution

The Commission has made a number of changes to the PTC section of the proposed regulation throughout this proceeding in order to create a mechanism that allows for the removal of natural gas procurement costs now included in NGDC delivery rates. The inclusion of gas procurement costs in delivery rates understates and masks the full cost of the commodity. The Commission believes that the PTC lies at the heart of retail choice and should be an easily understandable means by which consumers can compare the price offered by competitive NGS firms to the rates for default supply service charged by incumbent NGDCs. Accordingly, with that goal in mind, we again have made revisions to Section 62.223 in order to make it easier for consumers to compare NGDC rates for gas supply with the offers to be made by NGS firms.

A. Gas Procurement Costs

The first issue that we shall discuss is shifting gas procurement costs from the NGDC’s base rates to the PTC. In accordance with our directive that the PTC reflect the same type of commodity costs incurred and charged to customers by the NGSs, we proposed the removal of all fuel related procurement charges from each NGDC’s individual base rates by means of a gas procurement reduction rate. We acknowledge, however, that our initial approach to the PTC set forth in the proposed form regulation was overly complex and, accordingly, we revised the mechanics of the PTC to make the removal of gas procurement costs more transparent and easier to understand for consumers.

In the ANOFR, we listed specific, limited, and well-defined gas procurement related costs to be shifted from the distribution rates, where all customers were required to pay for these costs, to the SOLR charges paid by utility customers availing themselves of SOLR service, pursuant to a Gas Procurement Charge (GPC), which is designed to be revenue neutral, thus removing this subsidy previously paid by shopping customers, yet allowing for the fair cost recovery for all prudently incurred utility procurement costs. We agree with the comments of NEMA that the removal of all commodity-related costs, including gas procurement costs is essential to yield a PTC that better reflects the full commodity costs incurred by NGS firms seeking to sell natural gas to retail consumers. NEMA Initial Comments at 5-6. As noted by the NEMA, the PTC as proposed will provide consumers with a more meaningful basis upon which to compare utility commodity offer-

ings and competitive supply offerings because it will bear a greater resemblance to market conditions and more fully reflect the utilities’ full costs of providing commodity service.

EAPA and others argued that a sub-set of natural gas procurement costs of the NGDC, particularly the costs incurred to provide SOLR, are unavoidable and will continue to be incurred by the NGDC. A common criticism by many utilities was that SOLR service benefits both shopping and non-shopping customers, therefore these SOLR costs should be socialized and paid for by all customers. However, these same arguments can be espoused for competitive offers to non-SOLR customers. All customers benefit from the robust availability of competitive offers. As with SOLR service, customers can choose to avail themselves of these opportunities, or pass.

Several parties also argued that, since some SOLR costs are often relatively fixed over the year and thus “unavoidable,” such costs should be socialized. See EAPA ANOFR Comments at 4; Equitable ANOFR Comments, Appendix A at 2; NFG ANOFR Comments at 4-5; OCA ANOFR Comments at 7. This position ignores competitive equity, since NGSs may also have fixed costs for participating in a market, yet such costs are not socialized. Moreover, whether or not a cost is fixed is not relevant to the designation of who benefits from the service. Clearly, those who use the service should pay for it. Moreover, if, in the future, the NGDC’s SOLR function decreases to such an extent that its gas procurement costs recovered through SOLR rates are not adequate to support its residual gas procurement role, that situation can be addressed by future rate changes or designation of an alternative SOLR supplier under the provisions of Section 2207(a)(1). 66 Pa.C.S. § 2207(a)(1).

In its comments, Columbia argues that NGDCs incur costs that are solely related to NGSs’ service, but fails to demonstrate adequately that these costs are unique to NGS service. Columbia contends that, even if they left the merchant function, these costs would continue to be incurred. However, Columbia fails to note that many of these same costs are needed to provide both SOLR and competitive service. Moreover, none of these costs is included in the list of specific and limited costs which the Commission has proposed to unbundle from distribution service. Lastly, Columbia asserts that we are proposing to shift all procurement costs, which is not true. As an example, procurement costs related to storage and transportation capacity, which is used for SOLR service or assigned to NGSs serving their shopping customers, has not been unbundled.

NFG makes an argument similar to Columbia’s, noting that SOLR staff needs to administer pipeline and storage releases to NGSs. However, this point is moot, since the regulations do not provide for the unbundling of pipeline and storage procurement. Indeed, this order recognizes the importance of transportation and storage for both shopping and non-shopping customers.

NFG comments further that NGDCs must stand ready to serve all customers, while NGSs have the ability to “pick and choose” their customer base. NFG ANOFR Comments at 4. NFG argues that this obligation to stand ready justifies charging all customers for their procurement related costs, regardless of whether they provide supply to the customer. This argument also ignores competitive equity. Moreover, as fully detailed below, NGSs must accept all customers responding to an offer, regardless of credit, under the NGDC’s POR program. Therefore, NGSs also stand ready to serve substantially

all customers covered by the NGDC's POR program, within a NGS's targeted rate class of customers.

In summary, it is a level playing field for all market competitors that we seek. As noted by NEMA, in the absence of full rate unbundling, shopping customers are penalized with a double payment of commodity-related costs—those paid to the competitive supplier from which they are currently receiving service and to the utility from which they are no longer receiving commodity service. Unbundling of utility rates avoids this inequitable result. See NEMA ANOFR Comments at 6. Lastly, this level of unbundling for gas procurement costs is consistent with our balanced approach implemented in Pennsylvania's electricity markets. See Final Policy Statement, Docket M-00072009, (§ 69.1808 relating to default service cost elements).

In addition, to reduce litigation and uncertainty as to the scope of gas procurement cost to be shifted from the delivery rates to commodity rates, we have provided a more focused definition of "procurement costs" to better define and limit the functions that must be identified, quantified and moved out of distribution service rates and into the Price to Compare. The final form regulation specifies the management, contracting, scheduling, administrative and other costs that are directly associated with the NGDC's natural gas procurement function. These costs will include the following items.

1. Natural gas supply service management and acquisition costs, including natural gas supply bidding, contracting, hedging, credit, risk management costs, and working capital.
2. Administrative, legal regulatory and general expenses related to those natural gas procurement activities, excluding those related to the administration of firm storage and transportation capacity.

We continue to believe that the identification of these procurement related costs and their magnitude are best determined in the context of a rate filing under 1308(a), not in a Section 1307(f) proceeding. Accordingly, in the final-form regulation, the Commission will direct NGDCs to identify and remove, from delivery rates, their natural gas procurement costs in a Section 1308(a) proposed tariff filing; once those costs are determined, and after notice and opportunity to be heard, those same costs will be included, synchronized and recovered as part of the PTC or commodity rate on a per MCF or DTF revenue neutral basis. The Section 1308(a) tariff filings to remove these gas procurement costs from delivery rates shall be filed beginning 90 days after the effective date of these regulations pursuant to a schedule to be established by the Commission, or in the NGDC's next base rate case, whichever occurs first.

Lastly, since these costs will be identified and shifted from delivery rates to commodity rates on a revenue neutral basis, this avoids the prospect of single-issue ratemaking in which the utility seeks increased rates for a single element of increased expenses without examination of other expenses that may have decreased. Also, because these are costs that are being moved from base rates to the NGDC's PTC or commodity rate, these costs shall not be subject to reconciliation. As such, the gas procurement costs to be recovered in the PTC, on a per MCF or DTH⁸ basis, shall remain constant until reviewed and updated, after notice and opportunity to be heard, in

the NGDC's next base rate case in order to ensure that the NDGC's rate continues to reflect and recover its gas procurement costs.

B. Quarterly Adjustments

In the ANOFR Order, the Commission noted the concerns of some of the commenters regarding the use of monthly adjustments to the PTC. Therefore, the Commission determined that quarterly rate adjustments would adequately reflect changes in market rates over time. Additionally, the Commission determined that the use of quarterly adjustments would avoid added complexity and, further, the legal issue of requiring NGDCs to offer a fixed rate option. Accordingly, in the ANOFR Order, we deleted the monthly adjustment subsection from the regulation and proposed quarterly adjustments of the PTC.

At the same time, we stated in the ANOFR Order that in order to avoid the potential for large positive or negative reconciliation adjustments (e-factor) when a customer switches to an alternative supplier, we would direct NGDCs to file tariff revisions that provide for quarterly reconciliation adjustments to their gas cost rates as well. In its comments, NEMA supports this proposal as a means to make the PTC more reflective of current market conditions and provide consumers with a better basis of comparison of marketing offerings. NEMA states that the NGDC's ability to charge interest on under-collections, and be charged a percentage penalty for over-collections, provides a strong incentive for the NGDC to underestimate its GCR rate. NEMA asserts that by doing this, the NGDC has acted to understate the PTC against which consumers have been making comparisons and creating a faulty perception that marketer offers are more expensive than the artificially understated NGDC rates. Also, the Joint Commenters are in agreement with NEMA's observation and stated that including the e-factor as part of the gas cost rate portion of the PTC allows for a more accurate comparison between competitive supplier offers and the rates for default service.

Conversely, the OSBA, PECO, Equitable and Dominion Peoples state that in order to reflect a more accurate price signal, the Commission should not include the e-factor reconciliation adjustments. In its comments, Equitable states that this reconciliation component should be removed from the PTC. Equitable explains that the reconciliation is a cost component arising from a prior period and not properly included in the estimation of the current cost of gas, nor applicable to customers returning to SOLR service for one year consistent with all NGDCs' migration riders which were approved by the Commission during restructuring proceedings. In its comments, PECO explains that the e-factor results from a past accumulation of over and under recoveries of the procurement cost of gas supply that will be charged or credited to customers over a twelve month period. Therefore, this charge will follow a customer that switches to a supplier for a twelve month period (per migration riders). Thus, these parties agree the PTC will not be reflective of the cost of NGDC supply that a customer would avoid (or pay) when the customer chooses to shop (or to return to NGDC service).

We understand the arguments on both sides; nevertheless, we will continue to direct that the e-factor be included as part of the gas cost rate portion of the PTC as it will allow for a more accurate comparison between competitive supplier offers and the current rates charged by NGDCs for default service. While the e-factor does relate to prior period costs, these are nonetheless gas

⁸ A unit of heat equal to 1,000,000 Btus (1MMBtu); the thermal equivalent of 1,000 cubic feet of gas with a heat content of 1,000 Btus per cubic foot.

commodity costs charged by the incumbent NGDC, paid by each default service customer and, thus, includable in the PTC.

The NGSs also support increasing the frequency of the reconciliation of over/under collection as a way of reducing the negative impact of the migration rider. However, in its comments, UGI asserts that pursuant to Sections 1307(f)(3)—(5) and 1318, 66 Pa.C.S. §§ 1307(f)(3)—(5), 1318, the Commission can only direct that gas cost reconciliations be performed on an annual basis, and only after the Commission makes certain specific findings after the gas cost hearing process. UGI Comments at 13-14. Thus, UGI asserts that quarterly reconciliations would not be possible absent changes to these sections of the Public Utility Code.

We disagree with UGI's interpretation of those sections. Our existing regulations at Pa. Code § 53.64(b) and (i)(5)(i)—(v) already require and direct NGDCs to make quarterly filings when there is a change in the gas costs rates. In particular, the regulation requires NGDCs to make quarterly filings that disclose projected versus actual costs, and to update its gas cost rate in order to reflect actual gas costs if "the recalculated rate differs from the currently effective rate by more than 2% . . ." 52 Pa. Code § 53.64(i)(5)(iii). The quarterly filings and supporting information are reviewed by the Commission and interested parties that were involved in the 1307(f) proceeding in which the initial rate was established and become effective on 1 days' notice unless otherwise ordered by the Commission. 52 Pa. Code § 53.64(i)(5)(iv).

Accordingly, since quarterly filings for gas costs rates and the e-factor component have already been addressed in our existing regulations, we will not incorporate quarterly adjustments to gas costs and the e-factor in the instant final-form regulation. We believe that the quarterly adjustments already provided for in existing regulations will adequately mitigate large reconciliation swings due to the seasonal nature of gas sales and that any over/under collection balance will remain relatively small by comparison to overall gas costs. Additionally, the Commission also determines that through the utilization of more frequent reconciliations, the period of time over which the migration rider is collected might possibly be reduced. The Commission believes that if the reconciliation is done on a quarterly basis, then the migration rider should reflect the reconciliation and should only be imposed for one quarter. In other words, the migration rider should be consistent with the 90 day reconciliation adjustments.

Accordingly, the Commission invites NGDCs to file shortened migration riders [i.e., a 90-day migration rider, as opposed to the current annual migration rider] and requests that they include such a modification to their respective migration riders when they file their compliance tariff filing 90 days after the effective date of these regulations.

C. Implementation of a Merchant Function Charge

In the ANOFR Order, the Commission implemented a Merchant Function Charge (MFC). In lieu of a fully allocated cost of service study, the MFC was proposed as a mechanism to identify and remove from distribution rates the cost of uncollectible expenses associated with natural gas procurement and include them in the PTC.

The Commission determined that implementation of the MFC, as a component of the PTC or commodity rate, was reasonable and would allow the PTC to be a better approximation of the costs incurred by NGS firms to

provide commodity service. Implementation of the MFC will unbundle supply-related uncollectible costs from base rates, specifically, distribution rates, and add them to the price to compare on a revenue neutral basis. Moreover, for non-shopping customers, the MFC mechanism will be revenue neutral because the same write-off rate used to remove costs from base rates will be used to calculate the MFC as part of the PTC for commodity rates.

In conjunction with the ANOFR Order, Vice Chairman Christy issued a statement in which he requested comments regarding whether the MFC violated Section 1408 of the Code, 66 Pa.C.S. § 1408. In its comments, NFG states that the MFC does not violate section 1408 because it is not tracking specific uncollectible costs, reconciling them, and surcharging for any difference between costs incurred and revenues collected for that purpose. In other words, the MFC is a rate that is re-established in base rate proceedings on a going-forward basis, like all other base rates; there is no reconciliation of prior rates and costs. The MFC adjusts with changes in gas costs, and not with changing the NGDC's uncollectibles expense as a gross dollar amount. The Commission agrees with NFG's characterization of the MFC.

Accordingly, the final-form regulation will include the MFC provisions recommended by NFG in its initial comments with some clarifying language to recognize class differences in uncollectible rates and revenue neutrality. Also, as with gas procurement costs, because these are costs that are being moved from distribution rates to an NGDC's PTC or commodity rate, these costs are fixed and shall not be subject to reconciliation. The final-form regulation provides that the NGDC shall file an updated MFC rate, with its quarterly gas cost rate adjustments, to make sure that the rate continues to reflect and recover its supply-related uncollectible costs at the same write-off rate determined in the NGDC's last base rate case. However, the underlying write-off factor shall remain constant until it is reviewed and updated, after notice and opportunity to be heard, in the NGDC's next base rate case.

In sum, the PTC or commodity rate will be adjusted on a quarterly basis and will consist of the following elements on a per MCF or DTH basis: the gas cost rate determined in the NGDC's Section 1307(f) proceeding; the e-factor reconciliation for over and under collections in accordance with Section 1307(f); the NGDC's natural gas procurement costs which do not include administrative costs related to transportation and storage (determined via a Section 1308(a) tariff filing); and the Merchant Function Charge (determined via a Section 1308(a) tariff filing or prior rate case). These elements shall be the components of a single PTC rate on the customer's bill. Finally, we note here that because NGDCs use a portfolio approach for their natural gas purchases, the PTC will likely never track exactly the current market prices for natural gas. However, the changes we have directed in these regulations to the PTC will, in our judgment, result in an improved ability for customers to know the commodity costs charge by the NGDC for default service and, on that basis, to make informed choices from among the offers to be made by competitive suppliers.

In terms of responding to the clarification-related comments regarding Section 62.223 for the PTC, we have provided a more narrow and focused definition of natural gas procurement costs, excluded costs related to the administration of firm storage and transportation capacity, provided an improved description of how GPC and MFC costs are to be removed from distribution rates and

recovered as part of the PTC, and clarified that any over or under collections of GPC or MFC costs from prior periods are not subject to reconciliation.⁹

Finally, although the Commission had considered a clarification to the Final Rulemaking Order, as suggested by IRRC staff, to simply refer to the previously defined term Purchase Gas Cost (PGC) in Section 62.223(a)(1), the EAPA and NFG comments point out that, in practice, the PGC may include costs other than commodity related costs such as “balancing service and demand or capacity charges.” NFG recommends, in particular, that we simply use the term “natural gas supply charge determined in the NGDC’s Section 1307(f) proceeding” in the final form regulation in lieu of “PGC”, the previously defined term. Upon review, we shall accept EAPA’s comments and rationale and, accordingly, we shall adopt NFG’s recommended language. Therefore, the term “PGC” in Sections 62.223(a)(1), (c)(1) and (c)(3) shall be deleted from the final form regulation and replaced by the phrase “natural gas supply charge determined in the NGDC’s Section 1307(f) proceeding.”

Section 62.224—POR Programs

Proposed Rulemaking Order Comments

This section of the proposed rules establishes rules for POR programs. IRRC stated that it has three general questions and concerns relating to POR programs and the potential positive and negative effects. First, IRRC stated that the Commission should explain further why it is proper for the NGDC to collect unregulated NGS charges. Second, IRRC raised the question of how the NGDC will separate its operating costs from those related to collecting revenues for an unregulated entity. Additionally, in a more specific manner, IRRC stated that paragraph 10 of Subsection (a) sets forth the requirement that an NGDC “track its POR program purchases and collections.” IRRC also stated that this requirement is vague because it is not clear how an NGDC is to comply with it. IRRC suggested that the regulation should state a purpose for the tracking, specify what information is required and how long the information must be kept.

IRRC also questioned how the costs and revenues from a POR program will be considered in the filings envisioned in this rulemaking, including a base rate filing.

Lastly, IRRC questioned why the provision relating to licensure requirement is placed under this section. IRRC suggested that the Commission delete this provision or explain why it is needed under this particular section.

Columbia, T.W. Phillips, UGI, EAP and PECO all expressed concerns regarding our decision not to require NGSs participating in PORs programs to use only NGDC consolidated billing services. In particular, T.W. Phillips stated that the lack of consolidated billing is likely to create significant confusion among utility customers used to receiving a single bill and constitute a substantial burden on the NGDC. T.W. Phillips Comments at 4. Additionally, PECO stated that consolidated billing from the NGDC will minimize uncollectibles since the NGDC will have an existing customer account that it can monitor to track any delinquency the moment it occurs. PECO Comments at 5. PECO stated that the proposed regulation shifts uncollectible supplier risk to the NGDCs. Id. Furthermore, UGI states that uncollectible expenses could arise if NGSs do not engage in aggressive collection processes with customers that become delinquent in paying their gas bill. UGI Comments at 9-10.

⁹ We note that the comments of the Pennsylvania Energy Marketers Coalition and the NGS Parties strongly support these clarification-related revisions to the final-form regulation.

In its comments, NFG stated that under the model purportedly set forth by our regulations, an NGS essentially would be able to pick and choose which receivables are sold to the NGDC performing a consolidated billing service, and which receivables are not sold to the NGDC. NFG Comments at 14. Additionally, the system requirements for operating a dual POR and non-POR billing system would be costly and time consuming to implement, given the different consumer protections and shut-off procedures that would presumably apply to the separate customer groups. Id.

In their comments, Equitable, Dominion Peoples, OSBA, NFG and UGI also addressed the discount rate offered for accounts receivables. All of these comments reference the fact that the differences between NGSs customer bases could warrant differences in the discount rate between marketers within a POR program. Further, both EAPA and NFG stated that there is an inconsistency in the proposed regulation regarding the potential discount at which an NGDC will purchase receivables from an NGS. NFG Comments at 14-15. EAPA Comments at 6. In particular, both commenters noted that Section 62.224(a)(3) references a standardized discount while Section 62.224(a)(4) states that the NGDC will establish a negotiated discount on a case-by-case basis. Id.

In their comments, the OCA and PECO stated that an NGDC should be allowed to offer discounts so as to recover the NGS’ uncollectible expenses and the implementation, operating, administrative, and incremental costs associated with the POR. NFG further stated that the regulation should provide for a “risk factor” component to the discount rate established by the NGDC. Id. NFG asserted a discount is always applied to the risk the purchasing entity takes with respect to uncollectibles. NFG further explained that among the risks an NGDC would take in implementing a POR program are the risk of uncollectible accounts and the uncertainty of program implementation costs.

Also, in their comments, the OCA and NFG noted that the POR program regulation as proposed does not provide appropriate customer protections. NFG stated that the wording of proposed Subsection 62.224(b)(4) is confusing and misleading and suggests a rewording of this section to make its intent clear. NFG Comments at 15. The OCA also proposed several modifications to the proposed regulations to incorporate necessary customer protections. OCA Comments at 17-23. In particular, the OCA stated that the “right” to terminate must be limited to the portion of the NGS receivables that are equal to or less than the amount the customer would have been billed for commodity service if the customer had received SOLR services from the NGDC during the non-payment period. Id. OCA also had concerns regarding a customer’s right to reconnection of service. Id. Lastly, OCA stated that as a condition of the POR program, the NGS should be required to agree not to reject a new customer based on credit-related issues. As a result, the NGS is not permitted to seek a separate security deposit. Id.

The OSBA and the OCA were also opposed to the requirement that the NGDC must agree to share with distribution customers the amount by which the discount exceeds the uncollectible costs. OSBA Comments at 13; OCA Comments at 24. The OSBA stated that this concept is inconsistent with the principle of the NGDC recovering the costs of acquiring gas for non-shopping customers through the GCR and the stated principle of Chapter 14 of the Code. OSBA Comments at 5. Additionally, the OCA stated that Chapter 22 of the Code, 66 Pa.C.S.

§ 2205(c)(5), protects ratepayers from having to bear the cost of uncollectible expense associated with unregulated supply charges by ensuring that the NGDC does not have to make payments to the NGS before receiving payment from the customer. OCA Comments at 25.

Lastly, the EAP and NFG suggested that the Commission strike the provision of the proposed regulation that allows NGS accounts receivable to be used to satisfy the security requirement for NGS licensing at 66 Pa.C.S. § 2208(c)(1). Both commenters stated that this concept is being addressed in another rulemaking proceeding regarding NGS licensing and security issues at Docket No. L-2008-2069115.

ANOFR Order Comments

Based upon the comments we received to this section of the proposed regulation, we determined, in the ANOFR Order, that the use of POR programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers. We further determined that the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC's service territory, especially with respect to the residential/small business customer market. Accordingly, we determined that the implementation of POR programs, which allow the unregulated NGSs' accounts receivables for natural gas costs to be purchased and collected by the regulated NGDC and which allow NGDCs to be fully compensated for the risks and costs, is essential to facilitate effective competition in Pennsylvania's retail natural gas supply services market consistent with our obligations under the Act.

In the ANOFR Order, we agreed with the commenters who stated that requiring NGSs participating in POR programs to use consolidated billing from the NGDC is a prudent and necessary step. Thus, we revised the proposed regulations to require that an NGS use consolidated billing in order to qualify for participation in a POR program. Nevertheless, in the proposed regulation, we also established two circumstances in which an NGS does not have to use the consolidated billing of the NGDC. Those instances are when the NGS is providing a service or product to customers that an NGDC's consolidating billing system cannot accommodate or when the NGS wants to offer products that are bundled with non-basic services, the NGS may be permitted to issue a separate bill for such service or product for that customer. See generally *Petition of PECO Energy Company for approval of its Revised Electric Purchase of Receivables Program*, Docket No. P-2009-2143607 (Order entered June 16, 2010).

In its additional comments, EAPA agrees that the implementation of a voluntary POR program can offer one of the best means to increase NGS participation in the retail natural gas supply market. However, EAPA requests that the Commission strike the language in the ANOFR version of the regulation found at 62.224(a)(2)(i) and (ii) which appears to exempt NGSs from participating in the consolidated billing function in two distinct circumstances. In its comments, Columbia states that these two exceptions are confusing and should be deleted.

Additionally, in the ANOFR Order, we noted NFG's concerns about allowing NGSs to "cherry pick" customers, based on credit risk, to benefit the NGS at the expense of the NGDC and its customers. Thus, we determined that we would set forth in the regulation that an NGS must

include all of its accounts receivable related to commodity sales in the POR program to deter any "cherry picking" of best accounts for itself and worst accounts to the POR program. Also, we stated that we would incorporate in the regulation that an NGS would be required to accept all customers without using a credit check or requiring an additional security deposit.

In its additional comments, the OCA notes that the Commission had inadvertently omitted from the ANOFR version of the regulation the POR consumer protection relating to the requirement that an NGS participating in a POR program accept all customers without using a credit check or requiring an additional security deposit. Columbia also notes this omission and also noted that the Commission had not included the provision requiring an NGS to include all of its receivables related to commodity sales in the POR program in the ANOFR version of the regulation.

In the ANOFR Order, we further determined that the discount rate applied to purchase receivables should allow for the recovery of the reasonably anticipated risk of uncollectibles expenses associated with NGS's customers, as well as the cost of implementing and operating the POR program. Thus, in that version of the regulation, we stated that the NGDC should be fully compensated both for the reasonably projected risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.¹⁰ However, consistent with our prior decision in the proceeding, *Petition of National Fuel Gas Distribution Corporation Requesting Approval of a Program for Purchase of Natural Gas Supplier Accounts Receivable*, Docket No. P-2009-299182, (Order adopted June 3, 2010), we did not allow NGDCs to incorporate a further generic "risk factor" for the recovery of risks over and above those associated with uncollectible expenses. We determined that the discount rate should only reflect the NGDC's actual uncollectible rate.

Additionally, in the Proposed Rulemaking Order, we had required the same discount rate to be applied to the purchase of all accounts receivables an NGDC purchases from an NGS, regardless of customer class. However, in the ANOFR Order, we agreed that a successful POR program will offer a discount rate that can vary by customer class. Accordingly, we revised the regulation by deleting the provision that required the same discount rate be applied to the purchase of all accounts receivables and amended it so that the NGDC is allowed to offer discount rates that vary by class if substantial risk and costs differences exist.

We also deleted proposed Section 62.224(a)(9) of the regulation, which allowed the NGDC to recover or collect losses from distribution customers if the discount exceeds the uncollectibles costs. We determined that the ratepayers should not be guarantors of the business risk of an NGS. Variations between projected and actual uncollectible expenses can be addressed by tariff updates to the POR program.

Further, we revised the proposed regulation so that appropriate customer protections would be included. We wanted to ensure in the proposed regulation that NGDCs continued to follow Chapter 14 and Chapter 56 requirements when terminating natural gas service to shopping customers. We believed that this policy promoted equity and fairness between shopping and non-shopping customers and reduced the cost of NGDCs. Additionally, this

¹⁰ The Commission anticipates that, in practice, the "reasonably projected risk" of non-payment for the accounts receivables will be based on the NGDC's most recently updated uncollectibles rate for each customer class.

approach permitted an NGDC to terminate a customer for non-payment of NGS charges. We believed that permitting the NGDC to terminate for non-payment will increase collection rates and reduce the overall uncollectible expense experienced by the NGDC resulting in a lower discount rate for the POR program and thus lower competitive supply offers for customers.

Another concern we recognized was how an NGDC would separate its operating costs from those related to collecting revenues for an unregulated entity. Thus, we specified in the regulation that each NGDC track the costs of implementing and administering its POR program including uncollectibles, so that the NGDC can make sure that its POR discount rate covers its program costs. However, we did not set forth a limited timeframe in the regulation for an NGDC to retain records of these costs beyond what is required by normal business practices.

Furthermore, in the ANOFR Order, we addressed whether we had the legal authority to mandate that all NGDCs establish a POR program that will conform with the permanent rules we are establishing in these final regulations. We note that some commenters had argued that the Commission cannot mandate the implementation of POR programs. These commenters referenced 66 Pa.C.S. § 2205(c)(5) of the Code as support for their assertion.

Upon our analysis and consideration of this legislative language, we determined, in the ANOFR Order, that Section 2205(c)(5) only directs the mechanics of customer billing on behalf of suppliers, i.e., the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. We determined that it does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts. In that situation, the NGS customer's debt is now owed directly to the NGDC and, just like any other NGDC customer, failure to pay the amount due will subject the NGS customer to termination of service pursuant to Chapter 14 of the Code and the Commission's service termination regulations at Chapter 56. We determined that Section 2205(c)(5) appears to address the situation where there is a business arrangement in which the NGDC is the billing agent for the NGS, not when the NGDC becomes the new creditor for the debt owed by the NGS customer. Nevertheless, we continued the current policy in the proposed regulation to make POR programs voluntary.

In his statement that was released along with the ANOFR Order, Vice Chairman Christy requested comments on whether the Commission had the authority to mandate that NGDCs implement POR programs. NFG states that the first sentence of Section 2205(c)(5), 66 Pa.C.S. § 2205(c)(5), clearly requires that an NGDC must be paid first when the NGS has chosen to use the billing services of the NGDC. NFG further states that this statutory provision also precludes the Commission from forcing an NGDC to make payments to an NGS where the NGDC has not yet received payment from the customer(s). The OCA states that the Commission's legal interpretation in the proceeding Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009) is the proper interpretation of the Commission's legal authority to mandate POR programs. In that proceeding, the Commission held that it lacked the authority

to mandate the implementation of POR programs based on identical language set forth in Section 2807(c)(3) concerning electric distribution companies.

Lastly, in the ANOFR Order, we set forth a timeframe for NGDCs to comply with the POR rules. We stated that if the NGDC has already implemented a POR program that has a specific term, expressed in years or months, the Commission-approved POR program will be allowed to continue, but the NGDC should file a tariff that is consistent with the final regulations to commence after the initial term of the POR program expires. Alternatively, if the NGDC has implemented a Commission-approved POR program with no specific term limit, the NGDC should update its POR plan within 24 months of the effective date of the final regulations.

Resolution

The Commission continues to believe that POR programs offer the best means to increase supplier participation in the retail natural gas supply market, compensate NGDCs for their risks and costs, and are in the public interest. As we stated in the ANOFR Order, the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC's service territory, especially with respect to the residential/small business customer market.

In the ANOFR Order, we determined that we had the legal authority to mandate that all NGDCs establish a POR program that will conform with the permanent rules we are establishing in the regulation. As set forth above, NFG and the OCA argue that the Commission cannot mandate the implementation of POR programs. These commenters reference 66 Pa.C.S. § 2205(c)(5) of the Code as support for their assertion. We acknowledge that in addressing PPL's purchase of receivables program, we addressed similar language applicable to the electric industry and determined that Section 2807(c)(3) operated to prohibit the imposition of mandatory PORs. See Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009).

Nevertheless, we reaffirm the legal interpretation and analysis of Section 2205(c)(5) that was set forth in the ANOFR Order. We believe that this statutory language is only directed to the mechanics of customer billing on behalf of suppliers, i.e., the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. It does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts.

However, notwithstanding the above analysis regarding our legal authority to mandate POR programs for NGDCs, we again shall continue our current policy, in the final-form regulation, to make POR programs voluntary. Thus, even if our legal interpretation concerning Section 2205(c)(3) is incorrect, the final-form regulation, as noted by NFG in its comments, does not rise to the level of violating the statute because we are maintaining POR programs as voluntary rather than mandating them.

In the proposed regulation, the Commission departed from the requirement that NGSs participating in POR programs must use only NGDC consolidated billing services. Nevertheless, in regards to the initial comments we received on this issue, we agreed with the commenters

that requiring NGSs participating in POR programs to use consolidated billing from the NGDC is a prudent and necessary step. We believe that consolidated billing eases an NGDC's costs and operations. We note that POR programs are normally provided in conjunction with consolidated billing in which the utility issues a single bill to the end user that contains the utility's delivery charges and the NGS's supply charges. Thus, in the final-form regulation, at Section 62.224(a)(4), we will continue to require that an NGS use consolidated billing in order to qualify for participation in a POR program.

However, in the ANOFR Order, we created two exemptions to this consolidated billing requirement: (1) the NGDC's billing system cannot accommodate the NGS bill for basic supply service; and (2) the NGS is providing a service or product that does not meet the definition of basic natural gas supply. As to the second exception, rather than placing that as an exception to consolidated billing, the principle that an NGS may bill on its own for non-basic natural gas products and services will be added as a new Subsection 62.224(a)(12) in the final-form regulation. We will continue to retain the first exception in the final-form regulation to account for NGDC billing systems that may not be able to provide consolidated billing for NGS basic supply service.

Furthermore, we acknowledge the NGDCs' concerns regarding the omission about allowing NGSs to "cherry pick" customers, based on credit risk, to benefit the NGS at the expense of the NGDC and its customers. Thus, in our final-form regulations at 62.224(a)(2), we will direct that an NGS must include all of its accounts receivables related to commodity sales in the POR program, to deter any "cherry picking" of best accounts for itself and worst accounts to the POR program. Also, as recommended by the OCA, we will set forth in the final-form regulation at 62.224(a)(13) that an NGS will be required to accept all customers without using a credit check or requiring an additional security deposit.

A POR program involves the utility purchasing the receivables of an NGS at a discount rate. We believe that the discount rate applied to purchase receivables should allow for the recovery of the reasonably anticipated risk of uncollectibles expenses associated with supply service customers, as well as the cost of implementing and operating the POR program. We believe that an NGDC should be fully compensated both for the reasonably projected risk of non-payment and the costs of administering the POR by the discount rate that is applied to the purchased receivables.¹¹

The discount rate should reflect the NGDC's actual uncollectible rate for supply service customers, consistent with the uncollectible rate used in the determination of the MFC. Moreover, an NGDC can track its uncollectible expenses and administrative costs and adjust its discount rate accordingly in any future POR program update. Accordingly, in the final-form regulation at 62.224(a)(5), we will direct that the discount rate applied to purchased receivables shall reflect the NGDC's actual uncollectible rate for supply service customers, consistent with the write-off rate used in the determination of the MFC, and the cost of implementing and operating the POR program.

Additionally, in the ANOFR Order, we determined that we should allow for differences in the discount rate offered by the NGDC to be reflected on a customer class basis, as recommended by the OSBA. Upon further

consideration, the OSBA position regarding the POR discount rate is well taken and, to avoid cross-subsidization among customer classes, we shall require that the POR discount rate account for risk and cost differences among customer classes in the final-form regulation at 62.224(a)(6).

In the final-form regulation, we will delete proposed Section 62.224(a)(9), which allows the NGDC to recover or collect losses from distribution customers if the discount exceeds the uncollectibles costs. We believe that if an NGDC offers a POR program, the increased uncollectible expense it incurs should not be borne by ratepayers. See 66 Pa.C.S. § 1402. The ratepayers should not be guarantors of the business risk of an NGS. Variations between projected and actual uncollectible expenses can be addressed by tariff updates to the POR program.

Additionally, in the final-form regulation at 62.224(a)(8), we will allow an NGDC to terminate a customer for non-payment of NGS charges. We believe that there is no authority that restricts the ability of NGDCs to terminate service to POR customers based upon non-payment of an amount equal to the customer's default service. Additionally, permitting the NGDC to terminate for non-payment will increase collection rates and reduce the overall uncollectible expense experienced by the NGDC resulting in a lower discount rate for the POR program and thus lower competitive supply offers for customers. See Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502 (Order entered November 19, 2009). We believe that since the NGDC has purchased an NGS's accounts receivables, the NGDC would own those accounts and should have all of the suspension and termination tools available for those customers as it has for its default service customers.

Nevertheless, while an NGDC should not be prevented from terminating service to customers for failure to pay NGS charges purchased by the NGDC or prevent it from requiring full payment of purchased NGS accounts receivable before reconnecting natural gas service to a customer, termination of service can be done only in accordance with Chapter 14 of the Code and Chapter 56 of the Commission's regulations. Accordingly, in the final-form regulation at Subsection (b) of Section 62.224, we will set forth appropriate customer protections.

We note that the Pennsylvania General Assembly sought to continue the consumer protections outlined in the Code and Chapter 56 of the Commission's regulations in the introduction of competition in the natural gas industry. See 66 Pa.C.S. § 2206(a). Thus, we will ensure in the final-form regulation at 62.224(b)(1)–(6) that NGDCs continue to follow Chapter 14 and Chapter 56 requirements when terminating natural gas service to shopping customers. We believe that this policy promotes equity and fairness between shopping and non-shopping customers and helps reduce the cost of NGDCs.

Another concern regarding the implementation of POR programs is how an NGDC would separate its operating costs from those related to collecting revenues for an unregulated entity. We will specify in the final-form regulation at Section 62.224(a)(11) that each NGDC track the costs of implementing and administering its POR program including uncollectibles, so that the NGDC can make sure that its POR discount rate covers its program costs. At the same time, because the NGDC will be compensated for the costs associated with POR uncollectibles in the discount rate, those costs are not recover-

¹¹ The Commission anticipates that, in practice, the "reasonably projected risk" of non-payment for the accounts receivables will be based on the NGDC's most recently updated uncollectibles rate for each customer class.

able from base rates. However, we will not set forth a limited timeframe in the regulation for an NGDC to retain records of these costs beyond what is required by normal business practices.

We acknowledge that some NGDCs have Commission-approved voluntary POR programs in place. We appreciate that the NGDC and other parties have negotiated these POR programs and, accordingly, that they have settled expectations in the terms and conditions of those POR programs. In the final-form regulation at 62.224(c), we shall establish a reasonable transition plan for NGDCs with existing PORs to conform to the final-form POR regulations. In particular, we adopt the OCA's alternative suggestion that, for POR programs with no defined term, we allow at least 36 months experience under a previously approved POR program before the NGDC is required to file for any changes that may be needed to conform to this regulation. See OCA Comments at 22.

Section 62.225—Release, assignment or transfer of capacity.

Proposed Rulemaking Order Comments

We noted in our Action Plan that it might be helpful to the development of the gas retail markets if the ability of an NGDC to control its capacity on interstate natural gas pipelines was not as strong. This section was created in order to give NGDCs and NGSs guidance and to ensure that the requirements for the release, assignment and transfer of capacity by an NGDC shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity.

In its comments, IRRRC states that this section is very similar to the Act at 66 Pa.C.S. § 2204(d). IRRRC notes that there is no explanation for repeating the statute in the proposed regulation. IRRRC states that the Commission should either explain the need for this section or delete it in its entirety. In its comments, UGI expresses the same concern. UGI Comments, p. 12.

ANOFr Order Comments

In the ANOFr Order, we revised this section to require mandatory capacity release. In its comments, EAPA states that this section now directly conflicts with the provisions of the Public Utility Code. Specifically, EAPA states that the flexibility afforded NGDCs in their management assignments under Section 2204(d)(1) and (5) of the Code is not provided for in the ANOFr version of the regulation. EAPA states that the Commission cannot change the discretionary nature of mandatory assignment by regulation as this is contradictory to the clear language of its enabling statute.

In its comments, NFG echoes EAPA's sentiments. NFG states that mandatory capacity release in all circumstances is in direct opposition to the statute. NFG states that the statute does not go so far as to mandate capacity release but instead requires it be offered. NFG further states that the Commission does not have the authority to go beyond the directives of the General Assembly and impose a more stringent rule via regulation. Likewise, Equitable, the Joint Commenters, PGW and Columbia state that the revision to this section has altered the statutory plain language set forth in 66 Pa.C.S. § 2204(d)(1).

In their comments, the NGSs state that capacity "should follow the customer" but note that this concept is not set forth in the revised regulation. The NGSs also note that we discussed this concept in the body of the

ANOFr, but did not incorporate it into the revised regulation. The NGSs state that one aspect of the regulation is to ensure competitively neutral administration of the utilities' capacity release and storage programs and strongly suggest that this concept of "capacity following the customer" be incorporated into the regulation.

Resolution

As we stated in the ANOFr Order, utility operated natural gas capacity release and storage programs in Pennsylvania must be administered in a non-discriminatory and competitive neutral manner. Accordingly, we attempted to give both NGDCs and NGSs some guidance and to ensure that requirements regarding the release, assignment or transfer of capacity by an NGDC shall be on a non-discriminatory basis as to both functionality and price.

However, upon further review, it appears the underlying statutory provisions of Sections 2204(d) and 2204(e) of the Code regarding capacity release were conflated in drafting Subsection 62.225(a) of the regulation for the ANOFr Order, which has led to considerable confusion for the NGDCs. Accordingly, we will make revisions to this section so that the final-form regulation will be in harmony with the existing law and tracks Section 2204 of the Code as we had originally intended.

Nevertheless, it remains a central principle of natural gas restructuring and the efficacy of natural gas retail choice that the assets of gas pipeline and transportation and storage capacity should be made available and follows the shopping customers of each utility, regardless of where they purchase their natural gas supply, subject only to the NGDC's valid system reliability and FERC constraints. This understanding will be incorporated into the final-form regulation at Subsection 62.225(a)(2).

Additionally, we want to ensure that useable capacity is released to marketers at fair and equitable rates, not the most expensive and least usable capacity. However, we want to ensure that such capacity release is priced at a rate so that shopping and non-shopping customers are treated equally and that NGDCs have the flexibility to meet this goal based upon their respective capacity portfolios. For example, NFG proposed that, when capacity is released, it have the flexibility to price the capacity at a rate equal to its weighted average cost of capacity, whether or not the capacity contract rate is higher or lower than the release rate. As explained in its comments, "releases at the weighted average cost of capacity are the most practical means to ensure that shopping and non-shopping customers are treated equally." NFG ANOFr Comments at 13-14. The Commission agrees with this concept and believes that it should be incorporated in the final-form regulation. Accordingly, the Commission will insert the words "based upon" within Section 62.225(a)(3) so that it gives flexibility to the regulation while still requiring that the method selected by the NGDC be founded upon the applicable contract rate.

Section 62.226—NGDC costs of competition related activities.

Proposed Rulemaking Order Comments

In the Proposed Rulemaking Order, the Commission concluded that NGDCs "should be able to recover reasonable costs that are prudently incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market." We determined that we would allow NGDCs to

recover these costs through a surcharge with an automatic adjustment mechanism and set forth such a mechanism in this section.

In its comments to the proposed regulations, IRRC noted that since the cost of “competition related activities” is not established or defined in this section, it is not possible to determine the components, limits, or impact of this provision. IRRC stated that without direction from the Commission, the subjective nature of determining costs related to competition may expose customers to paying costs that may not be in their best interest, their responsibility, spent effectively or that are redundant to advertising costs already reflected in the NGDC base rates. IRRC stated that the Commission must provide guidance in the regulation on what specifically are NGDC costs of competitive related activities.

Also, IRRC stated that it has concerns relating directly to 66 Pa.C.S. § 2203(5)(a), under which the Commission must “require that restructuring of the natural gas industry be implemented in a manner that does not reasonably discriminate against one customer class for the benefit of another.” IRRC stated that it is not clear how the profits produced by the advertising will be considered by this statutory section.

IRRC stated that the Commission should either delete the section in its entirety or amend the regulation to strictly interpret what costs may be claimed and to protect customers from paying imprudent costs, redundant costs or costs borne by one customer class for the benefit of another.

ANOFR Order Comments

Based on comments we received concerning this section of the proposed regulation, specifically IRRC’s comments, we decided, in the ANOFR Order, to delete this section from the proposed regulation. We agreed with IRRC that the cost of “competition related activities” is not defined and is too broad and vague of a term. We also believe that these costs are already a part of the NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature. As such, we determined that a separate automatic adjustment clause for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995).

In its additional comments, NFG states that it disagrees with the Commission’s decision to delete this proposed section of the regulation. NFG states that our determination that “these costs are already a part of NGDC’s base rates and are neither large in magnitude in comparison to the utility’s base rates nor volatile in nature” is theoretical. NFG asserts that the costs incurred to promote competition will vary in nature from company to company and to make a broad statement that they are neither large nor volatile is presumptuous.

In their additional comments, the Joint Commenters state that to the extent that NGDCs are required to make changes to their operations and systems to accommodate the requirements in this rulemaking in order to enhance competition, the NGDCs should be able to recover those costs. Joint Commenters’ Comments at 11. The Joint Commenters suggest if the Commission does not allow NGDCs to recover incremental costs through a surcharge mechanism, the NGDCs should be permitted to defer those costs on their books and recover them in a ratemaking context as a regulatory asset or in some other manner that allows full recovery.

Resolution

Notwithstanding NFG’s assertions, we continue to believe that a separate automatic adjustment clause for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth). Accordingly, this section will remain deleted from the final-form regulation. Nevertheless, we agree with the Joint Commenters that if an NGDC makes changes to its operations and systems as a result of this rulemaking, it may request from the Commission the authority to defer those costs on their books and to seek recovery of those alleged costs in a litigated base rate case.

Section 62.227—Regulatory assessments

Proposed Rulemaking Order Comments

This section of the proposed regulation created a surcharge to allow NGDCs to recover the costs of their annual regulatory assessment to fund the Commission, the OCA and OSBA.

In its comments, IRRC noted that a commentator raised serious questions regarding the inclusion of this section in the proposed regulation. IRRC stated that commenters questioned the need for this assessment stating that the costs associated with the regulatory assessment are not large expenses that would require special ratemaking treatment. Thus, IRRC questioned the need for any change in the practice of having NGDCs recover these costs through their base rates. Additionally, IRRC stated that the section is unclear because it does not appear to have any relationship to or impact upon the “price to compare” or competition. Lastly, IRRC stated that the Commission provides no justification for the additional expense that NGDCs would incur as a result of making filings and separating these costs from their base rates. IRRC stated that the Commission should delete the section in its entirety or provide rationale for its inclusion.

ANOFR Order Comments

In the ANOFR Order, based on comments we received concerning this section, we deleted this section from the proposed regulation. We agreed with IRRC and the OCA that the regulatory assessment is not a large or volatile expense that would warrant special ratemaking treatment. We also determined that these costs were already a part of the NGDC’s base rates and did not believe that there were adequate legal or policy justifications for singling out this minor cost item as a separate surcharge.

No parties filed additional comments regarding the deletion of this section from the proposed regulation.

Resolution

We continue to believe that a surcharge for this type of item would not be appropriate and, indeed, would be subject to claims of impermissible single issue ratemaking. See *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth). Accordingly, this section will remain deleted from the final-form regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 26, 2009, the Commission submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 3461 (July 11, 2009), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 7(d) of the Regulatory Review Act (71 P. S. § 745.7(d)), the final-form rulemaking was deemed approved by the House and Senate Committees. Under the Regulatory Review Act, IRRC met on August 25, 2011, and November 3, 2011, and disapproved the final-form rulemaking.

Conclusion

Consistent with our authority and obligations under the Act, particularly, Chapter 22 of the Public Utility Code, 66 Pa.C.S. §§ 2201—12, the Commission is establishing rules and regulations that will bring the benefits of natural gas competition and customer choice to retail consumers. The purpose of the regulations is to eliminate barriers to supplier entry and participation in the marketplace. Accordingly, under Sections 501 and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501 and 1501); Sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); Section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and Section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.235, we find that the regulations for establishing a competitive retail natural gas supply market as set forth in Annex A should be approved; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 62, are amended by adding §§ 62.221—62.225 to read as set forth in Annex A.

(Editor's Note: Proposed §§ 62.226 and 62.227 included in the proposed rulemaking at 39 Pa.B. 3461 have been withdrawn by the Commission.)

2. The Secretary shall serve a copy of this order and Annex A on all jurisdictional natural gas distribution companies, natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at Docket No. L-2008-2069114, Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets.

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

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

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

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

7. The final regulations become effective upon publication in the *Pennsylvania Bulletin*.

8. NGDCs shall file, within 90 days of the effective date of these regulations, the tariff revisions required by

Section 62.223 (relating to PTC), in accordance with a filing schedule to be issued by the Commission.

9. The contact persons for this final-form rulemaking are David E. Screven, Assistant Counsel, (717) 787-2126 (legal) and Richard Wallace, (717) 787-7236 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the orders of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 5136 (September 24, 2011) and 41 Pa.B. 6470 (December 3, 2011).)

Fiscal Note: Fiscal Note 57-269 remains valid for the final adoption of the subject regulations.

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

Statement of Commissioner Wayne E. Gardner

Before the Commission is the Final Rulemaking Order which finalizes regulations meant to promote competition in the retail natural gas market. One issue of note concerns the price to compare (PTC) and whether the cost of providing supplier of last resort (SOLR) service should be included. Currently, the cost for procuring natural gas supply is included in distribution rates and paid for by both shopping and non-shopping customers. Each natural gas distribution company (NGDC) is required to provide SOLR service; each company must stand ready to provide natural gas supply to every customer in its distribution territory whether that customer currently receives supply from an alternative supplier or from the NGDC. Because SOLR service exists for the benefit of every customer, SOLR procurement costs should remain in distribution rates where every customer is required to pay for it. Additionally, because each NGDC is required to provide SOLR service, the associated costs are unavoidable and should be excluded from the PTC.

Today the majority votes to remove SOLR costs from distribution rates and put them into the gas procurement charge which will be paid for by non-shopping customers only and will be included in the PTC. The result of this is that customers who choose to stay with the default supplier will subsidize shopping customers who also benefit from the availability of SOLR service. Additionally, the true cost of the NGDCs providing a required service will not be reflected in the PTC. Therefore, I respectfully dissent from the majority's action and I support the recommendation made by Commission staff in this matter.

WAYNE E. GARDNER,
Commissioner

Statement of Commissioner Tyrone J. Christy

Before the Commission for consideration is the Revised Final Rulemaking Order, promulgating regulations to encourage increased natural gas supply competition among our jurisdictional Natural Gas Distribution Com-

panies (NGDCs) and licensed Natural Gas Suppliers (NGSs). The genesis of this rulemaking is the Commission's Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our SEARCH Final Order and Action Plan issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition.

After analysis of all the comments presented to the Commission in response to a Proposed Rulemaking Order issued on March 27, 2009 (March 27 Order), the Commission issued an Advance Notice of Final Rulemaking (ANOFR) on August 10, 2010 (August 10 Order), requesting further comment on the many revisions it had made to the proposed regulations. By order entered February 23, 2011, the Commission issued a Final Rulemaking Order, from which I partially dissented and on which I issued a Statement very similar to the Statement that I am issuing today. The Commission subsequently withdrew the Final Rulemaking Order in response to questions from the staff of the Independent Regulatory Review Commission (IRRC), and issued some proposed clarification amendments for comment via a Secretarial Letter on June 9, 2011. The revised final regulations before us today are the result of the comments on the ANOFR submitted by fifteen different parties, as well as the comments on the clarification amendments submitted by eight parties on June 16, 2011. I wish to thank each of the commenters for providing the excellent comments received.

This Revised Final Rulemaking Order is an extremely important rulemaking for this Commission to enhance the competitive natural gas market in Pennsylvania. While the revised final regulations reflect an improvement to the regulations as originally proposed, I continue to have some concerns that the regulations will result in increased costs to non-shopping customers of NGDCs, as well as cost shifting among customers that shop and those that decide to stay with the local NGDC. It is important to realize that the Commission is bound by certain standards in its efforts to enhance competition in the retail natural gas market. These standards are set out in 66 Pa.C.S. § 2203, Standards for restructuring of natural gas utility industry. Two of these standards are particularly appropriate in the context of these regulations. For example, 66 Pa.C.S. § 2203(3) states:

(3) The commission shall require natural gas distribution companies to unbundle natural gas supply services such that separate charges for the services can be set forth in tariffs and on retail gas customers' bills. In its restructuring filing, the natural gas distribution company shall establish system reliability standards and capacity contract mitigation parameters and address the unbundling of commodity, capacity, storage, balancing and aggregator services. *The commission may address the unbundling of other services only through a rulemaking. In conducting the rulemaking, the commission shall consider the impact of such unbundling on the labor force, the creation of stranded costs, safety, reliability, consumer protections, universal service and the potential for unbundling to offer savings, new products and additional choices or services to retail gas customers.* The commission's decisions shall assure that standards and procedures for safety and reliability, consumer protec-

tions and universal service are maintained at levels consistent with this chapter. (emphasis added)

Furthermore, 66 Pa.C.S. § 2203(5) states:

5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

My overriding concern with these regulations is that they may violate the aforementioned standards that this Commission is bound to uphold. For this reason, I am partially dissenting on the revised final regulations that are being adopted today, specifically with regard to the following issues:

Section 62.223 Price to Compare—Gas Procurement Charge

The draft final regulations would have required each NGDC to identify and remove the avoidable natural gas procurement costs included in base rates in the context of a 1308(a) tariff filing, and include these costs in a new rider to be called the Gas Procurement Charge (GPC) Rider. The GPC Rider was to be designed to remove non-SOLR avoidable costs from base rates, and to include those costs as a part of the PTC on a revenue neutral basis. I wholeheartedly support that approach as it would serve to level the playing field between NGDCs and alternative natural gas suppliers. This would have represented a significant improvement to the regulations originally proposed. However, the majority has determined to eliminate the concept of avoidable gas procurement costs from the GPC Rider. In my opinion, it is only the avoidable gas costs which are properly included within the PTC. If unavoidable costs are included in the PTC, shopping customers will be improperly subsidized by those customers that choose to remain under the regulated SOLR service.

The Natural Gas Choice and Competition Act at 66 Pa.C.S. § 2207(a) required that the NGDC serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers until such time as the Commission approves an alternative SOLR. As of today, an alternative SOLR has not been approved by the Commission for any NGDC. NGDCs shoulder this regulatory requirement. SOLR service benefits both shopping and non-shopping customers and the costs to provide this service should not be avoided by customers when purchasing alternative supply from an NGS. SOLR related costs should be paid by all customers. Furthermore, as I mentioned in my prior statements in this proceeding, if these costs are not avoidable and are included within the PTC, then they may not be recovered by the NGDCs. Unavoidable costs, regardless of whether 50,000 customers or 500 customers shop, do not go away. Inclusion of such unavoidable costs in its PTC will inflate the PTC and could result in more customers leaving the NGDC, thereby placing the unrecoverable gas procurement-related costs on an even smaller customer base. Such an unbundling of unavoidable expenses could result in stranded costs, which is an impact we must consider pursuant to 66 Pa.C.S. § 2203(3).

I also am concerned that the attempt to identify the amount of the costs to be included within the GPC in the context of a 1307(a) tariff filing will be difficult and controversial. The quantification of gas procurement related costs presently embedded in base rates should be accomplished within a base rate proceeding. There are significant factual and legal hurdles associated with removing costs from base rates outside of a base rate

proceeding. This is especially significant since the majority of recent base rate proceedings have not been fully litigated and instead have been approved based on a total allowable revenue increase pursuant to a "black-box" settlement. In such settlements, the individual components of the various cost components are not established and are not readily quantified. I am concerned that that the process established under these regulations will lead to confusion and excessive litigation, and potentially result in an inefficient and unwise use of the Commission's resources as well as the resources of the affected parties. Simply stated, are the desired benefits to be achieved worth the potential costs of these additional proceedings?

Section 62.223 Price to Compare—Inclusion of the Reconciliation for Over and Under Collections

The revised final regulations provide that the reconciliation for over and under collections, i.e. the E-factor, be included as a component of the PTC because this will purportedly provide a more accurate indication of the current cost of SOLR service when comparing offers from alternative suppliers. I disagree because this results in consumers comparing an NGS offer to a NGDC rate adjusted for prior period over/under collections. The latter is not the current gas cost of the NGDCs. The result is not an apples to apples cost comparison. Furthermore, any cost that is included within the PTC should be avoidable when a customer shops. The E-factor is not an avoidable cost as shopping customers are subject to the E-factor charge or credit within the context of the migration riders for a one-year period after switching to an alternative NGS. Including the E-factor in the PTC is doing a disservice to consumers as it is misleading and misinforms them of the current market prices of natural gas. Inappropriate pricing signals are going to be given to consumers as a result. Also, consider that when a shopping customer returns to SOLR service that customer is not subject to the E-factor for one full year. Consumers need clear pricing signals, not more confusion.

Section 62.224 Purchase of Receivables Programs

The ANOPR Order contained a lengthy discussion of whether the Commission possesses the legal authority to mandate that NGDCs implement purchase of receivables programs. The debate centers around 66 Pa.C.S. § 2205(c)(5) of the Code, which reads as follows:

No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers. The commission shall issue guidelines addressing the application of partial payments.

The Revised Final Rulemaking Order finds that the Commission does possess legal authority to mandate POR programs for NGDCs despite the above section of the Code, yet maintains the current policy of making POR programs voluntary. While I agree with the commenters that challenged the Commission's legal analysis on this issue, the regulations do not rely upon this analysis to mandate the implementation of NGDC POR programs. I support this end result, but agree with the commenters who argued that the Commission's legal analysis is flawed.

Section 62.226 NGDC Costs of Competition Related Activities

The March 27 Order proposed the creation of a surcharge mechanism to allow NGDCs to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition in this Commonwealth. For various reasons, this entire section has been eliminated entirely. The Revised Final Rulemaking Order does state that, if an NGDC makes changes to its operations and systems as a result of this rulemaking, it may request from the Commission the authority to defer those costs on its books and to seek recovery of those alleged costs in a litigated base rate case. While I am sympathetic to the concerns of various parties that the creation of the proposed surcharge would be subject to claims of impermissible single issue ratemaking, I believe that there should be some type of mechanism to allow a more timely recovery of the costs incurred to comply with this rulemaking by our incumbent NGDCs. It seems to me that by not providing this recovery, there is an inherent disincentive for NGDCs to promote competition in Pennsylvania.

Customer Information

In my statements issued in response to the Commission's March 27 Proposed Rulemaking Order and in response to the August 10 ANOFR, I expressed my concern that natural gas consumers lack the necessary information to make an informed decision as to whether they should switch to an alternative supplier. They currently receive an offer from an NGS, know what the currently effective PTC is for their NGDC and possess little more information. For example, consider a NGDC customer that receives a one-year fixed price offer from an NGS. Other than knowing the current PTC, this customer has no information on the effect of forecasted gas prices on the NGDC's PTC for the coming year. Thus, the customer makes a decision in a vacuum while the NGS is well aware of projected market conditions. Worse yet, with the adoption of today's decision to include a historic E-factor within the PTC, comparing fixed price offers from NGSs to the NGDC PTC will be like comparing apples to oranges to pears.

I had suggested that consumers be provided some form of a monthly projection of natural gas prices based upon the best available market information and requested parties to address this proposal or offer other proposals that would inform Pennsylvania consumers. Several commenters submitted responses to this request.

In its comments, the Office of Consumer Advocate stated that customers would benefit from additional information, but that it is not clear how this information can be provided in a timely and accurate manner. In their Joint Comments, the NGS parties stated that, while forecasts are unreliable, customers should be provided with a historical record of gas costs on a past 12-month or 24-month basis. Columbia Gas averred that this information should be provided by the Commission, but that the appropriate format could be addressed in a future proceeding.

The Revised Final Regulations before us today do not address this issue, but I strongly believe this information is critical to permitting natural gas consumers to make educated decisions in a more competitive natural gas market. Absent this necessary information, and considering that NGDC costs are changed quarterly, consumers are making decisions based on incomplete information. While this rulemaking may not be the proper vehicle to

address this concern, I would request that the Commission, in the future, consider how best to further educate consumers and provide them with the additional resources needed to make informed decisions.

TYRONE J. CHRISTY,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter G. NATURAL GAS DISTRIBUTION COMPANIES AND COMPETITION

Sec.	
62.221.	Purpose.
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62.224.	POR programs.
62.225.	Release, assignment or transfer of capacity.

§ 62.221. Purpose.

To foster a competitive retail marketplace for natural gas service to customers eligible for SOLR Service, which is a class of customer that consists largely of residential and small business customers, it is essential that these consumers are able to compare the price of gas purchased from their incumbent NGDCs with that offered for sale by NGSs. This subchapter sets forth a number of regulatory changes which promote competition for natural gas supplies.

§ 62.222. Definitions.

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

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

Base rate—The customer charge, distribution charge and other rates that are established in a Section 1308 proceeding under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

Basic services—As defined in § 62.72 (relating to definitions).

GPC—*Gas procurement charge*—An element of the PTC, expressed on a per MCF or dekatherms (Dth) basis, that reflects an NGDC's natural gas procurement costs and removed from the NGDC's base rate and recovered through a separate charge.

MFC—*Merchant function charge*—An element of the PTC, expressed on a per MCF or Dth basis, that reflects the cost of uncollectibles associated with an NGDC's natural gas costs.

NGDC—*Natural gas distribution company*—As defined in section 2202 of the act (relating to definitions).

NGS—*Natural gas supplier*—As defined in section 2202 of the act.

POR—*Purchase of receivables*—A program by which an NGDC purchases the accounts receivable of NGSs.

PTC—*Price to compare*—As defined in § 62.80 (relating to common natural gas competition terms).

SOLR—*Supplier of last resort*—As defined in § 62.101 (relating to definitions).

Small business customer—As defined in § 62.72.

§ 62.223. PTC.

(a) The PTC rate must be expressed on a per MCF or dekatherms (Dth) basis and consist of the following elements:

(1) The natural gas supply charge determined in the NGDC'S Section 1307(f) proceeding, including the reconciliation for over and under collections.

(2) The GPC.

(3) The MFC.

(b) An NGDC shall file a tariff change under 66 Pa.C.S. § 1308(a) (relating to voluntary changes in rates) to identify the natural gas procurement costs included in its base rate and propose tariff revisions designed to remove those costs from its base rate and to recover those annual costs as part of the PTC (the GPC portion) on a revenue neutral basis.

(1) Natural gas procurement costs must include the following elements:

(i) Natural gas supply service, acquisition and management costs, including natural gas supply bidding, contracting, hedging, credit, risk management costs and working capital.

(ii) Administrative, legal, regulatory and general expenses related to those natural gas procurement activities, excluding those related to the administration of firm storage and transportation capacity.

(2) An NGDC's natural gas procurement costs shall be updated in its next base rate case.

(c) An NGDC shall file an MFC rider. The MFC rider must remove the cost of uncollectibles applicable to natural gas costs from its distribution rates and recover those annual costs as part of the PTC on a revenue neutral basis.

(1) A write-off factor for each customer class is determined by dividing the uncollectible expense by revenues. This factor applied to the natural gas supply charge determined in the NGDC's Section 1307(f) proceeding is the implementation MFC amount that must be removed from distribution rates on a revenue neutral basis.

(2) After implementation, unbundled distribution charges may not be adjusted for the write-off factor outside of a base rate case.

(3) The MFC for each customer class must be equal to the write-off factor times the natural gas supply charge determined in the NGDC's Section 1307(f) proceeding and shall be updated quarterly to reflect new natural gas supply charges effective with each 1307(f) filing.

(4) The write-off factor shall be updated in an NGDC's next base rate case.

(d) The GPC and MFC tariff riders must identify:

(1) How the surcharges are calculated.

(2) Which costs shall be recovered through the surcharge by:

(i) Customer class.

(ii) Federal Energy Regulatory Commission account number, including the specific subaccounts used to recover eligible procurement costs.

(e) The GPC and MFC are not subject to reconciliation for a prior period over or under collections.

§ 62.224. POR programs.

(a) *Program design.*

(1) An NGDC may purchase accounts receivable from licensed NGSs which operate on the NGDC system and who wish to sell their receivables.

(2) An NGS electing to sell its receivables to an NGDC shall include its accounts receivables related to choice residential and small business basic services in the POR program.

(3) An NGS shall only sell receivables associated with basic services and may not sell other receivables related to products and services sold in relation to basic services or in addition to basic services to the NGDC's POR program. The NGS shall certify that charges do not include receivables for other products or services.

(4) To qualify for participation in an NGDC's POR program, an NGS shall use consolidated billing from the NGDC unless the NGDC's consolidated billing system cannot reasonably accommodate the NGS's billings for basic services.

(5) An NGDC's POR program shall use a discount rate designed to reflect the NGDC's actual uncollectible rate for supply service customers and the incremental costs associated with the development, implementation and administration of the POR program.

(6) The POR discount rate must account for risk and cost differences among the NGDC's customer classes.

(7) POR programs must, at a minimum, include receivables on residential and small business customer accounts.

(8) When an NGDC purchases accounts receivables from an NGS through a Commission-approved POR program and the accounts receivables are comprised only of charges for basic services, the NGDC may terminate service to customers for failure to pay NGS gas supply charges.

(9) To ensure that an NGDC's affiliated suppliers do not receive an advantage over nonaffiliated suppliers, a POR program shall be designed and implemented in accordance with §§ 62.141 and 62.142 (relating to standards of conduct).

(10) An NGDC POR program must be included in a supplier coordination tariff, as defined by Commission rules, regulations and orders, and approved by the Commission prior to implementation.

(11) To ensure that the POR discount rate accurately reflects its program costs, an NGDC shall track its POR program costs and NGS basic service collections experience. If the discount rate no longer reasonably compensates the NGDC for its POR program costs and collections experience, the NGDC shall file an update to the POR discount rate with the Commission.

(12) An NGS participating in an NGDC's POR program may separately bill a customer for a specific service or product if that service or product does not meet the definition of basic natural gas supply service.

(13) An NGS participating in an NGDC's POR program shall accept the customers responding to an offer included in the POR program without performing a credit check or requiring an additional security deposit from the customer.

(b) *Customer care.*

(1) An NGS shall follow Commission regulations relating to customer service including Chapter 56 and §§ 62.71—62.80 and 62.114 (relating to standards and billing practices for residential utility service; customer information disclosure; and standards of conduct and disclosure for licensees).

(2) An NGS shall respond to customer complaints regarding rate disputes in less than 30 days consistent with §§ 56.141, 56.151 and 62.79 (relating to dispute procedures; general rule; and complaint handling process).

(3) An NGDC shall follow 66 Pa.C.S. Chapter 14 (relating to responsible utility customer protection) and Chapter 56 when terminating service to a customer for failure to pay the NGS's basic natural gas supply charges purchased under the POR program. An NGDC may terminate service to an NGS customer only for the customer's failure to pay the portion of the accounts receivables purchased under the POR program that is comprised of charges for basic services.

(4) Reconnection of service to NGS customers following termination shall be made in accordance with 66 Pa.C.S. Chapter 14 and applicable regulations in Chapter 56.

(5) An NGDC shall agree to inform customers that service may be terminated for failure to pay NGS basic services charges by a separate bill insert that specifically describes the policy for termination of service.

(6) An enrollment letter issued by an NGDC at the time of selection of the NGS must inform customers that service may be terminated for failure to pay charges for basic services.

(c) *Transition plan for existing POR programs.*

(1) If the NGDC has an existing Commission-approved POR program that has a specific length of term, expressed in years or months, the Commission-approved POR program may continue until that term expires.

(2) The Commission will apply the POR program requirements in this section in its review of a new or updated POR program proposed by the NGDC.

(3) If the NGDC has an existing Commission-approved POR program without a defined term length, the NGDC shall update its POR program by April 14, 2015, to be consistent with this section.

§ 62.225. Release, assignment or transfer of capacity.

(a) An NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.

(1) A release, assignment or transfer must be made on a nondiscriminatory basis as to price, reliability and functionality.

(2) A release of an NGDC's pipeline and storage capacity assets must follow the customers for which the NGDC has procured the capacity, subject only to the NGDC's valid system reliability and Federal Energy Regulatory Commission constraints.

(3) A release, assignment or transfer must be based upon the applicable contract rate for capacity or Pennsylvania supply and be subject to applicable contractual arrangements and tariffs.

(4) The amount released, assigned or transferred must be sufficient to serve the level of the customers' requirements for which the NGDC has procured the capacity determined in accordance with the NGDC's tariff or procedures approved in its restructuring proceedings.

[Pa.B. Doc. No. 12-725. Filed for public inspection April 13, 2012, 9:00 a.m.]

