

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 53 ]

[ L-2013-2346923 ]

### Recovery of Fuel Costs by Gas Utilities

The Pennsylvania Public Utility Commission (Commission), on May 9, 2013, adopted a proposed rulemaking order designed to simplify and streamline information and procedures small gas utilities use when submitting gas cost rate filings with the Commission.

#### *Executive Summary*

In order to evaluate the operational and financial viability of small natural gas utilities within the Pennsylvania Public Utility Commission's (Commission) jurisdiction, the Commission directed the establishment of a Small Gas Task Force (Task Force) consisting of internal staff from the Commission's Law Bureau, Bureau of Technical Utility Services, Bureau of Audits and the Bureau of Investigation and Enforcement. In its October 28, 2011 Final Order regarding a request for relief from interest charges by North East Heat and Lighting Company (NEH&L), the Commission granted NEH&L's request that the Task Force examine issues involving the Gas Cost Rate mechanism as well as interest rate issues as applicable to small gas utilities. After a period of study and discussion, the Task Force determined that the Commission should amend its regulations to streamline the information and procedures small gas utilities use when submitting Gas Cost Rate filings with the Commission.

Specifically, the Commission proposes to implement changes to its regulations to (1) classify all natural gas utilities not qualifying for 1307(f) treatment as small gas utilities; (2) modify the schedules included in small gas utilities' GCR filings for purposes of efficiency; (3) provide small gas utilities with uniform time schedules to allow more accurate gas cost projections as winters approach; (4) allow small gas utilities to collect interest, at the interest rate specified at 66 Pa.C.S. § 1307(f)(5), on both net over and under collections from ratepayers; (5) eliminate the requirement that at least 90% of a small gas utility's annualized gas costs be rolled into base rates; and (6) implement a GCR interim tariff filing procedure to be effective on one day's notice.

Public Meeting held  
May 9, 2013

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

*Proposed Rulemaking for Revision of 52 Pa. Code, Chapter 53 §§ 53.61—53.68, pertaining to the Recovery of Fuel Costs by Gas Utilities; Doc. No. L-2013-2346923*

#### Proposed Rulemaking Order

#### *By the Commission:*

In accordance with Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission formally commences its rulemaking process to amend its existing regulations at 52 Pa. Code §§ 53.61 through 53.68, "Re-

covery of Fuel Costs by Gas Utilities," to the proposed language attached at Annex A. The purpose of this rulemaking is to simplify and streamline the information and procedures small gas utilities use when submitting gas cost rate filings with the Commission.

#### *Background and Procedural History*

On January 15, 2009, the Commission directed the establishment of a Small Gas Task Force (Task Force or SGTFF). Since its establishment, the Task Force has, among other tasks, evaluated the operational and financial viability of small natural gas utilities within the Commission's jurisdiction, met with small gas utilities operating in Pennsylvania to discuss gas safety issues and provide an overview of the standard rate case process as well as the "short form" process, and created a package of documents and a webpage on the Commission's website to help meet the gas utilities' perceived needs.<sup>1</sup> The Commission's webpage is meant to provide a one-stop location for small gas utilities to access the forms and information needed to effectively operate their companies within compliance of the law.

On October 2, 2009, the North East Heat and Lighting Company (NEH&L) submitted its 2009/2010 annual gas cost rate (GCR) filing, pursuant to 52 Pa. Code § 53.66 (related to filing requirements), to become effective November 1, 2009. NEH&L sought relief from interest charges, pursuant to section 53.66(d) (related to overcollections), for the twelve-month GCR reconciliation period that ended August 31, 2009. NEH&L's overcollections were the result of its purchasing strategy which allowed the company to take advantage of rapidly falling natural gas prices and to pass those savings on to its customers. NEH&L did not forecast rates that were unreasonable and did file an interim GCR when it realized that there would be significant overcollections, thereby seeking to minimize their accrual. The Commission granted equitable relief to NEH&L in the form of reduced interest rates on its overcollections, but emphasized that NEH&L's situation was unique and that this was a one-time partial waiver of the interest rate. See Commission Docket No. M-2009-2134358, (Order entered December 17, 2009).

The following year, on November 24, 2010, NEH&L similarly requested relief and exemption from interest charges on overcollections which accrued during the 2009/2010 GCR year. However, this time the Commission entered a Final Order denying NEH&L's request for relief. See Docket No. P-2010-2214432 (Final Order entered October 28, 2011). The Commission reasoned that (1) the amount of interest was markedly different than in the previous GCR year in which relief was granted; (2) the extraordinary circumstances such as the unusually low gas prices in the winter of 2008/2009 were not clearly evident in this year's request; and (3) NEH&L did not file an interim GCR to attempt to mitigate their overcollections as it had done previously. NEH&L argued that interest rates on overcollections were harmful because NEH&L was punished by an excessive interest rate even though it engaged in prudent business practices to procure low cost fuel below the GCR cost. Despite denying NEH&L's requested exemption, the Commission did grant NEH&L's request for the Commission's SGTFF to examine

<sup>1</sup> See webpage at: [http://www.puc.pa.gov/utility\\_industry/natural\\_gas/committees\\_and\\_working\\_groups/small\\_gas\\_task\\_force\\_.aspx](http://www.puc.pa.gov/utility_industry/natural_gas/committees_and_working_groups/small_gas_task_force_.aspx)

issues involving the GCR mechanism and to review interest rate issues raised by NEH&L as applicable to small gas utilities.

#### *Discussion*

The facts surrounding NEH&L's requests for relief submitted to the Commission, and referred to above, demonstrated to the Commission that its current regulations, at 52 Pa. Code §§ 53.61—53.68 relating to small gas utilities, should be reexamined. It was against this backdrop that the Commission ordered its Small Gas Task Force to investigate the GCR mechanism and the manner in which interest rates are assessed. The recommendations of the Task Force are the subject of the instant Proposed Rulemaking Order. By this Order, the Commission believes that the information small gas utilities must include in GCR filings will be streamlined to better accommodate the resources and capabilities of these utilities. Also, the proposed changes to interest rate assessments reflect industry advancements and the current natural gas market while creating consistency between large and small gas utilities.

The primary objectives of this proposed rulemaking include amending existing Commission regulations to allow small gas utilities to collect interest from ratepayers on net undercollections to be consistent with the rules applicable to gas utilities with revenues in excess of \$40 million (1307(f) gas utilities). Right now, small gas utilities are charged interest on net overcollections to compensate customers for the time value of their money before overcollections are refunded, but, unlike 1307(f) utilities, these small gas utilities are not allowed to collect interest on net undercollections. Also, this rulemaking is intended to amend the interest rate currently used within small gas utilities' GCR from the maximum residential mortgage rate to the rate as calculated in the manner specified at 66 Pa.C.S. § 1307(f)(5). Moreover, this rulemaking proposes to eliminate the requirement that 90% of small gas utilities' annualized gas costs be rolled into base rates so that the GCR in the line charge of customers' bills will represent 100% of their gas costs. Additional changes to the regulations at 52 Pa. Code §§ 53.61 through 53.68 include revising the schedules that GCR filings contain, providing a GCR procedure that allows interim tariff filings to become effective on one day's notice, and reclassifying all natural gas utilities that do not qualify for 1307(f) treatment as small gas utilities by eliminating Group I and Group II designations.

#### *Section 53.61. Purpose.*

Section 53.61(b) of the Commission's regulations currently provides that natural gas utilities are classified into three categories for the purpose of establishing procedures under which the Commission reviews requests by gas utilities to recover purchased gas costs and to specify information which gas utilities must file with the Commission. The Commission's recommendations in the instant Proposed Rulemaking Order require a reclassification of natural gas utilities to two categories by eliminating Group I and Group II designations. Instead, for the reasons explained below, all natural gas utilities not categorized as 1307(f) gas utilities<sup>2</sup> will be classified as small gas utilities.

<sup>2</sup> 1307(f) gas utilities have gross intrastate annual operating revenues in excess of \$40 million. 66 Pa.C.S. § 1307(f)(1).

*Section 53.62. Additional information to be filed by gas utilities with gross annual intrastate operating revenues in excess of \$40 million seeking a change in base rates.*

No revision to the language of this section is being proposed by the Commission as part of this Proposed Rulemaking Order.

#### *Section 53.63. Categories of gas utilities.*

The Commission's regulations refer to natural gas utilities with gross intrastate annual operating revenues in excess of \$40 million as 1307(f) gas utilities. Throughout the industry, the term "1307(f) gas utility" is commonly used interchangeably with "large gas utility." Directly below in this Order, the Commission proposes that all natural gas utilities with annual operating revenues less than \$40 million be referred to as small gas utilities. As the Commission believes it necessary to reclassify gas utilities from three designations to two, the Commission recommends that, hereafter, the term "Large Gas Utility" be included in its provision that defines utilities qualifying for 1307(f) treatment.

"Small gas utility" is a new classification of gas utility that will eliminate the "Group I Gas Utility" and "Group II Gas Utility" designations. Presently, classification as a Group I or Group II gas utility is determined by gross intrastate annual operating revenues. See 52 Pa. Code § 53.63. Group I utilities have annual revenues between \$2.5 million and \$40 million, inclusive, whereas Group II utilities have annual revenues less than \$2.5 million. Both Group I and Group II gas utilities have been commonly referred to as small gas companies, different from companies with annual revenues greater than \$40 million that qualify for 1307(f) treatment. 52 Pa. Code § 53.63; 66 Pa.C.S. § 1307(a)—(f).

Group I and Group II gas utilities have identical annual filing requirements; in fact, the only difference between Group I and Group II utilities is that they currently have different time schedules for reporting their filings. Group I gas utilities are required to make annual filings sixty days earlier than Group II utilities, a requirement developed with the purpose of providing the Commission a means to manage the review and approval process of filings when there were significantly more small gas utilities than today.

In the instant Proposed Rulemaking Order, the Commission proposes an identical time schedule for filings reported by Group I and Group II gas utilities. This amendment to Commission regulations eliminates the need for separate designations. This change corrects problems that may occur when variables like gas prices, market conditions, and over/under collections fluctuate from year to year. For example, a Group II gas utility might end one year with revenues that place the utility in the Group I designation, thereby changing their filing timetable for that year, but might be re-classified as a Group II gas utility the following year and again need to adjust its filing time schedule.

Therefore, pertaining to section 53.63, the term "Large Gas Utility" will be added to the definition describing utilities with operating revenues of at least \$40 million, and the terms "Group I Gas Utility" and "Group II Gas Utility" will be removed and replaced by the term "small gas utility" having the definition that appears at Annex A to this Proposed Rulemaking Order.

*Section 53.64. Filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million.*

No revisions to the substantive language of this section are being proposed by the Commission as part of this Proposed Rulemaking Order. However, the Commission takes this opportunity to update relevant provisions of this section to reflect the Commission's current organizational framework. In sections 53.64(i)(5)(iii) and 53.64(j) of this chapter, 1307(f) gas utilities are required to file a letter and quarterly reports, respectively, with the Commission. Currently, copies of these filing must be forwarded to, inter alia, the Office of Trial Staff. However, the Office of Trial Staff has since been incorporated into the Commission's Bureau of Investigation and Enforcement. Therefore, in the abovementioned provisions at Annex A, the "Office of Trial Staff" has been replaced with the "Bureau of Investigation and Enforcement."

*Section 53.65. Special provisions relating to natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million with affiliated interests.*

No revision to the language of this section is being proposed by the Commission as part of the Proposed Rulemaking Order.

*Section 53.66. Filing requirements for Small Gas Utilities.*

*1. References to Group I gas utilities should be amended to small gas utilities in section 53.66. Also, the Office of Trial Staff should be replaced with the Bureau of Investigation throughout the section.*

Section 53.66 currently refers only to filing requirements for Group I gas utilities. The Commission proposes supplanting the term "Group I Gas Utility" in the section title and throughout this section with "small gas utility." Pursuant to this Proposed Rulemaking Order, section 53.66 will regulate all natural gas utilities that do not qualify for 1307(f) treatment. This enables the Commission to reserve entirely section 53.67 which is specific to Group II gas utilities.

Additionally, section 53.66(b) provides that certain information and data may be required to be filed with the Commission's Bureau of Audits or other bureaus as the Commission might direct. Both the preliminary and the final GCR filing must be served upon additional parties including the Office of Trial Staff. As mentioned above, the former Office of Trial Staff is now part of the Commission's Bureau of Investigation and Enforcement. Therefore, this rulemaking will remove the term "Office of Trial Staff" and replace it with the "Bureau of Investigation and Enforcement" for filing purposes. These functional changes are reflected at Annex A of this Proposed Rulemaking Order.

*2. Schedules included in a Small Gas Utility's GCR filing should be amended to make filings more efficient and more manageable for small gas utilities.*

Section 53.66(a)(1) mandates that "Group I gas utilities," which will be referred to as small gas utilities for purposes of the proposed changes to this section, comply with filing requirements established by Commission orders entered in 1978 and 1984 when seeking to recover gas costs under 66 Pa.C.S. § 1307. As a result of those

orders, gas utilities filing gas cost rate tariffs have been required to submit the following nineteen schedules:

|               |                                                       |
|---------------|-------------------------------------------------------|
| Schedule 1    | Calculation of the GCR                                |
| Schedule 2    | Projected Sales and Costs                             |
| Schedule 3    | Projected Supply Volumes                              |
| Schedule 4    | Projected Supply Rates                                |
| Schedule 5    | Projected Supply Costs                                |
| Schedule 6    | Summary of E-Factor                                   |
| Schedule 7    | Statement of Over/Under Collections                   |
| Schedule 8.1  | Actual Supply Volumes                                 |
| Schedule 8.2  | Actual Supply Rates                                   |
| Schedule 8.3  | Actual Supply Costs                                   |
| Schedule 9    | Reconciliation of Prior Period—Over/Under Collections |
| Schedule 9.1  | Reconciliation of Prior Period—Miscellaneous Items    |
| Schedule 10   | Pipeline Refunds                                      |
| Schedule 11   | Reconciliation of Prior Period—Pipeline Refunds       |
| Schedule 12.a | Calculation of Base Cost of Gas                       |
| Schedule 12.b | Annualization of Gas Costs                            |
| Schedule 13   | Projected Statement of Over/Under Collections         |
| Schedule 14   | Effect of Rate Change on Residential Customer         |
| Schedule 15   | Roll-in of Base Cost of Gas for Tariff                |

By this Proposed Rulemaking Order, the Commission proposes to remove the references to the 1978 and 1984 orders and replace them with the actual filing requirements. Through this proposed change, the filing requirements will be more readily available to small gas utilities preparing gas cost rate filings and alleviate the need to review orders issued over twenty-five years ago during those preparations.

Also, the Commission plans to reduce, consolidate and streamline the filing requirements for small gas utilities filing gas cost rate tariffs. Specifically, the Commission proposes to eliminate the existing schedule called "Projected Sales and Costs," because it provides the same information that is or will be available in other schedules. The Commission further proposes to include both supply and sales volumes in the same schedule rather than having them shown in separate schedules. Similarly, the Commission's proposed changes would consolidate various schedules showing over/under collections and reconciliations into a single "1307(e) Statement of Over/Under Collections," and eliminate "Projected Statement of Over/Under Collections" and "Annualization of Gas Costs" schedules, which are unnecessary in calculating gas cost rates. In addition, the Commission is proposing to eliminate the schedule called "Roll-in of Base Cost of Gas for Tariff" to be consistent with our proposal in subsection five (5) below calling for removal of base costs of gas from gas cost rates.

In reviewing the existing schedules provided by small gas utilities, the Commission proposes to retain only those that are necessary for the calculation and review of gas cost rates. The proposed list of filing requirements contains the following eleven schedules:

|             |                                                |
|-------------|------------------------------------------------|
| Schedule 1  | Calculation of the GCR                         |
| Schedule 2  | Projected Supply and Sale Volumes              |
| Schedule 3  | Projected Supplier Rates                       |
| Schedule 4  | Calculated Projected Gas Cost                  |
| Schedule 5  | Summary of E-Factor                            |
| Schedule 6  | 1307(e) Statement of Over/Under Collections    |
| Schedule 7  | Schedule of Actual Supply Volumes              |
| Schedule 8  | Schedule of Actual Supply Rates                |
| Schedule 9  | Schedule of Actual Supply Costs                |
| Schedule 10 | Reconciliation of E-Factor                     |
| Schedule 11 | Effect of Rate Changes on Residential Customer |

The Commission is confident that this proposed list of schedules will provide a sufficient basis upon which to review the small gas utilities' filings and ensure the appropriateness of the gas cost rates charged by small gas utilities.

*3. Uniform time schedule should be implemented for GCR filings of small gas utilities.*

In the Commission's regulations presently, section 53.66(a)(2) identifies the annual time schedule for Group I gas utilities to submit a preliminary and final GCR filing to the Commission. Group I utilities are required to make such filings sixty days earlier than Group II utilities. By this rulemaking, the Commission proposes amending this section to unify the time schedules for all small gas utilities. For the reasons stated directly below, the Commission will use the time schedule that has been applicable to Group II gas utilities.

At present, Group I utilities' preliminary filings must be made in July using as much actual data as is then available. Their final filings, which occur at the beginning of August and must include updates or corrections to the data contained in their initial filing, become effective in September. Thus, a Group I gas utility projects its winter gas costs in the middle of summer. Group II utilities, however, make their initial filings in September and their final filings in October, with the filings becoming effective in November. Therefore, the Commission advises that it is more advantageous for small gas utilities to use the latter time schedule in order to more accurately project winter gas costs and to limit the number of corrections and updates to be made in actual data available between preliminary and final filings.

Likewise, to assist small gas utilities in simplifying the time schedules of annual filing requirements, the Commission proposes that section 53.66(c) (addressing reconciliation statements under 66 Pa.C.S. § 1307(e)) be amended to coincide with the abovementioned filing schedule. Therefore, reconciliation statements for small gas utilities should be filed by October 1 of each year for the 12-month period running from September 1 through August 31.

*4. Small gas utilities should be allowed to collect interest on net undercollections at the interest rate specified at 66 Pa.C.S. § 1307(f)(5), to be consistent with large gas utilities.*

As currently mandated by Commission regulations at 52 Pa. Code § 53.66(d), small gas utilities are required to pay interest to their customers only for net overcollections of gas costs. Small gas utilities are not permitted to

collect interest from ratepayers when they experience a net undercollection of their gas costs. Prior to the passage of the Natural Gas Choice and Competition Act in 1999 (Act), 1307(f) companies operated under the same rules as small gas companies regarding interest on over/under collected gas costs. However, since the Act passed, 1307(f) utilities have been permitted to recover interest from ratepayers on net undercollected gas costs.

Recognizing the inequity to small gas utilities because of this differential treatment in our present regulations, the Commission proposes that, hereafter, small gas utilities be allowed to collect interest on their company's money when net undercollections occur. This affords small gas utilities the same opportunity currently enjoyed by 1307(f) utilities. The Commission recognizes that small gas utilities operate in a similar manner to that of 1307(f) utilities, while often encountering more obstacles in the marketplace due to their diminished purchasing options and capabilities. Since no justification exists for differential treatment on the recovery of interest on net undercollections, the ability to recover interest should be extended to small gas utilities.

In reaching this conclusion, the Commission does recognize that this change departs from prior Commission policy that must now be explained. The Commission's policy on the issue of interest applied to net over/under collections of gas costs can be traced to a 1984 Opinion and Order that investigated the merits of the "Gas Cost Rate."<sup>3</sup> In that Order, the Commission affirmed its policy of requiring natural gas utilities to pay interest on overcollected gas costs, while not permitting these utilities to collect interest on any undercollected gas costs. At the time, the Commission stated the following:

The utility, not the customer, has complete control over the projection of gas supply costs and the projection of sales volume. It follows that the utility, not the customer, must bear the interest burden which results when the estimate is incorrect.

However, the 1984 Opinion and Order did allow for a one-time recovery of interest on undercollected gas costs for that portion of an undercollection that occurred as a result of Commission action,<sup>4</sup> and stated that the interest rate to be paid or received on any over/under collections be at the rate of six percent (6%) per annum.

Concerns expressed by small gas utilities as well as the goal to achieve consistency with 1307(f) utilities has prompted the Commission to reevaluate its policy as it pertains to small gas utilities. As stated above, the Commission finds that its prior position disallowing for the collection of interest on undercollections is unfair to small gas utilities. Expecting small gas utilities to project, without error, annual gas supply costs and sales volumes—both highly variable factors subject to the fickle nature of market conditions and weather patterns—places an unreasonable burden upon them. If such factors are allowed to justify why projections are skewed and overcollections occur, and hence interest paid out to customers, then the same logic should apply when there are undercollections. Also, absent evidence of negligent purchasing practices or other abuse of management discretion, the cost of capital for purchasing natural gas in advance of the time the gas utility will be paid for the gas provided to its customers is a legitimate cost of service and, therefore, should be recoverable in rates.

<sup>3</sup> See Investigation of Gas Cost Rate No. 5 at Docket Nos. M-78050055, D. 79S00192, Folder GCR No. 5 (entered March 16, 1984).

<sup>4</sup> See Investigation of Gas Cost Rate No. 5, p. 11, at Docket Nos. M-78050055, D. 79S00192, Folder GCR No. 5 (entered March 16, 1984) (regarding Commission action that led to the allowance of a one-time recovery of interest on undercollected gas costs.)

Furthermore, the Commission proposes that the interest rate applied to both over and under collections by small gas utilities should be the interest rate as calculated in the manner specified at 66 Pa.C.S. 1307(f)(5). This proposal creates consistency in interest rate assessments between large and small gas companies. If, during the pendency of this proposed rulemaking, or after, 1307(f) utilities' method of calculating interest rates changes, so too will the method for small gas utilities. We invite comments on the Commission's proposed use of the same standard that regulates large gas utilities, 66 Pa.C.S. 1307(f)(5) or, in the alternative, on other interest rates with evidence supporting their use.

Therefore, for the reasons stated above, the Commission recommends that, in addition to paying interest to ratepayers for net overcollections, all small gas utilities be permitted to recover interest from ratepayers on net undercollected gas costs. Additionally, the Commission proposes that the interest rate small gas utilities apply to both over and under collections be the same interest rate specified at 66 Pa.C.S. § 1307(f)(5).

*5. Retail customers should be able to see a GCR in the line charge of their bill that represents 100% of their gas costs by eliminating the requirement that 90% of small gas utilities annualized gas costs be rolled into base rates.*

The current GCR regulations require that at least ninety percent (90%) of a small gas utility's annualized gas costs be rolled into base rates. 52 Pa. Code § 53.66(e)(1). When this requirement commenced, gas costs fluctuated wildly; a roll-in was one way to avoid rate shock on a retail gas customer's bill. Gas costs continue to fluctuate, but now emphasis is placed on providing reliable information to the retail customers so that they may evaluate the costs of gas compared to their usage. A GCR mechanism allows for recovery of 100% of natural gas costs incurred. 66 Pa.C.S. § 1307(a)—(b). The Commission believes that small gas utility customers should see a GCR in the line charge of their bill that represents 100% of their gas costs, not one that represents only 10% or less plus the E-Factor. A small gas utility may not meet the definition of a natural gas distribution company for purposes of 66 Pa.C.S. § 2202 (Natural Gas Competition), and therefore, its customers might not have the ability to purchase their gas from an alternative supplier. However, this should not preclude small gas utilities from providing reliable information consistent with other industry providers.

The Commission proposes that the base rate roll-in of gas costs should be eliminated because it leads to a lack of consistency and comparability with rates. Presently, small gas utilities may vary the percentage of gas costs rolled into base rates. In cases where a 90% roll-in resulted in a negative GCR, the Bureau of Audits has requested from the Commission a waiver of the 90% requirement to a lower roll-in percentage. The reason for the waiver is that negative GCR is more likely to lead to confusion and question. If the base rate roll-in is eliminated, the GCR formula becomes:

$$\text{Gas Cost Rate} = \text{Cost/Sales} + \text{E-Factor/Sales}.$$

The current procedure for rolling gas costs into base rates does not require a base rate case. Presently, GCR filings result in an annual change to small gas utilities' tariffs because these utilities must roll-in at least 90% of gas costs into base rates. 52 Pa. Code § 53.66(e)(1). The amount that must be rolled into base rates is based on the annualized cost of gas divided by a utility's projected sales for the upcoming year. This unit cost is multiplied

by the base rate allocation (at least 90%) and the product is the revised base cost of gas. Then, the current base cost of gas is subtracted from the revised cost of gas; the resulting increase or decrease is the adjustment to base rates. If the gas cost roll-in to base rates is eliminated as this Rulemaking Order proposes, there will be a transition away from an annual adjustment in base rates. In the first year under the Commission's amended regulations, the revised base cost will be \$0.00 and the current base cost of gas will be subtracted from this revised base cost. The difference will be adjusted out of base rates and into small gas utilities' GCR filings. In subsequent GCR filings, 100% of gas costs will be included in the GCR and there will be no base rate roll-in. This eliminates the need of Schedule 12.a presently in our regulations.

The current gas cost roll-in to base rates does not include company-owned production recovered through base rates. If a small gas utility owns gas wells that provide gas supply, the costs associated with the production is recovered through base rates and not the GCR. Unlike gas cost roll-in to base rates, which does not require a base rate case, any change in the ownership or viability of the company's wells may require a general base rate case to adjust rates.

The elimination of the base rate roll-in will help to reduce tariff and billing errors. Currently, when a small gas company files its GCR, it must file revised tariffs. The tariff for the GCR is usually a rider with the GCR formula and rate. A small gas company typically files a revised rider page with the new GCR. The base rate roll-in is more complicated. The base rates for each customer classification in the company's tariff have to be adjusted for the change due to the roll-in. The additional procedures increase the likelihood for clerical and arithmetical errors. Removing the base rate roll-in will make the GCR filing easier because three schedules will be eliminated and at least three other schedules will become simpler. The schedules that would be included in the revised GCR filing can be found at Annex A of this proposed Rulemaking Order.

*6. The Commission recommends a GCR interim tariff filing procedure; to be beneficial to small gas utilities, the filings should be effective on one day's notice.*

Currently, Group I and Group II gas utilities are required to annually submit a preliminary and final Gas Cost Rate (GCR) filing to the Commission. The GCR filing should contain as much actual data as is available at the time. No GCR rates are to be implemented without prior Commission approval and that approval is only tentative until the utility's projections are audited in accordance with 66 Pa.C.S. § 1307(d). 52 Pa. Code § 53.66(a)—(b). The ratemaking amendment introduced at section 53.66(g), which permits interim tariff filings effective on one day's notice, is necessary and should be implemented for small gas companies for several reasons.

The GCR is based on twelve months of projected gas costs and revenues. However, in that time, gas costs can fluctuate greatly due to market demand, temperature, and customer usage. For example, an unusually warm January may result in a utility significantly overcollecting from retail customers because the utility's sales to those customers are lower than projected. Likewise, an unusually cold period might cause the utility to increase its purchases more than projected and result in significant undercollections, potentially impacting cash flows.

Another example may occur when the small gas utility operator discerns that market conditions provide an

opportunity for the utility to purchase gas at rates that are lower than projected. If a utility takes advantage of an opportunity to purchase gas at rates lower than initially projected, it is likely that overcollections will occur. On the other hand, if the utility does not act on the opportunity, its ratepayers lose because they will pay for gas at higher rates. Thus, under the Commission's present regulations, a small gas utility may be penalized for making the most of favorable market conditions when it projected paying higher gas costs over a twelve month period. See North East Heat & Light Company Request for Relief from Interest Charges Pursuant to 52 Pa. Code § 53.66(d), Related to Over-Collections, Pa. PUC Docket No. P-2010-2214432 (Final Order entered October 28, 2011). Any overcollection, if not reversed by activity in subsequent months, must be refunded to the utility's customers with interest.

A procedure that provides a small gas utility with the ability to make interim rate changes will help these utilities support their least-cost purchasing strategies. To be beneficial, however, an interim filing must be allowed to become effective on one day's notice. Fluctuations in over/under collections that cannot be addressed quickly may result in higher costs to the small gas utility in the form of interest on overcollections or to the ratepayers in the form of higher gas rates.

The Commission encourages small gas utilities to regularly monitor GCR activity as a good business practice and to utilize the interim filing option. However, the Commission will not make it a mandatory requirement that small gas utilities submit interim filings. The purpose of the ratemaking changes in this proposed rulemaking is not to create a regulation that will overburden small gas utilities. Rather, the proposed provision at 53.66(g) is meant to provide small gas utilities with a means to better manage their operations by remaining aware of their limited capabilities and resources.

*Section 53.67. Filing requirements for Group II gas utilities. (Reserved)*

In accordance with removing Group I and Group II Gas Utility designations to be replaced using small gas utilities, the Task Force recommends reserving section 53.67 in its entirety. Under the proposed rulemaking, section 53.66 will provide the filing requirements for all gas utilities that do not qualify for 1307(f) treatment. The time schedule in section 53.66(a)(2)(c) at Annex A of this proposed Rulemaking Order reflects the uniform schedule that all small gas utilities will follow and that allows section 53.67 to be reserved.

*Section 53.68. Notice requirements*

The terms "Group I Gas Utility" and "Group II Gas Utility" will be deleted and replaced by "small gas utility" with the definition that appears at Annex A to this Order. This amendment correlates with the changes proposed throughout the instant Proposed Rulemaking Order.

*Section 53.69. Fixed rate option.*

No revision to this language is being proposed by the Commission as part of the proposed Rulemaking Order.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2013, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the

Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Conclusion*

With this rulemaking, the Commission intends to revise its provisions regarding the recovery of fuel costs by small gas utilities. As stated above, the Commission proposes to (1) classify all natural gas utilities not qualifying for 1307(f) treatment as small gas utilities; (2) modify the schedules included in small gas utilities' GCR filings for purposes of efficiency; (3) provide small gas utilities with uniform time schedules to allow more accurate gas cost projections as winters approach; (4) allow small gas utilities to collect interest, at the interest rate specified at 66 Pa.C.S. 1307(f)(5), on both net over and under collections from ratepayers; (5) eliminate the requirement that at least 90% of a small gas utility's annualized gas costs be rolled into base rates; and (6) implement a GCR interim tariff filing procedure to be effective on one day's notice.

Comprehensive and detailed comments will assist in the development of cohesive and thorough final regulations. Accordingly, pursuant to Sections 501, 504, 523, 1301, 1307, and 1501 of the Public Utility Code (66 Pa.C.S. §§ 501, 504, 523, 1301, 1307 and 1501), the Commonwealth Documents Law (45 P. S. § 1201 et seq.) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we shall initiate a rulemaking proceeding to comply with our October 28, 2011 Order at Docket No. P-2010-2214432, and we are considering adopting the proposed regulations as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A proposed rulemaking be opened, at Docket Number L-2013-2346923, to consider the regulations set forth in Annex A relating to the recovery of fuel costs by small gas utilities.

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

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

4. The Secretary shall certify this proposed rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. Comments referencing the Docket Number L-2013-2346923 be submitted within 30 days and reply comments within 45 days of publication in the *Pennsylvania Bulletin*.

6. A copy of this proposed rulemaking Order and Annex A shall be served on the Bureau of Audits, the Bureau of

Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all jurisdictional Natural Gas Distribution Companies.

7. The contact person for legal matters for this proposed rulemaking is Colin W. Scott, Assistant Counsel, Law Bureau, (717) 783-5949. The contact persons for technical matters for this proposed rulemaking are, Richard Layton, Bureau of Technical Utility Services, (717) 214-9117, or Barbara Sidor, Bureau of Audits, (412) 423-9301. 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*

**Fiscal Note:** 57-297. No fiscal impact; (8) recommends adoption.

*Statement of Commissioner James H. Cawley*

In Docket No. P-2010-2214432 (Final Order entered October 28, 2011), the Commission initiated an investigation by the Small Gas Task Force (SGTF) to examine issues involving the Gas Cost Recovery (GCR) mechanism and to review interest rate issues raised by North East Heat & Light Company (NEH&L) as applicable to small gas utilities.<sup>5</sup> The proposed rulemaking that we are initiating today is an effort to improve the GCR mechanisms that enable our small gas utilities to recover their just and reasonable gas costs.

Specifically, in this rulemaking, the Commission proposes the following changes to the GCR regulations:

- Reclassify all natural gas utilities that do not qualify for § 1307(f) treatment as small gas utilities by elimination of Group I and Group II designations.
- Instead of only allowing small gas utilities to refund interest on over-collections, allow small gas utilities to collect interest on under-collections.
- Change the interest rate from the maximum residential mortgage rate to the same interest rate as for large gas utilities.
- Eliminate the requirement that 90% of small gas utilities' annualized gas costs be rolled into base rates so that the GCR in the line charge of customers' bills will represent 100% of their gas costs.
- Revise the GCR filing schedules
- Provide for a GCR procedure that allows interim tariff filings to become effective on one day's notice.

As noted, this rulemaking was initiated as a result of a Petition filed by NEH&L that sought relief from the high interest costs imposed on over-collections. NEH&L asserted that these high interest rates discouraged it from reducing gas costs relative to the projected costs, because the interest on over-collections was often in excess of their earnings. As proposed, these rulemaking changes do not appear to fundamentally address this issue. However, recent proposed statutory amendments<sup>6</sup> to § 1307(f)(5) of the Public Utility Code for large gas companies would modify the applicable interest rates to those companies, and by extension according to this proposed rulemaking, small gas companies, as follows:

Refunds to customers shall be made with and recoveries from customers shall include interest at the

<sup>5</sup> The Commission proposes that all natural gas utilities with annual operating revenues less than \$40 million be referred to as small gas utilities.  
<sup>6</sup> House Bill 1188, Printers No. 1484.

prime rate for commercial borrowing in effect 60 days prior to the tariff filing made under paragraph (1) and as reported in a publicly available source identified by the commission or at an interest rate which may be established by the commission by regulation.

Given the inherent uncertainty regarding the adoption of any proposed legislation seeking to address this issue, we invite interested parties to comment on what they believe is the optimal interest rate to approve as part of this rulemaking proceeding, including historical options of (1) legal rate of interest, (2) the maximum residential mortgage rate, (3) the proposed prime rate for commercial borrowing, (4) the LIBOR 3-month, 6-month, or 12-month rate, or (5) another interest rate (noting that the proposed legislation does provide for another interest rate other than the prime rate to be established by the Commission).

JAMES H. CAWLEY,  
*Commissioner*

**Annex A**

**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 53. TARIFFS FOR NONCOMMON CARRIERS**  
**RECOVERY OF FUEL COSTS BY GAS UTILITIES**

**§ 53.61. Purpose.**

\* \* \* \* \*

(b) This section and §§ 53.62—53.68 classify gas utilities into [ **three** ] **two** categories and set forth the filing requirements and procedures to be followed in reviewing requests for recovery of purchased gas costs in proceedings under 66 Pa.C.S. § 1307 and § 1308 (relating to voluntary changes in rates). The inclusion of this section and §§ 53.62—53.68 has been necessitated by passage of the act of May 31, 1984 (P. L. 370, No. 74), 66 Pa.C.S. §§ 514, 1307, 1317, 1318 and 2107. These sections provide for a transition from existing procedures to the new procedures.

\* \* \* \* \*

**§ 53.63. Categories of gas utilities.**

The following categories of jurisdictional gas utilities shall be applicable for the purposes of this section, §§ 53.61, 53.62 and 53.64—53.68 (relating to recovery of fuel costs by gas utilities) but shall not modify the categories of gas utilities established for other purposes, such as to prescribe proper accounting methods:

(1) *Section 1307(f) gas utility or large gas utility.* A natural gas distributor with gross intrastate annual operating revenues in excess of \$40 million, in the preceding calendar year, shall be categorized as a Section 1307(f) gas utility.

(2) [ *Group I Gas Utility* ] *Small gas utility.* A natural gas utility with gross intrastate annual operating revenues of [ **between \$2.5 million and \$40 million, inclusive** ] **\$40 million or less**, in the preceding calendar year, shall be categorized as a [ *Group I Gas Utility* ] **small gas utility**.

(3) [ *Group II Gas Utility* ]. A natural gas utility with gross intrastate annual operating revenues of **less than \$2.5 million in the preceding calendar year, shall be categorized as a Group II Gas Utility.**

(4) ] *Periodic orders.* The Commission shall periodically enter an order designating the category of each gas utility for the purposes of §§ 53.61—53.68.

§ 53.64. **Filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million.**

\* \* \* \* \*

(i) Utilities shall comply with the following:

\* \* \* \* \*

(5) A Section 1307(f) utility which files tariffs reflecting increases and decreases in gas costs in accordance with 66 Pa.C.S. § 1307(f) shall make quarterly filings in accordance with the following provisions:

\* \* \* \* \*

(iii) If the recalculated rate does not differ by more than 2% from the currently effective rate, the utility shall file a letter with the Commission to that effect, with copies to the Office of Consumer Advocate, the [ **Office of Trial Staff** ] **Bureau of Investigation and Enforcement** and the Office of Small Business Advocate. If the recalculated rate differs from the currently effective rate by more than 2%, the utility shall file a tariff incorporating the recalculated rate in accordance with this section. If the recalculated rate results in an increase that is reasonably expected to have an immaterial effect on the utility's annual gas costs, the utility shall file a letter and supporting data to that effect in lieu of a tariff rate change. Notwithstanding the letter and supporting data, the Commission may nevertheless direct the utility to file a tariff rate change. For the final 3-month period (being the 3-month period ending 1 month before the effective date of the utility's next annual Section 1307(f) tariff filing), the utility shall recalculate the rate as described in this paragraph and adjust the rate as part of its tariff filing in compliance with the Commission's final order resolving the utility's next annual Section 1307(f) proceeding.

\* \* \* \* \*

(j) Utilities under 66 Pa.C.S. § 1307(f) shall also file quarterly reports with the Commission, with a copy to the **Office of Consumer Advocate, [ Office of Trial Staff and ] the Bureau of Investigation and Enforcement and the Office of Small Business Advocate** concerning monthly gas costs incurred by the utility. The quarterly reports shall include by month change in supply source, supplier refunds received, change in supplier rates and comparison between actual costs and projected gas costs.

§ 53.66. **Filing requirements for [ Group I ] small gas utilities.**

(a) A [ **Group I Gas Utility** ] **small gas utility** seeking recovery of purchased gas costs under 66 Pa.C.S. § 1307(a) or (b) (relating to sliding scale of rates; adjustments) shall comply with the following procedures:

(1) [ **Tariffs filed by Group I** ] **Gas Cost Rate (GCR) tariffs filed by small gas utilities** for the purpose of recovery of gas costs under 66 Pa.C.S. § 1307 shall [ **comply with the Gas Cost Rate (GCR) tariff requirements established by Commission orders entered on June 7, 1978 (52 Pa.P.U.C. 217 (1978)), and March 16, 1984 at P.U.C. Docket No. M-78050055, as amended by §§ 53.61—53.65, this section and §§ 53.67 and 53.68.** ] **include the following schedules:**

- (i) **Schedule 1: Calculation of the GCR.**
- (ii) **Schedule 2: Projected Supply and Sales Volumes.**
- (iii) **Schedule 3: Projected Supplier Rates.**
- (iv) **Schedule 4: Calculated Projected Gas Cost.**
- (v) **Schedule 5: Summary of E-Factor.**
- (vi) **Schedule 6: 1307(e) Statement of Over/Under Collections.**
- (vii) **Schedule 7: Actual Supply Volumes.**
- (viii) **Schedule 8: Actual Supply Rates.**
- (ix) **Schedule 9: Actual Supply Costs.**
- (x) **Schedule 10: Reconciliation of E-Factor.**
- (xi) **Schedule 11: Effect of Rate Changes on Residential Customer.**

(2) A [ **Group I Gas Utility** ] **small gas utility** seeking recovery of its gas costs under 66 Pa.C.S. § 1307(a) or (b) shall annually submit a preliminary and a final GCR filing to the Commission to be effective [ **September** ] **November 1**, with notice to the public at the time of its initial filing as required by § 53.68 (relating to notice requirements). The preliminary filing is to be made by [ **July 3** ] **September 2**, and shall contain as much actual data as is then available. The final filing shall be made on [ **August** ] **October 2** and shall contain actual data and any updates or corrections to the data contained in the initial filing. Both the preliminary and the final filings shall be based on forecasted costs for the subsequent 12-month period ending August 31. The GCR computation is to follow a formula designated by the Commission. Upon Commission approval, a tariff shall be filed reflecting rates as approved.

\* \* \* \* \*

(b) In addition to the statements and supporting data filed as required by 66 Pa.C.S. § 1307(e), [ **Group I** ] **small gas utilities** shall file the information and data as may be required by the Bureau of Audits or other bureau as the Commission may direct. Both the preliminary and the final filing shall be served upon the Office of Consumer Advocate, the [ **Office of Trial Staff** ] **Bureau of Investigation and Enforcement** and the Office of Small Business Advocate and shall be provided to intervenors, upon request. This evidence will be considered by the Commission in formulating its audit review under 66 Pa.C.S. § 1307(d) or in other proceedings as described in subsection (c) and may be supplemented by submissions from interested persons. The audit under 66 Pa.C.S. § 1307(d) and the review of procurement policies will not be the subject of the Commission's statutorily required reconciliation hearings under 66 Pa.C.S. § 1307(e), which are governed by strict time limits.

(c) [ **Group I** ] **Small gas utilities** shall file a reconciliation statement under 66 Pa.C.S. § 1307(e) for the 12-month period running from [ **July** ] **September 1** through [ **June 30** ] **August 31** by [ **July 31** ] **October 1**. Questions on the underlying propriety of a utility's procurement policies, and the like, can be raised in a separately docketed complaint proceeding filed by a party, by Commission investigation, or in a proceeding arising from audit findings under 66 Pa.C.S. § 1307(d).

(d) Overcollections are subject to refund with interest [ **as calculated in the manner specified at 66 Pa.C.S.**



§ 1308(d) (relating to voluntary changes in rates). Customers are not liable for interest on net undercollections caused by the setting of rates under 66 Pa.C.S. § 1307 ] applied at the rate as calculated in the manner specified in 66 Pa.C.S. § 1307(f)(5). Undercollections may be recovered from ratepayers. When undercollections are recovered, interest shall be applied at the rate as calculated in the manner specified in 66 Pa.C.S. § 1307(f)(5). Adjustments to the E-Factor for correction of prior reported over/under collections or as recommended by the Bureau of Audits may include interest. Unless directed otherwise by the Commission, the adjustment for interest is the difference between the amount of interest originally reported on the applicable over/under collection and the amount of interest applicable to the adjusted over/under collection.

(e) Utilities recovering fuel costs under the GCR shall state the following information about fuel costs on customer's bills:

"This bill includes \_\_\_\_\_ per MCF which is our average cost of gas acquired for your use."

[ (1) ] The cost of gas shall be calculated exclusive of taxes and current base costs-nonfuel costs. [ The gas cost rate encompasses fuel costs, regardless of whether shown on the bill as a base cost or separately shown as a purchased gas cost. For purposes of how costs are to be shown on the bill, at least 90% of the utility's experienced gas rates will be rolled into base rates. Both rolled-in and rolled-out gas costs are gas cost rate related and are subject to refund and reconciliation under 66 Pa.C.S. § 1307(e). Base rate roll-ins shall be equally applied to rate classifications on a cents per Mcf basis for GCR related costs. ] The cost of gas must include the direct costs paid by the natural gas distribution company for the purchase and delivery of natural gas to its system to supply its customers. The GCR must include 100% of the gas costs and be shown as a separate line item on the customer bill. Gas costs included in the GCR are subject to refund and reconciliation under 66 Pa.C.S. § 1307(e). The E-Factor of Gas Adjustment Charge is a mechanism to refund or recoup over/under collected amounts under 66 Pa.C.S. § 1307(e). The E-Factor rate or Gas Adjustment Charge may be combined with the GCR or shown as a separate rate.

[ (2) Notwithstanding the language in this subsection, parties to base rate proceedings are not constrained to allocate the cost of purchased gas among customer rate classifications on a commodity basis in the preparation of class cost of service studies. ]

(f) [ Group I ] Small gas utilities shall pay interest on pipeline refunds from the time received until disbursed at a 6% annual interest rate. The refunds are to be refunded through recomputation of the E factor of the GCR formula.

(g) Small gas utilities should monitor GCR activity to avoid becoming materially over/under collected. In the event a small gas utility anticipates a material over/under collection that would result in a change in the current GCR greater than 2%, the small gas utility may submit an interim GCR tariff filing to become effective on 1 day's notice. The interim filing shall be subject to audit in accordance with 66 Pa.C.S. § 1307(d).

§ 53.67. [ Filing requirements for Group II gas utilities ] (Reserved).

[ Section 53.66 (relating to filing requirements for Group I gas utilities) applies to Group II gas utilities, with the following exceptions:

(1) The effective date for Gas Cost Rate (GCR) filings for Group II gas utilities is November 1 and a preliminary filing containing actual data then available shall be made September 2. A final filing, based upon actual data together with revisions to data in the preliminary filing shall be made October 2. Notice to customers shall be made in accordance with § 53.68(b) (relating to notice requirements) at the time of the preliminary filing. Filings shall be based on projected costs for the subsequent 12 months ending October 31. A Group II Gas Utility seeking to file its GCR for a different 12-month period shall first obtain express Commission approval to do so.

(2) The 66 Pa.C.S. § 1307(e) (relating to sliding scale of rates; adjustments) reconciliation statement shall be filed by October 1, based on the 12-month period ending August 31.

(3) GCR tariffs filed under this section shall be filed in compliance with the Commission order entered on August 3, 1979, at P.U.C. Docket no. D-79S00192, as amended by §§ 53.61—53.66, this section and § 53.68.

(4) In addition to the statements and supporting data filed as required by 66 Pa.C.S. § 1307(e), Group II gas utilities shall file information and data as may be required by the Bureau of Audits or other bureau as the Commission may direct. ]

§ 53.68. Notice requirements.

\* \* \* \* \*

(b) [ Each Group I and Group II gas utility ] Small gas utilities filing a [ Gas Cost Rate ] GCR shall provide public notice within 5 days of the preliminary filing by publishing a notice in major newspapers within the utility's service area. The notice shall inform the public of new or revised tariff filings, where the filing can be inspected, and how comments or complaints should be filed.

[Pa.B. Doc. No. 13-2042. Filed for public inspection November 1, 2013, 9:00 a.m.]