

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Public Meeting held ~~October 25, 2000~~

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|----------------------|---------------------|
| Ontario Energy Board |                     |
| FILE No.             | <u>EB-2008-0219</u> |
| EXHIBIT No.          | <u>HD3.2</u>        |
| DATE                 | <u>May 14, 2009</u> |
| <u>NS</u>            |                     |

**Commissioners Present:**

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
Nora Mead Brownell  
Terrance J. Fitzpatrick

Final Policy Statement on Maintaining Safety : Docket No. M-00001351  
and Reliability for Natural Gas Supply and :  
Distribution Service :

**ORDER**

**BY THE COMMISSION:**

**Introduction**

By order entered April 28, 2000, the Pennsylvania Public Utility Commission (Commission) adopted a proposed policy statement setting forth safety and reliability guidelines for the supply and distribution of natural gas. The Commission proposed to incorporate the guidelines into 52 Pa. Chapter 69, as Sections 69.11-69.19. The Commission further directed that the proposed policy statement be published in the Pennsylvania Bulletin for comment by interested parties. This order addresses the comments received by the Pennsylvania Office of Consumer Advocate (OCA) and the Pennsylvania Gas Association (PGA) and adopts a final policy statement.

## Background

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act (Act). The Act revised the Public Utility Code, 66 Pa. C.S. §§ 101, et. seq., by, inter alia, adding Chapter 22, relating to restructuring of the natural gas utility industry. The Commission is the agency charged with implementing the Act. The Act sets forth various responsibilities for the Commission to fulfill in restructuring the natural gas industry,

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

66 Pa. C.S. § 2203(1).

Further, the Act provides that:

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

66 Pa. C.S. § 2203(12).

The Commission established a collaborative working group as the appropriate vehicle to proceed with the implementation of the responsibilities set forth in Sections 2203(1) and (12) of the Act. The working group agreed that the Act, at Section 2203(1), recognizes the different operational characteristics of natural gas distribution companies



(NGDCs) and that this allows certain issues to be addressed in tariffs. The working group determined that regulations or policies containing detailed uniform rules for all companies might be inappropriate and unworkable.

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

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

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

October 20, 1999 Order at 2.

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

guidelines for the establishment of penalties, (7) critical day procedures necessary to maintain system safety and reliability, (8) the establishment of communication protocols on all matters which may affect system reliability, and (9) the establishment of Operational and Capacity Councils to meet the requirements of Section 2204(f) of the Natural Gas Choice and Competition Act. The Interim Guidelines provided a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures. Further, in its October 20, 1999, order, the Commission directed that an additional docket be opened so as to incorporate the Interim Guidelines into 52 Pa. Code Chapter 69, relating to policy statements and guidelines.

The Commission opened this docket for the purpose of incorporating the principles set forth in the Interim Guidelines into a policy statement. By order entered April 28, 2000, the Commission adopted the Interim Guidelines as a proposed policy statement, and amended 52 Pa. Code Chapter 69 to include Sections 69.11-69.19, which incorporated the guidelines for maintaining safety and reliability for natural gas supply and distribution service. The Commission further directed that the proposed policy statement be published in the Pennsylvania Bulletin for comment by interested parties. Pursuant to Ordering Paragraph No. 4 of the Commission's April 28, 2000 order, the Pennsylvania Office of Consumer Advocate (OCA) and the Pennsylvania Gas Association (PGA) filed comments in response to the proposed policy statement. This order addresses the comments received by the OCA and the PGA and sets forth the final form policy statement.



## **Comments**

### Pennsylvania Office of Consumer Advocate

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

Additionally, the OCA seeks clarification of proposed Section 69.12(c). OCA notes that the parallel provision within the Interim Guidelines included a reference to “any residential customer” as well as essential human needs customer. OCA requests clarification on why the reference to “any residential customer” was deleted from Section 69.12(c) in the proposed policy statement.

## Pennsylvania Gas Association

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

### **Discussion**

In order to ensure the continued safety and reliability of natural gas service in Pennsylvania in the newly restructured gas industry, the Commission proposed to establish guidelines setting forth the obligations of all NGDCs and NGSs. By Order entered October 20, 1999, the Commission adopted Interim Guidelines drafted by a collaborative working group and directed that the Interim Guidelines be incorporated into a policy statement. By Order entered April 28, 2000, the Commission sought to amend Chapter 69 of 52 Pennsylvania Code by adding Sections 69.11-69.19, which incorporated the concepts established by the Interim Guidelines adopted in the October

20, 1999 order. OCA strongly suggests that the proposed policy statement should fully conform to the original Interim Guidelines and include mandatory language.

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

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

Shenago Township Board of Supervisors v. Pa.PUC, (No. 1387 C.D., filed

December 20, 1996). Where an agency's guidelines are intended to provide a general statement of policy, they are not treated as binding administrative rules or regulations.

Willman v. Children's Hospital of Pittsburgh, 459 A.2d 855, 859 (1983) citing,

Pennsylvania Human Relations Commission v. Norristown Area School District, 473 Pa. 334, 374 A.2d 671 (1977).

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



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

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

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

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

Based upon the comments received and our consideration of the issues raised, we adopt this final policy statement as set forth in Annex A; **THEREFORE,**  
**IT IS ORDERED:**



1. That Title 52 of the Pa. Code is amended consistent with this body of this order by adding a statement of policy at Sections 69.11-69.19 to read as set forth in Annex A.

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

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

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

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

6. That alternative formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, at 717-772-4597. The contact person is David E. Screven, Assistant Counsel, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, at 717-787-2126.

**BY THE COMMISSION**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 25, 2000

ORDER ENTERED:

## **Annex A**

### **TITLE 52. PUBLIC UTILITIES**

#### **PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION**

##### **Subpart C. FIXED SERVICE UTILITIES**

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

##### **SAFETY AND RELIABILITY GUIDELINES**

#### **§ 69.11. Definitions.**

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

*Act--66 Pa.C.S. §§ 2201--2212* (relating to natural gas competition).

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

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

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

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

*Interruptible gas service*--~~Indicates that natural gas service may be interrupted consistent with the terms and conditions of the NGDC tariff.~~ INDICATES NATURAL GAS



SERVICE THAT CAN BE INTERRUPTED UNDER THE TERMS AND CONDITIONS SPECIFIED BY TARIFF OR CONTRACT.

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

*NGDC*--Natural gas distribution company.

*NGS*--Natural gas supplier.

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

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

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

*SOLR*--Supplier of last resort.

## **§ 69.12. Delivery standards for NGSs.**

(a) NGSs should deliver natural gas supplies under the terms of service specified in NGDC tariffs. Failure to deliver natural gas supplies in accordance with the tariffs may subject NGSs to penalties under procedures specified in the tariffs or revocation of licenses, or both. (See section 2203(12) of the act (relating to standards for restructuring of natural gas utility industry).) The NGSs may serve customers with different quality of service requirements, as permitted under the act and applicable NGDC tariffs.

(b) NGSs should utilize firm capacity sufficient to meet the requirements of their firm service customers except to the extent otherwise provided in each NGDC's reliability plan. Service to any essential human needs retail gas customer lacking installed and operable alternative fuel capability and any residential retail gas customer should be firm service.

(c) NGSs should warrant to the NGDC that they have sufficient firm capacity to meet the requirements of the essential human needs retail gas customers, as defined in § 69.11 (relating to definitions), and should describe the characteristics of any firm capacity to the NGDC. The NGDC should take commercially reasonable steps to attempt to verify that the firm capacity contract rights exist. The failure or inability of an NGDC to verify the existence of the contract rights using commercially reasonable steps does not relieve an NGS from any liability for failing to deliver gas, or subject the NGDC to any liability resulting from the NGS's failure to deliver.

(d) Natural gas service to interruptible gas service customers should be interrupted, pursuant to the terms and conditions of the NGDC's tariff, if the safety and reliability of firm service would be impeded by the interruptible customer's continued use of natural gas.

### **§ 69.13. Service obligations of the supplier of last resort.**

(a) The SOLR is the NGDC or an NGS, which has been designated by the Commission under section 2207 of the act (relating to obligations to serve) to provide SOLR service.

Each of the following services will be provided by an SOLR:

(1) Natural gas supply services to those customers who have not chosen an alternative NGS or who choose to be serviced by their SOLR.

(2) Natural gas supply services to those customers who are refused supply service from an NGS.

(3) Natural gas supply services to those customers whose NGS has failed to deliver its requirements.

(b) A customer should not have more than one SOLR designated for any of the services in subsection (a).

(c) An SOLR under subsection (a)(3) should provide sufficient supplies as to quantity, quality, pressure and location to meet the operational reliability requirements of the NGDC's system including a failure of one or more NGSs to do one of the following:

(1) Supply natural gas to their retail gas customers in conformance with their contractual obligations to the customers.

(2) Satisfy applicable reliability standards and obligations.

#### **§ 69.14. Obligations of the system operator.**

An NGDC should, in addition to performing any other roles such as selling natural gas, function as the system operator in ensuring that its distribution system is designed, constructed, managed and operated to safely and reliably receive and deliver natural gas throughout its facilities to customers connected to them. An NGDC, in performing its responsibilities as a system operator, may retain or acquire gas supply assets as required to perform its system operator functions in a manner which permits it to operate its



system in a safe and reliable manner. The identity of the gas supply assets utilized by the NGDC to perform its system operator function should be reviewed by the Commission annually in the NGDC's Section 1307(f) proceeding as part of the NGDC's reliability plan.

**§ 69.15. Ensuring sufficient firm capacity availability.**

(a) NGSs using firm gas supply contracts with Pennsylvania producers or storage or transportation capacity contracts acquired through assignment or release by NGDCs or acquired as the result of the nonrenewal of a storage or transportation capacity contract previously held by the NGDC should offer the SOLR, or the successor NGS, a right of first refusal to utilize the contracts at the NGS's contract cost as long as needed to serve retail gas customers being relinquished by the NGS.

(b) NGSs using storage or transportation capacity contracts acquired in a manner other than through assignment, release or nonrenewal by the NGDC should provide the SOLR a right of first refusal to use the capacity at contract cost if the NGS failed to give the SOLR and the NGDC sufficient notice or if there is insufficient alternative capacity available to serve the market being relinquished by the NGS.

(1) The SOLR may retain the right to use the capacity at cost until the SOLR, through reasonable and diligent efforts, is able to acquire replacement capacity sufficient to serve the customers being relinquished by the NGS.

(2) The NGDC or the SOLR should acquire the replacement capacity in a manner consistent with the Commission's least cost fuel procurement policy.

#### **§ 69.16. Penalties.**

Nonperformance penalties should be established at levels sufficiently high to deter NGSs from failing to comply with their delivery obligations.

(1) The penalties should be independent of and in addition to the costs incurred by the NGDC, or, in the alternative, the supplier of last resort, for replacement gas supplies, including pipeline penalties.

(2) NGDCs may take into consideration the operational costs and other liabilities NGDCs may be exposed to by virtue of an NGS's failure to deliver in establishing penalties.

(3) Failure of an NGS to honor delivery obligations may lead to disqualification from NGDC programs, suspension or revocation of the NGSs license.

(4) The disqualification, suspension or revocation should not relieve the NGS of its obligations to pay all penalties and costs incurred by the NGDC as a result of the NGS's failure to deliver.

#### **§ 69.17. Critical period procedures.**

(a) A critical period exists when the NGDC declares an Operational Flow Order (OFO). A critical period implies the need for heightened awareness and attention by all parties.

(1) OFOs are issued to alleviate stress, or potential stress, to the NGDC system that threatens safety or reliability, or both.

(2) OFOs are an action of last resort, are never issued lightly, and are only issued for safety or reliability reasons.

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(3) OFOs are distinct from, and do not preclude, other types of flow orders which an NGDC may issue to satisfy other obligations of the NGDC or the SOLR under the code or this title, such as the obligation to fulfill the least cost fuel procurement requirements of section 1318 of the act (relating to determination of just and reasonable gas cost rates).

(b) The NGDC should describe in detail, in its tariff, the actions it will take in advance of, and during a critical period. At a minimum, those actions should include the following:

(1) Exercises wherein critical period communications between, and the required responses of, the parties can be tested.

(2) A protocol for issuing and communicating system alerts that announce actual or pending events that, if unchecked, may result in a critical period, and call for voluntary actions or responses from NGSs and customers.

(3) A protocol for issuing and communicating OFOs. The protocol should address how and when the OFOs will be announced, and provide for disseminating periodic status reports during the period an OFO is in effect. OFOs should state the actions required and the reasons for the actions, be as localized as possible and be applied in a nondiscriminatory manner.

#### **§ 69.18. Communications protocols.**

Communications protocols are tools by which NGDCs, NGSs and other parties, define and describe the type, form and frequency of communications necessary to successfully fulfill customer requirements in an operating environment of increased retail choice.

Effective and consistent communications are critical to reduce errors, and provide all



entities with the information necessary to properly fulfill their respective responsibilities, both in normal and emergency circumstances. A communications protocol should include at minimum, in addition to the specific requirements in § 69.17(b)(2) and (3) (relating to critical period procedures) the following:

- (1) A detailing of contact data for both NGDC and NGS personnel responsible for the various aspects of customer contact, gas deliveries and distribution, including mechanisms for ensuring that the data is kept current for all parties.
- (2) The specification that regular meetings will be held, with joint agenda development responsibilities, including the potential scheduling of operational conference calls.
- (3) Communications, to the extent not otherwise set forth in the NGDC's tariff, associated with the NGDC's procedures for customer enrollment, billing arrangements, daily or monthly delivery quantity determination, nominations (monthly, daily, intra-day, and weekend), balancing options, reconciliation or true-ups, cash-outs and electronic data exchange requirements.
- (d) Procedures utilized by NGDCs to inform NGSs of changes to NGS delivered supplies or customer demand, or both, required to assure system reliability, both daily and seasonal, and to avoid pipeline penalties.

#### **§ 69.19. Operational and capacity councils.**

- (a) Each NGDC should create an operational and capacity council for parties referred to in section 2204(f) of the act (relating to implementation) to discuss and attempt to resolve operational and capacity issues related to customer choice, including the reliability effects

of those operational and capacity issues related to customer choice and the ongoing implementation of this section and §§ 69.11--69.18 (relating to safety and reliability guidelines). The intent of these councils is to explore the possibility of building consensus among council participants relating to operational, capacity and operational and capacity-related safety and reliability issues in a fair and nondiscriminatory manner.

(b) Each NGDC's operational and capacity council should, at a minimum, establish, in consultation with council participants, the following:

(1) A regular meeting schedule.

(2) An agenda for each meeting.

(c) The final determination of operational and reliability issues resides with the NGDC, subject to Commission review.

(d) The fact that statements were made, or positions were taken and were not considered or accepted, in operational and capacity council meetings should not be considered, or entered into evidence, in any formal proceeding before the Commission relating to any matter addressed in the council meetings.