

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1068 Session of
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LEH, STEELMAN, SEYFERT, SEMMEL AND GLADECK, MARCH 31, 1997

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 31, 1997

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for supply choice for
3 customers of natural gas utilities and for restructuring of
4 the natural gas utility industry.

5 The General Assembly finds and declares as follows:

6 (1) Over the past 20 years, the Federal Government and
7 state governments have introduced competition in several
8 industries that previously had been regulated as natural
9 monopolies.

10 (2) Interstate transmission of gas, including ancillary
11 services such as storage, is regulated by the Federal Energy
12 Regulatory Commission.

13 (3) The Federal Energy Regulatory Commission has adopted
14 a set of policies and a series of orders requiring the
15 unbundling of interstate pipeline services into
16 transportation, merchant and ancillary services. Such
17 unbundling allows customers directly to purchase gas from

1 third parties and to use interstate pipelines to transport
2 the gas.

3 (4) The unbundling of interstate pipeline services has
4 increased efficiency and controlled costs through
5 competition.

6 (5) Presently, the Pennsylvania Public Utility
7 Commission regulates the price and services of natural gas
8 distribution utilities.

9 (6) Users of natural gas are permitted by regulated
10 natural gas distribution utility tariffs to transport gas
11 purchased directly from their choice of suppliers.

12 (7) Many Pennsylvania industrial and commercial
13 customers purchase natural gas directly from suppliers and
14 pay the natural gas distribution utility to transport the gas
15 for them. Currently, almost all industrial customers, many
16 commercial customers but few residential customers transport
17 gas in this Commonwealth.

18 (8) Existing Pennsylvania Public Utility Commission
19 policies and rules may restrict the ability to participate in
20 gas transportation service to higher volume transactions,
21 limiting the efficacy of such purchasing by residential and
22 small commercial customers.

23 (9) Natural gas competes with fuel oil, propane gas,
24 electricity and other energy sources as a heating, cooking
25 and industrial fuel. Under existing law, price regulation has
26 already been or is in the process of being eliminated for all
27 fuel sources except natural gas.

28 (10) Many state governments are implementing or studying
29 policies that would create a competitive market for the
30 supply of natural gas to all end users.

1 (11) Competitive market forces are more effective than
2 economic regulation in controlling the costs of natural gas
3 supplies.

4 (12) It is in the public interest to permit all retail
5 customers to obtain direct access to a competitive natural
6 gas supply market as long as safe distribution service is
7 available at levels of reliability that are currently enjoyed
8 by the citizens and businesses in this Commonwealth.

9 (13) This Commonwealth must complete the transition from
10 regulation to greater competition in the natural gas supply
11 market to benefit all classes of customers, to help
12 households maintain the most just and reasonable energy
13 services and to protect the Commonwealth's ability to compete
14 in the national and international marketplace for industry
15 and jobs.

16 (14) The Commonwealth should seek to embrace the
17 benefits of competitive gas prices and services in as
18 expeditious a time frame as possible.

19 (15) The Commonwealth must continue the protections,
20 policies and services that now assist customers who are low
21 income to afford natural gas service.

22 (16) In order to ensure the safety and reliability of
23 the natural gas system, to ensure the continued provision of
24 high quality customer service and to avoid economic
25 dislocation, utilities shall consider the experience and
26 expertise of their work force in moving towards competition.

27 (17) The purpose of this act is to modify existing
28 legislation and regulations and to establish standards and
29 procedures in order to create direct access by all retail
30 customers to the competitive market for the supply of natural

1 gas while maintaining the safety and reliability of the
2 natural gas distribution system for all parties. Natural gas
3 industry restructuring should ensure the reliability of the
4 interconnected natural gas system by maintaining the
5 efficiency of the natural gas distribution system.

6 (18) Existing Pennsylvania Public Utility Commission
7 policies, rules, regulations and orders related to
8 transportation service or competitive gas supply services
9 should be reviewed and modified as necessary to be consistent
10 with this act.

11 (19) This act requires natural gas distribution
12 companies to unbundle their rates and services for all
13 customers and to provide comparable, nondiscriminatory open
14 access over their distribution systems to allow competitive
15 suppliers to sell natural gas directly to consumers in this
16 Commonwealth. The purchase and sale of natural gas will no
17 longer be regulated as a public utility function except as
18 otherwise provided for in this act.

19 (20) Natural gas suppliers, marketers and certain other
20 service providers will be required to obtain licenses,
21 demonstrate financial and technical fitness and comply with
22 such other requirements concerning service as the
23 Pennsylvania Public Utility Commission deems necessary for
24 the protection of the public.

25 (21) It is in the public interest for the transportation
26 and distribution of natural gas to continue to be regulated
27 subject to the jurisdiction and active supervision of the
28 Pennsylvania Public Utility Commission and other regulatory
29 agencies.

30 (22) Natural gas distribution companies shall no longer

1 perform the merchant function for customers in their local
2 distribution service areas except that they will continue to
3 be the supplier of last resort to all natural gas
4 distribution customers in order to ensure the availability of
5 natural gas supply to all natural gas customers unless
6 another provider of last resort is approved by the
7 Pennsylvania Public Utility Commission.

8 (23) There are certain public purpose costs, including
9 programs for low-income assistance, energy conservation and
10 others, which have been implemented and supported by public
11 utilities' bundled rates. The public purpose is to be
12 promoted by continuing universal service and energy
13 conservation policies, protection and services, and full
14 recovery of such costs is to be permitted through a
15 nonbypassable rate mechanism.

16 (24) All participants in the restructured natural gas
17 industry are encouraged to coordinate their plans and
18 transactions as appropriate in order to maintain the
19 reliability and efficiency of the natural gas distribution
20 system. The Pennsylvania Public Utility Commission shall
21 establish and enforce coordination, inspection, maintenance,
22 repair and replacement standards as necessary.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 Section 1. Subpart D of Part I of Title 66 of the
26 Pennsylvania Consolidated Statutes is amended by adding a
27 chapter to read:

28 CHAPTER 22

29 NATURAL GAS COMPETITION

30 Sec.

1 2201. Short title of chapter.

2 2202. Definitions.

3 2203. Standards for restructuring of natural gas utility
4 industry.

5 2204. Implementation.

6 2205. Duties of natural gas distribution companies.

7 2206. Consumer protections and customer service.

8 2207. Obligation to serve.

9 2208. Requirements for natural gas suppliers.

10 2209. Market power remediation.

11 2210. Approval of proposed mergers, consolidations,
12 acquisitions or dispositions.

13 § 2201. Short title of chapter.

14 This chapter shall be known and may be cited as the Natural
15 Gas Choice and Competition Act.

16 § 2202. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Aggregator," "marketer" or "market aggregator." An entity
21 licensed by the Pennsylvania Public Utility Commission that
22 purchases and takes title to natural gas supply as an
23 intermediate for resale to retail customers.

24 "Broker." An entity licensed by the Pennsylvania Public
25 Utility Commission that acts as an agent or intermediary in the
26 sale and purchase of natural gas supply but does not take title
27 to the natural gas.

28 "Customer" or "consumer." A retail purchaser of natural gas
29 supply or distribution services.

30 "Direct access." The right of natural gas suppliers and

1 customers to utilize and interconnect with the natural gas
2 distribution system on a nondiscriminatory basis at rates, terms
3 and conditions of service.

4 "Natural gas distribution company." The public utility
5 providing facilities and related services for the jurisdictional
6 distribution of natural gas to retail customers.

7 "Natural gas supplier." A person or corporation, including
8 municipal corporations or other municipal organizations that
9 choose to provide natural gas supply outside their municipal
10 limits or any other entity that sells natural gas supply to end-
11 use customers utilizing the jurisdictional distribution
12 facilities of the natural gas distribution company or that
13 purchases, brokers, arranges or markets natural gas for sale to
14 end-use customers utilizing the jurisdictional distribution
15 facilities of a natural gas distribution company. The term
16 excludes producers supplying free gas to end-users under the
17 terms of an oil or gas lease.

18 "Reliability." Includes adequacy and security. As used in
19 this definition, the term "adequacy" means the provision of
20 sufficient volumes of natural gas so as to supply the aggregate
21 requirements of consumers, taking into account peak and seasonal
22 demands and system operation contingencies, and the term
23 "security" means designing, maintaining and operating a system
24 so that it can handle emergencies safely while continuing to
25 operate.

26 "Natural gas supply services." Acquiring and reselling or
27 arranging the sale of natural gas to end-users, including all
28 related services except distribution service.

29 "Universal service and energy conservation." Policies,
30 protections and services that help low-income customers to

1 maintain natural gas service. The term includes customer
2 assistance programs, termination of service protection and
3 policies and services that help low-income customers to reduce
4 or manage energy consumption in a cost-effective manner, such as
5 the low-income usage reduction programs and consumer education.
6 § 2203. Standards for restructuring of natural gas utility
7 industry.

8 The following interdependent standards shall govern the
9 commission's actions in adopting rules, orders or policies and
10 in reviewing, assessing and approving each public utility's
11 restructuring filings, oversight of the transition process and
12 regulation of the restructured natural gas distribution utility
13 industry:

14 (1) The commission shall adopt and enforce standards as
15 necessary to ensure continuation of safe and reliable natural
16 gas distribution service to all natural gas consumers in this
17 Commonwealth. In adopting such standards, the commission
18 shall consider the absence of any applicable industry
19 standards and practices or adopt standards in conformity with
20 industry standards and practices meeting the standards of
21 this chapter.

22 (2) Consistent with section 2204 (relating to
23 implementation), the commission shall allow customers to
24 choose among natural gas suppliers in a competitive natural
25 gas market through direct access. Customers shall be able to
26 choose among alternatives such as firm and interruptible
27 natural gas supply service and flexible pricing. These
28 alternatives may be provided by different natural gas
29 suppliers.

30 (3) The commission shall require natural gas utilities

1 to unbundle natural gas supply service, tariffs and customer
2 bills to separate the charges for natural gas supply and
3 distribution services. The commission may require the
4 unbundling of other services.

5 (4) Except as provided in section 2207 (relating to
6 obligation to serve), natural gas distribution companies
7 shall no longer engage in the merchant function of natural
8 gas supply. The commission shall require a natural gas
9 distribution utility to separate physically, operationally
10 and legally all natural gas supply facilities and functions
11 from gas distribution operations. Separated affiliates of
12 natural gas distribution companies may provide gas supply and
13 other services to customers in this Commonwealth as provided
14 in this chapter and pursuant to commission rules, orders or
15 regulations.

16 (5) Consistent with the provisions of section 2204, the
17 commission shall require that a public utility that owns or
18 operates jurisdictional distribution facilities shall provide
19 distribution service to all retail natural gas customers in
20 their service territory and to all natural gas suppliers,
21 affiliated or nonaffiliated, on comparable nondiscriminatory
22 rates, terms of access and other conditions.

23 (6) The commission shall require by rule or order that
24 restructuring of the natural gas utility industry be
25 implemented in a manner that does not unreasonably
26 discriminate against one customer class for the benefit of
27 another.

28 (7) The commission shall by order establish for each
29 natural gas distribution utility an appropriate cost-recovery
30 mechanism which is designed to recover fully the natural gas

1 distribution utility's universal service and energy
2 conservation costs over the life of these programs.

3 (8) The commission shall ensure that universal service
4 and energy conservation policies, activities and services are
5 appropriately funded and available in each natural gas
6 distribution service territory. Policies, activities and
7 services under this paragraph shall be funded in each natural
8 gas distribution service territory by nonbypassable,
9 competitively neutral cost-recovery mechanisms that fully
10 recover the costs of universal service and energy
11 conservation services. The commission shall encourage the use
12 of community-based organizations that have the necessary
13 technical and administrative experience to be the direct
14 providers of services or programs which reduce energy
15 consumption or otherwise assist low-income customers to
16 afford natural gas service. Programs under this paragraph
17 shall be subject to the administrative oversight of the
18 commission which shall ensure that the programs are operated
19 in a cost-effective manner.

20 (9) The commission shall continue to regulate
21 distribution services for new and existing customers in
22 accordance with Chapter 13 (relating to rates and rate
23 making) and this chapter. For purposes of setting rates under
24 Chapter 13, any future test year utilized shall reflect the
25 costs of service that will be incurred during the period of
26 time when the proposed rates will be in effect. As of April
27 1, 1999, the date upon which all customers shall be permitted
28 to choose their supplier of natural gas, the utility shall
29 adopt a final reconciliation of section 1307(f) (relating to
30 sliding scale of rates; adjustments) natural gas costs, and,

1 thereafter, no longer conduct gas cost review proceedings
2 pursuant to section 1307(f).

3 (10) The commission shall permit the continuation of
4 natural gas direct access or transportation service tariffs,
5 policies or programs in existence as of the effective date of
6 this chapter. As part of each natural gas distribution
7 utility restructuring proceeding, the commission shall review
8 and modify any term of any policy, tariff or program that is
9 materially inconsistent with this chapter.

10 (11) At the time each utility submits its restructuring
11 filing with the commission, the utility shall submit an
12 initial proposal that sets forth how universal service and
13 energy conservation obligations shall be met.

14 (12) The commission shall make its determinations
15 pursuant to this chapter and shall adopt such orders or rules
16 as necessary and appropriate to ensure that natural gas
17 suppliers meet their supply obligations, including, but not
18 limited to, establishing penalties for failure to deliver
19 natural gas and revoking licenses.

20 § 2204. Implementation.

21 (a) Commencement of direct access.--The supply of natural
22 gas and other unbundled services shall no longer be regulated as
23 public utility services or functions except as otherwise
24 provided for in this chapter. As of April 1, 1999, consistent
25 with this chapter, customers of natural gas distribution
26 companies in this Commonwealth shall have the opportunity to
27 purchase natural gas supply services from their choice of
28 suppliers. The ultimate choice of natural gas suppliers is to
29 rest with the customer. The commission shall adopt such orders,
30 rules, regulations and policies as shall be necessary and

1 appropriate to implement fully this chapter within the
2 timeframes specified in this chapter.

3 (b) Restructuring filings.--All natural gas utilities in
4 this Commonwealth shall file with the commission, pursuant to a
5 schedule to be determined by the commission in consultation with
6 the natural gas distribution utilities, beginning on June 1,
7 1997, but in no event later than December 30, 1997, a
8 restructuring proposal consistent with this chapter and
9 commission directives to implement direct access to a
10 competitive market for the supply of natural gas.

11 (c) Contents of restructuring filings.--A restructuring plan
12 under subsection (b) shall include, consistent with the orders
13 and rules adopted by the commission, unbundled prices or rates
14 for gas distribution and supply; a proposal to physically,
15 operationally and legally separate an existing natural gas
16 utility's gas supply merchant function from the distribution
17 function; a proposed "gas supplier of last resort" mechanism in
18 which the natural gas distribution company or other gas supplier
19 shall have the duty to provide gas supply to any customer not
20 otherwise able to obtain gas supply; a proposed service delivery
21 and cost recovery mechanism for universal service and
22 conservation obligations; procedures for ensuring direct access
23 to all licensed natural gas suppliers; a discussion of the
24 impacts of the proposed plan on the utility's employees; revised
25 tariffs and rate schedules implementing the filing; and such
26 other information as the commission shall require as necessary
27 to implement this chapter.

28 (d) Commission review.--The commission shall review the
29 restructuring filing of each natural gas utility and shall,
30 after open evidentiary hearings with proper notice and

1 opportunity for all parties to cross-examine witnesses, issue an
2 order accepting, modifying or rejecting such filing at the
3 earliest date possible, but no later than nine months from the
4 filing date. If the commission rejects a restructuring filing,
5 it shall state the specific reasons for rejection and direct the
6 natural gas utility to address such objections with another
7 filing within 30 days of the entry date of the commission order
8 rejecting the prior filing. The commission shall review the
9 alternative filing, solicit comments from interested parties and
10 issue a final order within 45 days of the revised filing.

11 (e) Performance based rates and alternative regulation.--The
12 commission may use performance-based rates as an alternative to
13 existing rate-base/rate-of-return ratemaking.

14 § 2205. Duties of natural gas distribution companies.

15 (a) General rule.--Each natural gas distribution company
16 shall maintain the integrity of the distribution system at least
17 in conformity with the standards established by the Federal
18 Department of Transportation and such other standards practiced
19 by the industry in a manner sufficient to provide safe and
20 reliable service to all customers connected to the system
21 consistent with this title and the commission's orders or
22 regulations. In performing such duties, the natural gas
23 distribution company shall implement procedures to require all
24 natural gas suppliers to deliver natural gas to the natural gas
25 distribution company at locations, volumes, qualities and
26 pressures which are adequate to meet the natural gas supplier's
27 obligations to its customers. Subject to commission approval,
28 the natural gas distribution company may require that the
29 customer install, at the customers' expense, enhanced metering
30 capability sufficient to match the natural gas delivered by the

1 natural gas suppliers with consumption by the customer.

2 (b) Installation and improvement of facilities.--The natural
3 gas distribution company shall not have an obligation to install
4 nonstandard facilities, either as to type or location, for the
5 purpose of receiving natural gas from the natural gas supplier
6 unless the natural gas supplier or its customer pays the full
7 cost of these facilities. Nothing in this chapter shall prevent
8 the natural gas distribution company from maintaining and
9 upgrading its system to meet customer requirements consistent
10 with the requirement of section 1501 (relating to character of
11 service and facilities) or compliance with environmental, safety
12 and reliability requirements, and the commission may establish
13 incentive programs to encourage such systems maintenance and
14 upgrades. Disputes concerning facilities shall be subject to the
15 jurisdiction of the commission and may be initiated by the
16 filing of a complaint under section 701 (relating to complaints)
17 by the natural gas supplier or the customer.

18 (c) Customer billing.--

19 (1) Subject to the right of a customer to choose to
20 receive separate bills from its natural gas supplier for
21 natural gas commodity sales service, the natural gas
22 distribution company may be responsible for billing customers
23 for all natural gas services, consistent with the orders or
24 regulations of the commission, regardless of the identity of
25 the provider of those services.

26 (2) Customer bills shall contain unbundled charges
27 sufficient to enable the customer to determine the basis for
28 those charges.

29 (3) If services are provided by an entity other than the
30 natural gas distribution company, the entity that provided

1 those services shall furnish to the natural gas distribution
2 company billing data sufficient to enable the natural gas
3 distribution company to bill customers.

4 (4) The natural gas distribution company shall not be
5 required to forward payment to entities providing services to
6 customers, and on whose behalf the natural gas distribution
7 company is billing those customers, before the natural gas
8 distribution company has received payment for those services
9 from customers.

10 § 2206. Consumer protections and customer service.

11 (a) Quality.--The natural gas distribution company shall
12 continue to provide customer service functions consistent with
13 the orders and regulations of the commission, including meter
14 reading, complaint resolution and collections. Customer services
15 shall, at a minimum, be maintained at the same level of quality
16 under retail competition.

17 (b) Change of suppliers.--The commission shall, by order or
18 regulation, establish procedures to ensure that a natural gas
19 distribution company does not change a customer's natural gas
20 supplier without direct oral confirmation from the customer of
21 record or written evidence of the customer's consent to a change
22 of supplier.

23 (c) Customer information.--The commission shall, by order or
24 regulation, establish requirements that each natural gas
25 distribution company, natural gas supplier, marketer, aggregator
26 and broker provides adequate, accurate, customer information to
27 enable customers to make informed choices regarding the purchase
28 of all natural gas services offered by that provider.

29 Information should be provided to consumers in an understandable
30 format that enables consumers to compare prices and services on

1 a uniform basis.

2 (d) Consumer education.--Prior to the implementation of any
3 restructuring plan under section 2204 (relating to
4 implementation), each natural gas distribution company, in
5 conjunction with the commission, shall implement a consumer
6 education program informing customers of the changes in the
7 natural gas utility industry. The program shall provide
8 consumers with information necessary to help them make
9 appropriate choices as to their natural gas service. The
10 education program shall be subject to approval by the
11 commission.

12 § 2207. Obligation to serve.

13 A natural gas distribution company's obligation to provide
14 natural gas service following implementation of restructuring
15 and the choice of alternative gas supply by a customer is
16 revised as follows:

17 (1) Until April 1, 1999, the date upon which all
18 customers shall be permitted to choose their supplier of
19 natural gas, the natural gas distribution company shall
20 continue to have the full, existing obligation to serve in
21 its service territory, including the duty to connect, supply
22 and deliver natural gas to customers.

23 (2) After April 1, 1999, the date upon which all
24 customers shall be permitted to choose their supplier of
25 natural gas, the natural gas distribution company shall have
26 the obligation to connect and deliver natural gas to
27 customers in its service territory as provided by law and
28 regulations adopted by the commission.

29 (3) After April 1, 1999, the date upon which all
30 customers shall be permitted to choose their supplier of

1 natural gas, the natural gas distribution company may not
2 engage in the merchant function except as expressly provided
3 in this chapter.

4 (4) After April 1, 1999, the date upon which gas
5 distribution companies generally shall cease the merchant
6 function of supplying natural gas to customers in its service
7 territory, the natural gas distribution company shall
8 continue to have the obligation to provide natural gas
9 commodity service unless the commission has approved an
10 alternative supplier of last resort. The commission shall
11 ensure that there is at all times one or more suppliers of
12 last resort that shall have the duty to acquire and sell
13 natural gas at prevailing market prices to any customer not
14 otherwise able to obtain gas supply.

15 (5) The natural gas distribution company shall treat all
16 customers comparably, whether they are former gas supply
17 customers, remaining gas supply customers, new applicants for
18 natural gas distribution service or customers of gas supply
19 affiliates.

20 § 2208. Requirements for natural gas suppliers.

21 (a) License requirements.--No person or corporation,
22 including municipal corporations which choose to provide service
23 outside their municipal limits except to the extent provided
24 prior to the effective date of this chapter, brokers and
25 marketers, aggregators and other entities, shall engage in the
26 business of a natural gas supplier in this Commonwealth unless
27 the person or corporation holds a license issued by the
28 commission.

29 (b) License application and issuance.--An application for a
30 natural gas supplier license must be made to the commission in

1 writing, be verified by oath or affirmation and be in such form
2 and contain such information as the commission may, by rule or
3 order, require. A license shall be issued to any qualified
4 applicant, authorizing the whole or any part of the service
5 covered by the application, if it is found that the applicant is
6 fit, willing and able to perform properly the service proposed
7 and to conform to the provisions of this title and the lawful
8 order and regulations of the commission under this title,
9 including those concerning standards and billing practices, and
10 that the proposed service, to the extent authorized by the
11 license, will be consistent with the public interest and the
12 policy declared in this chapter otherwise, such application
13 shall be denied.

14 (c) Financial fitness.--

15 (1) In order to ensure the safety and reliability of the
16 supply of natural gas in this Commonwealth, no natural gas
17 supplier license shall be issued or remain in force unless
18 the holder complies with all of the following:

19 (i) Furnishes a bond or other security approved by
20 the commission, in form and amount to ensure the
21 financial responsibility of the natural gas supplier and
22 the supply of natural gas at retail in accordance with
23 contracts, agreements or arrangements.

24 (ii) Provides the commission with the address of the
25 participant's principal office in this Commonwealth and
26 the address of the participant's registered agent in this
27 Commonwealth, the latter being the address at which the
28 participant may be served process.

29 (2) Failure of a natural gas supplier to comply with the
30 provisions of this chapter or the rules, regulations, orders

1 or directives of the commission pursuant hereto shall be
2 cause for the commission to revoke the license of the natural
3 gas supplier or service provider.

4 (d) Transferability of licenses.--No license issued under
5 this chapter may be transferred without prior commission
6 approval.

7 (e) Form of regulation of natural gas suppliers.--The
8 commission may forbear from applying requirements of this part
9 which it determines are unnecessary due to competition among
10 natural gas suppliers. In regulating the service of natural gas
11 suppliers, the commission shall impose requirements necessary to
12 ensure that the present quality of service provided by natural
13 gas utilities does not deteriorate, including billing practices
14 as provided for in 52 Pa. Code Ch.56 (relating to standards and
15 billing practices for residential utility service).

16 (f) Availability of the service of brokers, marketers or
17 aggregators.--Prior to approving the licensure of any broker and
18 marketer or aggregator, the commission shall set forth standards
19 to ensure that all customer classes may choose to purchase
20 natural gas through a broker, marketer or aggregator. The
21 commission shall also ensure that brokers, marketers and
22 aggregators comply with applicable provisions of 52 Pa. Code Ch.
23 56.

24 § 2209. Market power remediation.

25 (a) Monitoring competitive conditions.--The commission shall
26 adopt one or more codes of conduct governing the activities of
27 and relationships between natural gas distribution companies,
28 their affiliates and other natural gas suppliers and monitor and
29 enforce compliance with such codes. In addition, the commission
30 shall monitor the market for the supply and distribution of

1 natural gas to retail customers and take steps as set forth in
2 this section to prevent anticompetitive or discriminatory
3 conduct and the unlawful exercise of market power.

4 (b) Initiation of investigations.--Upon complaint or upon
5 its own motion, for good cause shown, the commission shall
6 conduct an investigation of the impact on the proper functioning
7 of a fully competitive retail natural gas market, including the
8 effect of mergers, consolidations, acquisition or disposition of
9 assets or securities of natural gas suppliers and
10 anticompetitive or discriminatory conduct affecting the retail
11 distribution of natural gas.

12 (c) Conduct of investigations.--

13 (1) The commission may require a natural gas supplier to
14 provide information, including documents and testimony, in
15 accordance with the commission's regulations regarding the
16 discovery of information from any natural gas supplier.

17 (2) Material which the commission determines to be
18 confidential, proprietary or trade secret information
19 provided under this subsection shall not be disclosed to any
20 person not directly employed or retained by the commission to
21 conduct the investigation without the consent of the party
22 providing the information.

23 (3) Notwithstanding the prohibition on disclosure of
24 information in paragraph (2), the commission shall disclose
25 information obtained under this subsection to the Office of
26 Consumer Advocate and the Office of Small Business Advocate
27 under an appropriate confidentiality agreement. The
28 commission may disclose the information to appropriate
29 Federal or State law enforcement officials if it determines
30 that the disclosure of the information is necessary to

1 prevent or restrain a violation of Federal or State law and
2 it provides the party that provided the information with
3 reasonable notice and opportunity to prevent or limit
4 disclosure.

5 (d) Referrals and investigation.--If, as a result of the
6 investigation conducted under this section, the commission has
7 reason to believe that anticompetitive or discriminatory
8 conduct, including the unlawful exercise of market power, is
9 preventing the retail natural gas customers in this Commonwealth
10 from obtaining the benefits of a properly functioning and
11 workable competitive retail natural gas market, the commission,
12 pursuant to its regulations, shall:

13 (1) Refer its findings to the Attorney General, the
14 United States Department of Justice, the Securities and
15 Exchange Commission or the Federal Energy Regulatory
16 Commission.

17 (2) Subject to subsection (c)(3), disclose any
18 information it has obtained in the course of its
19 investigation to the agency or agencies to which it had made
20 a referral under paragraph (1).

21 (3) Intervene, as provided and permitted by law or
22 regulation, in any proceedings initiated as a result of a
23 referral made under paragraph (1).

24 § 2210. Approval of proposed mergers, consolidations,
25 acquisitions or dispositions.

26 (a) General rule.--In the exercise of authority the
27 commission otherwise may have to approve the mergers or
28 consolidations by natural gas utilities or natural gas suppliers
29 or the acquisition or disposition of assets or securities of
30 other public utilities or natural gas suppliers, the commission

1 shall consider whether the proposed merger, consolidation,
2 acquisition or disposition is likely to result in
3 anticompetitive or discriminatory conduct, including the
4 unlawful exercise of market power, which will prevent retail
5 natural gas customers of this Commonwealth from obtaining the
6 benefits of a properly functioning and workable competitive
7 retail natural gas market.

8 (b) Procedure.--Upon request for approval, the commission
9 shall provide notices and an opportunity for open, public
10 evidentiary hearings. If the commission finds, after hearing,
11 that a proposed merger, consolidation, acquisition or
12 disposition is likely to result in anticompetitive or
13 discriminating conduct, including the unlawful exercise of
14 market power, which will prevent retail natural gas customers in
15 this Commonwealth from obtaining benefits of a properly
16 functioning and workable competitive retail natural gas market,
17 the commission shall not approve such proposed merger,
18 consolidation, acquisition or disposition, except upon such
19 terms and conditions as it finds necessary to preserve the
20 benefits of a properly functioning and workable competitive
21 retail natural gas market.

22 (c) Preservation of rights.--Nothing in this chapter shall
23 restrict the right of any party to pursue any other remedy
24 available to it under this part.

25 Section 2. The provisions of this act are severable. If any
26 provision of this act or its application to any person or
27 circumstance is held invalid, the invalidity shall not affect
28 other provisions or applications of this act which can be given
29 effect without the invalid provision or application.

30 Section 3. This act shall take effect June 30, 1997.