

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 601 Session of
1999

INTRODUCED BY PICCOLA, BELL, BOSCOLA, HART, WHITE, CONTI,
THOMPSON, WENGER, EARLL, SCHWARTZ, LEMMOND, GERLACH, ROBBINS,
MELLOW, STOUT, WAGNER, LOEPER, MUSTO AND MURPHY,
MARCH 15, 1999

SENATOR BELL, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS
AMENDED, MAY 5, 1999

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; AND MAKING A REPEAL. <—

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 1307(f) and (g), 1317 and 1318 of Title
8 66 of the Pennsylvania Consolidated Statutes are amended to
9 read:

10 § 1307. Sliding scale of rates; adjustments.

11 * * *

12 (f) Recovery of natural gas costs.--

13 (1) Natural gas [distributors] distribution companies,
14 as defined in section 2202 (relating to definitions), with
15 gross intrastate annual operating revenues in excess of
16 \$40,000,000 may file tariffs reflecting actual and projected
17 increases or decreases in their natural gas costs and the

1 tariffs shall have an effective date six months from the date
2 of filing. The commission shall promulgate regulations
3 establishing the time and manner of such filing, but, except
4 for adjustments pursuant to a tariff mechanism authorized in
5 this title, no such natural gas [utility] distribution
6 company shall voluntarily file more than one such tariff in a
7 12-month period: Provided, That [nothing]:

8 (i) Nothing contained herein shall prohibit any
9 party from advising the commission that there has been or
10 there is anticipated to be a significant difference
11 between the natural gas costs to the [utility] natural
12 gas distribution company and the costs reflected in the
13 then effective tariff or the commission from acting upon
14 such advice.

15 (ii) A natural gas distribution company may also
16 file a tariff to establish a mechanism by which such
17 natural gas distribution company may further adjust its
18 rates for natural gas sales on a regular, but no more
19 frequent than monthly, basis to reflect actual or
20 projected changes in natural gas costs reflected in rates
21 established pursuant to paragraph (2), subject to annual
22 reconciliation under paragraph (5). In the event that the
23 natural gas distribution company adjusts rates more
24 frequently than quarterly, it shall also offer retail gas
25 customers a fixed rate option which recovers natural gas
26 costs over a 12-month period, subject to annual
27 reconciliation under paragraph (5). The commission shall,
28 within 60 days of the effective date of this
29 subparagraph, promulgate rules or regulations governing
30 such adjustments and fixed rate option, but the

1 commission shall not prohibit such adjustments or fixed
2 rate option.

3 (2) The commission shall conduct an investigation and
4 hold a hearing or hearings, with notice, to [investigate]
5 review the tariffs and consider the plans filed pursuant to
6 section 1317 (relating to regulations of natural gas costs).
7 Where there has been an indication of consumer interest, the
8 hearing shall be held in the service territory of the natural
9 gas [distributor] distribution company. Prior to the
10 effective date of the filing, the commission shall issue an
11 order establishing the rate to be charged to reflect such
12 [increases or decreases] changes in natural gas costs. [Rates
13 established under this subsection do not constitute either a
14 sliding scale of rates or an automatic adjustment subject to
15 the prohibitions in subsections (a) and (b).] The commission
16 shall annually review and approve plans for purposes of
17 reliability and supply. Such rates, however, are subject to
18 the [kinds] types of audits, reports and proceedings required
19 by subsection (d).

20 (3) Within 60 days following the end of such 12-month
21 period as the commission shall designate, each [public
22 utility] natural gas distribution company subject to this
23 subsection shall file with the commission a statement which
24 specifies for such period:

25 (i) The total revenues received pursuant to this
26 section.

27 (ii) The total [gas expense] natural gas costs
28 incurred.

29 (iii) The difference between the amounts specified
30 by subparagraphs (i) and (ii).

1 (iv) [Evidence explaining how actual] How actual
2 natural gas costs incurred differ from the natural gas
3 costs allowed under paragraph (2) and why such
4 differences occurred.

5 (v) How these natural gas costs are consistent with
6 a least cost procurement policy as required by section
7 1318 (relating to determination of just and reasonable
8 [natural] gas cost rates).

9 Such report shall be a matter of public record and copies
10 thereof shall be made available by the [gas distributor]
11 natural gas distribution company to any person upon request.
12 Copies of the reports shall be filed with the Office of
13 Consumer Advocate and the Office of Small Business Advocate
14 at the same time as they are filed with the commission.

15 (4) The commission shall hold a public hearing on the
16 substance of such statement submitted by a [utility] natural
17 gas distribution company as required in paragraph (3) and on
18 any related matters.

19 (5) The commission, after hearing, shall determine the
20 portion of the [companies] company's natural gas distribution
21 actual natural gas costs in the previous 12-month period
22 which meet the standards set out in section 1318. The
23 commission shall, by order, direct each [gas utility] natural
24 gas distribution company subject to this subsection to refund
25 to its [patrons any] customers gas revenues collected
26 pursuant to paragraph (2) which exceed the amount of actual
27 [gas expenses] natural gas costs incurred consistent with the
28 standards in section 1318 and to recover from its [patrons]
29 customers any amount by which the actual [gas expenses,]
30 natural gas costs, which have been incurred consistent with

1 the standards in section 1318, exceed the revenues collected
2 pursuant to paragraph (2). Absent good reason to the
3 contrary, the commission shall issue its order within six
4 months following the filing of the statement described in
5 paragraph (3). Refunds to [patrons] customers shall be made
6 with interest, [which shall be the average rate of interest
7 specified for residential mortgage lending by the Secretary
8 of Banking in accordance with the act of January 30, 1974
9 (P.L.13, No.6), referred to as the Loan Interest and
10 Protection Law,] at the legal rate of interest plus two
11 percent, during the period or periods for which the
12 commission orders refunds[:], and recoveries from customers
13 shall include interest at the legal rate of interest:
14 Provided, That nothing contained herein shall limit the
15 applicability of any defenses, principles or doctrines which
16 would prohibit the commission's inquiry into any matters
17 that were decided finally in the commission's order issued
18 under paragraph (2).

19 (6) The commission shall require that customers
20 transferring from sales to transportation service be subject
21 to the over or under collection adjustment provided for in
22 paragraph (5) and shall require further that customers
23 transferring from transportation service to sales service not
24 be subject to the over or under collection adjustment for an
25 appropriate period following either such transfer.

26 (g) Definition.--As used in this section, [the term "natural
27 gas" includes natural gas, liquefied natural gas, synthetic
28 natural gas and any natural gas substitutes.] the terms "natural
29 gas costs" and "gas costs" include the direct costs paid by a
30 natural gas distribution company for the purchase and the

1 delivery of natural gas to its system in order to supply its
2 customers. Such costs may include costs paid under agreements to
3 purchase natural gas from sellers; costs paid for transporting
4 natural gas to its system; costs paid for natural gas storage
5 service from others, including the costs of injecting and
6 withdrawing natural gas from storage; all charges, fees, taxes
7 and rates paid in connection with such purchases, pipeline
8 gathering, storage and transportation; and costs paid for
9 employing futures, options and other risk management tools.
10 "Natural gas" and "gas" include natural gas, liquified natural
11 gas, synthetic natural gas and any natural gas substitutes.

12 § 1317. Regulation of natural gas costs.

13 (a) General rule.--In every rate proceeding instituted by a
14 natural gas distribution utility, pursuant to section 1307(f)
15 (relating to sliding scale of rates; adjustments), each such
16 utility shall be required to [provide] supply to the commission
17 such information, to be established by commission regulation
18 within 120 days of the passage of this section, that will permit
19 the commission to make specific findings as to whether the
20 utility is pursuing a least cost fuel procurement policy,
21 consistent with the utility's obligation to provide safe,
22 adequate and reliable service to its customers. Such information
23 shall include, but need not be limited to, information, data and
24 statements regarding:

25 (1) The utility's participation in rate proceedings
26 before the Federal Energy Regulatory Commission which affect
27 the utility's gas costs.

28 (2) The utility's efforts to negotiate favorable
29 contracts with gas suppliers and to renegotiate existing
30 contracts with gas suppliers or take legal actions necessary

1 to relieve the utility from existing contract terms which are
2 or may be adverse to the interests of the utility's
3 ratepayers.

4 (3) The utility's efforts to secure lower cost gas
5 supplies both within and outside of the Commonwealth,
6 including the use of transportation arrangements with
7 pipelines and other gas distribution companies.

8 (4) The sources and amounts of all gas supplies which
9 have been withheld or have been caused to be withheld from
10 the market by the utility and the reasons why such gas is not
11 to be utilized.

12 (b) Integrated gas companies.--In the case of a natural gas
13 distribution utility which purchases all or part of its gas
14 supplies from an affiliated interest, as that term is defined in
15 section 2101 (relating to definition of affiliated interest),
16 such utility shall, in addition to the materials required in
17 subsection (a), be required to provide to the commission such
18 information, to be established by commission regulation within
19 120 days of the passage of this section, that will permit the
20 commission to make specific findings as to whether any purchases
21 of gas from an affiliated interest are consistent with a least
22 cost fuel procurement policy, consistent with the utility's
23 obligation to provide safe, adequate and reliable service to its
24 customers. Such information shall include, but need not be
25 limited to, statements regarding:

26 (1) Efforts made by the utility to obtain gas supplies
27 from nonaffiliated interests.

28 (2) The specific reasons why the utility has purchased
29 gas supplies from an affiliated interest and demonstration
30 that such purchases are consistent with a least cost fuel

procurement policy.

(3) The sources and amounts of all gas supplies which have been withheld from the market by the utility or any affiliated interest and the reasons why such gas is not being utilized.

(c) Reliability plans.--As part of its filing under section 1307(f) or if it is not required to make such a filing on an annual basis, a natural gas distribution company, as defined in section 2202 (relating to definitions), shall file a proposed reliability plan with the commission which shall, at a minimum, identify the following:

(1) The projected peak day and seasonal requirements of the firm customers utilizing the distribution system of the natural gas distribution company during the 12-month projected period specified in section 1307(f)(1). Where operationally required, the design peak day requirements shall be specified for discrete segments of each natural gas distribution system.

(2) The transportation capacity, storage, peaking or on system production that ensures deliverability of the natural gas supplies necessary to meet such projected period peak day and seasonal requirements.

(d) Supply plans.--As part of its filing under section 1307(f), a natural gas distribution company shall file a proposed plan with the commission for acquisition or receipt of natural gas supplies.

[(c)] (e) Definition.--As used in this section, the [term "natural gas" includes natural gas, liquified natural gas, synthetic natural gas and any natural gas substitutes] terms "natural gas costs," "gas costs," "natural gas" and "gas" shall

1 have the same definitions as provided in section 1307(g).

2 § 1318. Determination of just and reasonable [natural] gas cost
3 rates.

4 (a) General rule.--In establishing just and reasonable rates
5 for those natural gas distribution [utilities] companies, as
6 defined in section 2202 (relating to definitions), with gross
7 intrastate operating revenues in excess of \$40,000,000 under
8 section 1307(f) (relating to sliding scale of rates;
9 adjustments) or 1308(d) (relating to voluntary changes in rates)
10 or any other rate proceeding, the commission shall consider the
11 materials provided by the utilities pursuant to section 1317
12 (relating to regulation of natural gas costs). No rates for a
13 natural gas distribution utility shall be deemed just and
14 reasonable unless the commission finds that the utility is
15 pursuing a least cost fuel procurement policy, consistent with
16 the utility's obligation to provide safe, adequate and reliable
17 service to its customers. In making such a determination, the
18 commission shall be required to make specific findings which
19 shall include, but need not be limited to, findings that:

20 (1) The utility has fully and vigorously represented the
21 interests of its ratepayers in proceedings before the Federal
22 Energy Regulatory Commission.

23 (2) The utility has taken all prudent steps necessary to
24 negotiate favorable gas supply contracts and to relieve the
25 utility from terms in existing contracts with its gas
26 suppliers which are or may be adverse to the interests of the
27 utility's ratepayers.

28 (3) The utility has taken all prudent steps necessary to
29 obtain lower cost gas supplies on both short-term and long-
30 term bases both within and outside the Commonwealth,

1 including the use of gas transportation arrangements with
2 pipelines and other distribution companies.

3 (4) The utility has not withheld from the market or
4 caused to be withheld from the market any gas supplies which
5 should have been utilized as part of a least cost fuel
6 procurement policy.

7 (b) Limitation on gas purchased from affiliates.--In any
8 instance in which a natural gas distribution [utility] company
9 purchases all or part of its gas supplies from an affiliated
10 interest, as that term is defined in section 2101 (relating to
11 definition of affiliated interest), the commission, in addition
12 to the determinations and findings set forth in subsection (a),
13 shall be required to make specific findings with regard to the
14 justness and reasonableness of all such purchases. Such findings
15 shall include, but not be limited to findings:

16 (1) That the utility has fully and vigorously attempted
17 to obtain less costly gas supplies on both short-term and
18 long-term bases from nonaffiliated interests.

19 (2) That each contract for the purchase of gas from its
20 affiliated interest is consistent with a least cost fuel
21 procurement policy.

22 (3) That neither the utility nor its affiliated interest
23 has withheld from the market any gas supplies which should
24 have been utilized as part of a least cost fuel procurement
25 policy.

26 (c) Shut-in gas; special rule.--In determining whether a gas
27 utility has purchased the least costly natural gas available,
28 the commission shall consider as available to the utility any
29 gas supplies that reasonably could have been brought to market
30 during the relevant period but which were voluntarily withheld

1 from the market by the utility or an affiliated interest of the
2 utility.

3 (d) Other regulatory approvals.--The fact that a contract or
4 rate has been approved by a Federal regulatory agency for
5 interstate ratemaking purposes shall not, in and of itself, be
6 adequate to satisfy the utility's burden of proof that gas
7 prices and volumes associated with such contract or rate are
8 just and reasonable for purposes of this section.

9 (e) Reports.--Each natural gas distribution utility with
10 gross intrastate annual operating revenues in excess of
11 \$40,000,000 shall file with the commission [and], the Office of
12 Consumer Advocate and the Office of Small Business Advocate, in
13 accordance with regulations to be prescribed by the commission,
14 quarterly reports setting forth the actual gas costs incurred by
15 the utility on a monthly basis. Actual gas costs shall be
16 reviewed for their accuracy by the Bureau of Audits at least
17 annually and the results of that review shall be submitted to
18 the commission.

19 (f) Definition.--As used in this section, the [term includes
20 natural gas, liquified natural gas, synthetic natural gas and
21 any natural gas substitutes.] terms "natural gas" "natural gas
22 costs," "gas costs," and "gas" shall have the same definitions
23 as provided in section 1307(g).

24 Section 2. Subpart D of Part I of Title 66 is amended by
25 adding a chapter to read:

26 CHAPTER 22

27 NATURAL GAS COMPETITION

28 Sec.

29 2201. Short title of chapter.

30 2202. Definitions.

1 2203. Standards for restructuring of natural gas utility
2 industry.

3 2204. Implementation.

4 2205. Duties of natural gas distribution companies.

5 2206. Consumer protections and customer service.

6 2207. Obligation to serve.

7 2208. Requirements for natural gas suppliers.

8 2209. Market power remediation.

9 2210. Approval of proposed mergers, consolidations,
10 acquisitions or dispositions.

11 2211. Rate caps.

12 § 2201. Short title of chapter.

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

15 § 2202. Definitions.

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

19 "Consumer protection." The standards, practices and service
20 protections for retail gas customers, including those provided
21 for in 52 Pa. Code Ch. 56 (relating to standards and billing
22 practices for residential utility service), as well as
23 applicable Federal and State debt/credit collection statutes and
24 any regulations or orders of the commission that provide such
25 protections, as may be modified by the commission from time to
26 time.

27 "Entity." A person or corporation as defined in section 102
28 (relating to definitions).

29 "Natural gas distribution company." A public utility that
30 provides natural gas distribution services and which may provide

1 natural gas supply services and other services. For purposes of
2 this chapter, this term does not include:

3 (1) any public utility subject to the jurisdiction of
4 the commission which has annual gas operating revenues of
5 less than \$6,000,000 per year, except where the public
6 utility voluntarily petitions the commission to be included
7 within this definition or where the public utility seeks to
8 provide natural gas supply services to retail gas customers
9 outside its service territory; or

10 (2) any natural gas public utility subject to the
11 jurisdiction of the commission that is not interconnected to
12 an interstate gas pipeline by means of a direct connection or
13 an indirect connection through the distribution system of
14 another natural gas public utility or through a natural gas
15 gathering system.

16 "Natural gas distribution service." The delivery of natural
17 gas to retail gas customers utilizing the jurisdictional
18 facilities of the natural gas distribution company.

19 "Natural gas supplier." An entity other than a natural gas
20 distribution company, but including natural gas distribution
21 company marketing affiliates, which provides natural gas supply
22 services to retail gas customers utilizing the jurisdictional
23 facilities of a natural gas distribution company. The term
24 includes a natural gas distribution company that provides
25 natural gas supply services outside its certificated service
26 territories. The term includes a municipal corporation, its
27 affiliates or any joint venture, to the extent that it chooses
28 to provide natural gas supply services to retail customers
29 located outside of its corporate or municipal limits, as
30 applicable, other than:

1 (i) as provided prior to the effective date of this
2 chapter, pursuant to a certificate of public convenience
3 if required under this title;

4 (ii) total natural gas supply services in de minimis
5 amounts;

6 (iii) natural gas supply services requested by, or
7 provided with the consent of, the public utility in whose
8 certificated territory the services are provided; or

9 (iv) natural gas supply services provided to the
10 municipal corporation itself or its tenants on land it
11 owns or leases, or is subject to an agreement of sale or
12 pending condemnation, as of September 1, 1999, to the
13 extent permitted by applicable law independent of this
14 chapter.

15 The term excludes an entity to the extent that it provides free
16 gas to end-users under the terms of an oil or gas lease.

17 Notwithstanding any other provision of this title, a natural gas
18 supplier that is not a natural gas distribution company is not a
19 public utility as defined in section 102 (relating to
20 definitions) to the extent that the natural gas supplier is
21 utilizing the jurisdictional distribution facilities of a
22 natural gas distribution company or is providing other services
23 authorized by the commission.

24 "Natural gas supply services."

25 (1) The term includes:

26 (i) The sale or arrangement of the sale of natural
27 gas to retail gas customers; and

28 (ii) services that may be unbundled by the
29 commission under section 2203(3) (relating to standards
30 for restructuring of natural gas utility industry).

1 (2) The term does not include distribution service.

2 "Reliability." The term comprises adequacy and security. The
3 term "adequacy" means the provision of sufficient volumes and
4 deliverability of natural gas so as to supply the requirements
5 of retail gas ~~consumers~~ CUSTOMERS, taking into account peak and <—
6 seasonal demands, as well as isolated market areas and system
7 operation contingencies. The term "security" means designing,
8 maintaining and operating a system so that it can safely handle
9 extreme conditions, as well as emergencies.

10 "Retail gas customer." A direct purchaser of natural gas
11 supply services or natural gas distribution services, other than
12 a natural gas supplier. The term excludes an occupant of a
13 building or facility where the owner/operators manage the
14 internal distribution system serving such building or facility
15 and supply natural gas and other related services to occupants
16 of the building or facility; where such owner/operators are
17 direct purchasers of natural gas supply service; and where the
18 occupants are not direct purchasers.

19 "Universal service and energy conservation." Policies,
20 practices and services that help residential low-income retail
21 gas customers and other residential retail gas customers
22 experiencing temporary emergencies, as defined by the
23 commission, to maintain natural gas supply and distribution
24 services. The term includes retail gas customer assistance
25 programs, termination of service protections and consumer
26 protection policies and services that help residential low-
27 income customers and other residential customers experiencing
28 temporary emergencies to reduce or manage energy consumption in
29 a cost-effective manner, such as the low-income usage reduction
30 programs and consumer education.

1 § 2203. Standards for restructuring of natural gas utility
2 industry.

3 The following interdependent standards shall govern the
4 commission's actions in adopting rules, orders or policies and
5 in reviewing, assessing and approving each natural gas
6 distribution company's restructuring filings and overseeing the
7 transition process and regulation of the restructured natural
8 gas utility industry:

9 (1) The commission shall adopt and enforce standards as
10 necessary to ensure continuation of the safety and
11 reliability of the natural gas supply and distribution
12 service to all retail gas customers. In adopting the
13 standards, the commission shall consider the absence of any
14 applicable industry standards and practices or adopt
15 standards in conformity with industry standards and practices
16 meeting the standards of this chapter. The application of
17 such standards shall be in a manner that incorporates the
18 operating requirements of the different natural gas
19 distribution companies.

20 (2) Consistent with section 2204 (relating to
21 implementation), the commission shall allow retail gas
22 customers to choose among natural gas suppliers and natural
23 gas distribution companies to the extent that they offer such
24 natural gas supply services. Retail gas customers shall be
25 able to choose from these suppliers a variety of products,
26 including, but not limited to, different supply and pricing
27 options, and services that evolve as the competitive
28 marketplace matures. Neither any natural gas supplier nor any
29 natural gas distribution company shall offer interruptible
30 gas service to any essential human needs retail gas customer

lacking installed and operable alternative fuel capability or to any residential RETAIL GAS customer.

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

(4) Consistent with the provisions of section 2204, the commission shall require that a natural gas distribution company that owns or operates jurisdictional distribution facilities shall provide distribution service to all retail gas customers in its service territory and to all natural gas suppliers, affiliated or nonaffiliated, on nondiscriminatory rates, terms of access and other conditions.

(5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner

1 that does not unreasonably discriminate against one customer
2 class for the benefit of another.

3 (6) After notice and hearings, the commission shall
4 establish for each natural gas distribution company an
5 appropriate nonbypassable, competitively neutral cost-
6 recovery mechanism which is designed to recover fully the
7 natural gas distribution company's universal service and
8 energy conservation costs over the life of these programs.
9 Except as provided in paragraph (10), policies, activities
10 and services under this paragraph shall be funded and spent
11 in each natural gas distribution COMPANY'S service territory. <—
12 Nothing in this chapter shall be construed to prohibit public
13 funding or voluntary funding by third parties of a natural
14 gas distribution company's universal service and energy
15 conservation programs.

16 (7) The commission shall, at a minimum, continue the
17 level and nature of the consumers protections, policies and
18 services within its jurisdiction that are in existence as of
19 the effective date of this chapter to assist low-income
20 retail gas customers to afford natural gas services.

21 (8) The commission shall ensure that universal service
22 and energy conservation policies, activities and services are
23 appropriately funded and available in each natural gas
24 distribution service territory. The commission shall
25 encourage the use of community-based organizations that have
26 the necessary technical and administrative experience to be
27 the direct providers of services or programs which reduce
28 energy consumption or otherwise assist low-income retail gas
29 customers to afford natural gas service. Programs under this
30 paragraph shall be subject to the administrative oversight of

1 the commission, which shall ensure that the programs are
2 operated in a cost-effective manner.

3 (9) Each natural gas distribution company shall set
4 forth in its restructuring filing an initial proposal to meet
5 its universal service and energy conservation obligations.

6 (10) Consistent with paragraph (7), the commission shall
7 convene a task force to review universal service programs and
8 their funding. The task force shall issue a report to the
9 commission by December 31, 1999, and annually thereafter.
10 Recommendations regarding the use of general State revenue
11 shall be concurrently forwarded to the General Assembly.

12 (11) The commission shall continue to regulate rates for
13 natural gas distribution services for new and existing retail
14 gas customers in accordance with Chapter 13 (relating to
15 rates and rate making) and this chapter.

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

25 (13) Each natural gas distribution company shall set
26 forth in its restructuring filing an initial proposal to meet
27 its employee transition obligations precipitated by this
28 chapter.

29 (14) The natural gas distribution company may continue
30 to provide natural gas service to its customers under all

1 tariff rate schedules and riders incorporated into its
2 tariff, and policies or programs, existing on the effective
3 date of this chapter.

4 (15) BEGINNING MAY 1, 1999, AND CONTINUING FOR A 36- <—
5 MONTH PERIOD THEREAFTER, IF A NATURAL GAS DISTRIBUTION
6 COMPANY LAYS OFF OR TERMINATES ANY OF ITS EMPLOYEES, EXCEPT
7 FOR JUST CAUSE, THE NATURAL GAS DISTRIBUTION COMPANY SHALL:

8 (I) PROVIDE THE COMMISSION WITH SUFFICIENT
9 INFORMATION TO SHOW THAT WITH THE REDUCTION OF EMPLOYEES
10 THE COMPANY WILL STILL BE ABLE TO ENSURE THE SAFETY AND
11 RELIABILITY OF NATURAL GAS DISTRIBUTION SERVICE TO ALL
12 RETAIL GAS CUSTOMERS, AS PROVIDED FOR BY THE COMMISSION
13 UNDER PARAGRAPH (1).

14 (II) PROVIDE AT LEAST 60 DAYS' WRITTEN NOTICE OF
15 SUCH LAYOFF OR TERMINATION TO THE COMPANY'S EMPLOYEES'
16 AUTHORIZED BARGAINING REPRESENTATIVE.

17 § 2204. Implementation.

18 (a) Commencement of customer choice.--Beginning on November
19 1, 1999, unless the commission for good cause shown extends this
20 period by no more than eight months, consistent with this
21 chapter, all retail gas customers of natural gas distribution
22 companies shall have the opportunity to purchase natural gas
23 supply services from a natural gas supplier or their natural gas
24 distribution company to the extent it offers such services. The
25 choice of natural gas suppliers shall rest with the RETAIL GAS <—
26 customer. The commission shall adopt orders, rules, regulations
27 and policies as shall be necessary and appropriate to implement
28 fully this chapter within the time frames specified in this
29 chapter, provided that the commission may, in the context of
30 each natural gas distribution company's restructuring

1 proceeding, establish the time frames for implementation of
2 specific components of each natural gas distribution company's
3 restructuring plan.

4 (b) Restructuring filings.--All natural gas distribution
5 companies in this Commonwealth shall file with the commission,
6 pursuant to a schedule to be determined by the commission in
7 consultation with the natural gas distribution companies, a
8 restructuring filing consistent with this chapter and with any
9 orders, rules or regulations adopted by the commission.

10 (c) Commission review.--

11 (1) The commission shall review the restructuring filing
12 of each natural gas distribution company and shall, after
13 open evidentiary hearings with proper notice and opportunity
14 for all parties to cross-examine witnesses and brief issues,
15 issue an order accepting, modifying or rejecting such filing
16 at the earliest date possible, but no later than nine months
17 from the filing date.

18 (2) In issuing the restructuring order, the commission
19 may consider the results of any collaborative process
20 previously engaged in during or prior to the restructuring
21 proceeding.

22 (3) If the commission modifies or rejects a
23 restructuring filing, it shall state the specific reasons for
24 modification or rejection and direct the natural gas
25 distribution company to address such objections with another
26 filing within 30 days of the entry date of the commission
27 order modifying or rejecting the prior filing.

28 (4) The commission shall review the alternative filing,
29 solicit comments and reply comments from interested parties
30 and issue a final order within 45 days of the revised filing.

(d) Release, assignment or ~~assignment~~ TRANSFER of capacity.--

(1) A natural gas distribution company holding contracts for firm storage or transportation capacity, including gas supply contracts with Pennsylvania producers, on the effective date of this chapter may, at its option, release, assign or otherwise transfer such capacity, or Pennsylvania supply, in whole or part, associated with those contracts on a nondiscriminatory basis to licensed natural gas suppliers or large commercial or industrial customers on its system.

(2) Contracts which by their terms must be renewed within 150 days after the effective date of this chapter or contracts for which the last day for notice of renewal or nonrenewal pursuant to the notice provision of the contract has occurred or is within 150 days after the effective date of this chapter and which are renewed pursuant to such notice requirements shall also be subject to the provisions of this subsection.

(3) Such release, assignment or transfer shall be at the applicable contract rate for such capacity, or Pennsylvania supply, and shall be subject to applicable contractual arrangements and tariffs. The amount so released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the natural gas distribution company has procured such capacity, determined in accordance with the natural gas distribution company's tariff or procedures approved in its restructuring proceedings.

(4) The licensed natural gas supplier shall accept such release, assignment or transfer of that capacity, or

1 Pennsylvania supply, and enter into all applicable contracts
2 or agreements, as a condition of serving retail gas customers
3 on the natural gas distribution company's system.

4 (5) On or after July 1, 2002, the commission shall have
5 the authority to prevent such assignments, releases or
6 transfers under either of the following circumstances:

7 (i) the natural gas distribution company, alone or
8 together with one or more natural gas suppliers,
9 voluntarily proposes an alternative to such assignments,
10 releases or transfers and the commission finds such
11 alternative to be in the public interest; or

12 (ii) upon the petition of the licensed natural gas
13 supplier who desires to use alternate interstate storage
14 or transportation capacity to serve its customers on the
15 natural gas distribution company's system, the commission
16 makes the following findings and issues a final order as
17 to which all appeals have been exhausted in which:

18 (A) The commission finds that the alternate
19 capacity which the natural gas supplier seeks to
20 utilize meets the operational needs and reliability
21 standards of the natural gas distribution company.

22 (B) The commission confirms that the natural gas
23 distribution company's specific transportation and
24 storage capacity contracts to be displaced are no
25 longer needed to serve firm customers of the natural
26 gas distribution company.

27 (C) The commission authorizes the natural gas
28 distribution company to follow a specific, written
29 mitigation plan approved by the commission or, if
30 such a plan is not approved or applicable, to post

1 the displaced capacity for release in accordance with
2 the rules and regulations of the Federal Energy
3 Regulatory Commission and applicable requirements of
4 interstate pipelines.

5 (D) The commission authorizes the natural gas
6 distribution company to recover the difference
7 between the amount the natural gas distribution
8 company is required to pay under the applicable
9 contract terms for the capacity released, assigned or
10 transferred pursuant to subparagraph (c) and the
11 amount the natural gas distribution company receives
12 from an entity, if any, that acquires such capacity.
13 Under no circumstances, however, shall such recovery
14 result in shifting of costs between customer classes
15 or in any increase in rates to customers who continue
16 to purchase natural gas supplies from the natural gas
17 distribution company acting in its supplier of last
18 resort function.

19 (6) Prior to making the filing provided for in paragraph
20 (5), the natural gas supplier shall meet with the natural gas
21 distribution company to discuss the natural gas supplier's
22 proposed alternatives to the existing gas supply or capacity
23 contracts or to their mandatory assignment.

24 (7) Those natural gas distribution companies having gas
25 supply contracts with Pennsylvania producers may address the
26 issue of post-July 1, 2002, assignment of such contracts in
27 their restructuring proceeding or thereafter.

28 (e) New and renewed capacity.--

29 (1) Subject to the service obligations imposed by this
30 title, and to the extent such capacity is not needed to meet

1 the natural gas distribution company's least cost fuel
2 procurement and other applicable standards pursuant to this
3 title, prior to entering into new or renewed contracts for
4 firm storage or transportation capacity not subject to
5 subsection (d)(1), (2), (3) or (4) each natural gas
6 distribution company shall offer on a nondiscriminatory basis
7 to each natural gas supplier licensed to do business on its
8 system, and to large volume industrial or commercial
9 customers of the natural gas distribution company being
10 served by such contracts, the opportunity to renew such
11 contracts, pursuant to the rules and regulations of the
12 Federal Energy Regulatory Commission, or to enter into other
13 contracts for capacity.

14 (2) The capacity shall meet the reliability criteria of
15 the natural gas distribution company and, in the case of
16 large volume industrial and commercial customers being served
17 by such contracts, shall meet their current requirements.

18 (3) Each natural gas distribution company shall utilize
19 the collaborative process established pursuant to subsection
20 (f) to address its capacity requirements.

21 (4) Absent the natural gas supplier or large volume
22 industrial or commercial customer taking or providing such
23 capacity, the natural gas distribution company shall file
24 with and obtain approval from the commission for such
25 contracts necessary to ensure sufficient capacity to meet
26 current and projected customer requirements considering the
27 commitments of natural gas suppliers.

28 (5) Prior to being displaced by a natural gas supplier's
29 alternate interstate storage or transportation capacity,
30 contracts renewed or entered into by the natural gas

1 distribution company pursuant to this subsection shall be
2 subject to the process set forth in subsection (d).

3 (f) Working group and collaborative process.--In its
4 restructuring proceeding, a natural gas distribution company
5 shall set forth a process to establish a working group of
6 licensed natural gas suppliers having customers on the natural
7 gas distribution company's system and representatives of the
8 residential, commercial and industrial customer classes to:

9 (1) Meet on a scheduled basis.

10 (2) Seek resolution of operational and capacity issues
11 related to customer choice.

12 The final determination of operational and reliability issues
13 resides with the natural gas distribution company. In addition,
14 the natural gas distribution company shall include in its
15 restructuring filing a collaborative process to address broader
16 issues relating to unbundling, customer choice and deregulation.

17 (g) Investigation and report to General Assembly.--Five
18 years after the effective date of this chapter, the commission
19 shall initiate an investigation or other appropriate proceeding,
20 in which all interested parties are invited to participate, to
21 determine whether effective competition for natural gas supply
22 services exists on the natural gas distribution companies'
23 systems in this Commonwealth. The commission shall report its
24 findings to the General Assembly. Should the commission conclude
25 that effective competition does not exist, the commission shall
26 reconvene the stakeholders in the natural gas industry in this
27 Commonwealth to explore avenues, including legislative, for
28 encouraging increased competition in this Commonwealth.

29 (H) DISPLACED EMPLOYEE PROGRAM.--THE DEPARTMENT OF LABOR AND <—
30 INDUSTRY SHALL ESTABLISH AND IMPLEMENT A PROGRAM TO ASSIST THE

1 NATURAL GAS DISTRIBUTION COMPANY EMPLOYEES WHO ARE DISPLACED BY
2 THE TRANSITION TO RETAIL COMPETITION PRECIPITATED BY THIS
3 CHAPTER. THE PROGRAM SHALL BE DESIGNED TO ASSIST EMPLOYEES IN
4 OBTAINING EMPLOYMENT AND SHALL CONSIST OF UTILIZING THE FEDERAL
5 FUNDS AVAILABLE FOR THE PURPOSE OF RETRAINING AND OUTPLACEMENT
6 SERVICES FOR SUCH EMPLOYEES.

7 § 2205. Duties of natural gas distribution companies.

8 (a) Integrity of distribution system.--

9 (1) Each natural gas distribution company shall maintain
10 the integrity of its distribution system at least in
11 conformity with the standards established by the Federal
12 Department of Transportation and such other standards
13 practiced by the industry in a manner sufficient to provide
14 safe and reliable service to all retail gas customers
15 connected to its system consistent with this title and the
16 commission's orders or regulations.

17 (2) In performing such duties, the natural gas
18 distribution company shall implement procedures to require
19 all natural gas suppliers to supply natural gas to the
20 natural gas distribution company at locations, volumes,
21 qualities and pressures that are adequate to meet the natural
22 gas supplier's supply and reliability obligations to its
23 retail gas customers and the natural gas distribution
24 company's supply and reliability obligations to its retail
25 gas customers. The procedures shall include, but not be
26 limited to:

27 (i) A communication protocol with natural gas
28 suppliers.

29 (ii) An ability to issue system maintenance orders
30 to control the flow of gas into the distribution system.

(iii) The right to issue and enforce penalties pursuant to commission direction, provided, however, that the commission may approve additional procedures of like nature by order or regulation to preserve reliability.

(b) Installation and improvement of facilities.--

(1) The natural gas distribution company shall not have an obligation to install nonstandard facilities, either as to type or location, for the purpose of receiving natural gas from the natural gas supplier unless the natural gas supplier or its retail gas customer pays the full cost of these facilities.

(2) Nothing in this chapter shall prevent the natural gas distribution company from maintaining and upgrading its system to meet retail gas customer requirements consistent with the requirement of section 1501 (relating to character of service and facilities) or compliance with other statutory and regulatory requirements.

(3) Disputes concerning facilities shall be subject to the jurisdiction of the commission and may be initiated by the filing of a complaint under section 701 (relating to complaints) by the commission or any interested party.

(c) Customer billing.--

(1) Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail gas customers for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the identity of the provider of natural gas supply services.

1 (2) (i) Bills to retail gas customers shall contain
2 sufficient unbundled charge information to enable the
3 customer to determine the basis for those charges and
4 shall comply with section 1509 (relating to billing
5 procedures). At a minimum, such charges shall include
6 those services which are unbundled as a result of a
7 restructuring filing or rulemaking.

8 (ii) Bills to retail residential customers rendered
9 by a natural gas distribution company for natural gas
10 distribution services shall include information required
11 by commission regulations governing standards and billing
12 practices for residential utility service.

13 (iii) Bills rendered by a natural gas distribution
14 company on behalf of a natural gas supplier shall
15 include, in a form and manner determined by the natural
16 gas distribution company, in consultation with the
17 natural gas supplier, the following information with
18 respect to natural gas supplier services: the name of the
19 natural gas supplier; the rates, charges or prices of
20 natural gas supply services billed, including adjustments
21 to prior period billings, if applicable, and taxes, if
22 applicable; and the natural gas supplier's toll-free
23 telephone number and hours of operation for customer
24 inquiries.

25 (3) Incremental costs relating to billing services
26 designed, implemented and rendered by the natural gas
27 distribution company, at its election, on behalf of a natural
28 gas supplier or other entity may be recovered through fees
29 charged by the natural gas distribution company to the
30 natural gas supplier or other entity. Either party may

1 request that the commission consider the appropriate level of
2 the fee. In doing so, the commission shall consider fees
3 charged by other natural gas distribution companies for
4 similar services. The commission shall either permit the fee
5 to continue as set or shall establish an alternative
6 mechanism to permit full recovery of unrecovered just and
7 reasonable costs from the supplier or the supplier's
8 customers. Nothing in this section shall permit the recovery
9 of such costs from natural gas supply service customers of
10 the natural gas distribution company.

11 (4) If services are provided by an entity other than the
12 natural gas distribution company, the entity that provided
13 those services shall furnish to the natural gas distribution
14 company billing data sufficient to enable the natural gas
15 distribution company to timely bill RETAIL GAS customers. The <—
16 entity shall provide data for billing purposes in a format
17 and in a time frame as required by the natural gas
18 distribution company. The natural gas distribution company
19 shall consider the data and information confidential and
20 shall treat it as such.

21 (5) No natural gas distribution company shall be
22 required to forward payment to entities providing services to
23 customers and on whose behalf the natural gas distribution
24 company is billing those customers before the natural gas
25 distribution company has received payment for those services
26 from customers. The commission shall issue guidelines
27 addressing the application of partial payments.

28 (6) Natural gas distribution companies and natural gas
29 suppliers shall take reasonable steps to allow ~~consumers~~ <—
30 RETAIL GAS CUSTOMERS to contribute via their bill to hardship <—

energy funds which benefit low-income residential retail gas consumers.

(d) Enhanced metering.--Subject to commission approval, the natural gas distribution company may require the installation, at the retail gas customer's expense, of enhanced metering capability sufficient to match the natural gas delivered by the retail gas customer's natural gas supplier or suppliers with consumption by that retail gas customer. In exercising its discretion, the commission shall consider the effect on low-income retail gas customers.

§ 2206. Consumer protections and customer service.

(a) Quality.--A natural gas distribution company shall be responsible for customer service functions consistent with the orders and regulations of the commission, including, but not limited to, meter reading, installation, testing and maintenance and emergency response for all customers, and complaint resolution and collections related to the service provided by the natural gas distribution company. Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

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

(c) Customer information.--The commission shall, by order or regulation, establish requirements that each natural gas

1 distribution company and natural gas supplier provide adequate,
2 accurate customer information to enable retail gas customers to
3 make informed choices regarding the purchase of all natural gas
4 services offered by that provider. Information shall be provided
5 to retail gas customers in an understandable format that enables
6 retail gas customers to compare prices and services on a uniform
7 basis.

8 (d) Consumer education.--Prior to the implementation of any
9 restructuring plan under section 2204 (relating to
10 implementation), each natural gas distribution company, in
11 conjunction with the commission and consistent with the
12 guidelines established by the commission, shall implement a
13 consumer education program to inform customers of the changes in
14 the natural gas utility industry. The program shall provide
15 retail gas customers with information necessary to help them
16 make appropriate choices as to their natural gas service. The
17 education program shall be subject to approval by the
18 commission. The consumer education program shall include goals,
19 objectives and an action plan that is designed to be objective,
20 easily understood, utilizes a uniform measurement as established
21 by the commission for the cost of gas, be available in languages
22 that the commission requires to meet the needs of a service
23 territory and be separate and distinct from marketing.

24 (e) Consumer education cost recovery.--The consumer
25 education program shall be subject to approval by the commission
26 and shall be funded in each natural gas distribution service
27 territory by a nonbypassable, competitively neutral cost
28 recovery mechanism that fully recovers the reasonable cost of
29 such program. To the extent that the industrial customer class
30 is not currently assigned such costs on the effective date of

1 this chapter, it shall not be assigned such costs in the future.

2 (f) Tenants' rights.--Nothing in this chapter shall be
3 construed to restrict the rights of tenants pursuant to
4 Subchapter B of Chapter 15 (relating to discontinuance of
5 service to leased premises).

6 § 2207. Obligation to serve.

7 (a) Supplier of last resort.--

8 (1) After the effective date of this chapter, the
9 natural gas distribution company shall serve as the supplier
10 of last resort for residential, small commercial, small
11 industrial and essential human needs customers and any other
12 customer classes determined by the commission in the natural
13 gas distribution company's restructuring proceeding until
14 such time as the commission, pursuant to this section,
15 approves an alternative supplier or suppliers to provide such
16 services to any or all of the natural gas distribution
17 company's customers.

18 (2) For purposes of this section, a supplier of last
19 resort is a natural gas distribution company or natural gas
20 supplier which is designated by the commission to provide
21 natural gas supply service with respect to one or more of the
22 following services:

23 (i) natural gas supply services to those customers
24 who have not chosen an alternative natural gas supplier
25 or who choose to be served by their supplier of last
26 resort;

27 (ii) natural gas supply services to those customers
28 who are refused supply service from a natural gas
29 supplier; or

30 (iii) natural gas supply services to those customers

1 whose natural gas supplier has failed to deliver its
2 requirements.

3 No customer shall have more than one supplier of last resort
4 designated for any of the services set forth in this
5 paragraph.

6 (b) Consumer protection.--Service by the supplier of last
7 resort shall be subject to all consumer protection standards,
8 including those contained in 52 Pa. Code Ch. 56 (relating to
9 standards and billing practices for residential utility service)
10 and to all universal service obligations.

11 (c) Natural gas distribution company.--The natural gas
12 distribution company shall deliver natural gas to the extent
13 that it is provided by all natural gas suppliers, or suppliers
14 of last resort, as the case may be, in accordance with the
15 natural gas distribution company's tariff.

16 (d) Standards of service.--Consistent with the standards set
17 forth in section 1501 (relating to character of service and
18 facilities) and applicable orders of the commission, a supplier
19 of last resort under subsection (a)(2)(iii) shall provide
20 sufficient supplies as to quantity, quality, pressure and
21 location to meet the operational reliability requirements of the
22 natural gas distribution company's system, including, but not
23 limited to, a failure of one or more natural gas suppliers to:

24 (1) supply natural gas to their retail gas customers in
25 conformance with their contractual obligations to such
26 customers; or

27 (2) satisfy applicable reliability standards and
28 obligations.

29 (e) Discontinuation of service.--The natural gas
30 distribution company shall continue providing services as the

1 supplier of last resort to all of its customers for all of the
2 natural gas supply services described in subsection (a)(2),
3 unless, at its discretion, it requests and receives commission
4 approval to discontinue providing one or more such supplier of
5 last resort obligation. In approving such a petition, the
6 commission shall also approve another party as the alternative
7 supplier of last resort for each customer or customer group for
8 which the natural gas distribution company no longer provides
9 such natural gas supply services.

10 (f) Regulations.--The commission shall promulgate
11 regulations setting forth the standards for approving an
12 alternative supplier of last resort consistent with the
13 provisions of this title, including a mechanism to ensure that
14 the rates charged by any alternate supplier of last resort are
15 just and reasonable.

16 (g) Organized labor.--During the five-year period following
17 the effective date of this chapter, approval of an alternative
18 supplier of last resort pursuant to subsection (e) shall not be
19 granted unless the entity designated by the commission to
20 succeed the natural gas distribution company in the provision
21 of service to these customers agrees to recognize relevant union
22 and collective bargaining agreements of the natural gas
23 distribution company then in place.

24 (h) Petition to become supplier of last resort.--After the
25 five-year period following the effective date of this chapter,
26 any party may petition the commission to become the supplier of
27 last resort to some or all customers except for those customers
28 identified in subsection (a)(2)(i).

29 (i) Notice required prior to market exit.--

30 (1) A natural gas supplier may not exit the market

1 without providing notice as determined by the commission in
2 the restructuring proceeding of the natural gas distribution
3 company to its customers, the supplier of last resort and the
4 natural gas distribution company.

5 (2) If firm gas supply contracts with Pennsylvania
6 natural gas producers or storage or transportation capacity
7 contracts used by the natural gas supplier to serve such
8 retail gas customers were either assigned or released to the
9 natural gas supplier or constitute capacity which was
10 acquired by the natural gas supplier as the result of
11 nonrenewal of a storage or transportation capacity contract
12 previously held by the natural gas distribution company, the
13 natural gas supplier shall offer the supplier of last resort
14 or successor natural gas supplier a right of first refusal to
15 utilize such Pennsylvania supply contracts or storage or
16 transportation capacity contracts at its contract cost as
17 long as needed to serve those customers.

18 (3) If the storage or transportation capacity contracts
19 held by the natural gas supplier were acquired in another
20 manner, and there was not sufficient notice given to the
21 supplier of last resort and the natural gas distribution
22 company, or if there is not alternative storage or
23 transportation capacity available which is operationally
24 sufficient to serve the market the natural gas supplier was
25 serving, then the supplier of last resort shall be provided
26 with a right to use such storage or transportation capacity
27 as designated by the natural gas supplier, at the contract
28 cost, until the supplier of last resort is able to acquire
29 replacement capacity sufficient to serve its customers using
30 reasonable and diligent efforts to do so.

1 (4) If a dispute arises under this subsection, the
2 aggrieved party may file a complaint with the commission for
3 resolution within 45 days.

4 (j) Duty involving lost customers.--To the extent that a
5 natural gas supplier loses retail gas customers such that its
6 capacity requirements to a natural gas distribution company are
7 reduced below the level established by the commission for such
8 purpose in the natural gas distribution company's restructuring
9 proceeding, the natural gas supplier shall have the same
10 obligations set forth in subsection (i).

11 (k) Rate after service discontinued.--In the event the
12 natural gas supplier discontinues service or defaults before its
13 contract with the customer expires, the retail gas customer
14 shall be served by the supplier of last resort at the
15 commission-approved supplier of last resort rate commencing with
16 the next billing cycle. However, the retail gas customer shall
17 continue to be charged the rate the customer negotiated with the
18 discontinuing or defaulting natural gas supplier for the
19 remainder of the billing cycle. Any difference between the cost
20 incurred by the supplier of last resort and the amount payable
21 by the retail gas customer shall be recovered from the natural
22 gas supplier or from the bond or other security provided by the
23 natural gas supplier without recourse to any retail gas customer
24 not otherwise contractually committed for the difference.

25 § 2208. Requirements for natural gas suppliers.

26 (a) License requirements.--No entity shall engage in the
27 business of a natural gas supplier unless it holds a license
28 issued by the commission. To the extent that a natural gas
29 distribution company provides natural gas supply service outside
30 of its chartered or certificated territory, it also must hold a

1 license. A license shall not be required for customers who make
2 de minimis incidental sales or resales to themselves, an
3 affiliate or to other nonresidential retail gas customers.

4 (b) License application and issuance.--An application for a
5 natural gas supplier license shall be made to the commission in
6 writing, be verified by oath or affirmation and be in such form
7 and contain such information as the commission may, by rule or
8 order, require. A license shall be issued to any applicant,
9 authorizing the whole or any part of the service covered by the
10 application, if it is found that the applicant is fit, willing
11 and able to perform properly the service proposed and to conform
12 to the applicable provisions of this title and the orders and
13 regulations of the commission, including those concerning
14 standards and billing practices, and that the proposed service,
15 to the extent authorized by the license, will be consistent with
16 the public interest. Otherwise, such application shall be
17 denied.

18 (c) Financial fitness.--

19 (1) In order to ensure the safety and reliability of the
20 natural gas supply service in this Commonwealth, no natural
21 gas supplier license shall be issued or remain in force
22 unless the applicant or holder, as the case may be, complies
23 with all of the following:

24 (i) Furnishes a bond or other security in a form and
25 amount to ensure the financial responsibility of the
26 natural gas supplier. The criteria each natural gas
27 distribution company shall use to determine the amount
28 and form of such bond or other security shall be set
29 forth in the natural gas distribution company's
30 restructuring filing. In approving the criteria,

1 commission considerations shall include, but not be
2 limited to, the financial impact on the natural gas
3 distribution company or an alternative supplier of last
4 resort of a default or subsequent bankruptcy of a natural
5 gas supplier. The commission shall periodically review
6 the criteria upon petition by any party. The amount and
7 form of the bond or other security may be mutually agreed
8 to between the natural gas distribution company or the
9 alternate supplier of last resort and the natural gas
10 supplier or failing that shall be determined by criteria
11 approved by the commission.

12 (ii) Provides the commission with the address of the
13 participant's principal office in this Commonwealth or
14 the address of the participant's registered agent in this
15 Commonwealth, the latter being the address at which the
16 participant may be served process.

17 (2) Failure of a natural gas supplier to comply with any
18 provision of this chapter or the rules, regulations, orders
19 or directives of the Department of Revenue or of the
20 commission, including, but not limited to, engaging in
21 anticompetitive behavior, shall be cause for the commission
22 to revoke the license of the natural gas supplier.

23 (d) Transferability of licenses.--No license issued under
24 this chapter may be transferred without prior commission
25 approval.

26 (e) Form of regulation of natural gas suppliers.--Except
27 where a natural gas supplier serves as a supplier of last
28 resort, the commission may forbear from extending its regulation
29 of natural gas suppliers beyond licensing, bonding, reliability
30 and consumer services and protections, including all applicable

1 portions of 52 Pa. Code Ch. 56 (relating to standards and
2 billing practices for residential utility service). Subject to
3 the provisions of section 2207 (relating to obligation to
4 serve), nothing in this section shall preclude a natural gas
5 supplier, upon appropriate and reasonable notice to the retail
6 gas customer, supplier of last resort, and the natural gas
7 distribution company, from canceling its contract with any
8 customer for legal cause, subject to the customer's right to
9 have continued service from the supplier of last resort.

10 (f) Availability of the service of natural gas suppliers.--
11 Prior to licensing any natural gas supplier, the commission
12 shall set forth standards to ensure that all customer classes
13 may choose to purchase natural gas from a natural gas supplier.
14 The commission shall also ensure that natural gas suppliers
15 comply with applicable provisions of 52 Pa. Code Ch. 56.

16 (g) Open and nondiscriminatory access.--In addition to
17 meeting the license requirements applicable to applicants under
18 subsection (b), a municipal corporation shall, before it is
19 permitted to provide natural gas supply services as a natural
20 gas supplier, demonstrate, and the commission shall determine,
21 that by the date of the issuance of the license, it will provide
22 other natural gas suppliers open and nondiscriminatory access to
23 its gas distribution system under standards that are comparable
24 to this title, taking into consideration the particular
25 circumstances of the municipal corporation's ownership and/or
26 operation of the gas distribution system.

27 § 2209. Market power remediation.

28 (a) Interim standards of conduct.--Within 120 days of the
29 effective date of this chapter, the commission shall provide by
30 order binding, interim guidelines for standards of conduct

1 governing the activities of and relationships between natural
2 gas distribution companies and their affiliated natural gas
3 suppliers and other natural gas suppliers and monitor and
4 enforce compliance with those standards.

5 (b) Permanent standards of conduct.--The commission shall
6 thereupon promulgate regulations setting forth permanent
7 standards of conduct governing the activities of and
8 relationships between natural gas distribution companies and
9 their affiliated natural gas suppliers and other natural gas
10 suppliers and monitor and enforce compliance with these
11 standards. The commission shall neither favor nor disfavor
12 conduct or operations by and between a natural gas distribution
13 company and an affiliated natural gas supplier or a
14 nonaffiliated natural gas supplier.

15 (c) Contents of standards.--Standards of conduct shall
16 provide for:

17 (1) No discrimination against or preferential treatment
18 of any natural gas supplier, including an affiliated natural
19 gas supplier.

20 (2) No disclosure or preferential sharing of any
21 confidential information to or with any individual natural
22 gas supplier.

23 (3) Adequate rules prohibiting cross-subsidization of an
24 affiliated natural gas supplier by a natural gas distribution
25 company.

26 (4) Maintenance of separate books and records by the
27 natural gas distribution company and its affiliated natural
28 gas supplier.

29 (5) Sufficient physical and operational separation, but
30 not including legal divestiture, to accomplish paragraphs

1 (1), (2), (3) and (4).

2 (6) An informal dispute resolution procedure.

3 (7) A system of penalties for noncompliance with the
4 final set of standards of conduct consistent with existing
5 commission regulations.

6 (d) Limitation.--The standards shall not prohibit the
7 natural gas distribution company and its affiliated natural gas
8 supplier from using or sharing similar corporate names,
9 trademarks, trade dress or service marks.

10 (e) Initiation of investigations.--Upon complaint or upon
11 its own motion, for good cause shown, the commission shall
12 conduct an investigation of the impact on the proper functioning
13 of a fully competitive retail natural gas market, of mergers,
14 consolidations, acquisition or disposition of assets or
15 securities of natural gas suppliers and anticompetitive or
16 discriminatory conduct affecting the retail distribution of
17 natural gas.

18 (f) Conduct of investigations.--

19 (1) The commission may require a natural gas supplier to
20 provide information, including documents and testimony, in
21 accordance with the commission's regulations regarding the
22 discovery of information.

23 (2) Material which the commission determines to be
24 confidential, proprietary or trade secret information
25 provided under this subsection shall not be disclosed to any
26 person not directly employed or retained by the commission to
27 conduct the investigation without the consent of the party
28 providing the information.

29 (3) Notwithstanding the prohibition on disclosure of
30 information in paragraph (2), the commission shall disclose

1 information obtained under this subsection to the Office of
2 Consumer Advocate and the Office of Small Business Advocate
3 under an appropriate confidentiality agreement. The
4 commission may disclose the information to appropriate
5 Federal or State law enforcement officials if it determines
6 that the disclosure of the information is necessary to
7 prevent or restrain a violation of Federal or State law and
8 it provides the party that provided the information with
9 reasonable notice and opportunity to prevent or limit
10 disclosure.

11 (g) Referrals and investigation.--If, as a result of the
12 investigation conducted under this section, the commission has
13 reason to believe that anticompetitive or discriminatory
14 conduct, including the unlawful exercise of market power, is
15 preventing the retail gas customers from obtaining the benefits
16 of a properly functioning and effectively competitive retail
17 natural gas market, the commission, pursuant to its regulations,
18 shall:

19 (1) Refer its findings to the Attorney General, the
20 United States Department of Justice, the Securities and
21 Exchange Commission or the Federal Energy Regulatory
22 Commission.

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

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

30 (h) Marketing standards.--As part of each natural gas

1 distribution company's restructuring proceeding, the commission
2 may, in its discretion, develop and apply different standards of
3 conduct to the natural gas distribution company's marketing
4 activities related to natural gas supply services. No such
5 standards shall apply to the natural gas distribution company's
6 marketing division or operations until the commission issues an
7 order in the context of that natural gas distribution company's
8 restructuring proceeding.

9 (i) Definition.--Subject to the conditions set forth in
10 subsection (h), for the purposes of this section, the term
11 "affiliated natural gas supplier" includes marketing activities
12 related to natural gas supply services by the marketing division
13 or the marketing operation of a natural gas distribution
14 company.

15 § 2210. Approval of proposed mergers, consolidations,
16 acquisitions or dispositions.

17 (a) General rule.--In the exercise of authority the
18 commission otherwise may have to approve mergers or
19 consolidations involving natural gas distribution companies or
20 natural gas suppliers or the acquisition or disposition of
21 assets or securities of natural gas distribution companies or
22 natural gas suppliers, the commission shall consider:

23 (1) Whether the proposed merger, consolidation,
24 acquisition or disposition is likely to result in
25 anticompetitive or discriminatory conduct, including the
26 unlawful exercise of market power, which will prevent retail
27 gas customers from obtaining the benefits of a properly
28 functioning and effectively competitive retail natural gas
29 market.

30 (2) The effect of the proposed merger, consolidation,

1 acquisition or disposition on the employees of the natural
2 gas distribution company and on any authorized collective
3 bargaining agent representing those employees.

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

18 (c) Preservation of rights.--Nothing in this section shall
19 restrict the right of any party to pursue any other remedy
20 available to it.

21 § 2211. Rate caps.

22 (a) General rule.--Except as provided under subsections (d),
23 (e), (f) and (g), for a period from the effective date of this
24 chapter until January 1, 2001, the total non-gas cost charges of
25 a natural gas distribution company for service to any retail gas
26 customer shall not exceed the maximum non-gas cost charges that
27 are contained in the natural gas distribution company's tariff
28 as of the effective date of this chapter.

29 (b) Recovery of deferred costs.--

30 (1) In a restructuring proceeding, the natural gas

1 distribution company may identify categories of costs
2 resulting from this chapter.

3 (2) The natural gas distribution company may seek
4 permission in its restructuring proceeding to capitalize and
5 to amortize such costs over an appropriate period to be
6 determined by the commission. The amortization shall commence
7 at the time when restructuring orders are issued. The natural
8 gas distribution company may seek recovery of the unamortized
9 balance of such costs in a future rate proceeding and the
10 commission shall allow recovery of such costs provided that
11 the commission determines that such costs are reasonable and
12 that the resulting rates are just and reasonable.

13 (c) Deferral of costs.--Costs recoverable under sections
14 2203(6) (relating to standards for restructuring of natural gas
15 utility industry) and 2206(e) (relating to consumer protections
16 and customer service), in excess of amounts already reflected in
17 a natural gas distribution company's rates, which are incurred
18 between the date of entry of the commission's restructuring
19 order and the earlier of the date on which the commission
20 authorizes commencement of recovery or June 30, 2002, may be
21 deferred for recovery in the future. Such deferrals shall be
22 without interest.

23 (d) Circumstances for exceptions.--A natural gas
24 distribution company may seek, and the commission may approve,
25 an exception to the limitations set forth in this section under
26 any of the following circumstances:

27 (1) The natural gas distribution company meets the
28 requirements for extraordinary relief under section 1308(e)
29 (relating to voluntary changes in rates).

30 (2) The natural gas distribution company demonstrates

1 that a rate increase is necessary in order to preserve the
2 reliability of the natural gas distribution system.

3 (3) The natural gas distribution company is subject to
4 significant increases in the rate of Federal taxes or other
5 significant increases in costs resulting from changes in law
6 or regulations that would not allow the natural gas
7 distribution company to earn a fair rate of return.

8 (e) Interclass and intraclass cost shifts.--For the period
9 from the effective date of this chapter until January 1, 2001,
10 interclass or intraclass cost shifts are prohibited. This
11 prohibition against cost shifting may be accomplished by
12 maintaining the cost allocation methodology accepted by the
13 commission for each natural gas distribution company in the
14 company's most recent base rate proceeding.

15 (f) State tax adjustment surcharge.--The natural gas
16 distribution company shall remain subject to the State tax
17 adjustment surcharge and shall be permitted to adjust its State
18 tax adjustment surcharge mechanism to reflect State tax changes
19 or additions. The natural gas distribution company shall also
20 remain subject to existing riders or surcharges for the
21 collection of non-gas transition costs pursuant to Federal
22 Energy Regulatory Commission decisions.

23 (g) Provisions relating to interstate pipelines.--

24 (1) Notwithstanding any other provisions of this
25 chapter, if a natural gas distribution company's current base
26 rate revenues reflect the margins realized through the
27 utilization of firm interstate pipeline transportation and
28 storage capacity to serve the interruptible market when such
29 capacity is not needed to make firm retail deliveries, then
30 the natural gas distribution company shall be permitted to

1 increase base rates and, at the same time, reduce purchased
2 gas cost rates, as described in this chapter.

3 (2) The utility may propose such a change in treatment,
4 consistent with the following requirements:

5 (i) Base rates of customers who pay purchased gas
6 cost rates pursuant to section 1307(f) (relating to
7 sliding scale of rates; adjustments) shall be increased
8 by an amount equal to the margin received for service
9 provided to existing interruptible sales and
10 transportation service customers using capacity reflected
11 in rates established under section 1307(f) based upon the
12 revenue for such services for the most recent 12-month
13 period immediately preceding the application.

14 (ii) Purchased gas cost rates established pursuant
15 to section 1307(f) shall be decreased by an amount equal
16 to the amount by which base rates are increased in
17 subparagraph (i).

18 (iii) Purchased gas cost rates established pursuant
19 to section 1307(f) shall thereafter be reconciled to
20 reflect the margins realized from interruptible sales and
21 interruptible transportation customers utilizing capacity
22 reflected in rates established under section 1307(f).

23 (h) Interstate pipeline transportation.--

24 (1) Except as specifically set forth in this subsection,
25 nothing in this section or section 2204(d) (relating to
26 implementation) shall prevent a natural gas distribution
27 company from recovering costs paid under the terms of
28 interstate pipeline transportation and storage capacity
29 contracts which are not fully recovered through a release,
30 assignment or transfer of such capacity to another natural

1 gas supplier if such unrecovered costs arise under the terms
2 of a natural gas transportation pilot program approved by the
3 commission for such company on or before February 1, 1999.

4 (2) Such unrecovered interstate pipeline transportation
5 and capacity costs incurred under such programs through
6 October 31, 2004, may be recovered from a class or classes of
7 customers in accordance with such program provided that the
8 total volumetric charge for such costs does not exceed one
9 percent of the volumetric charge for residential natural gas
10 sales service set forth in the natural gas distribution
11 company's tariff in effect at the time.

12 (3) With respect to such pilot programs, the commission
13 may determine to extend such programs to include all
14 customers of that company pursuant to the requirements of
15 this chapter, and nothing in this section or section 2204(d)
16 shall prevent unrecovered interstate pipeline and
17 transportation capacity costs incurred through October 31,
18 2004, under such programs from being recovered in accordance
19 with such programs provided that the total volumetric charge
20 for such costs does not exceed the one percent limit
21 specified in paragraph (2) for pilot programs.

22 Section 3. The provisions of this act are severable. If any
23 provision of this act or its application to any person or
24 circumstance is held invalid, the invalidity shall not affect
25 other provisions or applications of this act which can be given
26 effect without the invalid provision or application.

27 ~~Section 4. This act shall take effect July 1, 1999, or~~ <—
28 ~~immediately, whichever occurs later.~~

29 SECTION 4. SECTIONS 1101 AND 1104 OF THE ACT OF MARCH 4, <—
30 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, ARE

1 REPEALED INSOFAR AS THEY IMPOSE GROSS RECEIPTS TAX ON NATURAL
2 GAS UTILITIES.

3 SECTION 5. SECTION 4 OF THIS ACT SHALL APPLY TO TAX YEARS
4 BEGINNING AFTER DECEMBER 31, 1999.

5 SECTION 6. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

<—

6 (1) THE ADDITION OF 66 PA.C.S. § 2203(15) SHALL TAKE
7 EFFECT MAY 1, 1999, OR IMMEDIATELY, WHICHEVER OCCURS LATER.

8 (2) THIS SECTION SHALL TAKE EFFECT MAY 1, 1999, OR
9 IMMEDIATELY, WHICHEVER OCCURS LATER.

10 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JULY 1,
11 1999, OR IMMEDIATELY, WHICHEVER OCCURS LATER.