

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

AS AMENDED ON THIRD CONSIDERATION, JUNE 7, 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
18 tariffs shall have an effective date six months from the date

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

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

14 (ii) A natural gas distribution company may also
15 file a tariff to establish a mechanism by which such
16 natural gas distribution company may further adjust its
17 rates for natural gas sales on a regular, but no more
18 frequent than monthly, basis to reflect actual or
19 projected changes in natural gas costs reflected in rates
20 established pursuant to paragraph (2), subject to annual
21 reconciliation under paragraph (5). In the event that the
22 natural gas distribution company adjusts rates more
23 frequently than quarterly, it shall also offer retail gas
24 customers a fixed rate option which recovers natural gas
25 costs over a 12-month period, subject to annual
26 reconciliation under paragraph (5). The commission shall,
27 within 60 days of the effective date of this
28 subparagraph, promulgate rules or regulations governing
29 such adjustments and fixed rate option, but the
30 commission shall not prohibit such adjustments or fixed

1 rate option.

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

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

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

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

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

30 (iv) [Evidence explaining how actual] How actual

1 natural gas costs incurred differ from the natural gas
2 costs allowed under paragraph (2) and why such
3 differences occurred.

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

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

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

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

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

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

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

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

§ 1317. Regulation of natural gas costs.

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

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

(2) The utility's efforts to negotiate favorable contracts with gas suppliers and to renegotiate existing contracts with gas suppliers or take legal actions necessary to relieve the utility from existing contract terms which are

1 or may be adverse to the interests of the utility's
2 ratepayers.

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

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

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

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

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

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

5 (c) Reliability plans.--As part of its filing under section
6 1307(f) or if it is not required to make such a filing on an
7 annual basis, a natural gas distribution company, as defined in
8 section 2202 (relating to definitions), shall file a proposed
9 reliability plan with the commission which shall, at a minimum,
10 identify the following:

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

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

22 (d) Supply plans.--As part of its filing under section
23 1307(f), a natural gas distribution company shall file a
24 proposed plan with the commission for acquisition or receipt of
25 natural gas supplies.

26 [[c)] (e) Definition.--As used in this section, the [term
27 "natural gas" includes natural gas, liquified natural gas,
28 synthetic natural gas and any natural gas substitutes] terms
29 "natural gas costs," "gas costs," "natural gas" and "gas" shall
30 have the same definitions as provided in section 1307(g).

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

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

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

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

(3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with

1 pipelines and other distribution companies.

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

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

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

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

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

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

1 utility.

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

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

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

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

25 CHAPTER 22

26 NATURAL GAS COMPETITION

27 Sec.

28 2201. Short title of chapter.

29 2202. Definitions.

30 2203. Standards for restructuring of natural gas utility

1 industry.
2 2204. Implementation.
3 2205. Duties of natural gas distribution companies.
4 2206. Consumer protections and customer service.
5 2207. Obligation to serve.
6 2208. Requirements for natural gas suppliers.
7 2209. Market power remediation.
8 2210. Approval of proposed mergers, consolidations,
9 acquisitions or dispositions.
10 2211. Rate caps.

11 § 2201. Short title of chapter.

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

14 § 2202. Definitions.

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

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

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

28 "Natural gas distribution company." A public utility that
29 provides natural gas distribution services and which may provide
30 natural gas supply services and other services. For purposes of

1 this chapter, this term does not include:

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

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

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

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

30 (i) as provided prior to the effective date of this

chapter, pursuant to a certificate of public convenience
if required under this title;

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

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

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

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

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

"Natural gas supply services."

(1) The term includes:

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

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

(2) The term does not include distribution service.

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

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

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

30 § 2203. Standards for restructuring of natural gas utility

1 industry.

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

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

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

1 to any residential retail gas customer.

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

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

28 (5) The commission shall require that restructuring of
29 the natural gas utility industry be implemented in a manner
30 that does not unreasonably discriminate against one customer

1 class for the benefit of another.

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

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

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

1 operated in a cost-effective manner.

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

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

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

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

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

28 (14) The natural gas distribution company may continue
29 to provide natural gas service to its customers under all
30 tariff rate schedules and riders incorporated into its

tariff, and policies or programs, existing on the effective date of this chapter.

(15) Beginning May 1, 1999, and continuing for a 36-month period thereafter, if a natural gas distribution company lays off or terminates any of its employees, except for just cause, the natural gas distribution company shall:

(i) Provide the commission with sufficient information to show that with the reduction of employees the company will still be able to ensure the safety and reliability of natural gas distribution service to all retail gas customers, as provided for by the commission under paragraph (1).

(ii) Provide at least 60 days' written notice of such layoff or termination to the company's employees' authorized bargaining representative.

§ 2204. Implementation.

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

specific components of each natural gas distribution company's restructuring plan.

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

(c) Commission review.--

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

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

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

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

(d) Release, assignment or transfer of capacity.--

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

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

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

27 (4) The licensed natural gas supplier shall accept such
28 release, assignment or transfer of that capacity, or
29 Pennsylvania supply, and enter into all applicable contracts
30 or agreements, as a condition of serving retail gas customers

1 on the natural gas distribution company's system.

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

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

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

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

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

25 (C) The commission authorizes the natural gas
26 distribution company to follow a specific, written
27 mitigation plan approved by the commission or, if
28 such a plan is not approved or applicable, to post
29 the displaced capacity for release in accordance with
30 the rules and regulations of the Federal Energy

1 Regulatory Commission and applicable requirements of
2 interstate pipelines.

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

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

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

26 (e) New and renewed capacity.--

27 (1) Subject to the service obligations imposed by this
28 title, and to the extent such capacity is not needed to meet
29 the natural gas distribution company's least cost fuel
30 procurement and other applicable standards pursuant to this

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

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

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

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

26 (5) Prior to being displaced by a natural gas supplier's
27 alternate interstate storage or transportation capacity,
28 contracts renewed or entered into by the natural gas
29 distribution company pursuant to this subsection shall be
30 subject to the process set forth in subsection (d).

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

7 (1) Meet on a scheduled basis.

8 (2) Seek resolution of operational and capacity issues
9 related to customer choice.

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

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

27 (h) Displaced employee program.--The Department of Labor and
28 Industry shall establish and implement a program to assist the
29 natural gas distribution company employees who are displaced by
30 the transition to retail competition precipitated by this

chapter. The program shall be designed to assist employees in obtaining employment and shall consist of utilizing the Federal funds available for the purpose of retraining and outplacement services for such employees.

§ 2205. Duties of natural gas distribution companies.

(a) Integrity of distribution system.--

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

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

(i) A communication protocol with natural gas suppliers.

(ii) An ability to issue system maintenance orders 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

1 the commission may approve additional procedures of like
2 nature by order or regulation to preserve reliability.

3 (b) Installation and improvement of facilities.--

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

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

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

20 (c) Customer billing.--

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

29 (2) (i) Bills to retail gas customers shall contain
30 sufficient unbundled charge information to enable the

1 customer to determine the basis for those charges and
2 shall comply with section 1509 (relating to billing
3 procedures). At a minimum, such charges shall include
4 those services which are unbundled as a result of a
5 restructuring filing or rulemaking.

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

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

23 (3) Incremental costs relating to billing services
24 designed, implemented and rendered by the natural gas
25 distribution company, at its election, on behalf of a natural
26 gas supplier or other entity may be recovered through fees
27 charged by the natural gas distribution company to the
28 natural gas supplier or other entity. Either party may
29 request that the commission consider the appropriate level of
30 the fee. In doing so, the commission shall consider fees

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

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

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

26 (6) Natural gas distribution companies and natural gas
27 suppliers shall take reasonable steps to allow retail gas
28 customers to contribute via their bill to hardship energy
29 funds which benefit low-income residential retail gas
30 consumers.

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

9 § 2206. Consumer protections and customer service.

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

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

27 (c) Customer information.--The commission shall, by order or
28 regulation, establish requirements that each natural gas
29 distribution company and natural gas supplier provide adequate,
30 accurate customer information to enable retail gas customers to

1 make informed choices regarding the purchase of all natural gas
2 services offered by that provider. Information shall be provided
3 to retail gas customers in an understandable format that enables
4 retail gas customers to compare prices and services on a uniform
5 basis.

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

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

30 (f) Tenants' rights.--Nothing in this chapter shall be

1 construed to restrict the rights of tenants pursuant to
2 Subchapter B of Chapter 15 (relating to discontinuance of
3 service to leased premises).

4 § 2207. Obligation to serve.

5 (a) Supplier of last resort.--

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

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

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

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

28 (iii) natural gas supply services to those customers
29 whose natural gas supplier has failed to deliver its
30 requirements.

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

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

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

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

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

25 (2) satisfy applicable reliability standards and
26 obligations.

27 (e) Discontinuation of service.--The natural gas
28 distribution company shall continue providing services as the
29 supplier of last resort to all of its customers for all of the
30 natural gas supply services described in subsection (a)(2),

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

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

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

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

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

28 (1) A natural gas supplier may not exit the market
29 without providing notice as determined by the commission in
30 the restructuring proceeding of the natural gas distribution

1 company to its customers, the supplier of last resort and the
2 natural gas distribution company.

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

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

29 (4) If a dispute arises under this subsection, the
30 aggrieved party may file a complaint with the commission for

1 resolution within 45 days.

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

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

23 § 2208. Requirements for natural gas suppliers.

24 (a) License requirements.--No entity shall engage in the
25 business of a natural gas supplier unless it holds a license
26 issued by the commission. To the extent that a natural gas
27 distribution company provides natural gas supply service outside
28 of its chartered or certificated territory, it also must hold a
29 license. A license shall not be required for customers who make
30 de minimis incidental sales or resales to themselves, an

1 affiliate or to other nonresidential retail gas customers.

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

16 (c) Financial fitness.--

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

22 (i) Furnishes a bond or other security in a form and
23 amount to ensure the financial responsibility of the
24 natural gas supplier. The criteria each natural gas
25 distribution company shall use to determine the amount
26 and form of such bond or other security shall be set
27 forth in the natural gas distribution company's
28 restructuring filing. In approving the criteria,
29 commission considerations shall include, but not be
30 limited to, the financial impact on the natural gas

1 distribution company or an alternative supplier of last
2 resort of a default or subsequent bankruptcy of a natural
3 gas supplier. The commission shall periodically review
4 the criteria upon petition by any party. The amount and
5 form of the bond or other security may be mutually agreed
6 to between the natural gas distribution company or the
7 alternate supplier of last resort and the natural gas
8 supplier or failing that shall be determined by criteria
9 approved by the commission.

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

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

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

24 (e) Form of regulation of natural gas suppliers.--Except
25 where a natural gas supplier serves as a supplier of last
26 resort, the commission may forbear from extending its regulation
27 of natural gas suppliers beyond licensing, bonding, reliability
28 and consumer services and protections, including all applicable
29 portions of 52 Pa. Code Ch. 56 (relating to standards and
30 billing practices for residential utility service). Subject to

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

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

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

25 § 2209. Market power remediation.

26 (a) Interim standards of conduct.--Within 120 days of the
27 effective date of this chapter, the commission shall provide by
28 order binding, interim guidelines for standards of conduct
29 governing the activities of and relationships between natural
30 gas distribution companies and their affiliated natural gas

1 suppliers and other natural gas suppliers and monitor and
2 enforce compliance with those standards.

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

13 (c) Contents of standards.--Standards of conduct shall
14 provide for:

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

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

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

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

27 (5) Sufficient physical and operational separation, but
28 not including legal divestiture, to accomplish paragraphs
29 (1), (2), (3) and (4).

30 (6) An informal dispute resolution procedure.

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

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

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

16 (f) Conduct of investigations.--

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

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

27 (3) Notwithstanding the prohibition on disclosure of
28 information in paragraph (2), the commission shall disclose
29 information obtained under this subsection to the Office of
30 Consumer Advocate and the Office of Small Business Advocate

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

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

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

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

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

28 (h) Marketing standards.--As part of each natural gas
29 distribution company's restructuring proceeding, the commission
30 may, in its discretion, develop and apply different standards of

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

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

13 § 2210. Approval of proposed mergers, consolidations,
14 acquisitions or dispositions.

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

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

28 (2) The effect of the proposed merger, consolidation,
29 acquisition or disposition on the employees of the natural
30 gas distribution company and on any authorized collective

bargaining agent representing those employees.

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

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

§ 2211. Rate caps.

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

(b) Recovery of deferred costs.--

(1) In a restructuring proceeding, the natural gas distribution company may identify categories of costs resulting from this chapter.

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

11 (c) Deferral of costs.--Costs recoverable under sections
12 2203(6) (relating to standards for restructuring of natural gas
13 utility industry) and 2206(e) (relating to consumer protections
14 and customer service), in excess of amounts already reflected in
15 a natural gas distribution company's rates, which are incurred
16 between the date of entry of the commission's restructuring
17 order and the earlier of the date on which the commission
18 authorizes commencement of recovery or June 30, 2002, may be
19 deferred for recovery in the future. Such deferrals shall be
20 without interest.

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

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

28 (2) The natural gas distribution company demonstrates
29 that a rate increase is necessary in order to preserve the
30 reliability of the natural gas distribution system.

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

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

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

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

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

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

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

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

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

21 (h) Interstate pipeline transportation.--

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

1 commission for such company on or before February 1, 1999.

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

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

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

25 ~~Section 4. Sections 1101 and 1104 of the act of March 4,~~ <—
26 ~~1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are~~
27 ~~repealed insofar as they impose gross receipts tax on natural~~
28 ~~gas utilities.~~

29 ~~Section 5. Section 4 of this act shall apply to tax years~~
30 ~~beginning after December 31, 1999.~~

1 ~~Section 6. This act shall take effect as follows:~~

2 ~~(1) The addition of 66 Pa.C.S. § 2203(15) shall take~~
3 ~~effect May 1, 1999, or immediately, whichever occurs later.~~

4 ~~(2) This section shall take effect May 1, 1999, or~~
5 ~~immediately, whichever occurs later.~~

6 ~~(3) The remainder of this act shall take effect July 1,~~
7 ~~1999, or immediately, whichever occurs later.~~

8 SECTION 4. THIS ACT CONSTITUTES THE LEGISLATION REFERRED TO <—
9 IN SECTION 33(3) OF THE ACT OF MAY 12, 1999 (P.L. , NO.4),
10 ENTITLED "AN ACT AMENDING THE ACT OF MARCH 4, 1971 (P.L.6,
11 NO.2), ENTITLED 'AN ACT RELATING TO TAX REFORM AND STATE
12 TAXATION BY CODIFYING AND ENUMERATING CERTAIN SUBJECTS OF
13 TAXATION AND IMPOSING TAXES THEREON; PROVIDING PROCEDURES FOR
14 THE PAYMENT, COLLECTION, ADMINISTRATION AND ENFORCEMENT THEREOF;
15 PROVIDING FOR TAX CREDITS IN CERTAIN CASES; CONFERRING POWERS
16 AND IMPOSING DUTIES UPON THE DEPARTMENT OF REVENUE, CERTAIN
17 EMPLOYERS, FIDUCIARIES, INDIVIDUALS, PERSONS, CORPORATIONS AND
18 OTHER ENTITIES; PRESCRIBING CRIMES, OFFENSES AND PENALTIES, '
19 REVISING AND ADOPTING SALES AND USE TAX PROVISIONS ON PROCESSING
20 EXCLUSIONS, CREDIT SALES AND BAD DEBT SALES; REVISING PERSONAL
21 INCOME TAX PROVISIONS ON SMALL CORPORATIONS; EXPANDING
22 ELIGIBILITY FOR SPECIAL POVERTY PROVISIONS; REVISING ESTIMATED
23 TAX DECLARATIONS; ELIMINATING LOTTERY FUND TRANSFERS; REVISING
24 CORPORATE NET INCOME TAX PROVISIONS ON NONPROFIT ORGANIZATIONS,
25 NET LOSS DEDUCTIONS AND APPORTIONMENT OF BUSINESS INCOME;
26 REVISING CAPITAL STOCK FRANCHISE TAX PROVISIONS TO REDUCE THE
27 RATE OF TAXATION, REDUCE THE MINIMUM TAX, AND FURTHER PROVIDE
28 FOR CAPITAL STOCK FRANCHISE TAX EXEMPTIONS, EXCLUSIONS AND
29 PROCEEDS; ELIMINATING THE UTILITIES GROSS RECEIPTS TAX ON
30 NATURAL GAS; MAKING OMNIBUS AMENDMENTS TO THE PUBLIC UTILITY

1 REALTY TAX; PROVIDING FOR A TAX CREDIT FOR COAL WASTE REMOVAL
2 AND ULTRACLEAN FUELS; FURTHER PROVIDING FOR MALT BEVERAGE TAX
3 CREDITS; FURTHER PROVIDING FOR THE RATE OF TAXATION FOR THE
4 PUBLIC TRANSPORTATION ASSISTANCE FUND; FURTHER PROVIDING FOR
5 ESTIMATED TAX, FOR PAYMENT OF HARNESS AND THOROUGHBRED RACING
6 TAXES AND FOR CORPORATE TAX TREATMENT OF AUTOMOBILE CLUBS; AND
7 MAKING A REPEAL." THE SECRETARY OF REVENUE SHALL PUBLISH NOTICE
8 OF THE ENACTMENT OF THIS ACT IN THE PENNSYLVANIA BULLETIN.

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

10 (1) THE ADDITION OF 66 PA.C.S. § 2203(15) SHALL TAKE
11 EFFECT IMMEDIATELY.

12 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

13 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JULY 1,
14 1999, OR IMMEDIATELY, WHICHEVER OCCURS LATER.