

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-G-0059 - In the Matter of Issues Associated With Gas
Curtailement.

ORDER ADOPTING GAS CURTAILMENT
GUIDELINES AND REQUIREMENTS

(Issued and Effective August 23, 2007)

BY THE COMMISSION:

BACKGROUND

In an Order Commencing Additional Proceedings issued March 26, 2007 in this proceeding, a further inquiry was launched into existing natural gas supply curtailment policies. The goal of those policies is to preserve service to core residential and human needs customers, by establishing priorities for interrupting service during a gas shortage that begin with the lowest priority categories of non-core customers and reach the highest priority categories of core customers last. The existing short-term and long-term curtailment policies are in need of review because a growing number of customers, especially large customers considered non-core, are opting to take supply from energy services companies (ESCO) or

other supply sources under firm arrangements.¹ If this trend continues, is possible that, at some point in the future, local distribution companies (LDC) will no longer control non-firm and utility-owned supplies sufficient to meet the needs of core customers during a curtailment.²

The Order Commencing Additional Proceedings listed a number of questions on long-term and short-term curtailment policy and the arrangements that should be made to divert gas from lower-priority customers, and compensate them, when curtailments are required. Parties were invited to submit comments on those questions. Moreover, Department of Public Service Staff (Staff) was directed to supervise, after comments were received, collaborative efforts that would facilitate the development of new gas curtailment policies.

Initial comments on the issues raised in the Order Commencing Additional Proceedings were due May 1, 2007, with the deadline for replies set at May 29, 2007. Moreover, notice of the Order Commencing Additional Proceedings was published in the State Register on April 18, 2007 in conformance with State Administrative Procedure Act (SAPA) §202(1). The period prescribed for submitting comments to that Notice under SAPA §202(1)(a) expired on June 2, 2007. Multiple Intervenors (MI) and a consortium of LDCs (the Joint LDCs) filed comments in response to the notices. Those comments are summarized below.

¹ Case 06-G-0059, supra, Order Approving Tariff Modifications In Part and Instituting Additional Proceedings (issued December 13, 2006)(Tariff Modification Order).

² Case 93-G-0932, Restructuring Emerging Competitive Natural Gas Markets, Order Adopting Short-Term Curtailment Procedures (issued December 3, 1996) and Order Clarifying Short-Term Curtailment Procedures (issued June 3, 1997) and Untitled Order (issued April 25, 1997) and Order Clarifying Long-Term Curtailment Order (issued September 26, 1997).

POSITIONS OF THE PARTIES

The Joint LDCs³

The Joint LDCs would eliminate the distinction between long-term and short-term curtailments, because the length of time a curtailment persists is not a distinction that forms a useful basis for differentiating among the curtailment rules that should apply. Instead, the Joint LDCs maintain that the same curtailment rules should apply whenever a curtailment is needed, and those rules should be written to protect residential and human needs customers regardless of whether they are purchasing their gas commodity supply from an LDC or an ESCO. Curtailment rules and procedures, the Joint LDCs insist, must subordinate other concerns to the paramount objectives of protecting the health and safety of customers and maintaining the integrity and safety of distribution facilities.

All mutual aid, contractual and other non-curtailment supply management tools, the Joint LDCs explain, should be deployed before a curtailment is declared. Once a curtailment becomes necessary, the Joint LDCs assert, curtailed customers should be required to continue to nominate and otherwise arrange for the delivery of their supply to the citygate, to the extent feasible, notwithstanding that once the gas arrives at the citygate, the utility will divert it to core customers. If a customer, without adequate excuse, failed to arrange for the delivery of its supply as directed, the Joint LDCs argue penalties should be imposed.

³ The Joint LDCs are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, National Fuel Gas Distribution Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

Recognizing that customers whose gas is diverted should be compensated, the Joint LDCs maintain that the correct level of compensation is the market value of the alternate fuel the customer will use when curtailed. For customers that cannot avail themselves of an alternate fuel, the Joint LDCs would set compensation at the market price, or a published gas index price, effective on the day the gas is diverted. That compensation, the LDCs believe, should be directed to the entity that has title to the gas that is diverted.

MI

MI would maintain the distinction between short-term and long-term curtailments, but would amend the definition of a short-term curtailment to limit it to a duration of no greater than 24 hours. MI believes its definition is warranted because curtailments of more than 24 hours can cause more significant economic disruption than those lasting 24 hours or less. A long-term curtailment, MI declares, should be implemented in conformance with a plan that spreads the burden of the curtailment among as many similarly-situated core customers as possible.

MI believes that curtailments should be restricted to emergencies and should never be implemented where the justification is an economic consideration, instead of a threat to the physical and operational operation of the gas system. Firm transportation customers, MI emphasizes, should not see their expectation of firm delivery disturbed unless absolutely necessary. MI also claims that, when LDCs divert customer-owned gas to backstop their own supply responsibilities, the LDCs avoid their responsibility to procure necessary supplies and manage their systems prudently. MI proposes a number of conditions that it argues effectuate its curtailment principles.

Curtailments, continues MI, should be limited in scope and duration, should take into account the effect of a curtailment on customers and their facilities and employees, and should be localized to the extent feasible. Voluntary reductions in consumption, MI posits, should be solicited before compulsory curtailment is directed.

Addressing issues arising out of the diversion of customer-owned gas upon implementation of a curtailment, MI maintains the title to gas generally transfers from ESCOs to customers at the citygate, and it would establish that location as the point where a diversion occurs. As a result, MI would prefer that payments in compensation for a diversion be directed to the customer. MI would set the rate for compensation of the diverted gas at an amount equal to the higher of the customer's contract price or 125% of the highest cost of gas during the month in which the curtailment occurs. It argues this approach is needed to adequately compensate customers for the economic harm they might suffer as a result of a curtailment. MI opposes the Joint LDCs' proposal to price diverted gas at the customer's cost of alternative fuel, as inadequate compensation and as irrelevant to the many customers that do not have an alternative fuel available to them.

The Joint LDCs' Reply

Replying to MI, the Joint LDCs protest that MI does not sufficiently recognize the importance of curtailments as a means for protecting residential and human needs customers. While agreeing that protection of a non-core customer's plant may be a factor that can be recognized in setting curtailment priorities, the Joint LDCs argue that other economic impacts on customers should not be recognized in establishing curtailment procedures. That approach, they assert, would unduly interfere

with the continuation of service to core residential and human needs customers, which is of paramount importance.

The Joint LDCs agree with MI on its proposed criteria for determining whether an LDC should implement a curtailment. They continue to adhere, however, to their position calling for elimination of the distinction between short-term and long-term curtailments.

Opposing MI's proposal for pricing compensation to customers whose gas is diverted, the Joint LDCs argue that MI's use of a 125% factor creates an unwarranted premium. Clarifying their earlier position on identifying the party entitled to compensation, the Joint LDCs note that they are not privy to the arrangements customers and ESCOs make on passing title, and so are not necessarily aware of which entity possesses title at the citygate. As a result, the Joint LDCs would direct compensation for diverted gas to the ESCOs, which it can identify, unless the customer takes service directly from a gas supplier without employing an intermediary ESCO. In those circumstances, the direct customer would be compensated.

MI's Reply

MI agrees with the Joint LDCs that service to residential and human needs customers is the paramount priority. It reiterates, however, that any incentive to implement a curtailment for reasons other than emergencies, where physical and operational integrity of the gas system are threatened, should be eliminated. Defending its proposal to price diverted gas at its 125% factor, MI argues that compensation at just the market price for gas would not adequately recompense the customer for expenses incurred in enduring a curtailment.

DISCUSSION AND CONCLUSION

In conformance with the procedures established in the Order Commencing Additional Proceedings, further proceedings were conducted after the initial and reply comments were received. After reviewing the comments, Staff prepared a Straw Proposal to assist in resolving the issues. It was circulated to all parties on June 29, 2007 and a Settlement and Technical Conference was held on July 11, 2007 to discuss its terms and conditions. Based on those discussions, Staff prepared a Revised Straw Proposal (attached as Appendix A), intended to capture the consensus of the parties on the issues raised in this proceeding. The Revised Straw Proposal was circulated to the parties on July 13, 2007, and informal comments on its wording were submitted shortly thereafter.

Under the Revised Straw Proposal, the distinction between short-term and long-term curtailment is eliminated. The criteria that LDCs must consider in deciding to commence a curtailment are specified and the LDCs are allowed to divert gas, at the citygate, from lower priority ESCO and direct non-core customers to higher priority core customers. The ESCOs and direct customers would be required to continue making nominations of their gas to the citygate throughout the curtailment period, unless force majeure interruptions prevented them from securing and arranging for the delivery of those gas supplies. Compensation for the diverted gas would be set at the market price in effect during the time of the curtailment, unless it could be demonstrated that a contract calls for a higher price. Compensation would be directed to the ESCO or direct customer, with the understanding that ESCOs and their customers would contract between themselves on arrangements for appropriate disposition of the compensation proceeds. The Revised Straw Proposal also calls for the development of an

Outreach and Education (O&E) Plan, to advise customers of ESCOs that they will be subject to curtailment under the new diversion and compensation policies.

The informal comments suggested a number of wording changes to the terms and conditions of the Revised Straw Proposal. Where the proposed wording changes improve clarity, modifications have been made, in the Gas Curtailment Guidelines attached as Appendix B.

The Revised Straw Proposal suggested that "the largest volume" non-core loads would be shut off first. Although large volume is a factor in determining curtailment priority, it is not always dispositive. Therefore, the Revised Straw Proposal language on the effect of large volume is somewhat misleading and it is not included in the Guidelines.

Although the Revised Straw Proposal provided that ESCOs and direct customers must continue making nominations of gas throughout a curtailment period even if their gas is diverted, the level of the nomination required was not established. That level should be set at "up to their maximum delivery obligation." This clarification is appropriately made in the Guidelines to ensure that all gas that can be obtained is available for diversion to meet the public health and safety needs of core residential and human needs customers.

Under the Revised Straw Proposal, compensation for diverted gas was set at the higher of market price or a price identified in an existing contract. The ESCO or direct customer, however, should be responsible for demonstrating the existence of the higher contract price, because the contract and related information is in its possession. Clarifying in the Guidelines that a customer's demonstration of the contract price must be made "with adequate support" appropriately requires the presentation of the requisite information.

Proposed wording changes that altered the meaning or intent of the Revised Straw Proposal, however, were rejected. While the Revised Straw Proposal allows for our review of the facts and circumstances of a curtailment following its implementation, several wording changes were proposed that would restrict that review or the relief that could be ordered following such a review. Those proposed changes were not made, as they unreasonably constrained our discretion.

One re-wording proposal would have linked continued participation in retail access to compliance with gas diversion requirements. That compliance, however, is best achieved through enforcement of the tariffs that will establish the diversion requirements. Adding another enforcement mechanism that is directed at retail access customers, but does not extend to utility commodity customers, is not necessary or effective.

With the wording changes accepted above, the Gas Curtailment Guidelines establish the new curtailment policies that shall serve as the basis for new LDC tariffs on the implementation of gas curtailments.⁴ Therefore, the Gas Curtailment Guidelines set forth at Appendix B are promulgated, and the LDCs listed at Appendix C shall amend their tariffs accordingly, in conformance with the new guidelines. To ensure that those tariff amendments properly implement the new Guidelines, they shall take effect on a temporary basis and parties will be invited to comment on them before they are made permanent.

⁴ Newspaper notification of notice of these tariff changes will not be required, because customers will be adequately informed through the promulgation of the Gas Curtailment Guidelines attached to this Order and the implementation of the O&E Plans that will be developed under those Guidelines.

The Commission Orders:

1. The local distribution companies listed in Appendix C shall file amendments to their gas tariff schedules consistent with the Gas Curtailment Guidelines attached as Appendix B, to become effective on not less than seven days' notice on November 1, 2007.

2. The local distribution companies listed in Appendix C shall serve copies of their tariff amendment filings upon all parties to this proceeding. Parties are invited to file comments on the tariff amendments within 21 days after their filing, or at such other time as the Secretary may require.

3. The tariff amendments described in Ordering Clause No. 1 shall take effect on a temporary basis and shall not become permanent until approved.

4. The requirements of Public Service Law §66(12)(b) as to newspaper publication of the changes proposed by the tariff amendments directed in Ordering Clause No. 1 are waived.

5. This proceeding is continued but shall be closed by the Secretary after the filings required by Ordering Clause No. 1 have been reviewed, unless the Secretary finds good cause to continue the proceeding further.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

Case 06-G-0059
Staff Revised Straw Proposal -- Gas Curtailment

(July 13, 2007)

Curtailments:

- The distinction between short- and long-term curtailments would be eliminated; future curtailments would follow the utilities' order of curtailment by end use categories. As the current short-term curtailment plans envision, the largest volume non-core loads would be shut off first, to preserve service to higher priority customers that do not have alternatives to the use of gas. If the situation required extension of curtailments into firm service categories, all customers, whether sales or transportation customers, would be curtailed according to the utilities' tariffs, where curtailment priority is identified by end use category, with essential human needs customers having the highest priority. Plant protection would continue to be a high priority gas use.
- Specific curtailment criteria that LDCs must follow are attached.
- When necessary to meet high-priority customer demand, LDCs would acquire gas intended for lower priority customers at the citygate. ESCOs/Direct Customers whose gas is diverted by the LDC would be required to continue making nominations of gas throughout the curtailment period as directed by the LDC, unless qualified upstream force majeure interruptions or curtailments prevent ESCOs/Direct Customers from securing or delivering such supplies.
- The ESCO/Direct Customer would be the party compensated for the diverted gas. To the extent individual ESCO customers are affected by directing the payment to the ESCO, they would enter into contractual arrangements with the ESCO that clearly spell out the resolution of compensation issues between the customer and the ESCO related to occasions when gas supplies are diverted.

Compensation:

- The default price for the diverted gas would be the current market price in effect at the time of curtailment. If it could be demonstrated that a contract calls for a higher

price, the LDC would reimburse the ESCO/Direct Customer at the contract price.

- Market price needs to be defined to the extent possible; that price may vary by LDC.
- Additional compensation (a premium) is not needed; properly defining criteria utilities must follow in implementing a curtailment and the compensation mechanism, given that market prices are likely high during a curtailment period, are sufficient; ratepayers should not have to bear the cost of a premium.
- LDCs would recover compensation costs from customers via the GAC or equivalent mechanism, subject to Commission review.

Outreach & Education:

- LDCs will develop a plan to inform ESCO customers of the changes to the curtailment procedures, and specifically advise them that compensation will be directed to the ESCO if gas is diverted, so that customers may address that issue with their ESCO if necessary.

Process:

- Staff plans to prepare an item for the 8/22 Commission session.
- After the Commission issues an Order, LDCs would file compliance tariffs for review by Staff and interested parties.
- Compliance tariff leaves may be cancelled and requirements for resubmission established, as determined by the Commission.
- Goal is to have final tariff changes in effect by 12/1.

ATTACHMENTCurtailment Criteria

1. LDCs should implement a curtailment only as a last resort. Mutual aid, contractual and other non-curtailment supply management tools, OFOs, interruption of contractually-interruptible load, and supply acquisition should be utilized before a LDC declares a curtailment.
2. As circumstances permit, LDCs should initially seek voluntary curtailments to alleviate an emergency situation.
3. Economic considerations should not be the basis for a curtailment.
4. Curtailments should be limited in scope and duration as necessary to alleviate an emergency.
5. Curtailments should be localized to the extent possible,
6. The LDC should provide periodic updates to ESCOs and curtailed customers so that they can plan accordingly.
7. The LDC shall notify the Director of the Office of Gas and Water of the New York State Department of Public Service when a curtailment is declared and when the situation returns to normal.
8. Failure of the LDC to adhere to one or more of the above criteria is not a basis for ESCOs or Direct Customers not to comply with requirements of the curtailment but may provide the basis for a complaint to the Commission regarding the LDC's behavior.
9. If, during a curtailment period, the LDC is aware of ESCOs or Direct Customers that are not responding to the required actions, it should make all reasonable efforts to inform the non-responding ESCOs and Direct Customers that required actions are not being taken. Lack of such notice shall not relieve any ESCO or Direct Customer of its obligations.

Gas Curtailment GuidelinesCurtailments:

- The distinction between short- and long-term curtailments is eliminated; future curtailments will follow the Local Distribution Companies' (LDC) existing order of curtailment by end use categories. As the current short-term curtailment plans envision, the non-core loads would be shut off first, to preserve service to higher priority customers that do not have alternatives to the use of gas. If the situation required extension of curtailments into firm service categories, all customers, whether sales or transportation customers, would be curtailed according to the utilities' tariffs, where curtailment priority is identified by end use category, with essential human needs customers having the highest priority. Plant protection would continue to be a high priority gas use.
- Specific curtailment criteria that LDCs shall follow are:
 - 1) LDCs shall implement a curtailment only as a last resort. Mutual aid, contractual and other non-curtailment supply management tools, Operational Flow Orders, interruption of contractually-interruptible load, and supply acquisition shall be utilized before a LDC declares a curtailment.
 - 2) As circumstances permit, LDCs shall initially seek voluntary curtailments to alleviate an emergency situation.
 - 3) Economic considerations shall not be the basis for a curtailment.
 - 4) Curtailments shall be limited in scope and duration as necessary to alleviate an emergency.
 - 5) Curtailments shall be localized to the extent possible.
 - 6) The LDC shall provide periodic updates to Energy Services Companies (ESCO) and curtailed customers so that they can plan accordingly.
 - 7) The LDC shall notify the Director of the Office of Gas and Water of the New York State Department of Public Service when a curtailment is declared and when the situation returns to normal.

- 8) Failure of the LDC to adhere to one or more of the above criteria is not a basis for ESCOs or Direct Customers not to comply with requirements of the curtailment but may provide the basis for a complaint to the Commission regarding the LDC's behavior.
 - 9) If, during a curtailment period, the LDC is aware of ESCOs or Direct Customers that are not responding to the required actions, it shall make all reasonable efforts to inform the non-responding ESCOs and Direct Customers that required actions are not being taken. Lack of such notice shall not relieve any ESCO or Direct Customer of its obligations.
- When necessary to meet high-priority customer demand, LDCs will acquire gas intended for lower priority customers at the citygate. ESCOs/Direct Customers whose gas is diverted by the LDC will be required to continue making nominations of gas throughout the curtailment period up to their maximum delivery obligation as directed by the LDC, unless qualified upstream force majeure interruptions or curtailments prevent ESCOs/Direct Customers from securing or delivering such supplies.
 - The ESCO/Direct Customer will be the party compensated for the diverted gas. To the extent individual ESCO customers are affected by directing the payment to the ESCO, they would enter into contractual arrangements with the ESCO that clearly spell out the resolution of compensation issues between the customer and the ESCO related to occasions when gas supplies are diverted.

Compensation:

- The default price for the diverted gas will be the current market price in effect at the time of curtailment. If it can be demonstrated by the ESCO/Direct Customer with adequate support that a contract calls for a higher price, the LDC would reimburse the ESCO/Direct Customer at the contract price.
- Market price needs to be defined to the extent possible; that price may vary by LDC.

- Additional compensation (a premium) is not needed; properly defining criteria utilities must follow in implementing a curtailment and the compensation mechanism, given that market prices are likely high during a curtailment period, are sufficient; ratepayers shall not have to bear the cost of a premium.
- LDCs will recover compensation costs from customers via the GAC or equivalent mechanism, subject to Commission review.

Outreach & Education:

- LDCs will develop a plan to inform ESCO customers of the changes to the curtailment procedures, and specifically advise them that compensation will be directed to the ESCO if gas is diverted, so that customers may address that issue with their ESCO if necessary.

The Local Distribution Companies

The Brooklyn Union Gas Company
d/b/a KeySpan Energy Delivery New York

Central Hudson Gas & Electric Corporation

Consolidated Edison Company of New York, Inc.

Corning Natural Gas Corporation

KeySpan Gas East Corporation
d/b/a KeySpan Energy Delivery Long Island

National Fuel Gas Distribution Corporation

New York State Electric & Gas Corporation

Niagara Mohawk Power Corporation
d/b/a National Grid

Orange and Rockland Utilities, Inc.

Rochester Gas and Electric Corporation

St. Lawrence Gas Company, Inc.

Valley Energy, Inc.