

DOCKET NO. G-9, SUB 698

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:)	
Application of Piedmont Natural)	
Gas Company, Inc. for Approval)	MOTION FOR
Of Appendix F to its North Carolina)	RECONSIDERATION
Service Regulations)	

Pursuant to N.C. Gen. Stat. § 62-80 and Rule 1-7 of the North Carolina Utilities Commission Rules and Regulations, the North Carolina Pork Council (the “Pork Council”) hereby moves for limited reconsideration of the June 19, 2018, Order issued by the North Carolina Utilities Commission (the “Commission”) in Docket G-9, Sub 698. In support of its motion, the Pork Council states as follows:

A. BACKGROUND

1. In the June 19 Order, the Commission conditionally approved Piedmont Natural Gas Company, Inc.’s (“Piedmont”) application to adopt an Appendix F to its North Carolina Service Regulations. *See*, Docket G-9, Sub 698, *Order Approving Appendix F and Establishing Pilot Program* (June 19, 2018) (hereinafter the “June 19 Order”). That appendix establishes the terms and conditions under which Piedmont will accept Alternative Gas into its distribution system for delivery or redelivery to customers. Alternative Gas is defined in Appendix F as gas from non-traditional sources that is “intended as a substitute or replacement for natural gas.” *Id.* at 1, fnt. 1. The terms and conditions set forth in Appendix F are designed to assure that the Alternative Gas accepted into Piedmont’s system is “similar in heat content and chemical characteristics to natural gas produced from traditional underground well sources.” *Id.*

2. Although the Commission approved Appendix F in the June 19 Order, it limited the application of Appendix F to a three year “pilot program.” *See*, Order at 17-18. The Commission also limited participation in the pilot program to two suppliers of Alternative Gas who had agreements to interconnect with Piedmont’s distribution system approved by the Commission while Appendix F was still under review. *Id.* The June 19 Order provides that other suppliers of Alternative Gas can petition to participate in the pilot program but these suppliers will be allowed to proceed only if doing so will be “useful” in generating the information and data sought by the Commission through the pilot program. *Id.* at 5, 17.

3. The June 19 Order also imposes a number of reporting requirements on Piedmont and the Alternative Gas suppliers participating in the pilot program and rejects certain modifications to Appendix F arrived at by the interested parties and their experts in a collaborative process ordered by the Commission, instead reinstating the requirements originally proposed in Piedmont’s initial application. *Id.* at 17-18.

4. At no time during the 18-month period between Piedmont’s submission of Appendix F for approval and the Commission’s June 19 Order approving Appendix F was a pilot program with limited participation proposed for consideration. On the contrary, throughout the 18 months Appendix F was pending, and right up to the June 19 Order, all indications were that when finally approved, Appendix F would be incorporated into Piedmont’s Service Regulations and set the threshold requirements necessary to access Piedmont’s distribution system without any other limitations or restrictions.¹

¹ The Pork Council understands that compliance with Appendix F or any similar gas quality standard does not assure access to the gas distribution system and that there are logistical issues that also need to be addressed. Nevertheless, compliance with Appendix F was represented throughout this proceeding as the threshold for access.

5. A trial period to gauge the efficacy of Appendix F was not raised in any comment or report filed during this proceeding. It was not discussed nor was it considered during the collaborative process ordered by the Commission, and when it came time to consider the two interconnection agreements adopted while Appendix F was still under review, the Commission stated unequivocally that the developers’ “agreement to comply with the proposed Appendix F, and any revisions to Appendix F that are ultimately required . . . *provide[d] reasonable assurance of the safe and secure receipt and transportation of ... Alternative Gas on [Piedmont’s] system.*” See, Docket G-9, Sub 699, *Order Approving Agreement with Conditions* (May 10, 2017) (emphasis added). See also, Docket G-9, Sub 701 *Order Approving Agreement with Conditions* (May 10, 2017). The message plainly conveyed throughout the docket proceeding was that the final requirements of Appendix F would be the gateway to Piedmont’s gas distribution system and that meeting the final requirements would be enough to gain access to that system.

6. Sponsors of Alternative Gas projects participating in and monitoring this docket had every reason to believe that once final, the requirements of Appendix F would be the threshold for access to Piedmont’s distribution system. These developers could reasonably anticipate that certain terms or criteria in Appendix F might change because those terms and criteria were under review in the docket proceeding. But there was no notice of, and moreover, no reason to believe that access to Piedmont’s distribution system ultimately would be restricted for a three-year trial period initially limited to two participants.

7. Alternative Gas projects were initiated or continued development during the 18 months that Appendix F was under consideration. These projects included projects initiated specifically to assist electric power suppliers to meet the swine waste set-aside in North

Carolina's Renewable Energy and Energy Efficiency Portfolio Standard.² The project sponsors invested both time and money in belief that there would be a pathway to proceed under the pending Appendix F. They were blindsided by the limited participation pilot program established in the June 19 Order and the projects are now in jeopardy. The market uncertainties now in place make moving forward precarious if not imprudent. Accordingly, the Pork Council respectfully requests that the Commission reconsider several elements of the June 19 Order.

B. REQUEST FOR RECONSIDERATION

1. The Pilot Program Needs to be Reconsidered.

The Pork Council is not opposed to a trial period during which time certain enhanced reporting requirements are used to gather information and data on the efficacy of Appendix F. Indeed, the recommendation coming out of the collaborative process mandated by the Commission envisioned an Appendix F that would evolve as information and data related to its use became available. *See*, Docket G-9, Sub 698, *Revised Appendix F* (October 26, 2017). The concept of a flexible gas quality standard evolving with experience is, in the Pork Council's view, entirely acceptable. A three-year trial period initially limited to two participants, however,

² While growth in alternative gas projects was fueled by the prospect of access to the gas distribution system represented by Appendix F, the underlying catalyst for much of this development is State policy embodied in the set-aside provisions of North Carolina's Renewable Energy Portfolio Standard, N.C. Gen. Stat. §§ 62-138 (e) & (f). The set-aside provisions require the use of animal waste by-products to produce an increasing percentage of electricity sold at retail in the State. *Id.* The General Assembly enacted these provisions to promote several key state policies including the accelerated adoption of advanced techniques for the management of animal waste by-products, and the General Assembly has, on more than one occasion, reinforced its desire to see these objectives reached. Difficulty meeting the set-aside with traditional on-farm production of electricity and access to the grid has given rise to alternatives and the relatively recent use of "directed-biogas" from swine waste (an Alternative Gas) to produce electricity has proven to be a highly viable. Thus, while Appendix F remained pending, Alternative Gas projects using swine waste as feedstock were motivated to move forward both by the prospect of access to the gas distribution system afforded by Appendix F and by the on-going demand to meet State policies and goals manifested in the animal waste-to-energy set-asides.

is problematic and unlikely to lead to the type of data and information the Commission seeks to obtain.

First, as discussed above, throughout the 18 months that Appendix F was under review, it was consistently represented as the “standard and testing requirements” for Alternative Gas that if met, would allow access to Piedmont’s distribution system. At the outset, Piedmont proffered Appendix F as the “appropriately cautious parameters for [the] receipt of Alternative Gas” in its distribution system. *See e.g.*, Docket G-9, Sub 698, *Application of Piedmont Natural Gas Company, Inc. for Approval of Appendix F to its North Carolina Service Regulations* (December 6, 2016). Thereafter the criteria in Appendix F were vetted in comments and through a mandated collaborative process, “the ultimate goal” of which was to develop a standard and testing requirements “that Piedmont would incorporate into its Service Regulations.” Docket G-9, Sub 698, *Order Requiring Collaborative Meetings, Reports and Additional Information* (May 4, 2017). Subsequently, Piedmont submitted a revised Appendix F to the record. At that time, it was represented as final. Moreover, Piedmont and the other participants to the collaborative process stated that there were no unresolved or outstanding issues concerning the standard or testing requirements. Docket G-9, Sub 698, *Revised Appendix F* (October 26, 2017). And, as noted above, when it came time to consider the pending interconnection applications, the Commission itself made clear that meeting the requirements of the final Appendix F would provide reasonable assurance of the safe and secure receipt and transportation of Alternative Gas on Piedmont’s system. *See*, Docket G-9, Sub 699, *Order Approving Agreement with Conditions* (May 10, 2017); Docket G-9, Sub 701 *Order Approving Agreement with Conditions* (May 10, 2017).

Alternative Gas project developers reasonably relied upon these statements and representations in the record. They invested time and money on projects, executed related agreements and obtained permits all while Appendix F was under review. To be sure, these developers knew that Appendix F might change and the terms or criteria might be revised or modified. But at all times up until the June 19 Order, the Alternative Gas project developers had every reason to believe that any changes would be to the terms and criteria under review and that at the end of the process, access to the gas distribution system would be available if the terms and criteria in final Appendix F were met. The extent of this reliance is aptly shown in the May 31, 2018, *Joint Semiannual Progress Report* submitted in Docket E-100, Sub 113A, which identifies a number of Alternative Gas projects initiated or continuing while Appendix F was under review. Duke Energy itself issued a Request for Proposals for in-state swine-derived biogas while Appendix F was pending. *See id.* The Pork Council also is aware of other projects not listed in the *Joint Semiannual Progress Report* that moved forward while Appendix F was pending based on the belief and reliance that once adopted, compliance with that appendix would allow access to the gas distribution system. *See also*, Docket G-9, Sub 698, *Letter in Support for Optima TH, LLC's Application for Approval to Participate in Pilot Program* filed by Smithfield (“Optima TH has already invested a significant amount of time, effort and resources in the project and is fairly along in the development process”). It is estimated that over \$2 million has been invested on landfill gas projects alone while Appendix F was pending and Alternative Gas producers have discussed proposals with other local distribution companies (“LDCs) on the reasonable belief that Appendix F would be the model for moving forward.³

³ Ostensibly other LDCs are not restricted by the June 19 Order. Given the underlying premise for the pilot program, evaluating the impact on end-users of Alternative Gas injected into the local distribution system, it seems likely that other LDCs may be encouraged to wait the results of that three-year trial

There was no notice or opportunity to comment on the pilot program or the limitations on participation established in the June 19 Order. The possibility of a trial period with limited participation was never raised and there was no hint at any point in the proceeding that a trial period with limited participation was being considered. Issues that warranted comment and consideration included the scope and duration of the program and perhaps most importantly, how best to structure the trial period and participation in it so as to minimize the impact to projects under development and avoid disruption to the emerging Alternative Gas market in North Carolina. Due process and fundamental fairness (not to mention vested rights) requires notice and an opportunity to comment before a program such as the limited participation pilot program in the June 19 Order is established which inevitably will cause significant disruption and harm to existing projects and potentially prohibit participation in the State's emerging renewable energy market. *See*, N.C. Gen. Stat. § 62-43 (requiring notice and hearing where the Commission seeks to ascertain and fix just and reasonable regulations, practices, or service to be observed or followed by any or all public utilities or prescribe reasonable regulations for the examination and testing of such services). *Accord*, *CSX Transp. Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080-82 (D.C. Cir. 2005) (finding final rule invalid where the proposal did not raise the possible final result, the final result was not the "logical outgrowth" of the matters proposed and there was no opportunity to comment on the final rule).

Second, the Commission's decision to establish a pilot program with limited participation is based on a "concern" that Alternative Gas will "be consistently *lower in quality* than the blended gas" received from traditional interstate suppliers. June 19 Order at 10 (emphasis

period. At the very least, it is now unclear how the Commission will treat requests from other LDCs to accept Alternative Gas.

added). The emphasis here is on the “off-takers” or end users of the gas provided by Piedmont. The preponderance of the evidence in the record, however, strongly suggests that Alternative Gas meeting the requirements of Appendix F will not adversely impact this constituency. *See e.g., Piedmont Natural Gas Company, Inc. Response to Data Request No. 1 from the N.C. Pork Council, No. 26* (reporting no known instances where the transit or use of Alternative Gas has resulted in an adverse impact to the operations of the carrier or to the systems and equipment of the end user) (attached to Comments Submitted by the North Carolina Pork Council to Docket G-9, Sub 698 (February 20, 2017)); *Piedmont Natural Gas Company, Inc. Response to Data Request No. 1 from the N.C. Pork Council, No. 15* (reporting no known incidents where the transit or use of Alternative Gas has resulted in a harm to public health or the health of any person coming into contact with the Alternative Gas.) (attached to Comments Submitted by the North Carolina Pork Council to Docket G-9, Sub 698 (February 20, 2017)); Docket G-9, Sub 698, *Public Staff Final Report* (October 31, 2017) at 9 (“[i]f the Alternative Gas standards, as revised in this docket on October 26, 2017, are approved then Piedmont does not believe that a material change in gas service will occur.”); *id.* at 16 (PSNC’s Response that “[i]f the Alternative Gas meets the prescribed standard” there should be no change or damage to the distribution system); *id.* at 22 (par. e & f) (stating that Appendix F will militate against any risks of change and if the requirements of Appendix F are met, there will not be a material change in the service provided to downstream customers); *id.* at 24 (explaining that Piedmont will continue to monitor and evaluate its “common gas areas” (“CGAs”) to ensure that no customers are adversely impacted by interconnections of Alternative Gas); *id.* at 27 (stating that the Public Staff does not believe that Alternative Gas meeting the requirements of Appendix F will result in a material change in service provided to off-takers or end users).

Moreover, the Commission’s “concern” with a purportedly “*lower quality*” gas being injected into the distribution system arises almost exclusively in the context of one narrow scenario. June 19 Order at 10. According to the Commission, in some instances, under certain conditions, an end user may receive mostly Alternative Gas, and in that instance the heating value of the gas may be different, or in the Commission’s view a “lower quality”, than the gas Piedmont traditionally provided to the customer. *Id.* While there may be limited instances that give rise to this scenario, the record evidence again suggests that a broad “concern” here may not be warranted. *See, Public Staff Final Report* (October 31, 2017) at 10 (stating that “based on actual operating experience Piedmont does not believe that the minimum heat content proposed in Appendix F will cause problems”); *id.* at 10-11 (explaining that gas burning equipment typical of customers in North Carolina can readily accept pipeline gas with a heat content even lower than that set in Appendix F without impact to safety or reliability); *id.* at 24 (stating that Piedmont will monitor and adjust CGAs “to ensure that no customers are adversely impacted” by a lower heat content in the gas received); *id.* at 29 (explaining the Public Staff belief that Piedmont’s monitoring of CGAs and possible use of sub-CGAs will maintain accuracy for customer billing purposes).⁴

Indeed, in the case of the two projects approved while Appendix F was still under consideration, “Piedmont’s modeling . . . indicate[d] that some customers may receive up to 100% Alternative Gas under certain operating conditions.” *See, June 19 Order at 10 citing Piedmont Reply Comments, fn 8.* At that time, however, the Commission did not express a

⁴ It is worth noting that Piedmont itself does not have a minimum heat content requirement in its tariff, nor does any LDC in North Carolina guarantee a minimum heat content to its customers. *See, Docket G-9, Sub 698, Public Staff Final Report* (October 31, 2017) at 5, 10. *See also, id.* at 7 (listing specifications for Alternative Gas nominated for Duke Energy’s Buck and Dan River facilities that set a minimum heat content at 950 Btu/SCF as compared to the 980 Btu/SCF in Appendix F).

“concern” related to heating value. Rather, the Commission concluded that the developers’ agreement to comply with the proposed Appendix F and any revisions to Appendix F ultimately required, was adequate and assured the safe and secure receipt, transport and by necessary implication, distribution and use of the Alternative Gas. *See*, Docket G-9, Sub 699, *Order Approving Agreement with Conditions* (May 10, 2017); Docket G-9, Sub 701 *Order Approving Agreement with Conditions* (May 10, 2017).⁵

More importantly, however, a “concern” based on an isolated possibility that in some circumstances “under certain operating conditions” Alternative Gas may dominate the gas stream delivered to a customer provides little support for a pilot program that effectively bans all new projects regardless of location, injection points and flow. The location and injection rate of any Alternative Gas that Piedmont takes from a developer will be determined by Piedmont and that developer through negotiations. *See*, Docket G-9, Sub 698, *Public Staff Final Report* (October 31, 2017) at 22 (Piedmont’s Response par. e). *See also id.* at 27-28 (explaining that injection locations will be mutually decided by Piedmont and developer). Piedmont also will present proposed projects to “the Commission and Public Staff for review and approval prior to implementation.” *Id.* Thus, the Commission’s “concern” can be readily addressed without effectively prohibiting all new projects. If modeling shows a real risk that an end user may receive a disproportionate concentration of Alternative Gas in the gas provided by Piedmont, or that the heat value is in any way potentially compromised, the parties can work out a solution including changing the injection location or controlling the flow at which the Alternative Gas is added to the gas stream. It also would be a relatively straightforward exercise for Piedmont and

⁵ Nothing in the record demonstrates why the Commission’s view may have changed almost a year later when it issued the June 19 Order. There is no explanation in the June 19 Order on why Appendix F was good enough when the two projects were approved, but now may be inadequate and require three years of testing limited to the two pre-approved projects.

project developers to jointly determine points along the pipeline that would be acceptable for injection, (e.g., points at which pipe diameter, volumetric flow, and pressure are ideal), and portions of the system that would be a problem. *Public Staff Final Report* (October 31, 2017) at 14. Banning participation in an emerging market that is widely recognized as good for the State is extreme when less draconian approaches are available to address the circumstances giving rise to the Commission's concern.

Third, the June 19 Order suggests that in limited instances, projects other than the initial two will be permitted to participate in the pilot program provided it can be demonstrated that the projects will generate information and data deemed "useful" to the objectives of the pilot program. *See*, June 19 Order at 5, 17. The term "useful" is not defined in the June 19 Order, the contours of that concept are not explained and the criteria that will be used to decide whether a project will produce useful data and information are not elaborated or discussed in the record anywhere. Each project producing Alternative Gas is likely to produce data and information that are "useful" in some respect. Among significant variables, the feedstocks will vary between projects and the injection points will be different. The amount of Alternative Gas injected into the distribution system is likely to vary between projects and the flow at various injection points will be different; consequently, the blend of natural gas and Alternative Gas distributed to customers will be different. The end users will vary and how these "off-takers" use the gas they receive will not be the same. Thus, while the June 19 Order contemplates that other projects may be granted a position in the pilot program if the data and information generated will be "useful", there will be few instances where qualitative differences in projects will not exist and where the information and data produced will not be unique to the particular set of circumstances represented by the project. The Commission inevitably will be faced with either allowing all

projects to proceed or making arbitrary choices related to which projects can proceed and which cannot. As the Commission itself noted in the June 19 Order, picking and choosing which projects can proceed and which cannot, “raises a fundamental question of fairness.” *See*, June 19 Order at 11.

Finally, there are practical problems with limiting a pilot program to two participants, even initially. Two projects represent a fairly small sample size and they alone are unlikely to provide sufficient data and information representative of the array of circumstances and conditions that various Alternative Gas projects may present. The data set produced by the two preapproved projects is likely to be quite narrow and limited.

Further to this point, at present only one of the two projects pre-approved for the pilot program is operating and producing data and information on the distribution and use of Alternative Gas. It is common knowledge that the second project is unlikely to commence operations any time soon.⁶ There are no other projects currently producing Alternative Gas and injecting that gas into local distribution pipelines and, assuming the project sponsors continue with development, it is likely to be months before the next project will be in a position to do so. Thus, the pilot program as presently structured is unlikely to produce thorough and complete information on any remaining questions regarding Appendix F. Instead of limiting participation, the Commission should encourage and expedite Alternative Gas projects.

⁶ Notably, the June 19 Order has given this project a distinct competitive advantage over other projects as it can represent to feedstock suppliers that it has been approved and can actually take feedstock whereas at this point, all other projects are simply hypothetical and have to hedge any commitment to take feedstock with the possibility that the project may not be approved to participate in the pilot program. This competitive advantage, while perhaps inadvertently bestowed, is real and is another item that could have been considered had the concept of a limited pilot program been open for comment as opposed to simply imposed without notice or comment.

For the reasons above, the Pork Council respectfully requests that the June 19 Order be reconsidered. The pilot study program established in the June 19 Order should be held in abeyance and an expedited notice and comment period or hearing held to ascertain how best to structure a program to collect the data and information the Commission believes is needed while limiting the impact of that program on existing projects and the emerging market. Alternatively, the Pork Council respectfully requests that the pilot program established in the Order be open to all projects producing Alternative Gas meeting the requirements of Appendix F subject to considerations normally attendant to the interconnection of such projects to Piedmont's distribution system.

2. **The Purpose of Appendix F and the Result of Compliance with The Gas Quality Standard Needs to be Articulated and Affirmed.**

The Pork Council has its own concerns about the uncertainty and undue chilling effect on market development created by the June 19 Order. Developers of Alternative Gas can manage the risk that the criteria in Appendix F will evolve. They cannot, however, proceed under a cloud that access to the local distribution systems under any reasonable scenario may be unavailable or unreasonably limited. Financing cannot be obtained and, in any event, it would be imprudent to proceed under such circumstances.

In the June 19 Order, the Commission acknowledges that "there are clear benefits" and distinct "advantages to the State" to accommodating the receipt of Alternative Gas into the local distribution systems" but it then qualifies that finding by stating the "Alternative Gas producers and other interests [are] asking to use the natural gas distribution system for a purpose for which it was not intended." June 19 Order at 4. The Commission also asserts that it "is not persuaded that there is an obligation, particularly in the sense of a common carrier obligation, for LDCs to

accept Alternative Gas.” *Id.* Both statements are problematic. To the Pork Council they seem inconsistent with its understanding of Appendix F and the role of “public utilities.”

Alternative Gas producers are not seeking to use the natural gas distribution system for any purpose other than to transport a natural gas (albeit from a non-traditional source) from one location to another, from producers to consumers. Transporting gas is at the heart of what LDCs do. It is a service they routinely provide. *See*, Piedmont Natural Gas Company, Inc., *North Carolina Service Regulations* at 4 (defining “services” as including transportation and redelivery services); 2016 *N.C. Utilities Commission Report* p. 73 (“Piedmont and its subsidiaries are also engaged in the acquisition, marketing, transportation, and storage of natural gas”); Piedmont Natural Gas Company, Inc., *North Carolina Rate Schedules* 113 & 114. It is also a service the LDCs stood ready to accommodate for gas retrieved by the hydraulically fracturing local shale reserves.

By definition “Alternative Gas,” is functionally the same as gas from underground well sources. It is “similar in heat content and chemical characteristics” and is “intended to act as a substitute or replacement for traditional natural gas.” *See*, June 19 Order at 1, fnt. 1. The terms, conditions and criteria in Appendix F assure this equivalency. Thus, presenting Alternative Gas for transportation in the pipeline is no different than presenting gas from underground well sources for transportation and it is entirely consistent with what the gas distribution systems are designed to do.

Similarly, it is difficult to reconcile the Commission’s doubt “that there is an obligation . . . for LDC’s to accept Alternative Gas” with the LDCs’ status as “public utilities.” No one is suggesting that the law mandates unconditional access to the LDC systems. But LDCs are “public utilities,” they are state-sponsored monopolies and by virtue of that favored position the

law requires them to serve alike all who are similarly situated. *See also, State ex rel Utilities Commission v. Buck Island*, 592 S.E.2d 244, 251, 162 N.C. App. 568 (2004) citing *Utilities Commission v. Water Company*, 248 N.C. 27, 30, 102 S.E.2d 377, 379 (1958). With respect to the services public utilities provide the law prohibits unreasonable preferences or unreasonable disadvantages. *See*, N.C. Gen. Stat. §§ 62-131(b) and 62-140.

Again, Alternative Gas meeting the requirements of Appendix F is by definition, the functional equivalent of the gas from underground well sources traditionally transported by LDCs. The terms and conditions of Appendix F are designed to assure equivalency. Thus, the law requires that the same services and preferences afforded to a person seeking to transport gas from underground well sources also be afforded to persons presenting Alternative Gas for transportation. The product offered is not identical, but it is functionally the same. Compliance with Appendix F is the reasonable pre-requisite that assures equivalency and once that requirement is met, any discrimination in services is prohibited. *Id.*

To be sure, in the June 19 Order the Commission has expressed “concerns” with certain elements of Appendix F primarily related to heating value. The Pork Council is not averse to a regimen designed to test that “concern” or to gauge the overall effectiveness of Appendix F as currently structured. The Pork Council agrees that where data or information justify it, adjustments may be appropriate. The matter at issue, however, relates solely to whether the parameters in Appendix F assure equivalency. The question clearly is **not** whether an Alternative Gas that is shown to be functionally the same as gas from underground wells should have access to the local distribution system. The law requires that access. Any suggestion to the contrary needs to be clarified. Once it is shown that Appendix F is effective, persons offering Alternative Gas must be treated no differently and are entitled to the same kind and degree of

services that the LDCs provide for geologically derived natural gas. *See e.g., Utilities Comm. v. Mead Corp.*, 238 N.C. 451, 462, 78 S.E.2d 290, 298 (1953) (explaining that there can be “no unreasonable discrimination between those receiving the same kind and degree of service”).

Given the record, the presumption going into any trial period must be that this will be the case.

3. Certain Constituent Levels Proposed by the Interested Parties and Experts in the Revised Appendix F Should Be Reinstated.

a. **Nitrogen.** Piedmont’s original Appendix F set a limit on the nitrogen concentrations in Alternative Gas at 2 percent per volumetric basis. During the collaborative process mandated by the Commission, the parties and their experts evaluated nitrogen limits and concluded that an explicit limitation on nitrogen was not needed. This conclusion was based in part on industry consensus as evidenced by other gas quality standards in use. For example, Transco, the primary interstate supplier of natural gas to Piedmont, has no limits on nitrogen concentrations. More importantly, the decision to recommend deleting the proposed limit on nitrogen concentrations from Appendix F was based on nitrogen’s effect on gas quality.

Nitrogen’s sole effect on the quality of a gas stream relates to heating value. The “higher the concentration of nitrogen, the lower the heating value.” *See*, June 19 Order at 13. That is nitrogen’s only impact. Thus, where a standard sets a minimum heating value, there is no need for a redundant limit on the nitrogen concentration. The only practical effect of a nitrogen limit in that instance would be costly and unnecessary nitrogen reduction, not better gas quality.

In the June 19 Order the Commission acknowledged that major carriers like Transco have no standard for nitrogen. *See*, June 19 Order at 13. The Commission observed, however, that the gas Transco typically delivered to Piedmont has an average nitrogen level of 0.649% or “less than half of Piedmont’s initial proposed standard of 2% by volumetric basis.” *Id.* Accordingly,

the Commission reinstated the proposed nitrogen concentration limit because even at the 2% level, Piedmont's customers will be receiving "lower quality gas" than they received in the past. *Id.* Here, the finding of "lower quality" is clearly conflated with "different." To be sure, Piedmont's customers historically received a gas from Transco with an average 0.64% nitrogen level. Now, the customer might in very unique circumstances receive an Alternative Gas with up to 2% nitrogen. Clearly that is different. But because the heating value is directly controlled in Appendix F, the difference has no material impact. The heating value in Appendix F was determined to be acceptable and that value can be achieved even if nitrogen concentrations exceed the 2% limit in Appendix F. Accordingly, the only substantive effect of a nitrogen limit in Appendix F will be costly and unnecessary nitrogen reduction measures.⁷

For this reason, the Pork Council respectfully requests that the Commission reconsider the recommendation of the parties and experts to eliminate a quantitative limit for nitrogen in Appendix F.

b. Interchangeability.

The June 19 Order notes several points of confusion regarding the interchangeability standard first in the initial Appendix F and then in the revised version of Appendix F. *See*, June 19 Order at 12. As to the latter, the Commission finds fault with the revised interchangeability standard because it was adopted "[w]ithout explanation or justification." *Id.* The Commission orders Piedmont to clarify the standard and advises Piedmont that if it "submits a Wobbe range"

⁷ Nitrogen also is inert. Any limit on inerts in Appendix F also will have the indirect effect of limiting nitrogen as well.

that is different than the range proposed in the original Appendix F (1290 to 1370), it needs “to provide a detailed explanation” for that change. *Id.*

The Pork Council agrees that there was confusion regarding the parameters of the interchangeability standard proposed in the initial version of Appendix F and in the revised version. The Pork Council supports clear and thoughtful explanations in the record for ultimate decisions. The Commission’s June 19 Order, however, seemingly endorses the interchangeability standard initially proposed in the original version of Appendix F, at one point stating that the original proposal “of WOBBE from 1290 to 1370 is appropriate.” *Id.* There is no clear justification or explanation in the record for that finding. On the contrary, the Wobbe range in the original version of Appendix F represents nothing more than what Piedmont first proposed. It actually is at variance with what has been found generally acceptable elsewhere. *See id.* at 12 (referencing a Gas Technology Institute white paper advocating use of a variation of Wobbe of +/- 4% from historical values). And perhaps more importantly, it was revised during the collaborative process where the parties and their experts (including representatives of the LDCs) concluded that the Wobbe range in the initial version of Appendix F was unnecessarily stringent. Rather, the parties and experts determined that an acceptable variance would be “+/- 4% of historical values for natural gas in North Carolina.” The collaborative group found that a Wobbe range of “+/- 4% of historical values for natural gas in North Carolina” would not require inordinate adjustments by consumers to pressure or valve settings and would assure that there was no noticeable change in service and energy output.⁸

⁸ Admittedly, the interchangeability standard in the final Appendix F was somewhat unclear as it did not specifically indicate “+/- 4% of historical values for natural gas in North Carolina,” instead being listed as “a WOBBE variance range equal to or less than 4%” begging the question, +/- 4% of what.

A standard relying on “historical values for natural gas in North Carolina” is dependent upon accurate records. A fixed range based on historical data would be more precise and easier to apply. The Pork Council would support that approach. The concern here is only with what is implied in the June 19 Order. The statement, albeit perhaps unintended, that an “interchangeability standard of ‘WOBBE from 1290 to 1370’ is appropriate” (*id.*) is not supported in the record and contrary to the finding of the parties and the experts participating in the collaborative process mandated by the Commission. The Pork Council would object to reinstating that range without the opportunity to present countervailing evidence showing why the range of “+/- 4%” of historical values for natural gas in North Carolina” also is acceptable and more appropriate in this instance.

EXPEDITED CONSIDERATION.

The resolution of the issues prompting this Motion for Reconsideration is critical to the development of the emerging Alternative Gas sector in North Carolina. The projects that are not in the pilot program as currently structured need to make decisions now on how or whether to proceed. The resolution of matters presented herein will weigh heavily on those decisions. It also is unclear whether LDCs other than Piedmont are in any way limited by the June 19 Order, albeit indirectly or by implication. Accordingly, the Pork Council respectfully requests that the Commission consider this Motion for Reconsideration on an expedited basis.

C. CONCLUSION.

For the reasons set forth above, the Pork Council respectfully requests that the June 19 Order be revised in the following respects:

1. The pilot program established in the June 19 Order should be held in abeyance and an expedited notice and comment period or hearing held to ascertain how best to structure a program to collect the data and information the Commission believes is needed while limiting the harm to existing projects and the emerging market. Alternatively, the Pork Council respectfully requests that the pilot program established in the June 19 Order be open to all projects producing Alternative Gas subject to considerations normally attendant to the interconnection of such projects to Piedmont's distribution system.

2. The Commission should clarify that Piedmont and other LDCs have an obligation under the Public Utilities Act to accept Alternative Gas meeting the requirements of Appendix F or other appropriate gas quality standard that establishes the equivalency of the gas stream with traditional sources of gas from underground well sources.

3. For the reasons recommended by interested parties and experts in the collaborative process mandated by the Commission there should be no nitrogen concentration level in Appendix F. Further, any change to interchangeability standard in the revised Appendix F should be open to comment so that a full record on the appropriate range and variance can be presented for the Commission's consideration.

Respectfully submitted this the 9th day of August 2018.

/s/ Kurt J. Olson
Kurt J. Olson, Esq.
Counsel for the North Carolina
Pork Council
State Bar No. 22657
P.O. Box 10031
Raleigh, NC 27612
(919) 916-7221
kurt.j.olson@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Motion for Reconsideration by first class mail deposited in the U.S. mail, postage pre-paid or by email transmission with the party's consent.

Respectfully submitted this the 9th day of August, 2018.

/s/ Kurt J. Olson
Kurt J. Olson, Esq.
Counsel for the North Carolina
Pork Council
State Bar No. 22657
P.O. Box 10031
Raleigh, NC 27612
(919) 916-7221
kurt.j.olson@gmail.com