



September 17, 2004

SUBJECT: Comments on 2004 REQ and RGQ Annual Plan Item 2

Duke Energy Gas Transmission offers the following comments on the outline for the Distribution Company-Supplier Service Agreement for consideration during the November 2004 REQ/RGQ Executive Committee meeting. These comments apply to the REQ and RGQ recommendations.

1. Section 1.1.a - the word "Gas" should not be capitalized because it is not a defined term.
2. Section 1.7.a - suggest the following minor wording change for clarity:
Severability: If any provision of this Agreement or application thereof is held invalid or unenforceable, the remainder of the provisions in this Agreement shall not be affected and shall continue in full force, unless deletion of the provision ~~makes results in the failure of~~ the Agreement ~~fail~~ to address its central purpose.
3. Section 1.7.b - suggest the following minor wording change for clarity:
Governing law: This section ~~references-identifies~~ the applicable venue under which the Agreement will be enforced (e.g., state and federal laws).
4. Section 1.9 (third paragraph) - the word "Gas" should not be capitalized because it is not a defined term.
5. Section 2 (last paragraph) - suggest the following minor wording change:
~~It may be noted~~ This section may note that these conditions precedent are ongoing obligations of the parties and failure to continue to meet these conditions may provide grounds for default or eventual termination of the Agreement.
6. Section 7 - the term "market participants" should be capitalized because it is a defined term.
7. Section 11 - the term "customer" should be capitalized because it is a defined term.
8. Section 19.1 - suggest a rearrangement of the sentence to reflect that the "such as" clause refers to the obligations, rather than the expiration or termination of the agreement:
This ~~provisions in this~~ section states that certain obligations, such as confidentiality, payment of money due, warranties, remedies, and indemnity for events arising prior to termination or expiration, survive expiration or termination of the Agreement, ~~such as confidentiality, payment of money due, warranties, remedies, and indemnity for events arising prior to termination or expiration~~.
9. Section 19.2 - suggest a rearrangement of the sentence for clarity:
This section provides that a party's failure to insist on strict performance of any agreement provision of the Agreement is not construed as a waiver of its right to enforce ~~the-such~~ provision in the future.