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April 16, 2010

James J. McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

RE: Marcellus Shale En Blanc Hearing on PUC Jurisdictional Issues
Docket No. I-2010-2163461

Dear Secretary McNulty:

Enclosed please find the original Comments of DTE Pipeline Company and Bluestone Pipeline Company of Pennsylvania, LLC in the above-referenced proceeding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'John H. Isom', is written over a printed name. The signature is fluid and cursive.

John H. Isom

JHI/jl

Enclosures

cc: Jennifer Kocher, Office of Communications (*via e-mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Marcellus Shale *En Banc* Hearing on
PUC Jurisdictional Issues

Docket No. I-2010-2163461

**COMMENTS OF DTE PIPELINE COMPANY
AND BLUESTONE PIPELINE COMPANY OF PENNSYLVANIA, LLC**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

By Secretarial Letter issued on March 25, 2010, the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) requested comments from interested parties on issues related to the Commission’s jurisdiction over the transportation and sale of natural gas produced from Marcellus Shale formations in Pennsylvania. To assist in determining the potential impact of the development of the Marcellus Shale formations on the Commission and its core functions, the Commission asked questions on various topics.

DTE Pipeline Company (“DTE”) is a Michigan corporation that owns interests in and manages natural gas pipelines that serve the Midwest and Northeast regions of the United States and Ontario, Canada and that are subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission. These pipelines include the Vector Pipeline and the Millennium Pipeline. In addition, DTE’s affiliates have built and operated more than 840 miles of gathering systems and processing plants in Michigan since the 1970s. These facilities are connected to more than 6,000 production wells. Gathering services provided by DTE’s affiliates are subject to the regulatory jurisdiction of the Michigan Public Service Commission (“MPSC”).

Bluestone Pipeline Company of Pennsylvania, LLC (“Bluestone”) is a recently formed wholly-owned subsidiary of DTE. Bluestone was formed by DTE as a Pennsylvania limited-liability company for the purpose of constructing and operating a natural gas gathering system in Susquehanna County, Pennsylvania, to transport natural gas supplies produced from Marcellus Shale formations to the Millennium Pipeline in Broome County, New York. Capacity on Bluestone’s gathering system will be made available to producers following individual negotiations or awarded via a public Open Season. As Bluestone intends to hold itself and its services out to and for the public for compensation, Bluestone believes that its gathering services in Pennsylvania will be subject to the regulatory jurisdiction of the Commission. Therefore, Bluestone expects to file with the Commission an application for a certificate of public convenience in the third quarter of 2010.

DTE’s affiliates provide substantial gathering and transportation services subject to the regulatory jurisdiction of the MPSC. These experiences of DTE and its affiliates may provide to the Commission insight into the regulation of gathering facilities in other jurisdictions. Specifically, DTE’s and its affiliates’ experiences in Michigan may be useful to the Commission in determining the appropriate scope of regulation of gathering services and facilities in Pennsylvania. Therefore, DTE and Bluestone commend the Commission for initiating this docket and appreciate the opportunity to comment on the questions posed by the Commission. The appropriate resolution of issues identified by the Commission is vital to the development of the Marcellus Shale formations in Pennsylvania and the Commission will play a vital role in this process.

To facilitate review by the Commission and other interested parties, the following comments track the organization of the Commission’s Secretarial Letter.

II. COMMENTS

1. **Bluestone's Planned Operations in Pennsylvania**

Bluestone intends to file with the Commission an application for a certificate of public convenience in the third quarter of 2010 so that it may begin to offer natural gas gathering and transportation services from Marcellus Shale formations in Susquehanna County, Pennsylvania and Broome County, New York to the Millenium Pipeline.¹ It is important to note that neither Bluestone nor any affiliate will own or purchase any of the production volumes. Further, Bluestone will not sell any gas or deliver any gas to retail markets. All volumes will be delivered to the Millenium Pipeline in New York. Processing and compression facilities, to be owned and operated by Bluestone, will be installed just upstream of the interconnection with the Millenium Pipeline. By providing these regulated services, Bluestone will provide the necessary infrastructure to support development of new Marcellus Shale production in northeast Pennsylvania and southern New York. The shippers will be responsible for the reservation of capacity on the interstate pipeline and for the disposition of the production.

Bluestone notes that its proposed service territory in Pennsylvania will likely overlap with those of one or more providers of similar services. It is Bluestone's position that a regulated gathering and transportation companies' certificated service territory should not be exclusive so that competitors otherwise meeting the criteria for certificates of public convenience will not be denied such certificates based on the existence of competitors in the same territory. The Marcellus Shale formations in Pennsylvania are able to sustain and indeed may require that more than one gathering system in order to transport the production to interstate pipelines.

¹ In addition, Bluestone intends that its gathering services in New York will also be subject to the regulatory jurisdiction of the New York Public Service Commission.

2. Appropriate Scope of Commission Jurisdiction of Gathering Utilities

As noted above, Bluestone intends to seek a certificate of public convenience from the Commission to provide gathering and transportation services for producers of natural gas from Marcellus Shale formations in Susquehanna County, Pennsylvania. Bluestone will offer its gathering and transportation services to all interested producers through direct negotiation or via an Open Season. Bluestone believes that its services are in the public interest and it will promote the development of the Marcellus Shale in Pennsylvania.

DTE and Bluestone support Commission safety regulation over Pennsylvania jurisdictional gathering and transportation company operations and facilities. However, it is DTE and Bluestone's position that Commission regulation of rates is unwarranted. DTE and Bluestone note that their position on rates is consistent with their position that service territories should not be exclusive, as the availability of competitive alternatives to producers will make rate regulation unnecessary. In addition, DTE and Bluestone believe that the Commission should not attempt to regulate siting of gathering pipelines. Thousands of miles of natural gas pipelines have been constructed in Pennsylvania without siting regulation, and there is no history of significant public discontent with the existing natural gas pipeline systems. DTE and Bluestone see no reason to change this long-standing process for gathering pipelines. Indeed, such a change would impede the development of the Marcellus Shale formations in Pennsylvania.

a. Safety Regulation

DTE's gathering and transportation affiliates in Michigan are currently subject to safety regulation by the MPSC. DTE and Bluestone support similar Commission safety regulation of jurisdictional Pennsylvania gathering and transportation facilities. Upon receipt of a certificate of public convenience from the Commission, Bluestone intends that its facilities and operating

procedures will meet or exceed the Commission's safety requirements. In addition, Bluestone will participate in Pennsylvania One Call.

b. Rate Regulation

Bluestone's operations in Pennsylvania will be limited to providing gathering and transportation services to third-party shippers. Bluestone will not provide any retail services. Further, all gas supplies gathered by Bluestone will be delivered to the Millennium Pipeline in New York. Therefore, DTE and Bluestone recommend that the Commission not regulate the rates of regulated gathering and transportation companies like Bluestone, but instead provide them with the commercial flexibility to negotiate rates directly with shippers or set the rates for its services via an Open Season.

At this time, Bluestone anticipates that it will offer capacity to producers on its gathering facilities through direct negotiation with known producers in the area or through Open Seasons. Bluestone will engage identified producers to negotiate the rates associated with Bluestone's gathering and transportation services. There are risks associated with this process, including (1) the risk that shippers will use alternative means of moving their gas to market; (2) that shippers will not renew contracts for gathering services; and (3) that the Marcellus Shale formations will not be as productive as presently believed in the proposed service territory. Bluestone will bear 100 percent of the market risk associated with the results of these negotiations as there will be no mechanism to assure recovery of its costs of service. Bluestone believes that these risks are appropriate and indeed are necessary.

It is Bluestone's position that rates should not be regulated so that it and other similar situated gathering companies will have the flexibility required to negotiate with the various producers. Indeed, such flexibility is necessary as each producer may be in a vastly different operating position. For example, some producers may currently be drilling while others are

seeking to secure capacity in advance of commencing drilling. In addition, it is likely that each producer will have a different acreage dedication thus impacting their current and potential production volumes. Moreover, as noted above, Bluestone believes that the production from the Marcellus Shale formations is adequate to support multiple gathering companies in one area. Therefore, each producer will have competitive options for gathering and transportation services which will give producers appropriate bargaining power. For these reasons, DTE and Bluestone do not believe that rate regulation by the Commission is required.

However, DTE and Bluestone propose that regulated gathering and transportation companies file a transportation tariff with the Commission. Through this tariff companies like Bluestone will identify (1) the gathering and transportation services it offers and (2) other aspects of its service including, minimum credit requirements, gas quality requirements, service prioritization, and fuel charges.

For the reasons set forth, above DTE and Bluestone recommend that the Commission not regulate the rates of gathering utilities in Pennsylvania. However, DTE and Bluestone support the filing of general tariffs with the Commission setting forth other terms of the transportation services to be provided.

c. Siting Regulation

It is DTE's and Bluestone's position that, similar to other underground facilities in Pennsylvania, Commission regulation over the siting of gathering pipelines is unnecessary, and such regulation could hamper the development of the Marcellus Shale in Pennsylvania. Natural gas gathering pipelines and natural gas distribution and transmission pipelines are identical from the perspective of an affected landowner. Indeed, thousands of miles of natural gas distribution and transmission pipelines have been sited in Pennsylvania without regulation by the Commission and without significant expressions of displeasure by the public. There is no

history which suggests that the Commission should attempt to regulate siting of gathering pipelines.

d. Assessments

DTE and Bluestone understand that the Commission will incur costs associated with the regulation of gathering facilities in Pennsylvania. Therefore, DTE and Bluestone do not object to the assessment of regulated gathering companies in order to offset the cost of such regulation. It is expected, however, that “light-handed” regulation of gathering companies will not be as expensive as the regulation by the Commission of natural gas distribution companies. Therefore, Bluestone and DTE believe that regulated gathering companies should not be classified with natural gas distribution companies or any other entities subject to standard Commission regulation.

As explained above, DTE and Bluestone believe that the assessment of Pennsylvania gathering utilities should be commensurate with the level of regulation. To the extent that the principal focus of the Commission’s jurisdiction over gathering companies is safety regulation, the assessments should be set to recover the costs of the operation of the Commission’s Bureau of Transportation Safety and other related staff as they relate to regulating gathering utilities. To accomplish this goal, consideration should be given to assessing based on “mileage” of pipeline facilities, which would be the principal driver of the Commission’s regulatory costs. A similar assessment mechanism is used successfully in Michigan.

As noted above, DTE and Bluestone do not believe that rate regulation of gathering utilities is necessary or appropriate due to the nature of the service provided. Therefore, the costs of Commission regulation of such gathering utilities need not include costs associated with rate regulation. Instead, DTE and Bluestone propose that Pennsylvania’s gathering facilities be assessed based upon the miles of gathering pipelines in Pennsylvania. Assessments based upon

miles of line are more in line with the causes of costs that the Commission will incur in regulating the safety of gathering utilities operations and facilities in Pennsylvania.

3. Impact of Marcellus Shale Development on Pennsylvania Natural Gas Distribution Companies

DTE and Bluestone offer no comments on these issues.

4. Pennsylvania Association of Township Supervisors

DTE and Bluestone offer no comments on the effect that truck transport related to Marcellus Shale development will have on municipalities within the Commonwealth of Pennsylvania.

5. General Questions

a. Measures to Avoid Stifling Marcellus Shale Development

DTE and Bluestone commend the Commission for holding an *en banc* hearing and soliciting input from all interested parties on the development of the Marcellus Shale in Pennsylvania and its potential impact on the Commission. These actions by the Commission send a strong signal to existing and proposed gathering companies of the Commission's intent to establish the "rules of the road" at the outset and thereby allowing all gathering companies to establish business plans based upon a known regulatory framework.

To avoid stifling the development of the Marcellus Shale, DTE and Bluestone recommend that the Commission adopt a regulatory framework that balances the need to insure financial and technical fitness with the need to set appropriate limits on the regulatory oversight of gathering facilities. As noted above, DTE and Bluestone believe that it is imperative that the Commission not establish exclusive territories for gathering utilities. The Marcellus Shale formations in Pennsylvania are sizable and will allow for overlapping service territories for

multiple gathering companies. Further, DTE and Bluestone believe that the Commission should insure financial and technical fitness but avoid protracted administrative proceedings due the need for only light-handed regulation.

To this end, DTE and Bluestone support Commission safety regulation of jurisdictional gathering and transportation companies in Pennsylvania. However, DTE and Bluestone do not believe that rate or siting regulation is necessary due to the nature of the services provided. Specifically, as discussed above, Bluestone's operations in Pennsylvania will be limited to providing gathering and transportation services to producers. Bluestone will negotiate rates for its services with each producer. Bluestone will not have any of its own production nor will it take title to the production that will transport on its gathering facilities. Further, the production on Bluestone's facilities will be transported to the Millenium Pipeline in New York and will not be delivered or sold by Bluestone to retail customers.

Another important issue to Bluestone is for the Commission to assess regulated gathering and transportation companies at a level commensurate with Commission's of regulation of these entities. As detailed above, DTE and Bluestone support Commission assessments based upon a regulated gathering and transportation company's miles of pipeline rather than on gross revenues for the gathering and transportation services provided.

b. State/Federal Safety Regulation of Non-Jurisdictional Intrastate Pipelines

As Bluestone intends to seek a certificate of public convenience to offer transportation services in Pennsylvania, the companies have no position on these issues.

III. CONCLUSION

As stated above, DTE and Bluestone commend the Commission for holding the *en banc* hearing on the development of the Marcellus Shale formations and soliciting input on the

appropriate level of Commission jurisdiction over gathering and transportation companies in Pennsylvania. DTE and Bluestone look forward to working with the Commission, its staff and other interested parties on these important matters as the Commission proceeds with its evaluation of the impact of the development of the Marcellus Shale on the Commission and its operations.

Respectfully submitted,



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