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August 13, 2009

Via Electronic Filing

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

In re: Dockets No. R-2009-2088072, *et al.*
Pennsylvania Public Utility Commission, *et al.* v. Equitable Gas Company, LLC

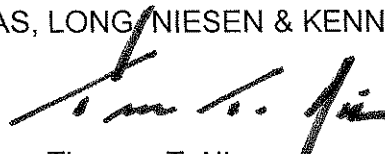
Dear Secretary McNulty:

Enclosed for filing on behalf of Equitable Gas Company, LLC are its original Exceptions in the above matter. Copies are being served upon the persons and in the manner set forth on the certificate of service attached to the Exceptions.

Very truly yours,

THOMAS, LONG NIESEN & KENNARD

By



Thomas T. Niesen

Encl.

cc: Certificate of Service
Daniel L. Frutchey, Esq.
John M. Quinn

090813 McNulty (Exceptions).wpd

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judges
Robert P. Meehan, Presiding
Katrina L. Dunderdale, Presiding

In The Matter Of

R-2009-2088072
C-2009-2091475
C-2009-2098330
C-2009-2100312

- Pennsylvania Public Utility Commission
- Michael Tarr
- Irwin A. Popowsky, Consumer Advocate
- William R. Lloyd, Jr., Small Business Advocate
NRG Energy Center Pittsburgh LLC
Independent Oil and Gas Association of
Pennsylvania
Dominion Retail, Inc.
Intervenors

v.

Equitable Gas Company, LLC

EXCEPTIONS
OF
EQUITABLE GAS COMPANY, LLC

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DATE: August 13, 2009

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I. INTRODUCTION

This proceeding concerns Equitable Gas Company's ("Equitable" or "Company") Computation of Annual Purchased Gas Adjustment ("April 1 Filing") for the twelve months ending September 2010. The Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"), the statutory advocates, participated in the proceeding. NRG Energy Center Pittsburgh LLC ("NRG") and Dominion Retail, Inc. ("Dominion Retail") intervened in the proceeding. NRG is an Equitable transportation customer. Dominion Retail is a natural gas supplier operating on the Equitable system.¹

On June 24, 2009, Equitable, OTS and OCA filed a Joint Settlement Agreement with the Public Utility Commission ("Commission") resolving all issues between Equitable and their respective offices. The OSBA, the remaining party statutorily charged with protecting the interest of the public and PGC customers, did not oppose the approval of the Joint Settlement Agreement.

Equitable and NRG litigated one issue - - the Btu conversion factor. Testimony was submitted and Equitable and NRG filed Main and Reply Briefs. A Btu conversion is necessary for the determination of monthly and daily imbalances associated with transportation service. As it had in every proceeding since 2004, Equitable used a Btu conversion factor of 1.06 in its 2009 Section 1307(f) filing. Although NRG presented

¹ As explained in footnote 5, page 34, of the Recommended Decision, Dominion Retail did not raise any specific issue in its petition to intervene, nor did it present any witnesses, submit any testimony or exhibits, or otherwise litigate any issue and Judges Meehan and Dunderdale concluded that Dominion Retail's positions are not entitled to any consideration. Accordingly, Dominion Retail is not discussed further in these Exceptions.

testimony that the heat content of gas received by it at its plant has been 1.06 since July 2005,² NRG challenged the continued use of a 1.06 Btu conversion factor.³

By Recommended Decision dated July 16, 2009, Administrative Law Judges Meehan and Dunderdale recommend that the Commission adopt the Joint Settlement Agreement presented by Equitable and the statutory advocates. They recommended further that the Btu conversion factor should be decreased from 1.06 to 1.057.

The end result of the Recommended Decision is to potentially shift and reallocate PGC cost responsibility from transportation customers to purchased gas cost customers. In effect, the Recommended Decision would allow NRG and other transportation customers to swing on the system at the expense of Equitable's PGC sales customers. Although the dollar amount is relatively minor and, arguably, insignificant, the potential shifting and reallocation of cost responsibility away from transportation customers to PGC customers is not consistent with the public interest and Equitable submits that the factor should remain at the established 1.06.

Additionally and more importantly from Equitable's perspective, the Recommended Decision is based on the incorrect assumption that Equitable has a profit motive in the determination of PGC rates and in the determination of the Btu conversion factor for delivery service balancing purposes. However, the entire 1307(f) process with the reconciliation of under and over recoveries is a pass through of purchased gas costs -- no more, no less. While Equitable believes that the public interest is furthered by

² NRG Pittsburgh St. No. 1 at 18.

³ NRG expressed concern that the heat content of system gas could decrease because of anticipated reduced purchases of Appalachian gas. Although Equitable's purchases of Appalachian gas will decrease from historic levels, that gas, however, will remain on the system. System heat content is likely to remain at existing levels and probably increase as additional Appalachian gas and high heat content Marcellus Shale gas are brought onto the system in this and future years. See Equitable Reply Brief at 10-15. The Recommended Decision gave no weight to NRG's allegations concerning possible heat content reductions.

setting the Btu conversion factor at 1.06, ultimately, it is of no moment to Equitable if the Commission concludes that the factor should be decreased to 1.057.

Equitable takes vigorous exception to the assumption that Equitable has a profit motive in the setting of the Btu conversion factor for PGC and balancing purposes. This incorrect assumption seems to underpin the entirety of the judges' thinking on this issue and the Commission should expressly reject it. Equitable does not make money by the application of the Btu conversion factor as suggested by the presiding administrative law judges, nor does the record substantiate their conclusion. Even if the Commission were to accept 1.057 as the appropriate Btu conversion factor, it should reject the "profit motive" rationale relied on by the presiding administrative law judges.

Equitable submits the following Exceptions to the Recommended Decision.

II. EXCEPTIONS

Equitable bills customers volumetrically based upon the cubic feet of natural gas used by the customer. The standard measurement quantity is 1000 cubic feet, or 1 Mcf. Equitable, however, purchases and transports gas on a dekatherm basis. A dekatherm is a measure of heat content.

In a perfect world, one Mcf of gas would be exactly equivalent to one dekatherm. Each cubic foot of gas would contain exactly 1000 Btu's of energy, and 1000 cubic feet (1 Mcf) would contain 1,000,000 Btu's (1 dekatherm). The world, unfortunately, is not perfect. Heat content varies widely in natural gas. Gas produced in the southwestern part of the United States, for example, routinely tests at between 1000 and 1050 Btu's per cubic foot, whereas gas produced in Appalachia often contains 1100 to 1250 Btu's per cubic foot.

The variation in heat content would be meaningless if all customers were sales customers. However, the existence of transportation customers requires the use of a Btu conversion factor to determine monthly and daily imbalances for transportation customers. Equitable's Tariff provides that, for the purposes of determining monthly and daily imbalances, the Company will use the BTU conversion factor utilized in the Company's most recent Section 1307(f) proceeding.

The determination of the Btu conversion factor is not an exact science and the statement of the presiding administrative law judges that Equitable "asserted it would"⁴ provide gas at a specific heat content is wholly inaccurate. Equitable receives gas from over 1,500 wells on its gathering system and over a hundred other points from upstream transporters. With this unique supply mix (many NGDC's have only a handful of interconnects, usually with the same pipeline), Equitable cannot guarantee or assure a

⁴ Recommended Decision at 46.

specific heat content for each and every customer at each and every system location on each and every day and month of the year. It simply is not reasonable or even plausible to suggest that it is possible. Like many other issues in ratemaking such as retainage rates or delivery charges, the Btu conversion factor reflects a best-efforts approximation - - a "just and reasonable" rate⁵ - - but not a guarantee.

1. **EXCEPTION NO. 1** - The Recommended Decision recommends a Btu conversion factor of 1.057 beginning October 1, 2009. Decreasing the factor from 1.06 to 1.057 would have no adverse financial impact to Equitable and Equitable does not specifically oppose it. The decrease would, however, benefit NRG to the detriment of PGC customers. Accordingly, Equitable submits that the public interest would be furthered by allowing the factor to remain at 1.06. See Recommended Decision at 49.

A. Introduction

The Recommended Decision concludes that the Commission should decrease the Btu conversion factor beginning October 1, 2009, from the current 1.06 to 1.057. The Recommended Decision is a departure from what has been consistently accepted by the Commission in the past several Equitable 1307(f) proceedings. Equitable increased the Btu conversion factor from 1.045 to 1.06 in its 2003 1307(f) proceeding. It has remained at 1.06 since that time without challenge or controversy.

The recommendation of the administrative law judges to decrease the factor from 1.06 to 1.057 is not based on a specific proposal of any one of the many alternative proposals submitted by NRG, the only party that challenged the continued use of 1.06, but rather is based on the presiding administrative law judges' interpretation of the evidence of record. Unknowingly and unintentionally, the judges have created a

⁵ Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides the statutory standard and requires rates that are "just and reasonable."

scenario of possible cost benefit to NRG, the only party to challenge the 1.06 factor in this proceeding, at the expense of PGC customers.

NRG was only an intervenor, as opposed to a formal complainant, in this proceeding. The presiding administrative law judges present no analysis of the impact, or potential benefit, of their recommendation on NRG and, once again, no party other than NRG supported a change in the Btu conversion factor. The Recommended Decision does not address whether NRG, itself, will benefit or be harmed by allowing the factor to remain at the existing and historically accepted level of 1.06. As addressed further below, however, if NRG continues to receive 1.06 gas at its plant as it claims that it has since July 2005, NRG will receive a potential financial benefit as a result of the recommendation of the presiding administrative law judges to reduce the Btu conversion factor to 1.057.

B. No Adverse Financial Impact to Equitable For Reducing the Factor to 1.057

At the outset, prior to a discussion of the potential benefit to NRG, it should be clearly understood that the recommended decrease to the Btu conversion factor will have no impact on Equitable's recovery of purchased gas costs through the 1307(f) process. Equitable's purchased gas costs are spread over its PGC sales customer base based on delivered volumes of gas as measured by volumetric registering meters with reconciliation of under and over recoveries. The entire statutory process is designed to provide for the opportunity for full gas cost recovery - - no more, or less.

The presiding administrative law judges recommend that the Commission decrease the conversion factor from 1.06 to 1.057 beginning October 1, 2009. The effect of the reduction, initially, will be to reduce the Btu conversion factor rate beginning October 1, 2009. Subsequently, in next year's 1307(f) proceeding, Equitable will provide

data that will demonstrate, on average, whether actual system heat content for the period was either higher or lower than 1.057. In either instance, there will be no adverse financial impact to the Company.

C. Financial Benefit to NRG and Detriment to PGC by Reducing the Factor to 1.057

NRG, on the other hand, has a financial incentive in the level of the Btu conversion factor. The benefit to NRG from reducing the conversion factor from 1.06 to 1.057 arises because the Btu conversion factor utilized in the Company's 1307(f) proceedings is used as part of the balancing provisions for NRG, as well as other transportation customers. The factor, in effect, plays a part in allocating purchased gas costs between PGC sales and transportation customers. Equitable's Tariff Rule 11.22 - BTU Conversion Factor provides as follows:

For the purposes of determining monthly and daily imbalances of a delivery service pool, the Company will use the BTU conversion factor utilized in the Company's most recent Section 1307(f) proceeding.⁶

NRG witness Merrill testified that "the heat content of the gas delivered to the [NRG] plant since July 2005 indicates a heat content of 1060 Btu/cf (dry)" NRG Pittsburgh St. No. 1 at 18. Assuming heat content at the NRG plant of 1060 Btu, annual

⁶ At page 44 of the Recommended Decision, the presiding administrative law judges state that, in addition to its use in the application of Rule 11.22 for the purposes of supplier pool balancing, the Btu conversion factor is "also used in Equitable's base rate proceedings to determine sales volumes, which in turn is used to determine distribution rates." No citation is provided for this statement and the statement is simply not accurate. The presiding administrative law judges repeat the thought later on that same page when they refer, once again inaccurately, to the "BTU Conversion Factor used in Equitable's last base rate proceeding to calculate sales volumes." No Btu conversion factor is applied in a base rate proceeding to determine sales volumes. Sales volumes in a base rate proceeding are based on normalized volumetric meter readings of customer usage during the test year. An incomplete cross examination of the normalization process occurs at transcript pages 70 through 72 but it would be inaccurate to interpret the cross examination at those pages as a statement that the Btu conversion factor is used to adjust base rate, test year sales volumes. The inaccuracy is compounded by the citation to the testimony of NRG witness Merrill on page 45 of the Recommended Decision and Mr. Merrill's claim that the Commission "approved" a Btu conversion factor of 1.045 in Equitable's 1996 base rate proceeding. Although asked to do so, Mr. Merrill could not provide any support for his testimony from either a Commission Order or Equitable testimony. N.T. 175. The use of the Btu conversion in base rate proceedings as presumed by the presiding administrative law judges is wrong and not supported by any credible evidence of record.

usage of 600,000 Mcf and an average natural gas price of \$5.50/Dth, NRG stands to gain approximately \$9,900 annually if the Btu conversion factor is decreased from 1.06 to 1.057 as recommended by the presiding administrative law judges.⁷ This gain to NRG will be at the expense and detriment of PGC customers, not Equitable Gas Company.

In effect, through the application of transportation balancing provisions, PGC customers in the example above are supplying 1,800 Dth of the energy burned at the NRG plant at a cost of \$9,900. Thus, the decrease to the conversion factor as recommended by the presiding administrative law judges actually exposes PGC customers to increased PGC costs that would otherwise be paid by NRG and, similarly, by other transportation customers through monthly and daily tariff balancing provisions. In effect, the Recommended Decision creates the potential for subsidization of transportation customers by sales customers. The potential subsidization is relatively minor on a dollar basis but it exists.

Equitable submits that the potential cross subsidization, minor though it is, is not consistent with the public interest. Unlike sales customers, transportation customers typically benefit from negotiated delivery rate components that are less than full tariff charges. NRG, as an example, already benefits tremendously from negotiated delivery rate components that are far below full tariff charges. It is inconsistent with the public interest to create an additional potential for cross subsidization favorable to NRG by decreasing the Btu conversion factor as recommended by the presiding administrative law judges.

⁷ $(600,000 \text{ Mcf} \times 1.06) - (600,000 \times 1.057) = 1,800 \text{ Dth} \times \$5.50/\text{Dth gas cost.}$

D. Conclusion

Rather than decreasing the Btu conversion factor, Equitable believes that the public interest is furthered by allowing the factor to remain at the established level of 1.06. Decreasing the Btu conversion factor from 1.06 to 1.057 would have no adverse financial impact on Equitable. It, however, would create the possibility of a potential benefit for NRG to the detriment of PGC customers.

Equitable's Exception No. 1 should be granted.

- 2. EXCEPTION NO. 2 -** The evidence of record supports a Btu conversion factor of 1.06. See Recommended Decision at 49.

Unlike many natural gas distribution companies, Equitable receives natural gas at over 1,600 receipt points: including approximately 113 points at which custody of gas is transferred to Equitable from interstate pipelines and approximately 1,500 points at which gas is received from Appalachian sources. Equitable St. No. 3-R at 11. This diversity of supply and high levels of Appalachian system gas, much of which is local Pennsylvania production, has been encouraged by the Commission.

The heat content and volume of gas received is not identical from one transfer or receipt point to the other. As an example, typically, but not always, heat content of Appalachian gas is higher than the heat content of interstate pipeline gas. It has been wrongly suggested by NRG throughout this proceeding that Equitable has the ability to control the heat content of natural gas delivered on its system.⁸ In recommending a 0.003 decrease in the Btu conversion factor, the Recommended Decision, like NRG, assumes an unrealistic ability to control system heat content.

⁸ NRG Objections, ¶ 31.

Equitable can open or close valves to control the flow of gas on the system but this is only done for operational reasons (N.T. 143) - - to protect the integrity of the system in emergency situations or if producers delivered gas that either does not meet the minimum heat content of 960 Btu/cf or if the gas exceeds the maximum heat content of 1100 Btu/cf.⁹ Having the operational ability to prevent systemic failures does not equate to being able to "manually" control or "fine-tune" Btu content on a system with more than 1,600 natural gas receipt points. See N.T. 130-132.

It is unrealistic and unreasonable to try or even suggest that one can hit a 1.06 or 1.057 Btu "bulls-eye" each and every day, month or year through the opening and closing of valves. It simply cannot be done and there is no statutory or regulatory, ratemaking or other requirement that it be done. Just like many other issues in ratemaking such as retainage rates or delivery charges, the Btu conversion factor reflects a best-efforts approximation consistent with the statutory requirement that rates be just and reasonable and not unduly discriminatory. 66 Pa. C.S. § 1301.¹⁰

With respect to retainage, for example, Equitable's Tariff Rule 11.4 provides for a retention allowance of 6.0 percent for commercial and industrial customers and 8.0 percent for all other customers. Evidence of record demonstrated that the Company's current weighted average retainage rate of 7.09% assessed to all transportation customers is within 95% of the total system UFG and compressor fuel gas level of 7.44%. Therefore, a significant cross-subsidization between transportation customers

⁹ Both extremely low Btu content and extremely high Btu content can be exceedingly hazardous for Equitable because it provides service to thousands of customers directly from gathering lines. Having the ability to respond quickly is necessary to safely operate a gas distribution and gathering system and emergency shut-off valves are required by federal pipeline safety regulations.

¹⁰ In actuality, can it be reasonably suggested that every other ratemaking component only needs to be "just and reasonable," but the Btu conversion factor must be set at a "guaranteed" level? The answer is that such a suggestion is not reasonable although the Recommended Decision concludes otherwise.

and PGC customers does not exist and currently effective transportation retainage rates are to remain unchanged. This is precisely the approach that should be taken in regard to the Btu conversion factor which similarly should remain at the historically accepted level of 1.06.

The historical heat content data submitted by the Company and relied on by Judges Meehan and Dunderdale in footnote 10 of the Recommended Decision in support of 1.057 show how system heat content can vary within reasonable bounds from month to month. The data also demonstrates that system heat content was equal to or above 1.06 in four of the twelve months of calendar 2008 and higher than 1.057 in six of the twelve months.

In sum, the historical data relied upon by the presiding administrative law judges supports the continued application of 1.06 as the Btu conversion factor for the period beginning October 1, 2009.¹¹ Decreasing the factor is not supported by the evidence of record and only serves to create the potential for unreasonable cross subsidization of transportation customers by PGC customers as explained in Exception No. 1.

Equitable's Exception No. 2 should be granted. The evidence of record supports a Btu conversion factor of 1.06.

¹¹ NRG's own measurements of historical heat content also do not support the Recommended Decision and the recommended decrease in the Btu conversion factor. Mr. Merrill testified that "NRG Pittsburgh's independent measurement of the heat content of the gas delivered to the plant since July 2005 indicates a heat content of 1060 Btu /cf (dry)" NRG Pittsburgh St. No. 1 at 18. Assuming their accuracy for the purpose of argument, NRG's own measurements taken in conjunction with its alleged "independent consultant" produced a system wide average of 1059.019 for the 42 month period from July 2005 through December 2008. Equitable Cross Examination Exhibit No. 2.

3. **EXCEPTION NO. 3** - The Recommended Decision incorrectly assumes that Equitable makes a larger profit when the system gas heat content is lower than the Btu conversion factor. It does not. The entire 1307(f) process is a pass through of purchased gas costs - no more, no less.

A. Introduction

The Recommended Decision is based on the incorrect assumption that Equitable makes money or receives pecuniary benefit on the delivery of natural gas when the system heat content is lower than the "Commission approved" Btu conversion factor. Rec. Dec. at 46. The assumed pecuniary benefit, in turn, is based on a misleading NRG analysis of Equitable proposals concerning base rate billing determinants from two prior Equitable 1307(f) proceedings. The first proposal was withdrawn as part of a comprehensive settlement in the 2004 1307(f) proceeding and the second was rejected by the Commission in the 2005 1307(f) proceeding.

Equitable does not make money through the application of the Btu conversion factor.¹² The statement in the Recommended Decision that Equitable's evidence shows an adverse financial impact on Equitable customers potentially in excess of \$200,000 annually is simply wrong. In its Exceptions Nos. 1 and 2, Equitable took exception to the recommended decrease of the Btu conversion factor from 1.06 to 1.057. While Equitable believes that the public interest would be furthered by allowing the factor to remain at 1.06, ultimately, the decision as to which customer group to prefer (sales customers or transportation customers), obviously, is up to the Commission. It is of no moment to Equitable if the Commission concludes that the factor should be decreased to 1.057.

This Exception No. 3 differs from Exceptions Nos. 1 and 2 in that it seeks to correct a clear error in the reasoning behind the recommended decrease in the Btu

¹² See Exception No. 1 *supra*.

conversion factor. Even if the Commission concludes that 1.057 is the appropriate Btu conversion factor for PGC and balancing purposes and that Equitable's Exceptions Nos. 1 and 2 should be denied, this Exception No. 3 should be granted and the Recommended Decision corrected on this important point.

B. The Adjustments Proposed in the 2004 and 2005 Section 1307(f) Proceedings and the Reference to Them in This Proceeding

In its 2004 and 2005 1307(f) proceedings, Equitable asked the Commission to allow it to implement a base rate adjustment that would make the Company economically indifferent about the higher Btu content of Appalachian supply that was coming onto its system. As explained by Equitable and noted by the Commission in its Order entered September 28, 2005 in the Company's 2005 1307(f) proceeding at R-00050272, levels of Appalachian-produced natural gas had been steadily increasing on the Equitable system over the several years prior to 2005. In 1997, Equitable had purchased approximately 3.2 Bcf of local Appalachian production. By 2003, the level of local Appalachian purchases had more than doubled to 8.4 Bcf.¹³

Appalachian natural gas, typically, but not always, has a higher Btu content than interstate pipeline gas. As higher heat content gas was brought into the system, the heat content of system gas increased allowing a customer to purchase smaller volumes of gas (fewer Mcfs) while maintaining the same level of heating comfort or energy usage. Since Equitable sells gas on a volumetric basis rather than a heat content basis, Equitable was experiencing decreased delivery service margin as system throughput decreased. From 1997 to 2003, Equitable's PGC sales declined from 30.12 Bcf in 1997 to 26.26 Bcf in 2003 due in part to the higher heat content of the gas.¹⁴

¹³ Order entered September 28, 2005 at 45.

¹⁴ Order entered September 28, 2005 at 45.

Equitable was being financially harmed by the revenue loss associated with the reduction in sales as a consequence of the increased level of higher Btu local production in the Company's gas supply mix. To remedy the situation, the Company proposed an annual adjustment - - a decoupling type adjustment - - that would allow the Company to be economically indifferent on the issue of higher Btu Appalachian supply. Although the Company was proposing a base rate, delivery service margin adjustment based on delivery service billing determinants, the adjustment was to be determined in the Company's annual 1307(f) proceeding.

Specifically, the Company proposed to evaluate heat content on an annual basis. The heat content was to be compared to 1.045 the system average heat content on or about the time of the Company's then most recent base rate filing in 1997. The difference between the two Btu conversion factors, whether positive or negative, was then to be multiplied by the projected PGC sales volumes to determine an appropriate annual adjustment. If applied, the adjustment would have reversed the loss of delivery service margin that was occurring as a result of the reduction in delivery service billing determinants being experienced by the Company due to increase in system average heat content.

The delivery service margin adjustments were opposed by statutory parties in both the 2004 and 2005 Section 1307(f) proceedings. Equitable withdrew the proposal in the 2004 proceeding. The 2005 proceeding was, however, brought to a litigated conclusion. The Commission rejected the proposal explaining that it was **not** a gas cost matter but rather an attempt to undertake single issue base rate ratemaking outside of the context of full base rate review. The Commission held as follows in its Order entered September 28, 2005 at Docket No. R-00052072:

We will deny Equitable's Exception on this issue. First, we agree with the OTS, OCA and OSBA that the issue Equitable seeks to raise is not a gas cost issue. Section 1307(h) of the Code provides us with a definition of gas costs: "As used in this section, the terms 'natural gas costs' and 'gas costs' include the direct costs paid by a natural gas distribution company for the purchase and the delivery of natural gas to its system in order to supply its customers." A review of the balance of that Section fails to support Equitable's arguments that a loss of revenue due to a higher heat content of gas is in any way related to transportation costs, storage costs, or any of the other elements set forth in Section 1307(h).

Although our primary rationale for denying this Exception is that the issue is not properly brought in a Section 1307(f) proceeding, we agree that this constitutes single issue ratemaking which should not take place outside the context of a full base rate review. In addition, while we hesitate to dismiss a substantive claim on a procedural basis, the OCA, OSBA and OTS are correct that it appears this issue could have been raised in Equitable's case-in-chief. Thus, its appearance at the rebuttal stage does conflict with 52 Pa. Code § 5.243(e).

For all the foregoing reasons, we will deny Equitable's Exception relating to higher Btu content gas.

Fast forwarding to this 2009 1307(f) proceeding, the presiding administrative law judges cite the withdrawn and rejected delivery service adjustments from the prior proceedings in support of decreasing the Btu conversion factor to 1.057. At page 45 of the Recommended Decision, the presiding judges state that Equitable asserted in these prior proceedings that it would perform an annual evaluation of the heat content of gas. In footnote 8 at page 45, specific citation is made to testimony from the 2004 and 2005 proceedings.

The proposed delivery service margin adjustments from the prior proceedings do not support a Btu conversion factor adjustment in this proceeding. It is "apples and oranges" to attempt to support a change in the Btu conversion factor by citation to a withdrawn/rejected delivery service adjustment proposed by the Company as a result of reduced delivery service billing determinants. One has nothing to do with the other. One does not support the other. Additionally, it is completely inappropriate to take an

adjustment that was withdrawn in settlement in the 2004 1307(f) proceeding and rejected by the Commission in the 2005 1307(f) proceeding, accept it as fact and then use it as the basis to support an adjustment in a later case. The Recommended Decision has misinterpreted and misapplied a proposed adjustment and testimony that were withdrawn and rejected in prior proceedings and the Commission should correct the Recommended Decision.

C. The "\$200,000" Figure Cited in the Recommended Decision

The misinterpretation and misapplication discussed above is greatly compounded by the conclusion that Equitable's evidence showed adverse financial impact on customers in excess of \$200,000.¹⁵ The "\$200,000" figure cited by the presiding administrative law judges, which was calculated during the cross examination of Equitable witness Quinn, was a recasting of an exhibit submitted by Equitable in its 2004 1307(f) proceeding. The calculation has only created unnecessary confusion about the existence of a "profit motive" and it should not have been allowed into the record. Equitable's objection to the attempted recalculation, although overruled (N.T. 77-79), should have been sustained.

The "\$200,000" figure has no bearing on the appropriate Btu conversion factor in any event. When it was first presented in its original form in the 2004 1307(f) proceeding, the calculation was in support of the previously discussed proposed adjustment for lost delivery service margin and reduced delivery service billing determinants being experienced by Equitable between base rate cases as the heat content of its system gas rose. As explained above, the adjustment was ultimately rejected by the Commission and Equitable was unable to effect any delivery service

¹⁵ Recommended Decision at 46.

margin adjustment during the many years when system heat content was above the level underlying the 1996 base rate case.

Ignoring the fact that the adjustment was a matter concerning delivery service billing determinants - - a base rate matter - - that was previously determined to be inappropriate for consideration in a 1307(f) proceeding, the presiding administrative law judges have relied on the adjustment and related calculation to support their 2009 1307(f) Btu conversion factor recommendation. Simply stated, the base rate calculation produced during cross examination from testimony previously rejected by the Commission as inappropriate for consideration in a 1307(f) proceeding provides no support for determining whether 1.06 or 1.057 is the appropriate Btu conversion factor to be established for the prospective 1307(f) period beginning October 1, 2009.

The calculation and “\$200,000 figure” concern delivery service margin and are not evidence that Equitable has a profit motive or pecuniary interest in the setting of the Btu conversion factor for PGC and balancing purposes. At most, the calculation and “\$200,000 figure” show that *if* current delivery service rates were determined based on a Btu conversion factor of 1.060 and *if* the actual heat content of system gas were 1.057 with all other cost of service items being held constant, then a **base rate adjustment** of \$258,932 for the entire PGC customer base would be appropriate under the delivery service margin adjustment proposed by Equitable in its 2004 and 2005 1307(f) proceedings.

The Recommended Decision has misinterpreted and misapplied a hypothetical calculation of delivery service margin impact to support a conclusion that Equitable has a pecuniary interest in the setting of the appropriate Btu conversion factor for the purpose of transportation pool balancing for PGC purposes and then improperly relied on that conclusion to recommend a reduction to the Btu conversion factor. It is “apples

and oranges” to attempt to support a change in the Btu conversion factor by citation to a calculation originally presented in support of an adjustment to delivery service margins. One has nothing to do with the other. When transportation pool balancing is achieved by the Btu conversion factor, no customer is charged for any new or additional delivery charges.¹⁶

D. Conclusion

The error of the Recommended Decision might have been avoided if Equitable’s objection to the cross examination and calculation had been sustained. Equitable continues to support 1.06 as the appropriate Btu conversion factor for the prospective period beginning October 1, 2009, consistent with the public interest as addressed in Exceptions Nos. 1 and 2. However, even if the Commission were to accept 1.057 in place of 1.06, the Commission should reject the rationale relied on by the presiding administrative law judges. Equitable does not have a “profit motive” or pecuniary benefit in the application of the Btu conversion factor as incorrectly stated by the presiding administrative law judges.

Equitable’s Exception No. 3 should be granted.

- 4. EXCEPTION NO. 4 -** The Recommended Decision inappropriately places the burden of proof on Equitable. Recommended Decision at 46.

The Recommended Decision concludes that Equitable bears the ultimate burden to demonstrate that a conversion factor of 1.06 is “just, reasonable, and in the public

¹⁶ As an example, if Customer A used 100 Mcf for the month measured at his plant, and as a result of the Btu conversion factor Customer A’s pool is notified that Customer A needs to bring in additional gas, say 3 Dth, to be in balance, Customer A is not billed additional delivery charges by Equitable. The customer’s measurement of 100 Mcf remains the same and only the amount of gas to be delivered to the pool is affected.

interest.”¹⁷ Equitable submits, however, that the burden of proof resides with opponents to support a recommended change in the established 1.06 factor. See *Brockway Glass Company v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A. 2d 1067 (1981). Although NRG presented different theories in an attempt to cast doubt on the continued application of 1.06, none of these theories was relied upon by the presiding administrative law judges. Instead, the judges relied upon historical Company heat content data similar to what is available each and every year in Equitable 1307(f) proceedings.¹⁸

When the concern with “profit motive” is appropriately removed from consideration as explained in Exception No. 3, one is left with a 1.06 factor, reasonably and continuously accepted without controversy in prior proceedings, and historical heat content data similar to what is available each and every year in Equitable 1307(f) proceedings. The historical heat content data demonstrates that system heat content was equal to or above 1.06 in four of the twelve months of calendar 2008 and higher than 1.057 in six of the twelve months. This level of heat content is expected to continue and may well increase as additional Appalachian gas and high heat content Marcellus Shale gas are brought onto the system in this and future years. A Btu conversion factor of 1.06 is the “just and reasonable” factor for continued application to transportation balancing for the period beginning October 1, 2009.

Equitable’s Exception No. 4 should be granted.

¹⁷ Recommended Decision at 46.

¹⁸ Recommended Decision at 47.

III. CONCLUSION

Equitable Gas Company, LLC respectfully requests that the Pennsylvania Public Utility Commission approve the Joint Settlement Agreement in its entirety and grant the foregoing Equitable Exceptions Nos. 1, 2, 3 and 4 as aforesaid.

Respectfully submitted,

By  _____

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Attorneys for
Equitable Gas Company, LLC

DATE: August 13, 2009
EGC Exceptions (Final).wpd

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judges
Robert P. Meehan, Presiding
Katrina L. Dunderdale, Presiding**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	R-2009-2088072, <i>et al.</i>
	:	
	:	
v.	:	
	:	
Equitable Gas Company, LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of August, 2009, served a true and correct copy of the Exceptions of Equitable Gas Company, LLC, upon the persons and in the manner set forth below:

BY EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

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