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December 28, 2011

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA HAND DELIVERY**

**RE: Petition for Generic Investigation or Rulemaking Regarding "Gas-on-Gas Competition" Between Jurisdictional Natural Gas Distribution Companies, Docket No. P-2011-2277868**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and three (3) copies of the Answer of the Industrial Energy Consumers of Pennsylvania ("IECPA") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Answer, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers  
of Pennsylvania

TKS/sar  
Enclosures  
c: Certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition for Generic Investigation or  
Rulemaking Regarding "Gas-On-Gas  
Competition" Between Jurisdictional  
Natural Gas Distribution Companies** :

**Docket No. P-2011-227786**

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**ANSWER TO THE PETITION FOR GENERIC  
INVESTIGATION OR RULEMAKING ON BEHALF OF THE  
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

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Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, 52 Pa. Code § 5.61, the Industrial Energy Consumers of Pennsylvania ("IECPA") hereby files this Answer to the Joint Petition ("Petition") requesting that the Pennsylvania Public Utility Commission Institute a Generic Investigation or Rulemaking Concerning "Gas-on-Gas Competition" Between Natural Gas Distribution Companies. On December 8, 2011, the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Peoples TWP LLC ("Peoples TWP"), and Peoples Natural Gas Company LLC ("Peoples") (collectively, "Joint Parties") filed the Petition at the Pennsylvania Public Utility Commission ("PUC" or "Commission"), requesting that the Commission institute an investigation or rulemaking into gas-on-gas competition issues, particularly into the practice of rate flexing. IECPA files this Answer pursuant to 52 Pa. Code § 5.61(a)(1), authorizing submission of Answers in this proceeding until December 28, 2011.

## ANSWER

IECPA does not oppose the Joint Parties' request for the institution of a generic investigation or rulemaking to address gas-on-gas competition issues, specifically flexible rate negotiation, i.e., negotiated or flex rates. Similar to the Joint Parties, IECPA recognizes that gas-on-gas competition may be better addressed through a rulemaking, rather than in individual base rate proceedings. Although IECPA agrees with the Joint Parties that an investigation or rulemaking may be necessary, IECPA disagrees with the Joint Parties' position that the practice of rate flexing is "uneconomical and inequitable," and should be treated differently during base rate proceedings or perhaps eliminated altogether. *See* Petition at 2-3. As detailed below, the Joint Parties' opposition of rate flexing is unsupported by Pennsylvania law and conflicts with important natural gas policy rationales.

On October 16, 1986, the Commission adopted its regulations regarding natural gas transportation rates. *See* 17 Pa. B. 546. For many years, those regulations have addressed the ability of large volume gas consumers, such as the IECPA members, to obtain transportation service for competitively procured natural gas. A clear presumption of negotiation exists both within the regulations and the Commission's Order implementing the regulations. The regulations state that NGDC tariffs must "separately state and price the components of transportation service to afford customers flexibility in choosing the degree of supply risk they are willing to assume." 52 Pa. Code § 60.2(1). In addition, the tariffs must include "a range of rates for transportation service," 52 Pa. Code § 60.2(2), but also establish a "maximum rate allowed for transportation service." 52 Pa. Code § 60.2(3).

Although the Commission recognized that there is a maximum rate that can be charged, there are no mandatory circumstances in which transportation customers are required to pay the

maximum tariff rate. Instead, the Commission viewed negotiated rates as optimal, in order to encourage the use of natural gas: "Assuming that many of these customers are able to burn another type of fuel, it is preferable to keep these customers on the system, albeit at a lower rate, than to lose all contribution to the company's (NGDC) fixed costs." 17 Pa. B. 548. The Commission further determined that NGDCs should be permitted to offer a "range of rates" to transportation customers, "to give them (NGDCs) more flexibility to respond in particular situations." *Id.* at 547. The Order and the regulations do not limit this negotiation to only certain large transportation customers, or limit the factors that can be considered when establishing rates. Other ratepayers are protected by the requirement in the regulations that the rates negotiated between the NGDC and the transportation customer "shall recover, to the maximum extent possible, the fixed costs associated with the service." 52 Pa. Code § 60.2(6).

Clearly, overlapping service territories in portions of Western Pennsylvania existed when the regulations were adopted, and are one factor that has been used to justify negotiated rates, which assist in the competitiveness of business and industry in the Commonwealth. Unlike customers in more rural areas of the Commonwealth who can more easily pursue bypass through *an interstate pipeline or local natural gas wells*, customers in more populated areas may not have these options and should be able to rely on overlapping service territories, in addition to their economic development benefits, to justify negotiating a rate that is below the maximum tariff rate.

The regulations also require NGDCs to provide transportation service "in a manner and according to terms which maximize system throughput." 52 Pa. Code § 60.2(7). Permitting NGDCs to continue offering negotiated rates due to overlapping service territories and other circumstances can incentivize the use of natural gas by businesses and industries. Because

commercial and industrial ("C&I") customers can often choose among a variety of energy resources, it is crucial for gas transportation rates to offer lower rates to ensure the continued consumption of natural gas by these customers. Similarly, negotiated rates are important for NGDCs, who may offer flexible rates to C&I customers to grow their customer base and remain competitive, especially within overlapping NGDC service territories. The continued existence of transportation rate negotiation may also assist the Commonwealth in promoting the use of the indigenous Marcellus Shale resources to advance economic development goals and to retain business and industry in Pennsylvania.

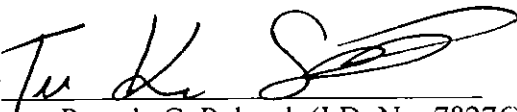
Although many factors have changed since the transportation rate regulations were passed 25 years ago, the similarities that exist necessitate the continued employment of negotiated transportation rates. Arguably the most significant change affecting the Pennsylvania energy markets since these regulations were adopted was the passage of the Natural Gas Customer Choice and Competition Act ("Competition Act"). Notably, the Competition Act supports the continuation of pre-restructuring transportation rate practices, such as rate flexing, stating that "[t]he natural gas distribution company may continue to provide natural gas service to its customers under all tariff rate schedules and riders incorporated into its tariff, and policies or programs, existing on the effective date of this chapter." 66 Pa. C.S. § 2203(14).

Based on the aforementioned reasons, IECPA, as a group representing the interests of Pennsylvania's Large C&I energy customers, does not oppose a rulemaking on negotiated transportation rates. IECPA supports continuing the current regulatory system and allowing large transportation customers to negotiate rates based on a variety of factors, including the existence of overlapping service territories, as long as the safeguard established in Section 60.2(6) of the Commission's regulations is preserved. Because the current system of establishing

a "maximum rate" with the presumption of individual negotiation between the NGDC and its customers is set forth in a regulation, IECPA respectfully submits that a rulemaking ultimately is the appropriate procedural vehicle for examining this issue if the Commission decides to reverse its prior determinations that the maximum rates established in the NGDCs' tariffs should be subject to negotiation based on the existence of competitive alternatives or other factors, including overlapping territories and facilities that could serve the customer. Pending completion of this process, NGDCs should be ordered to continue negotiating transportation rates with Large C&I customers for all legitimate reasons, including to address "gas-on-gas competition." At this time, it is appropriate to ensure that the "status quo" is maintained, especially as Pennsylvania industry continues to recover from the recession, and the Commonwealth is seeking ways to enhance the use of Marcellus Shale resources.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Counsel to the Industrial Energy Consumers of  
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Dated: December 28, 2011

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Teresa K. Schmittberger

Counsel to the Industrial Customer Groups

Dated this 28th day of December, 2011, at Harrisburg, Pennsylvania

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