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January 13, 2012

**VIA HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

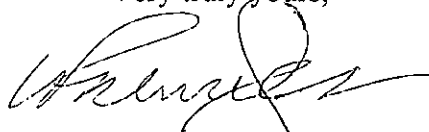
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LA FOU  
SECRETARY'S OFFICE

Re: Natural Gas Pipeline Replacement and Performance Plans,  
Docket No. M-2011-2271982

Dear Secretary Chiavetta:

Enclosed for filing are the original and ten (10) copies of the *Pipeline Replacement and Performance Plan Comments of Equitable Gas Company*. Copies of these Comments have been served as indicated on the attached Certificate of Service.

Very truly yours,



W. Edwin Ogden  
For BUCHANAN INGERSOLL & ROONEY PC

WO/kra

Enclosures

cc: Paul Metro, Chief, Gas Safety Division (via email, [pmetro@pa.gov](mailto:pmetro@pa.gov))  
Robert F. Young, Deputy Chief Counsel (via email, [rfyoung@pa.gov](mailto:rfyoung@pa.gov))  
David W. Gray, Esquire  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Natural Gas Pipeline Replacement and Performance Plans** : **Docket No. M-2011-2271982**  
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**PIPELINE REPLACEMENT AND PERFORMANCE PLAN  
COMMENTS  
OF  
EQUITABLE GAS COMPANY**

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Equitable Gas Company, LLC ("Equitable" or the "Company")<sup>1</sup> respectfully files these Comments in response to the Pennsylvania Public Utility Commission ("Commission") Tentative Order, entered November 10, 2011 ("Tentative Order"), which requested comments addressing the Commission's proposal to establish Natural Gas Pipeline Replacement and Performance Plans ("PRP Plans").<sup>2</sup>

**A. Introduction**

Equitable shares the Commission's goal of ensuring continued natural gas pipeline safety and reliability and agrees with the Commission's statement that "Pennsylvania's natural gas utilities have been providing safe and reliable service for many years."<sup>3</sup> The Company has well established gas safety and reliability practices that are appropriately tailored to the specific needs of its distribution system. Those practices have been audited by the Commission's Gas

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<sup>1</sup> Equitable is a Pennsylvania natural gas distribution public utility company ("NGDC") that provides Commission jurisdictional service to approximately 260,000 residential, commercial and industrial customers in portions of western Pennsylvania. It operates and maintains over 3300 miles of distribution main pipelines in Pennsylvania.

<sup>2</sup> By Secretarial Letter dated November 21, 2011, as ratified by the Commission on December 1, 2011, the comment period for proposed PRP Plans was extended from December 2, 2011 to January 13, 2012. The remaining two topics addressed by the Tentative Order were the subject of previously filed Comments by Equitable, and by others, and a subsequent Commission Order entered December 22, 2011.

<sup>3</sup> Tentative Order, page 5.

Safety Division, and the Company has worked cooperatively to improve those practices, when necessary. The Company looks forward to continuing to foster that type of cooperation.

Applying those practices to its pipeline system, Equitable has appropriately managed risks, including deciding to spend over \$180 million in the past ten years to replace aging infrastructure. Moreover, the Company has allocated more resources in 2012 to replace higher volumes of what it has classified as small diameter (12 inches or less) cast iron pipe. If Equitable is able to maintain its present level of capital expenditures on these efforts for the next five years, and barring unforeseen circumstances, all of Equitable's small diameter cast iron pipe should be replaced within that timeframe.

Equitable understands the challenges of managing aging infrastructure, including the need to replace that aging infrastructure at times, within the confines of the current regulatory framework that does not assure a timely and cost effective way to recover such significant expenditures. Equitable will continue to meet its statutory obligations to operate a safe and reliable system within those confines. However, there is a need for an improved recovery mechanism to better enable NGDCs to address pipeline replacement expenditures.

Accordingly, Equitable fully supports the passage of House Bill 1294, which would authorize the Commission to approve alternative ratemaking mechanisms to allow more timely recovery of the significant infrastructure costs NGDCs will incur in the coming years to maintain and improve their pipeline systems. Such an alternative ratemaking process would significantly enhance the capability of NGDCs to undertake pipeline system improvements. However, if it is the intent of the Tentative Order to now mandate that NGDCs accelerate pipeline replacement projects or otherwise relinquish the right to appropriately exercise their

managerial discretion, then Equitable respectfully disagrees with the appropriateness of such mandates as well as the process relied upon.

The Tentative Order proposes to implement a new program requiring NGDCs to file, and obtain Commission approval for, PRP Plans. The PRP Plan must address pipeline replacement time frames, certain performance metrics and a proposal for the means by which the cost of the PRP Plan should be recovered in rates.<sup>4</sup> The Tentative Order states that PRP Plans will be utility-specific, not a “one-size-fits-all” proposition; and, each utility will be permitted to design a PRP Plan that takes into account the utility’s total amount of “risky pipe”, customer rate stability, the utility’s financial health and the amount of time that the utility estimates to replace the “failing infrastructure”. With respect to NGDC rate recovery mechanisms for PRP Plan costs, the Tentative Order states that utilities will be permitted to amend their PRP Plans in the event that legislation permitting alternative ratemaking mechanisms is enacted into law.<sup>5</sup>

The Tentative Order recognizes that an important element of an NGDC’s current federally-mandated Distribution Integrity Management Program Plan (“DIMP Plan”) is “the identification and implementation of measures ... designed to reduce the risks from failure of its gas distribution pipeline”.<sup>6</sup> Equitable’s current DIMP Plan (including its risk assessment) is based on extensive experience, backed by industry practice and takes into account the varying metallurgical characteristics within its system.

Pursuant to its DIMP Plan, the Company diligently monitors and assesses various pipeline failure risks within its system, and takes appropriate remedial action when and where needed. The Company’s ongoing activities to maintain the integrity, safety and reliability of its

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<sup>4</sup> Tentative Order, page 6.

<sup>5</sup>*Id.*

<sup>6</sup> Tentative Order, page 5. These ongoing efforts are required by federal regulations governing DIMP Plans at 49 C.F.R. § 192.1007(b), (d).

pipeline system, including pipeline replacement decisions, are directly tied to the Company's DIMP Plan, and are re-evaluated continually as changing conditions and circumstances dictate. Moreover, these pipeline replacement and related risk mitigation decisions are directly connected to the annual budgets set by utility management. The flexibility and discretion exercised by Equitable in that process are critical elements of its DIMP obligations as well as the efficient operation of an NGDC.

Although the Commission's overall goal to advance the safety and reliability of the NGDCs' natural gas distribution systems is one that Equitable shares, Equitable does have concerns with aspects of the Tentative Order that could be read as overriding the flexibility and discretion that is so critical to DIMP obligations. A prescriptive approach that would deprive Equitable of its managerial discretion and ignore the ongoing and reasonably flexible requirements embodied in the DIMP would not be in the public interest. If that is the Commission's intent, there are due process concerns with the current Tentative Order that need to be addressed in a further proceeding.

In addition, more clarity is needed in the event that it is the intent of the Commission to establish mandatory requirements. As discussed above, it is unclear from the Tentative Order how the Commission intends to integrate PRP Plans with the NGDCs' current federally-mandated DIMP Plans. Also, the performance metrics referred to in the Tentative Order and its related terms are in need of further clarification and specification. Those types of issues are more appropriately addressed in a formal rulemaking process.

All of these issues are further addressed in the comments below.

## **B. The DIMP Plan Process Includes Appropriate Pipe Replacement Considerations**

As the Commission recognizes, one of the most important elements of a DIMP Plan is the identification and implementation of measures to address risks from potential failures of gas distribution pipelines.<sup>7</sup> The DIMP Plan process was implemented by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), pursuant to the Pipeline Integrity, Protection, Enforcement and Safety Act of 2006. As part of the DIMP process, operators of natural gas distribution pipelines are required to identify and assess risks on their distribution systems on an ongoing basis, to remediate conditions that present a potential threat to pipeline integrity, and to monitor program effectiveness.

Consistent with its obligations, Equitable developed and implemented its DIMP Plan in 2011. Prior to that time, many of the practices and policies that became part of Equitable’s DIMP Plan were utilized by Equitable to appropriately manage risks, including decisions over pipeline replacement projects. Under its DIMP Plan, the Company conducts a thorough evaluation of risks associated with its distribution pipeline. The Company ranks relative risks within its system and implements appropriate measures to address these risks and monitor results. Under its DIMP Plan obligations, the Company also evaluates, and re-evaluates, threats and risks across its entire pipeline system on an ongoing basis.<sup>8</sup> As should be apparent, there is no “one size fits all” for DIMP Plans and “risks” are defined in relative terms within each NGDC's distribution network.

Pipeline replacement is one approach, but certainly not the sole or the most appropriate approach, for reducing pipeline risks identified in a company’s DIMP Plan. Under the DIMP process, those types of decisions are appropriately left to the discretion of the NGDCs,

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<sup>7</sup> *Id.*

<sup>8</sup> 49 C.F.R. 192.1007(b)-(f).

which must make those decisions by balancing the various considerations involved in running an NGDC. Accordingly, DIMP Plans, by design, are intended to be flexible in order to permit pipeline operators to exercise their discretion and judgment in evaluating and managing risks of pipeline failure, choosing among various means available to manage such risks, and continually changing factors that must be considered.

DIMP Plan regulations specifically recognize that the distribution pipeline operator possesses the key knowledge and experience to assess, manage and remedy risks posed to its pipeline system. Such knowledge and experience is gained through past, current and ongoing activities to design, operate and maintain the system. Under the DIMP Plan process, reassessment of the pipeline system is also an ongoing requirement in order to properly account for changes in the various factors that affect the risk of failure.<sup>9</sup>

It is noteworthy that PHMSA did not impose additional prescriptive requirements for integrity management of the systems beyond the parameters, and flexibility, embodied in the DIMP Plan process.

### **C. Mandating Separate PRP Plans Requires Additional Process Steps**

Given the requirements already imposed by the DIMP Plans, requiring separate and mandatory pre-approved PRP Plans is not necessary. As recognized by the DIMP process, the NGDCs are in the best position to manage risks within their systems, and the regulatory oversight provided by DIMP is the necessary balance in the event an NGDC is not meeting its safety obligations. Since there is not even an assertion that Equitable is failing to meet those safety obligations, which is otherwise refuted by Equitable's track record and current practices, the Company must preserve its right to exercise its independent business judgment, as well as the

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<sup>9</sup> *Id.*

reasonable flexibility provided by DIMP, in determining how best to maintain the integrity, safety and reliability of its distribution pipeline system.

Thus, if the Commission's intention is to assert control over the Company's decision-making process pertaining to the timing and amounts of capital expenditures to be made on its distribution pipeline system, such action would be contrary to the flexibility provided under DIMP Plan, and also would constitute an unwarranted intrusion on the discretion and judgment that is to be exercised by utility management.<sup>10</sup> If it is the Commission's intention to impose such new requirements and take away that flexibility, then, at a minimum, it should institute a rulemaking proceeding so as to preserve the due process rights of all affected participants, and permit a full understanding and discussion of such a plan's legality, basis, components and operation.

The need for a more robust process also is illustrated by the several specific aspects of the Tentative Order that are unclear and leave open important issues that must be addressed before such a sweeping new regulation is imposed on NGDCs. Those issues are more fully discussed in the next section.

A further concern relates to the inherently confidential nature of this type of information, particularly if PRP Plans contain a lot of detailed information. Mandating detailed PRP Plans would, at a minimum, necessarily require measures to protect such details from public

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<sup>10</sup> It is a longstanding principle of Pennsylvania law that the company is to manage its affairs to the fullest extent, free from Commission interference absent compelling evidence of an abuse of discretion that violates the public interest. See *Metropolitan Edison Company v. Pa.P.U.C.*, 62 Pa. Cmwlth. 460, 437 A.2d. 76 (1981); *Berner v. Pa.P.U.C.*, 382 Pa. 622, 116 A.2d 738 (1955); *Bell Telephone Co. of Pennsylvania v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941); *Northern Pennsylvania Power Co. v. Pa.P.U.C.* 333 Pa. 265, 5 A.2d 133 (1939); *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921).

disclosure under the Pennsylvania Public Utility Confidential Security Information Disclosure Protection Act.<sup>11</sup>

#### **D. Replacement Time Frames and Performance Metrics are Vague and Unclear**

The Tentative Order proposes to require that PRP Plans include time frames for pipeline replacement, based, *inter alia*, on each NGDC's total amount of "risky pipe" and the time estimated to replace the "failing infrastructure", taking into consideration "customer rate stability" and "utility financial health". Without guidance on how these various factors are weighed, Equitable cannot fully comment on the appropriateness of that analysis. However, the Tentative Order requires NGDCs to comply with a Pipeline Replacement Performance Metric ("Metric"), as follows: "the utility's average rate of pipeline replacement during the ten years prior to the filing of the establishment of the Metric; or the rate that will result in the replacement of all "high-risk" (emphasis provided) pipe within twenty years unless the company demonstrates that a lower rate of replacement is in the public interest." The Tentative Order provides further that each NGDC must replace "unprotected bare steel or coated steel and cast iron pipe based on its DIMP Plan for risk assessment", and that the rate of replacement must be equal to or exceed its Metric.<sup>12</sup>

It is unclear (1) what the legal and/or factual basis may be for these standards, and (2) how they interrelate to each other, and to the DIMP Plan. It is also unclear what is meant by terms such as "risky pipe", "high-risk" pipe and "failing infrastructure" – all key terms under the Tentative Order in determining the trigger for meeting the proposed Metric. Although risks are ranked in relative terms under Equitable's DIMP Plan, terms such as "high-risk", "failing infrastructure", and "risky pipe" are not DIMP-defined terms. Moreover, the DIMP Plan is not a

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<sup>11</sup> Act 2006-156 (H.B. 854), P.L. 1435, § 1, 35 P.S. §§ 2141.1-2141.6.

<sup>12</sup> Tentative Order, page 6.

stagnant document in which relative risks do not change over time. Thus, in the event the Commission ultimately requires filed and approved PRP Plans, clarity is needed on these terms and there must be appropriate consideration given to the changing nature of risks and the steps need to mitigate those risks.

Equitable respectfully disagrees if the Tentative Order's intent is to require all cast iron, bare steel and coated steel pipe to be replaced within a time frame that equals or exceeds the Company's "Metric", irrespective of its DIMP Plan risk assessment. Such a requirement would ignore critical elements of the DIMP Plan, as well as management's right to exercise reasonable discretion in planning for and implementing steps required to maintain pipeline safety and reliability. Equitable appropriately focuses its DIMP Plan analysis on identifying pipeline that needs some mitigating action, whether it is surveying, repairing, replacing or some other action. The DIMP Plan is a "living" document that is reassessed on an ongoing basis, with changing circumstances and updated data. The risk associated with all pipe in the ground is always relative, dependent on updated data flowing into the DIMP Plan process. When the Company establishes its budget of activities for each year, it considers the current DIMP Plan analysis and makes pipeline replacement decisions as part of that process.

Additional key language in the Tentative Order that lacks the needed clarity relates to the "public interest" that may justify a replacement period beyond the Metric. A wholesale pipeline replacement program that mandates the replacement of all cast iron, bare steel and coated steel on a 20 year or less schedule would require hundreds of millions of dollars in rate relief for Equitable alone. In addition to such rate related issues that are more fully addressed in the following section, it is unclear what public interests would be considered and found to be appropriate to warrant a replacement period longer than the Metric. For instance,

mandating accelerated replacement plans must take into consideration other practical issues. There will be heightened competition for limited labor, materials and equipment. As a result, there can be a shortage of qualified resources that prevents or significantly inhibits the safe completion of all jobs within these accelerated timeframes. To the extent they can be completed on an accelerated basis, this heightened competition, at a minimum, is likely to increase the costs of such projects.

Similarly, consideration must be given to the potential impact on individuals, businesses and communities as broad scale, major pipeline replacement projects (especially those in urban areas) are likely to be disruptive. For instance, Equitable has service territories within the City of Pittsburgh and surrounding communities that overlap with other NGDCs. The prospect of several NGDCs attempting to complete pipeline replacement projects within a compressed time frame in such areas raises the likelihood of project delay and compounds the expected disruption to those communities. Moreover, such projects require a significant amount of planning and coordination with local officials and others that may be impacted, which must take into account permitting, customer communication programs and similar efforts to educate and reduce the impact of these projects. These efforts will not eliminate the disruptive nature of these projects and having multiple NGDCs completing them on an accelerated basis has the potential of compounding the concerns. It is unclear from the Tentative Order whether these types of issues are part of the “public interest” analysis for the Metric.

Finally, Equitable respectfully submits that the other metrics listed in the Tentative Order (damage prevention, corrosion control, leaks, emergency response time, and critical valve determination) should not be separately addressed in any filed and approved PRP Plan. These areas already are addressed in the Company’s DIMP Plan and/or in other Company

policies and practices. For example, the DIMP Plan already takes into account damage prevention, leaks and corrosion control when assessing and managing risk. An emergency response time policy has been fully developed with years of experience and critical valve determinations are made consistent with industry standard – both of which have questionable relevance to a PRP Plan. Equitable respectfully submits that these “other metrics” should not be part of a PRP Plan and, to the extent the intent is to make them part of such plans, the Tentative Order lacks the clarity needed to fully consider and comment on the potential impact of requiring some other “metrics” on these issues.

In summary, to the extent new mandated standards are the ultimate goal of the Tentative Order, Equitable respectfully submits that a rulemaking process would be the most appropriate avenue. Further clarification and more details are needed about these metrics before they can become required standards. In addition, the apparent departure from DIMP Plan analyses, and the interjection of what may be arbitrary standards into the decision-making processes that are reserved for management, need to be further addressed in a manner that permits participation by all affected parties.

Individual utilities should continue to have the ability to implement mitigation measures specific to those risks identified and prioritized within their individual DIMP Plans. It is imperative to take into account the unique characteristics of each system, including the type of pipeline, topography, logistics of implementation and other factors, in order to develop an approach that is appropriate and cost effective for that system. Industry experience and practice have proven that this is the best approach. Equitable understands that an appropriate balance must be found between all of the relevant considerations in order to continue to ensure that adequate measures are being taken to address pipe failure risks. Equitable believes that its DIMP

Plan appropriately assesses risks within its system, including the proper identification of pipeline for replacement, and the Company has appropriately exercised its discretion in addressing those risks. Any attempt to eliminate the Company's flexibility to make reasonable judgments about such infrastructure improvements should not be imposed in this proceeding.

#### **E. Rate Recovery Mechanisms**

The Tentative Order also requires PRP Plans to contain a proposal for the means by which the cost of pipeline replacement should be addressed in rates. The current traditional mechanism for recovery of capital investments is the filing of a base rate case. This traditional mechanism contains inherent delay (lag) in when capital expenditures are reflected in NGDC base rates, which creates uncertainty of recovery, and requires significant legal, expert witness and related expenses. There is a need for a more timely, cost-effective way to recover these significant capital expenditures.

Currently, the Company establishes its capital and operating budgets on an annual basis, which takes into consideration all facets of the NGDC, including labor and all projects, including pipeline replacement projects, that need to be funded for that year. Those decisions are made in the context of Equitable's obligation to provide safe and reliable service. Moreover, those decisions are made in a cost-effective manner to the benefit of customers and shareholders. Pipeline replacement expenditures must compete with those other projects and commitments for the limited Company financial resources that are available. However, as stated earlier, the Company has a solid track record of providing for pipeline replacements when and where needed; and, its DIMP Plan assures that the Company will continue to monitor the system and take appropriate remedial action when and where needed.

Recognizing the need to continue to address aging infrastructure and the limitations of the current ratemaking process to recover those costs, the enactment of pending legislation permitting an alternative ratemaking mechanism is needed. With the prospect of more prompt cost recovery for these investments, the Company can consider an acceleration of its pipeline replacement program that would not divert resources from other needs.

#### **F. Schedule of Filings**

The Tentative Order proposes a staggered schedule for filing PRP Plans, beginning with a due date of March 16, 2012 for the first round of filings. At a minimum, those filings dates and the other proposed deadlines in the Tentative Order should be adjusted to reflect the extended comment period. To the extent a Final Order is entered that provides for an adjustment of those deadlines and requires a PRP Plan filing by Equitable within those reasonable time frames, Equitable is able to file a plan that contains DIMP Plan backed specifics for pipeline replacements within the current planning year. Equitable again emphasizes that significant detail should not be required in light of the confidentiality concerns earlier raised and recognizing that Equitable's DIMP Plan that supports these decisions remains available for review. If more, or different, details will be required, the Company would need additional time to comply.

#### **G. Conclusion**

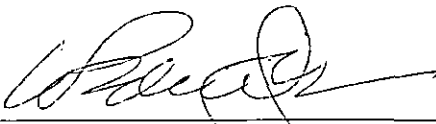
Equitable will continue to operate a safe and reliable system that appropriately addresses any pipeline replacement needs within the context of its DIMP Plan, which decisions will continue to balance the need to efficiently operate an NGDC. Equitable understands the challenges in managing aging infrastructure within the current regulatory framework and applauds the Commission's desire to address these issues. However, it respectfully disagrees

with the need or appropriateness of having Commission-approved PRP Plans which mandate new standards and take away the needed flexibility in managing risks and operating an NGDC. If that is the Tentative Order's purpose, such issues should be considered in a further proceeding, preferably after an alternative recovery mechanism is in place.

Equitable appreciates the opportunity to file these Comments and looks forward to discussing in greater detail these issues.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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Attorneys for Equitable Gas Company, LLC

Dated: January 13, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Natural Gas Pipeline Replacement and Performance Plans** : **Docket No. M-2011-2271982**  
:

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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