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January 27, 2012

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

VIA HAND DELIVERY

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and five (5) copies of the Reply Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Central Penn Gas Large Users Group ("CPGLUG"), Columbia Industrial Intervenors ("CII"), Peoples Industrial Intervenors ("PII"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and UGI Industrial Intervenors ("UGIII") (collectively, "Industrial Customer Groups") 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 Reply Comments, 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 Customer Groups

TKS/sar
Enclosures

c: Certificate of Service
Paul Metro, Chief, Gas Safety Division (via e-mail)
Robert Young, Deputy Chief Counsel – Energy (via e-mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natural Gas Pipeline Replacement :
and Performance Plans :

Docket No. M-2011-2271982

REPLY COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: January 27, 2012

I. INTRODUCTION

In a Tentative Order adopted November 10, 2011, the Pennsylvania Public Utility Commission ("Commission") proposed to require larger natural gas distribution companies ("NGDCs") to submit Natural Gas Pipeline Replacement and Performance ("PRP") Plans, which should include a proposed procedure and timeline for pipeline replacement, as well as cost recovery mechanisms for the replacement process. On January 13, 2012, the Commission received a number of Comments regarding the format of PRP Plans. Reply Comments must be submitted to the Commission by January 27, 2012.

The Industrial Energy Consumers of Pennsylvania ("IECPA") is an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania. Also sponsoring these Comments are coalitions of industrial customers receiving service from most of the Commonwealth's NGDCs: Central Penn Gas Large Users Group ("CPGLUG"), Columbia Industrial Intervenors ("CII"), Peoples Industrial Intervenors ("PII"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and UGI Industrial Intervenors ("UGIII") (collectively, "Industrial Customer Groups").

Because the Industrial Customer Groups depend on substantial volumes of natural gas in their manufacturing and operational processes, any modification to the terms or conditions of gas service for Large Commercial and Industrial customers could substantially impact the Industrial Customer Groups' overall operating costs. Accordingly, the Industrial Customer Groups respectfully submit the following Reply Comments.

II. REPLY COMMENTS

As noted in the Industrial Customer Groups' Comments, the Commission correctly identified its authority within the Public Utility Code to ensure utilities are providing safe, adequate, and reliable natural gas service.¹ Pursuant to this authority, the Commission may require replacement of all high risk pipeline,² and call for NGDCs to submit PRP Plans proposing reasonable steps for accomplishing this replacement.³ Contrary to the assertions of multiple Commenters, the Commission has present authority to require the submission of PRP Plans as described in its Tentative Order. The Industrial Customer Groups support the Commission's acknowledgement of their authority on this matter, and welcome a future stakeholder process for evaluating PRP Plans.

The Industrial Customer Groups disagree with certain Commenters who argue that NGDCs have absolute "managerial discretion" to determine the timelines and guidelines for pipeline replacement, and the Commission should not infringe on this discretion. The NGDCs claim that their prior infrastructure replacement efforts are a demonstration of this "managerial discretion," which were completed without Commission guidance. However, where, as here, the Commission examines the current condition of utility assets and determines that it must monitor the utility's progress in replacing those assets to avoid potential reliability problems, the "managerial discretion" of the utility must give way so the Commission can ensure the safety of the public.

¹ Tentative Order at 5-6. ("Pursuant to our authority under Sections 501, 504, 505, 506 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501, 504, 505, 506 and 1501, and, in particular, our fundamental duty to ensure the provision of safe and reliable utility service to consumers, utility employees and the public, we propose that Pennsylvania's major natural gas distribution utilities be required to file Pipeline Replacement and Performance Plans ('PRP Plans') for Commission review and approval.").

² See 66 Pa. C.S. § 1501.

³ See 66 Pa. C.S. § 504.

Furthermore, other Commenters expressed support for House Bill 1294 and a Distribution System Improvement Charge ("DSIC"), which they framed as the optimal mechanism for pipeline replacement cost recovery. Providing safe, adequate, and reliable service under the ratemaking constraints in Section 1308 of the Public Utility Code is part of the "regulatory compact" between the customers and the utility shareholders and owners. It is both expected and necessary that utilities replace failing infrastructure for the benefit of ratepayers and the public at large. Commenters favored alternative ratemaking mechanisms, because they would provide a return on the NGDCs' investments into pipeline replacement between rate cases. However, a utility can seek rate relief under Section 1308 that provides shareholders with the opportunity to earn a return on their infrastructure.⁴ Thus, alternative ratemaking mechanisms that automatically include a specific return are inconsistent with this basic aspect of utility law, and alter the traditional balance between ratepayers and shareholders. The Industrial Customer Groups do not believe that alternative ratemaking incentives are necessary or appropriate.


The Industrial Customer Groups agree that unsafe and unreliable infrastructure should be replaced, and the Commission should have a means to supervise the procedures for this replacement. This issue should be evaluated and PRP Plans should be developed in a reasoned and deliberate manner. Accordingly, the Industrial Customer Groups support Comments by the Energy Association of Pennsylvania and several NGDCs that the Commission should take all necessary time to finalize the requirements for PRP Plans.

⁴ *Pennsylvania Gas & Water Co. v. Pennsylvania Pub. Util. Comm'n*, 470 A.2d 1066, 1072 (Pa. Commw. Ct. 1984) ("[A] major consideration in determining utility rates is to establish rates which do not produce excessive returns, but which do afford the utility an opportunity to earn a fair and reasonable return on property used and useful in the public service.").

WHEREFORE, the Industrial Customer Groups respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the aforementioned Comments.

Respectfully submitted,

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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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Dated this 27th day of January, 2012, at Harrisburg, Pennsylvania

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