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August 9, 2012

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Pennsylvania Public Utility Commission v. UGI Penn Natural Gas, Inc.
Docket No. R-2012-2302221

Dear Secretary Chiavetta:

Enclosed please find UGI Penn Natural Gas, Inc.'s Main Brief in the above-referenced proceeding. Copies have been served on all parties as indicated on the Certificate of Service.

Respectfully Submitted,

Anthony D. Kanagy

ADK/skr

Enclosures

cc: Honorable Kandace F. Melillo
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: August 9, 2012



Anthony D. Kanagy

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, ET AL.	:	Docket Nos. R-2012-2302221
	:	C-2012-2304836
v.	:	C-2012-2305783
	:	C-2012-2310661
UGI PENN NATURAL GAS, INC.	:	

MAIN BRIEF OF
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I. INTRODUCTION

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) hereby files its Main Brief in the above-captioned proceeding pursuant to the schedule adopted by Administrative Law Judge Kandace F. Melillo (the “ALJ”). As explained below, the parties in this proceeding have settled all issues except for one, which relates to the sharing of capacity release revenues from certain transactions that will provide customers with significant long-term and short-term savings and will promote the use of Marcellus supply.

Pursuant to the ALJ’s direction, the parties will be filing a Stipulation in Settlement of all other issues in this proceeding on August 13, 2012. The parties have reserved the capacity release issue for Briefing, and this Brief addresses that issue.

Below, PNG explains how it has followed the express terms of its tariff in sharing capacity release revenues and how the Office of Consumer Advocate (“OCA”) is attempting to re-write the capacity release rules of the Company’s Pennsylvania Public Utility Commission (“Commission”) approved tariff, even though such tariffs have the full force and effect of law and must be followed, and even though the OCA agreed to these rules in the Company’s 2011 Purchased Gas Cost (“PGC”) proceeding and agreed not to challenge these rules through November 30, 2016. PNG also explains how its methodology is fully consistent with the methodology recently approved by the Commission in Equitable Gas Company’s (“Equitable”) 2009 PGC proceeding. In addition, PNG explains how the capacity release transactions are in the public interest because of the substantial benefits these transactions provide to customers and because the transactions will promote the further use of Pennsylvania produced Marcellus gas.

II. BACKGROUND AND PROCEDURAL HISTORY

PNG is a natural gas distribution company with gross intrastate annual operating revenues in excess of \$40 million and is authorized by the provisions of Section 1307(f) of the Public Utility Code, and the Commission's gas cost recovery regulations at 52 Pa. Code §§ 53.61 - 53.68, to make annual PGC filings proposing gas rate modifications to reflect increases or decreases in its natural gas costs.

On May 1, 2012, PNG provided the Commission with the prefiling information required by 52 Pa. Code § 53.64(e) and 52 Pa. Code § 53.65. On June 1, 2012, in accordance with the schedule for Section 1307(f) filings established by the Commission, PNG submitted its 2012 PGC filing to the Commission, with proposed modifications to PNG's Tariff Gas - Pa. P.U.C. No. 8, to become effective December 1, 2012. PNG's June 1, 2012 PGC filing proposed to implement a PGC rate of \$4.7608/Mcf applicable to rate R and GL customers, and a PGC rate of \$4.6874/Mcf applicable to rates N and CIAC customers effective December 1, 2012. PNG also filed the direct written testimony of its supporting witnesses with its June 1, 2012 PGC filing.

The Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") filed notices of appearance in this proceeding. In addition, the OCA and OSBA filed formal complaints.

On June 14, 2012, a consolidated Prehearing Conference in the PNG, UGI Central Penn Gas, Inc. ("CPG") PGC proceeding at Docket No. R-2012-2302219 and UGI Utilities, Inc. – Gas Division ("UGI") PGC proceeding at Docket No. R-2012-2302220 was conducted by ALJ Melillo. At the Prehearing Conference, amongst other things, the PNG, CPG and UGI PGC

proceedings were consolidated by the ALJ for the limited purposes of hearing; a procedural schedule was adopted; and certain discovery response rules were established.

On June 19, 2012, PNG, CPG and UGI jointly filed a Petition for a Protective Order for all three PGC proceedings. In an Order dated June 20, 2012, the ALJ granted the Petition for a Protective Order.

On or about June 22, 2012, George Keener filed a formal complaint, docketed at C-2012-2310661. PNG filed an answer to the complaint on July 10, 2012. On July 19, 2012, the ALJ issued an order consolidating the Keener complaint with this proceeding.

In accordance with the procedural schedule established by the ALJ, the OCA filed written direct testimony on July 6, 2012. PNG filed rebuttal testimony on July 20, 2012; the OCA filed surrebuttal testimony on July 26, 2012, and PNG filed written rejoinder testimony on July 30, 2012.

Throughout this proceeding, all active parties explored the possibility of settlement in accordance with the Commission's Rules of Practice at 52 Pa. Code § 5.231. On July 27, 2012, PNG notified the ALJ that an agreement in principle of all issues of the PNG PGC proceeding had been reached, except for the capacity release revenue sharing issue.

A hearing was held on July 31, 2012. At the hearing, the parties' testimony and exhibits were admitted into the record by stipulation with accompanying signed affidavits or affirmations of the sponsoring witnesses.

Pursuant to the Briefing Schedule adopted by the ALJ, PNG hereby submits its Main Brief addressing the capacity release issue. In addition, pursuant to the ALJ's Briefing Order

dated August 1, 2012, proposed findings of fact, conclusions of law and ordering paragraphs are provided in Appendix A hereto.

III. SUMMARY OF ARGUMENT

The issue in this proceeding concerns whether PNG is required to apply its 75%/25% capacity release sharing mechanism on capacity release revenues received or whether the Company is required to net revenues received against costs prior to applying the 75%/25% sharing mechanism under the Company's Commission-approved tariff. The plain language of PNG's tariff clearly does not contain a "netting" provision for capacity release revenues. However, despite this fact, the OCA argues that a "netting" provision is implied because the off-system sales section of PNG's revenue sharing mechanism includes a netting provision. The OCA's argument cannot be accepted.

The OCA is attempting to write in to the Company's tariff, by implication, a netting provision for capacity release transaction where none exists. The fact that PNG's tariffed revenue sharing mechanism for off-system sales includes a netting provision and the capacity release mechanism does not include a netting provision, provides clear evidence that netting is not permitted for capacity release revenues under the tariff. In addition, tariffs have the full force and effect of law and must be followed.

Moreover, the capacity release sharing mechanism was designed to encourage PNG to release capacity into the market. If PNG were required to net capacity costs against release revenues, this methodology would almost always create a negative result. Therefore, this "netting" methodology would not provide the appropriate incentives for natural gas distribution companies to seek out these types of transactions.

The OCA also argues in this proceeding that its “netting” proposal is consistent with how Equitable Gas Company (“Equitable”) applied its revenue sharing mechanism in Equitable’s 2009 PGC proceeding. As explained in detail below, Equitable applied a 75%/25% split to total capacity release revenues and did not net any additional costs or savings. This is completely consistent with how PNG applied its revenue sharing mechanism. The OCA’s “netting” proposal is not supported by Equitable.

It also is important to recognize that PNG’s capacity release transactions will provide substantial benefits to customers. Under the transactions, PGC customers will experience cost savings of \$1.2 million for years 2012 through 2015. In addition, PGC customers will also save \$30 million between 2015 and 2020 due to PNG’s actions in seeking less expensive short-haul capacity from the Marcellus Shale region as opposed to renewing existing long-haul contracts from the Gulf coast region. In addition, the new capacity will provide access for Marcellus Shale gas producers to deliver gas to PNG’s system. These transactions provide substantial benefits to PNG’s customers and to Pennsylvania.

For the reasons explained above, PNG’s capacity release sharing mechanism should not be modified and PNG should be permitted to continue to apply the 75%/25% sharing mechanism to total capacity release revenues through November 30, 2016 per the tariff.

IV. ARGUMENT

A. Burden Of Proof

PNG’s capacity release sharing mechanism is part of the Company’s Commission-approved tariff. In last year’s PGC proceeding, the OCA agreed not to challenge this mechanism before November 30, 2016. PNG St. No. 3-RJ, p. 2. Despite this agreement, the OCA is challenging the Company’s capacity release mechanism in this proceeding and, in effect, is

arguing that the express terms of the Company's tariff do not apply to the capacity releases in question in this proceeding and that the Commission should adopt a "net revenues" approach even though the tariff does not contemplate this type of approach for capacity releases.

Tariffs that have been approved by the Commission have the force of law and are binding on both the utility and its customers. *Brockway Glass Co. v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Behrend v. Bell Telephone Co.*, 242 Pa. Super. 47, 363 A.2d 1152 (1976). The burden of proving that an existing tariff provision is unreasonable or discriminatory is on the complainant. *Paul Kossman t/a Kossman Dev. Co. v. Pa. P.U.C.*, 694 A.2d 1147 (Pa. Cmwlth. 1997) ("*Kossman*"). In *Kossman*, the Commonwealth Court further stated as follows:

This burden is very heavy because tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Shenango Township Board of Supervisors v. Pa. P.U.C.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).

The OCA has a very heavy burden of proving that PNG's capacity release sharing methodology under the Company's Commission-approved tariff is unreasonable. As explained below, the OCA has not met its burden of proof.

B. Description Of The Capacity Release Transactions

PNG has firm transportation contracts with Transcontinental Gas Pipe Line Company ("*Transco*") and Tennessee Gas Pipeline Company ("*Tennessee*") that are set to expire on July 31, 2015 and November 1, 2015, respectively. See PNG St. No. 2, p. 2. These contracts constitute approximately 74,000 dth per day and are required to meet PNG's design day requirements. PNG St. No. 2, p. 4.

During the past year, PNG sought alternatives to renewing these contracts. PNG issued an RFP to 102 suppliers and received 6 responses, and had discussions with Tennessee and

Transco regarding incremental capacity. PNG St. No. 2, pp. 9-10. As a result of the RFP, PNG awarded 2 suppliers, UGI Energy Services, Inc. (“UGIES”) and Tennessee, contracts of 40,000 dth per day and 34,000 dth per day, respectively, to replace the 74,000 dth capacity that is set to expire in 2015. These new contracts will save PGC customers approximately \$30 million in demand charges from 2015-2020 as compared to what PGC customers would have paid if PNG had simply renewed its existing contracts.

In addition, both suppliers, Tennessee and UGIES, offered to provide firm transportation service that would provide PGC customers with additional savings prior to the onset of the new contracts in 2015. Both Tennessee and UGIES offered PNG new, substantially less expensive capacity prior to 2015. As a result of acquiring this new, substantially less expensive capacity, PNG is able to release capacity from its long-term contracts with Transco into the market. These transactions provide PGC customers with considerable savings, even after factoring in PNG’s share of capacity release revenues. A calculation of PGC customers’ savings are shown on Exhibit Nos. PNG-DCB-3 and PNG-DCB-4. As shown therein, PGC customers will receive savings of \$1.2 million dollars between now and the end of 2015 as a result of PNG’s effort to acquire new, cheaper capacity.

In addition to providing cost savings, the new capacity acquired from Tennessee is in the middle of the Marcellus Shale area in northern Pennsylvania. PNG St. No. 2, p. 15. Therefore, this new capacity should facilitate the delivery of Marcellus supplies to PNG’s system for the benefit of PGC customers and Marcellus Shale developers.

C. **PNG Followed the Plain Language Of Its Tariff In Sharing Capacity Release Revenues**

1. **PNG's Tariff Provides For A 75%/25% Sharing Of Actual Capacity Release Revenues.**

There is no dispute in this proceeding that the revenue sharing provisions of the Company's tariff apply to the capacity releases in question. A copy of the revenue sharing provisions of PNG's tariff is provided as Exhibit PNG-SMH-RJ-1 and is attached to the Rejoinder Testimony of Shaun Hart. The section addressing Capacity Release on Interstate Pipelines provides as follows:

Capacity release revenue generated by administrative releases to third parties that fill the Company's storage shall be credited 100% to PGC customers. *Other revenue received by the Company for off system Capacity Release of interstate pipeline capacity will be credited in accordance with the Revenue Sharing Allocation procedure in this section.*

Bold and italics added.

The Revenue Sharing Allocation section of the Company's tariff provides as follows:

Effective March 1, 2012, through November 30, 2016 the sum of the revenues derived from all Off-System Sales, Exchanges of National Gas, Capacity Release on Interstate Pipelines and Storage Asset Management, will be allocated 75% to the retail customers served and 25% to the Company.

With respect to sharing of capacity release revenues, the Company's tariff clearly provides that PGC customers will receive 75% of **revenues received** from the capacity release and the Company will receive 25% of the **revenues received** from the capacity release.

This is exactly how the Company is proposing to allocate the capacity release revenues. For example, for the period of January 1, 2012 through November 30, 2013, PNG is releasing Transco capacity and projects to receive approximately \$10 million in revenues for the release.

PNG is proposing to retain 25% of this amount, approximately \$2.5 million, and intends to credit the remaining 75% of \$7.5 million to PGC customers. See Exhibit PNG-DCB-3.¹

PNG is strictly following the express terms of its tariff in allocating 75% of the capacity release revenues received to PGC customers and 25% of the capacity release revenues received to PNG.

2. PNG's Tariff Does Not Provide For "Netting" Of Capacity Release Revenues.

In this proceeding, the OCA argues that PNG did not properly administer the 75%/25% sharing mechanism under its tariff. OCA St. No. 1-S, p. 1. According to the OCA, PNG should net its capacity release revenues against costs for acquiring new capacity and only retain 25% of the net savings. OCA St. No. 1-S, p. 1. The OCA is incorrect. PNG's tariff does not contain any provision for netting revenues for capacity releases, and the OCA is improperly attempting to add a "netting" provision that is not included in the plain language of PNG's tariff for capacity release provisions.

It is obvious that OCA is straining to include the netting provision for capacity releases by reviewing Mr. Mierzwa's surrebuttal testimony. Therein, the OCA cites to the off-system sales sharing section of PNG's tariff which clearly and unequivocally contains a netting provision for off-system sales. See Exhibit PNG-SMH-RJ-1. However, the revenue sharing issue in this proceeding is not related to off-system sales but is related to capacity release. As explained above, the capacity release section of PNG's tariff does not contain a netting provision. It is clear from reviewing both the off-system sales and capacity release provisions of

¹ As shown in Exhibit PNG-DCB-3, the total projected capacity release revenue is shown on the line "Demand Cost" as \$9,991,296 and PNG's share of the capacity release revenues is shown on the line "PNG Share of Cap Release" in the amount of \$2,497,824.

PNG's tariff that netting applies to off-system sales but does not apply to capacity release transactions. If the netting provision applied to capacity release transactions, the capacity release provisions of PNG's tariff would include specific "netting" language.

It is important to note that tariffs have the full force and effect of law and must be followed. *Brockway Glass Co. v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Behrend v. Bell Telephone Co.*, 242 Pa. Super. 47, 363 A.2d 1152 (1976). PNG's interpretation of its tariff is consistent with the Rules of Statutory Construction which provide that the inclusion of a specific matter in a statute implies the exclusion of other matters. *See Popowsky v. Pa. P.U.C.*, 869 A.2d 1144, 1159 (Pa. Cmwlth 2005) (wherein the Commonwealth Court held that a utility could not adopt a distribution system improvement charge for sewer costs where such a charge was specifically authorized for water companies under Section 1307 of the Public Utility Code but was not specifically authorized for sewer companies); 1 Pa. C.S. § 1903. This principle applies just as well to PNG's tariff language. The inclusion of "netting" language for off-system sales and exclusion of "netting" language for capacity releases means that capacity release revenues are not to be netted against costs.

It is also important to note that if netting rules would apply, the netting would include both additional costs and additional savings. PNG has not included additional costs or additional savings in the calculation but has applied the 75%/25% sharing percentages to the total capacity release revenues received, which is the methodology set forth in its tariff.

In support of its position, the OCA argues that its proposal to share net capacity revenues is consistent with the sharing of net off-system sales revenues. OCA St. No. 1-S, p. 4. OCA is incorrect. Under the off-system sales sharing provisions, the sum of all revenues from the sale of

gas is offset by all gas costs related to the gas that is being sold which excludes the demand costs associated with the capacity used to make the off-system sale. See Exhibit PNG-SMH-RJ-1. If a “net revenue” provision was applied to a capacity release transaction, the net revenues from the capacity release would be offset by all capacity costs. As explained by Mr. Hart, net savings would often be negative since the capacity cost using the pipeline tariff rate would be subtracted from the capacity release revenue. PNG St. No. 3-R, p. 7. This would not provide the appropriate incentive for NGDCs to release capacity. For those reasons, capacity release revenues are not netted against costs for capacity release transactions.

Apparently recognizing this problem with his “netting” proposal, Mr. Mierzwa argues that his methodology would only “net” costs for replacement capacity and not costs for the original capacity. OCA St. No. 1-S, p. 4. Therefore, Mr. Mierzwa is not proposing a true “netting” methodology, but rather, a netting methodology that only nets certain costs and not others. This type of netting methodology, which includes certain costs and not others, is clearly not set forth in PNG’s tariff. Moreover, adopting such a methodology would require significant revisions to the capacity release provisions of PNG’s tariff. This is contrary to the agreement of the parties in last year’s PNG proceeding to continue PNG’s capacity release rules to November 30, 2016.

The OCA can not simply make up new capacity release rules and claim that this was the parties’ or the Commission’s intent regarding how the rules should be applied. See OCA St. No. 1, p. 6. The tariff rules, as stated, do not include a “netting” provision and certainly do not include rules to net certain costs and not others. For these reasons, the OCA’s netting proposal cannot be accepted.

D. PNG's Methodology Is Consistent With The Equitable Decision

In this proceeding the OCA argues that its proposed revenue sharing methodology is consistent with the methodology approved by the Commission for Equitable Gas Company ("Equitable") in its 2009 PGC proceeding at Docket No. R-2009-2088672. In his testimony, Mr. Mierzwa argues that Equitable was entitled to retain 25% of the "net revenues" associated with its capacity release. OCA St. No. 1-S, p. 5, lines 18-19. By this statement, Mr. Mierzwa implies that Equitable adopted a netting methodology. As explained below, Mr. Mierzwa is clearly incorrect. In fact, PNG's methodology is consistent with the Equitable decision.

A copy of the Supplemental Testimony of Thomas P. Wiggers in the Equitable Proceeding is provided as Exhibit PNG SMH-RJ-2. Mr. Wiggers is the Director of Gas Supply for Equitable. In his testimony, Mr. Wiggers explains that the total annual capacity release revenues in question in that proceeding was approximately \$1,650,000. Exhibit PNG-SMH-RJ-2, p. 8, lines 11-12. In addition, Mr. Wiggers explains that Equitable's share of those capacity release revenues was approximately \$414,000 per year. Exhibit PNG-SMH-RJ2, p. 9, line 16. This amount is 25% of the total annual capacity release revenues. See Exhibit PNG-SMH-RJ2, pp. 8-9; see also Attachment B to Exhibit PNG-SMH-RJ2 which clearly applies a 75%/25% split to total release revenues, with no netting. There is no basis in the 2009 Equitable decision to support OCA's netting argument. The total capacity release dollars in Equitable were **not** netted against any other costs or savings.

In testimony, the OCA argues that there were no additional demand charges in Equitable. OCA St. No. 1-S, p. 6. The OCA implies that if there were additional demand charges, Equitable would have netted them against the capacity release revenues. OCA cites no portion of the Equitable decision or record that supports this conclusion. Moreover, a careful review of

the Equitable record does not support the OCA's netting conclusion. On Attachments C and D of Mr. Wiggers' testimony, it is clear that Equitable's capacity release transactions produced additional savings, in the form of reduced pipeline variable costs, for customers. See also PNG St. No. 3-RJ, p. 7, lines 8-15. These savings were approximately \$2.2 million. However, Equitable did not include these additional savings in its sharing mechanism. See PNG St. No. 3-RJ, p. 7, lines 8-15. If Equitable had adopted a "netting" methodology, these additional savings should have been included in the calculation, and Equitable would have received a portion of these savings. It would clearly be inconsistent and unreasonable to adopt a "netting" methodology that only considers additional costs and not additional savings.

Moreover, in Rejoinder Testimony, Mr. Hart clearly explained why Mr. Mierzwa's demand charge argument did not have any merit.

- Q. On page 6 of his surrebuttal testimony Mr. Mierzwa claims that the 2009 Equitable PGC case is distinguishable because "no additional demand charges were incurred as a result of the release of Tetco capacity to CPA." Does this argument have merit?
- A. No. Initially, I would note that I do not know if there were any demand-type charges incurred by Equitable under its contracts for local production. Even assuming there were none, however, this is a distinction without a difference. Equitable released capacity into the secondary market because it had found a lower cost replacement supply that provided benefits to its PGC customers even after considering the effects of the RSIM, and retained 25 percent of the capacity release revenues consistent with the RSIM provisions of its tariff. In exactly the same circumstance here, PNG has released and will release Transco capacity into the secondary market because it has found a lower cost replacement supply that provides benefits to PGC customers, even after considering the effects of the RSIM, and has and will retain 25 percent of the capacity release revenues consistent with the RSIM provisions of its tariff.

PNG St. No. 3-RJ, pp. 7-8.

PNG's capacity release revenue allocation is consistent with the revenue allocation in Equitable, and more importantly is consistent with the methodology set forth in PNG's tariff.

E. The Capacity Release Transactions Will Provide Substantial Benefits To Customers And To Pennsylvania.

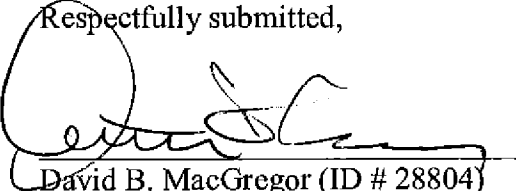
As explained by Mr. Beasten, the total savings to PGC customers from 2012-2015 as a result of the capacity release transactions will be approximately \$1.2 million. See Exhibit PNG-DCB-3. The \$1.2 million in savings included the offset for PNG's share of the capacity release revenues. In addition to the \$1.2 million in savings, PGC customers will also save an additional 30 million dollars from 2015-2020 due to PNG's efforts to obtain least cost supply for its customers. See Exhibit PNG-DCB-2 These are very substantial benefits for customers.

In addition to reducing PGC rates, these transactions will also facilitate the delivery of Marcellus gas to PNG's system. As explained by Mr. Beasten, the Tennessee Zone 4 capacity is in the middle of the Marcellus Shale area in northern Pennsylvania and should facilitate the delivery of Pennsylvania Marcellus production. PNG St. No. 2, p. 15. Therefore, these transactions also provide substantial benefits to Pennsylvania.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, UGI Penn Natural Gas, Inc., requests that Administrative Law Judge Kandace F. Melillo and the Pennsylvania Public Utility Commission: (1) deny the Office of Consumer Advocate's attempts to modify the Companies' capacity release sharing mechanism to include a provision for "netting" revenues and (2) retain the Company's existing capacity release sharing mechanism, without modification, through November 30, 2016 as it is set forth in the Company's tariff.

Respectfully submitted,



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Date: August 9, 2012

Attorneys for UGI Penn Natural Gas, Inc.

Appendix A

APPENDIX A

I. PROPOSED FINDINGS OF FACT

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) proposes the following findings of fact:

1. PNG is a natural gas distribution company with gross intrastate annual operating revenues in excess of \$40 million and is authorized by the provisions of Section 1307(f) of the Public Utility Code, and the Commission’s gas cost recovery regulations at 52 Pa. Code §§ 53.61 - 53.68, to make annual PGC filings proposing gas rate modifications to reflect increases or decreases in its natural gas costs. (Stipulation In Partial Settlement Of Section 1307(f) Rate Investigation, pp. 2-3.)

2. On May 1, 2012, PNG provided the Commission with the prefiling information required by 52 Pa. Code § 53.64(c) and 52 Pa. Code § 53.65. (UGI Penn Natural Gas, Inc., Exhibit No. 1.)

3. On June 1, 2012, in accordance with the schedule for Section 1307(f) filings established by the Commission, PNG submitted its 2012 PGC filing to the Commission, with proposed modifications to PNG’s Tariff Gas - Pa. P.U.C. No. 8, to become effective December 1, 2012. (UGI Penn Natural Gas, Inc., Exhibit No. 1.)

4. PNG’s June 1, 2012 PGC filing proposed to implement a PGC rate of \$4.7608/Mcf applicable to rate R and GL customers, and a PGC rate of \$4.6874/Mcf applicable to rates N and CIAC customers effective December 1, 2012. PNG also filed the direct written testimony of its supporting witnesses with its June 1, 2012 PGC filing. (PNG St. No. 1, p. 4).

5. PNG has firm transportation contracts with Transcontinental Gas Pipe Line Company (“Transco”) and Tennessee Gas Pipeline Company (“Tennessee”) that are set to expire on July 31, 2015 and November 1, 2015, respectively. (PNG St. No. 2, p. 2.)

6. These contracts constitute approximately 74,000 dth per day and are required to meet PNG's design day requirements. (PNG St. No. 2, p. 4.)

7. During the past year, PNG sought alternatives to renewing these contracts. PNG issued an RFP to 102 suppliers and received 6 responses, and had discussions with Tennessee and Transco regarding incremental capacity. (PNG St. No. 2, pp. 9-10.)

8. As a result of the RFP, PNG awarded 2 suppliers, UGI Energy Services, Inc. ("UGIES") and Tennessee, contracts of 40,000 dth per day and 34,000 dth per day, respectively, to replace the 74,000 Dth capacity that is set to expire in 2015. (PNG St. No. 2, pp. 10-11.)

9. These new contracts will save PGC customers approximately \$30 million in demand charges from 2015-2020 as compared to what PGC customers would have paid if PNG had simply renewed its existing contracts. (PNG St. No. 2, p. 11.)

10. Both Tennessee and UGIES offered PNG new, substantially less expensive capacity prior to 2015. (PNG St. No. 2, pp. 11-14.)

11. As a result of acquiring the new, substantially less expensive capacity, PNG is able to release capacity from its long-term contracts with Transco into the market. (PNG St. No. 2, pp. 14-15.)

12. PGC customers will receive savings of \$1.2 million dollars between now and the end of 2015 as a result of PNG's effort to acquire new, cheaper capacity. (Exhibit Nos. PNG-DCB-3 and PNG-DCB-4.)

13. The new capacity acquired from Tennessee is in the middle of the Marcellus Shale area in northern Pennsylvania, and should facilitate the delivery of Marcellus supplies to PNG's system for the benefit of PGC customers and Marcellus Shale developers. (PNG St. No. 2, p. 15.)

14. With respect to sharing of capacity release revenues, the Company's tariff clearly provides that PGC customers will receive 75% of revenues received from the capacity release and the Company will receive 25% of the revenues received from the capacity release. (Exhibit PNG-SMH-RJ-1).

15. PNG is proposing to allocate the capacity release revenues exactly in accordance with its tariff provisions. (PNG St. No. 3-R, p. 7.)

16. For example, for the period of January 1, 2012 through November 30, 2013, PNG is releasing Transco capacity and projects to receive approximately \$10 million in revenues for the release. PNG is proposing to retain 25% of this amount, approximately \$2.5 million, and intends to credit the remaining 75% of \$7.5 million to PGC customers. (Exhibit PNG-DCB-3.)

17. The revenue sharing issue in this proceeding is related to capacity release and is not related to off-system sales. (PNG St. No. 3-RJ, p. 3.)

18. PNG's tariff does not contain any provision for netting revenues for capacity releases. (PNG St. No. 3-RJ, pp. 3.)

19. There is a netting provision in PNG's tariff that applies to off-system sales but does not apply to capacity release transactions. If the netting provision applied to capacity release transactions, the capacity release provisions of PNG's tariff would include specific "netting" language. (PNG St. No. 3-RJ, pp. 2-4.)

20. If netting rules would apply, the netting would include both additional costs and additional savings. PNG has not included additional costs or additional savings in the calculation but has applied the 75%/25% sharing percentages to the total capacity release revenues received, which is the methodology set forth in its tariff. (PNG St. No. 3-R, pp. 4-5.)

21. Under the off-system sales sharing provisions, the sum of all revenues from the sale of gas is offset by all gas costs related to the gas that is being sold, which excludes the demand costs associated with the capacity used to make the off-system sale. (Exhibit PNG-SMH-RJ-1.)

22. If a net revenue provision was applied to a capacity release transaction, the net revenues from the capacity release would be offset by all capacity costs. The net savings would often be negative since the capacity cost using the pipeline tariff rate would be subtracted from the capacity release revenue. (PNG St. No. 3-R, p. 7.)

23. A netting methodology which includes certain costs and not others is clearly not set forth in PNG's tariff. Adopting such a methodology would require significant revisions to the capacity release provisions of PNG's tariff. (PNG St. No. 3-R, p. 7.)

24. The parties in last year's PNG PGC proceeding agreed to continue PNG's capacity release rules to November 30, 2016. (PNG St. No. 3-R, p. 2.)

25. In Equitable Gas Company's ("Equitable") 2009 PGC proceeding at Docket No. R-2009-2088672, the Commission approved a methodology which the record evidence clearly showed was a 75%/25% split to total release revenues, with no netting. In the supporting testimony the total annual capacity release revenues in question in that proceeding was approximately \$1,650,000 and Equitable's share of those capacity release revenues was approximately \$414,000 per year, which amounts to 25% of the total annual capacity release revenues. (Exhibit PNG-SMH-RJ2, p. 8-9, also Attachment B to Exhibit PNG-SMH-RJ2.)

II. PROPOSED CONCLUSIONS OF LAW

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) proposes the following conclusions of law:

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 501, et seq.

2. Commission approved tariffs have the full force and effect of law and must be followed. *Brookway Glass Co. v. Pa. P.U.C.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Belrend v. Bell Telephone Co.*, 242 Pa. Super. 47, 363 A.2d 1152 (1976).

3. The burden of proving that an existing tariff provision is unreasonable or discriminatory is on the complainant. *Paul Kossman t/a Kossman Dev. Co. v. Pa. P.U.C.*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (“*Kossman*”).

4. The burden of proving that an existing tariff provision is unreasonable or discriminatory is very heavy because tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Shenango Township Board of Supervisors v. Pa. P.U.C.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).

5. The OCA has the burden of proving that PNG’s tariff provisions regarding capacity releases are unreasonable or discriminatory.

6. There is a netting provision in PNG’s tariff that applies to off-system sales but does not apply to capacity release transactions.

7. The inclusion of “netting” language for off-system sales and exclusion of “netting” language for capacity releases means that capacity release revenues are not to be netted against costs.

8. PNG’s interpretation of its tariff is consistent with the Rules of Statutory Construction which provide that the inclusion of a specific matter in a statute implies the

exclusion of other matters. *See Popowsky v. Pa. P.U.C.*, 869 A.2d 1144, 1159 (Pa. Cmwlth 2005).

9. Revising the capacity release rules is contrary to the agreement made by the parties in last year's PNG PGC proceeding to continue PNG's capacity release rules to November 30, 2016.

10. PNG's revenue sharing methodology is consistent with the methodology approved by the Commission for Equitable Gas Company ("Equitable") in its 2009 PGC proceeding at Docket No. R-2009-2088672.

11. The OCA has not met its burden of proof in this case, and its Complaint must be dismissed with prejudice.

III. PROPOSED ORDERING PARAGRAPHS

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) proposes the following ordering paragraphs:

1. The Office of Consumer Advocate’s attempt to modify the Companies’ capacity release sharing mechanism to include a provision for “netting” revenues is denied.

2. PNG’s existing capacity release sharing mechanism will continue as it is set forth in the Company’s tariff, without modification, through November 30, 2016.

3. The rates as approved in this proceeding shall become effective on December 1, 2012 along with the provisions included in the Stipulation in Partial Settlement of Section 1307(f) Rate Investigation.

4. The Complaint of the Office of Consumer Advocate, docketed at Docket No. C-2012-2304836, is satisfied and marked closed.

5. The Complaint of the Office of Small Business Advocate, docketed at Docket No. C-2012-2305783, is satisfied and marked closed.

6. The Complaint of George Keener, docketed at Docket No. C-2012-2310661, is dismissed.

7. The Commission’s Secretary shall mark Docket No. R-2012-2302221 as closed.