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September 14, 2012

Via E-Filing

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

Re: Dockets Nos. R-2012-2304727, R-2012-2304731 and R-2012-2304735
Equitable Gas Company, LLC Request for Approval of Tariff Supplement

Dear Secretary Chiavetta:

We are counsel to Equitable Gas Company, LLC ("Equitable" or "Company") in the above matter and, in accordance with the Prehearing Order of Administrative Law Judge Conrad A. Johnson Setting Litigation Schedule and Consolidating the Dockets, dated June 26, 2012, are submitting the Company's Main Brief via E-Filing. Copies of Equitable's Main Brief are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By


Charles E. Thomas, Jr.

Encl.

cc: Certificate of Service (w/encl.)
David W. Gray, Esq. (w/encl.)
John M. Quinn (w/encl.)

120914 - Chiavetta (Main Brief).wpd

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Equitable Gas Company, LLC Request for Approval of Supplement No. 79 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304727
	:	
Equitable Gas Company, LLC Request for Approval of Supplement No. 80 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304731
	:	
Equitable Gas Company, LLC Request for Approval of Supplement No. 81 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304735
	:	
Office of Consumer Advocate	:	C-2012-2309502
	:	C-2012-2309538
v.	:	C-2012-2309549
	:	
Equitable Gas Company	:	

**MAIN BRIEF OF
EQUITABLE GAS COMPANY, LLC**

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I. STATEMENT OF THE CASE

This proceeding concerns Supplements Nos. 79, 80 and 81 (collectively, “Supplements”) filed by Equitable Gas Company LLC (“Equitable” or “Company”) to its Tariff Gas-Pa. P.U.C. No. 22, on April 30, 2012.¹ The Supplements propose options for the Public Utility Commission’s (“Commission”) consideration to accomplish, in a revenue neutral fashion, the adjustment of customer billing as a result of changes in the heating value of gas that have occurred since the conclusion of Equitable’s 2008 Base Rate Proceeding at Docket No. R-2008-2029325 (“2008 Base Rate Proceeding”).² The goal of the Supplements is to neutralize the impact of heating value fluctuations going forward and to have customers pay for their actual energy consumption instead of having others unfairly subsidize that energy consumption. Recent Commission precedent confirms that the Commission has “maximum flexibility” to review and approve whether the Company’s Supplements are “just and reasonable” under Chapter 13 of the Public Utility Code (“Code”).³

The change in heating value is a direct result of a gas procurement strategy developed and implemented by Equitable with the encouragement and approval of the Commission as well

¹ The Supplements were initially filed on April 30, 2012 as Supplement No. 79, Options A, B and C. By Secretarial letter dated May 10, 2012, the filing was returned to the Company with a directive that it be revised to have a specific tariff supplement identified for the Company’s preferred billing option. Following discussions with the Bureau of Technical Utility Services, the Supplements were redesignated as Supplements Nos. 79, 80 and 81 and separately resubmitted with the same issued and effective dates. The three revenue neutral alternative proposals are: (1) monthly delivery rate adjustments (Supplement No. 79); (2) heat value correction factor adjustments to metered volumes (Supplement No. 80); and (3) conversion to dekatherm billing (Supplement No. 81). Each of the revenue neutral alternative proposals is explained in detail in the supporting documentation in Equitable Exhibits I, II and III included with the Supplements. Supplement No. 79 is the Company’s preferred option as explained below, but the Company is willing to implement whichever of the three alternative Supplements Nos. 79, 80 or 81 the Commission deems appropriate. Equitable St. No. 1 at 6-7.

² *Pa. P.U.C. v. Equitable Gas Co.*, Docket No. R-2008-2029325. The 2008 rate filing was submitted to the Commission in June 2008 and concluded by Order entered February 26, 2009.

³ See *Consolidated Communications Enterprise Services v. Omnipotent Communications, Inc. d/b/a T-Mobile, et al.*, Docket No. C-2010-2210014 (Opinion and Order entered March 15, 2012), and discussion *infra* Section V.

as the review and approval of many of the parties now contesting the Supplements. This gas procurement strategy emphasizes the use of locally produced Appalachian gas, including Marcellus Shale Gas, and it has created significant financial benefits for Equitable's customers. As of April 2012, Equitable uses locally produced Appalachian gas, including Marcellus Shale Gas, *exclusively*, to serve its customers.

Equitable's increased reliance on locally produced gas will produce approximately \$16.3 million of *annual* purchased gas cost savings. However, it has also inadvertently created a subsidy by Equitable to its customers as well as a subsidy by purchased gas cost ("PGC") customers⁴ to transportation customers. Equitable's proposals remove those subsidies in a revenue neutral manner, and their implementation results in a lower overall bill to PGC customers – in addition to the annual savings of approximately \$16.3 million in reduced gas costs. As is further discussed herein, the parties opposing the Supplements have raised "single issue ratemaking" in an effort to strip the Commission of the "maximum flexibility afforded to it in this rate proceeding in order to keep these unjust and unreasonable subsidies in place. However, "single issue ratemaking" has no application in this rate proceeding and, if it did, Equitable's requests are revenue neutral. Accordingly, Equitable's proposals are "just and reasonable" and should be approved. The Supplements also propose tariff modifications establishing a voluntary Purchase of Receivables Program ("POR Program") that complies with the governing regulations and Commission orders and likewise should be approved.

By Order entered June 7, 2012, at Dockets Nos. R-2012-2304727, R-2012-2304731 and R-2012-2304735 ("Suspension Order entered June 7"), the Commission respectively suspended

⁴ A PGC customer is a traditional sales customer and, in virtually every instance, a residential or small commercial customer. As of March 31, 2012, Equitable had approximately 240,000 sales customers and approximately 19,000 transportation customers. Equitable Exhibit I, Supporting Documentation at 5.

the Supplements, until December 29, 2012, instituted an investigation into the Company's proposed tariff rates, rules and regulations and referred the investigation to the Office of Administrative Law Judge for the scheduling of hearings and the issuance of a recommended decision. The Order also advised the parties to investigate any other issues they may deem important to the fair and thorough review and analysis of Equitable's tariff filings.⁵

The matters were assigned to Administrative Law Judge Conrad A. Johnson. By notice dated June 12, 2012, the Commission advised that an initial prehearing conference would be held on June 22, 2012. Judge Johnson issued a Prehearing Conference Order dated June 12, 2012.

On or about June 13, 2012, the Office of Consumer Advocate ("OCA") filed separate complaints at Dockets Nos. C-2012-2309502, C-2012-2309538 and C-2012-2309549, addressing, in similar language, each of the tariff supplements. On June 19, 2012, the Bureau of Investigation and Enforcement ("I&E") entered its Notice of Appearance and the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention. The Retail Energy Supply Association ("RESA") and Dominion Retail, Inc., d/b/a Dominion Energy Solutions ("Dominion Retail") intervened in the proceeding.⁶

An initial prehearing conference was held on June 22, 2012, as originally noticed. A schedule for litigation of the proceeding was established providing for, *inter alia*, the submission of written testimony in advance of evidentiary hearings to be held on August 27 and 28, 2012 and the submission of briefs. Judge Johnson issued a Prehearing Order Setting Litigation Schedule and Consolidating the Dockets dated June 26, 2012 ("Prehearing Order") memorializing the litigation schedule. The Prehearing Order also consolidated the investigations

⁵ Suspension Order entered June 7, slip op. at 3.

⁶ Through their respective interventions, RESA and Dominion Retail have addressed the proposed POR Program but not the proposed adjusting of customer bills for changes in natural gas heat content.

of Supplements Nos. 80 and 81 and the three OCA Complaints with the investigation of Supplement No. 79.

Equitable distributed written direct and rebuttal testimony of Thomas P. Wiggers and Carol A. Scanlon on June 25, 2012 and August 15, 2012, respectively. Additionally, on July 25, 2012, I&E distributed the written direct testimony of Lisa A. Boyd; OCA distributed the written direct testimony of Ralph E. Miller and Barbara R. Alexander; OSBA distributed the written direct testimony of Brian Kalcic; RESA distributed the written direct testimony of John Sutherland; and Dominion Retail distributed the written direct testimony of Thomas J. Butler.

The evidentiary hearing was held on August 27, 2012, as scheduled. Mr. Wiggers, Ms. Scanlon, Ms. Boyd, Mr. Miller, Ms. Alexander, Mr. Kalcic and Mr. Sutherland authenticated their statements of written testimony, which were admitted into the record. Mr. Butler's testimony was authenticated by stipulation and admitted into the record. Mr. Wiggers, Ms. Scanlon, Ms. Boyd, Ms. Alexander, Mr. Kalcic and Mr. Sutherland were cross examined.

This Main Brief is submitted in accordance with the Prehearing Order and 52 Pa. Code § 5.501.⁷ As set forth herein, Equitable's preferred Supplement No. 79, which implements a billing mechanism to eliminate the two subsidies inadvertently created by the Btu fluctuations resulting from the exclusive purchase of locally produced gas, should be allowed to go into effect, as filed. The additional proposed Supplement No. 79 tariff changes implementing a voluntary POR Program are consistent with several Commission Orders, including the recently promulgated final POR Program design elements in 52 Pa. Code § 62.224 and should also be allowed to go into effect, as filed, with the POR modifications accepted by Equitable, as

⁷ In accordance with 52 Pa. Code § 5.501, this Main Brief contains a statement of the case, proposed findings of fact and conclusions of law, a statement of questions involved, an argument preceded by a summary, proposed ordering paragraphs and a conclusion with requested relief.

addressed in Section V.B., *infra*. Alternatively, if Supplement No. 79 is not chosen by the Commission, then either Supplement No. 80 or Supplement No. 81 should be permitted to go into effect, as filed, both of which also eliminate the two subsidies and implement the POR Program.

II. PROPOSED FINDINGS OF FACT

A. Equitable Gas Company, LLC

1. Equitable is a Pennsylvania regulated natural gas distribution company with its principal offices at 225 North Shore Drive, Pittsburgh, PA 15212. Equitable Exhibit I, Supplement No. 79, cover page.

2. As of March 31, 2012, Equitable served 260,684 residential, commercial, industrial and other customers in Southwestern Pennsylvania, including the City of Pittsburgh. Equitable Exhibit I, Supporting Documentation at 4.

3. Equitable's presently bills for its service on a volumetric or Mcf basis without adjustment for Btu content (heat content) of the gas provided.

B. Equitable's Alternative Proposals for Btu Adjusting

4. Equitable presents three alternative proposals – Supplements Nos. 79, 80 and 81 – for adjusting customer billing, on a monthly basis, to address changes beyond Equitable's control in the Btu content of natural gas. Equitable Exhibit I, Supporting Documentation at 1.

5. Each of the alternative supplements proposes tariff changes that are “just and reasonable” and revenue neutral based on the billing determinants and heat content of gas from the Company's 2008 Base Rate Proceeding. Equitable Exhibit I, Supporting Documentation at 1.

6. The Company's preferred alternative is Supplement No. 79 – Monthly Delivery Rate Adjustments. Equitable St. No. 1 at 3. However, any one of the proposed alternative Supplements will equitably adjust customer billing for Btu variability, and Equitable is willing to implement whichever of the three alternative Supplements Nos. 79, 80 or 81 the Commission deems appropriate. Equitable Exhibit I, Supporting Documentation at 3.

7. Equitable prefers Supplement No. 79 because it would require the least modification to the Company's billing system. Equitable Exhibit I, Supporting Documentation at 4.

8. Alternative Supplement No. 80 would create a heat value correction factor adjustment to metered volumes. Alternative Supplement No. 81 would replace Mcf billing with dekatherm billing. Dekatherm billing as proposed in Supplement No. 81 has been characterized in testimony submitted by the OCA as the industry standard for heat based billing. Equitable St. No. 1 at 5; OCA St. No. 1 at 25.

1. **The Need for Btu Adjusting**

9. Since 2010, Equitable has been experiencing significant variability and an upward trend in the average Btu content of the gas supply delivered into its distribution system. Equitable Exhibit I, Supporting Documentation at 1 and 2; Equitable St. No. 1 at 4.

10. The variability is shown in Attachment A to Equitable Exhibit I which provides a comparison of Equitable's monthly system average Btu content and the twelve month rolling system average Btu content. Prior to 2010, the twelve month rolling system average Btu content remained relatively consistent. Beginning in 2010 and thereafter, the average begins to vary significantly. Equitable Exhibit I, Supporting Documentation at 2; Equitable St. No. 1 at 4.

11. The upward trend correlates to the increased flow of Marcellus Shale Gas on the interstate pipeline that delivers natural gas to the Equitable system and Equitable's greater use of local Appalachian gas, including Marcellus Shale Gas, to meet the energy needs of its customers. Equitable Exhibit I, Supporting Documentation at 2; Equitable St. No. 1 at 5.

12. Marcellus Shale Gas, typically, has been “hotter” – *i.e.*, it has a higher Btu content – than other gas supply alternatives from the Gulf and Mid-Continent Regions. Equitable St. No. 1 at 4; Equitable St. No. 1R at 2.⁸

13. Gas volume consumed is inversely related to Btu content. As Btu content increases, a customer’s volumetric consumption decreases and vice versa. Equitable Exhibit I, Supporting Documentation at 2; Equitable St. No. 1R at 2.

14. As a result of this inverse relationship, heat content volatility creates a subsidy from Equitable to all of its customers and creates gas cost subsidizations between PGC and transportation customers. Equitable St. No. 1 at 5.

15. The Btu content of supply delivered to Equitable is wholly outside of Equitable’s control. Equitable cannot control, influence or predict the Btu content of the supply delivered to its system. Equitable St. No. 1R at 11 and 19.

a. **Heat Content Volatility Has Created a Subsidy for Delivery Service Customers**

16. Equitable’s current delivery rates were established in the 2008 Base Rate Proceeding. The rates established in that proceeding were based on billing volume determinants of 46,633,777 Mcf. Equitable St. No. 1R at 6 and Equitable Exhibit TPW-1R, Column (a).

17. With the increased flow of “hot” Marcellus Shale Gas onto the Equitable system, however, customers, since 2010 and subsequent to the conclusion of the 2008 Base Rate Proceeding in February 2009, buy fewer Mcfs of natural gas to meet their *same* energy needs. Equitable St. No. 1R at 7.⁹

⁸ Prior to 2010, Equitable purchased the majority of its winter natural gas system supply from the Gulf and Mid-Continent regions. Natural gas from these regions tends to have a lower Btu content than natural gas produced locally in the Appalachian region. Equitable St. No. 1 at 4.

⁹ As stated above, gas volume consumed is inversely related to Btu content.

18. With customers buying fewer Mcfs, the Company's billing volume determinants are reduced below the level of 46,633,777 Mcf agreed to in settlement of the 2008 Base Rate Proceeding. Equitable St. No. 1R at 3-4.

b. **Heat Content Volatility Has Created a Subsidy for Transportation Customers**

19. Equitable Tariff Rule No. 11.22 currently provides for the Company to determine a Btu conversion factor in its annual Section 1307(f) proceedings. This conversion factor is utilized for monthly and daily transportation pool balancing. Equitable Exhibit I, Supporting Documentation at 2.

20. The aggregate transportation customer consumption for each Natural Gas Supplier ("NGS") is converted from volumes to dekatherms based on the Btu conversion factor per Tariff Rule No. 11.22. The intent of this tariff provision is to ensure that NGSs deliver the energy consumption, *i.e.*, dekatherm requirements, for transportation customers onto the Equitable system. Equitable Exhibit I, Supporting Documentation at 2.

21. With gas volume consumption inversely related to Btu content, a transportation customer's volumetric consumption decreases as Btu content increases and vice versa. If the Company's actual monthly system Btu content differs from the tariff Btu conversion factor, a gas cost subsidization between PGC and transportation customers exists. Equitable Exhibit I, Supporting Documentation at 2.

22. Without adjusting bills for heat content, if the actual Btu content is higher or lower than the tariff Btu conversion factor, transportation customers' energy consumption will be understated or overstated and NGSs will under-deliver or over-deliver the actual energy requirements of transportation customers. The under-delivery will be subsidized by PGC

customers. The opposite situation would exist if the actual Btu content is less than the tariff Btu conversion factor. Equitable Exhibit I, Supporting Documentation at 2-3.

2. **Equitable's Proposal to Eliminate the Current Subsidies Caused by Btu Volatility**

23. The recent and continued fluctuations in the Btu content of gas supply have made it necessary for Equitable to make tariff modifications to adjust its billing practices. The proposals presented in Supplements Nos. 79, 80 and 81 address the Company's subsidy to all of its customers and the gas cost subsidization between PGC and transportation customers caused by the Btu content of gas supply. Equitable Exhibit I, Supporting Documentation at 1; Equitable St. No. 1 at 6.

24. Supplements Nos. 79, 80 and 81 will more closely align customers' bills with their *actual* energy consumption and, thereby, eliminate the current subsidy from Equitable to its customers caused by this Btu fluctuation. Equitable St. No. 1 at 6.

25. The Supplements neutralize the impact of Btu volatility by working both ways and will adjust for both increases and decreases in heat content. In doing so, they will more closely align customers' bills with their *actual* energy consumption. N.T. 83-84.

26. The proposals are revenue neutral based on known and Commission approved billing determinants and heat content of gas from Equitable's 2008 Base Rate Proceeding and 1307(f) Proceeding. Equitable St. No. 1 at 6-7. Attachment C to the Supporting Documentation for each of Supplements Nos. 79, 80 and 81 demonstrates how each alternative proposal produces the same overall impact in a manner that is revenue neutral and consistent with the settlement of the 2008 Base Rate Proceeding. Equitable St. No. 1 at 7-8.

27. Equitable's proposal addresses *only* the changes in billing determinants that have occurred as a result of changes in natural gas heat content. It does *not* address or impact, in any

way, changes in billing determinants that have occurred or that might occur as a result of weather fluctuations or customer conservation, for example. Equitable St. No. 1R at 2; Equitable St. No. 1 at 6. Accordingly, Equitable's proposal does not lessen the risk to the Company of revenue variability due to weather fluctuations or customer conservation.

3. The Net Impact of the Company's Btu Adjustment Proposal

28. The net impact of the Company's proposed adjustment to customer billing produces a reduction in rates to PGC customers. N.T. 45-47; Equitable Exhibit TPW-1. As presented in Equitable Exhibit TPW-4R, if the Btu adjustment proposal had been in effect for the twelve month period ended April 2012, the delivery rate impact on PGC customers of \$794,815 would have been more than offset by the elimination of the gas cost subsidy of (\$1,363,141) provided by PGC customers to transportation customers. The net customer savings of the billing adjustment to PGC customers would have been \$582,326 for that twelve month period. Equitable Exhibit TPW-4R.

29. In addition to the foregoing, Equitable, as a result of its increased purchases of local Appalachian Region gas, including Marcellus Shale Gas, has been able to eliminate interstate pipeline capacity that it used, historically, to bring gas from the Gulf and Mid-Continent Regions to the Pittsburgh area. Equitable St. No. 1 at 5.

30. Just by itself, the elimination of Equitable's last interstate pipeline contract (with Texas Eastern Transmission Company ("TETCO")) will reduce purchased gas cost rates by \$.52 per Mcf or by \$16.3 million annually. Equitable St. No. 1 at 5.

31. In total, the implementation of the Company's proposed heat content billing modifications and the elimination of gas cost subsidization through changes to Tariff Rule No. 11.22, together with Equitable's Marcellus Shale Gas and local Appalachian production

procurement program, is projected at this time to produce approximately \$17 million of *annual* rate savings for PGC customers. Equitable St. No. 1R at 14.

4. **Absent Its Btu Adjustment Proposal, the Company Is Unreasonably Penalized**

32. Equitable's increased purchases of Marcellus Shale Gas and other local Appalachian production has been encouraged by the Commission. For example, in his Statement from Equitable's 2009 1307(f) proceeding at Docket No. R-2009-2088072, Vice Chairman Christy explained that increased use of local gas benefits customers by reducing purchased gas costs, reducing the need for interstate pipeline capacity and enhancing economic development. Equitable St. No. 1R at 3.

33. Increased purchases of high Btu content, local Marcellus Shale Gas have allowed the Company (and PGC customers) to avoid significant purchased gas costs but these same purchases, as a result of higher Btu content, have produced an unforeseen and unanticipated subsidies discussed above. Equitable St. No. 1R at 3.

34. Without the Btu adjustment, a reduced gas cost benefit will flow to the customer without appropriate recognition of the negative impact of the Equitable subsidy to its customers as well as the subsidy of PGC customers that were inadvertently created by the reduced billing volume determinants. Equitable St. No. 1R at 3.

35. The Company's proposal allows it to address the existing inequity that has only occurred because of the change in natural gas heat content and to do so in a way that is revenue neutral based on the billing determinants from the 2008 Base Rate Proceeding. Equitable St. No. 1R at 4. Going forward, the Company's proposal will neutralize the impact of Btu fluctuations for the benefit of the customer and the Company.

36. The change in natural gas heat content that has occurred since the 2008 Base Rate Proceeding was not known nor could it have been known at the time of that proceeding. Equitable St. No. 1R at 4.

C. Equitable's Voluntary POR Program Proposal

37. Equitable's POR program is a voluntary proposal submitted by Equitable in response to and consistent with the Commission's Revised Final Rulemaking Order entered June 23, 2011 in *Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*, Docket No. L-2008-2069114 ("Revised Final Rulemaking Order") and the Commission's desire to improve natural gas CHOICE competition. Equitable St. No. 2 at 3-4.¹⁰

38. Equitable's Voluntary POR Program proposal is succinctly described at pages 4 and 5 of Equitable Statement No. 2, as follows:¹¹

A Firm Pool Administrator operating in Equitable's distribution system may elect to sell its accounts receivable to the Company at a discounted rate. The program will be available to Pool Administrators providing service to residential and small commercial customers with annual consumption of 300 Mcf or less consistent with 52 Pa. Code Section 62.224. The Pool Administrator may opt-in or out of the POR program on an annual basis.

The following provisions will apply to Firm Pool Administrators that choose to participate in the POR program. These POR program guidelines are also included in Rule 11.29 of Supplements Nos. 79, 80 and 81.

- An agreement for Consolidated Billing Service and POR will be executed between the Company and the Pool Administrator. The proposed form of the billing service and purchase of receivable agreement is included as Attachment E to the supporting information for Supplements Nos. 79, 80 and 81.
- All eligible customers served by a [Firm] Pool Administrator must participate in the POR program.

¹⁰ The CHOICE market is made up of firm residential and firm small business customers with usage less than 300 Mcf.

¹¹ The Company's POR Program proposal is the same in each of Equitable's Supplements Nos. 79, 80 and 81. Equitable St. No. 2 at 2.

- The [Firm] Pool Administrator must accept all non-CAP customers whose accounts will be included in the POR program without performing a credit check or requiring an additional security deposit from the customer.
- Only basic gas supply service will be eligible for participation in the POR program. Products and services sold in relation to, or in addition to, basic service will not be included.
- The Company may terminate service to customers for the full amount of natural gas supply charges purchased under the POR program in accordance with the service termination provisions of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

39. The Company will purchase qualifying NGS accounts receivable at a discount rate of 1.7946% for residential customers and 0.4776% for small commercial and industrial customers. Equitable St. No. 2 at 5.

40. The Company determined the discount rate by first summing the actual customer account write offs for the three year period 2009-2011 for each customer class and then adding to that sum estimated IT billing system programming costs of \$370,065.¹² The total was then divided by the same three year time period (2009-2011) revenue figure for each class. Equitable St. No. 2 at 5-6.

41. When a Firm Pool Administrator decides to participate in the POR Program, the Company will notify customers by a separate bill insert that service may be terminated for failure to pay basic natural gas supply charges purchased under the POR Program. The enrollment letter issued by the Company to a CHOICE customer when a CHOICE customer switches to a new NGS will also explain that service may be terminated for failure to pay basic supply service charges. Equitable St. No. 2 at 7.

¹² The total estimated IT programming cost of \$370,065 was allocated 80% to the residential customer class and 20% to the small commercial and industrial class. The 80/20 percentage allocation was determined by the number of customers of each category enrolled in Equitable's existing CHOICE program. Equitable St. No. 2 at 6.

42. Equitable will delay implementation of the voluntary POR Program and incurring the IT billing system programming costs until receipt of an agreement for Consolidated Billing Service and POR from an NGS operating on Equitable's distribution system. Equitable explained its implementation plans as follows (Equitable St. No. 2 at 7):

The Company does not currently offer a POR program. As a result, system programming changes and training will be required prior to initiation of the POR program. The estimated time to accommodate these requirements is nine months.

Presently, Equitable has only one pool administrator that operates a [Firm Pool] Choice program on the system. This pool administrator has informed Equitable that it does not plan to participate in a POR program if implemented.

Due to this circumstance and the cost and time associated with placing the new POR program into service, Equitable proposes to commence the requisite modifications upon notification from an NGS operating on its system of interest in POR program participation.

III. STATEMENT OF QUESTIONS INVOLVED

1. Are the tariff rates, rules and regulations proposed in Supplements Nos. 79, 80 and 81 establishing a mechanism for adjusting customer bills to reflect changes in the Btu heat content of system natural gas just and reasonable under Chapter 13 of the Public Utility Code?
2. Are the tariff rates, rules and regulations proposed in Supplements Nos. 79, 80 and 81 creating a Purchase of Receivable Program just and reasonable under Chapter 13 of the Public Utility Code and consistent with the Revised Final Rulemaking Order?

IV. SUMMARY OF ARGUMENT

The Commission should exercise the “maximum flexibility” afforded it in this rate proceeding and approve any of the Supplements as “just and reasonable.” Equitable, with the Commission’s encouragement and subsequent approval in its annual 1307(f) proceedings, has developed and implemented a gas procurement strategy that maximizes its use of local Appalachian gas to the significant financial benefit of its customers. Since April 2012, Equitable has been relying exclusively on local Appalachian and Marcellus Shale Gas to meet the needs of its customers. As anticipated by Vice Chairman Christy in the Company’s 2009 Section 1307(f) proceeding, Equitable’s purchased gas cost has markedly decreased coincident with its expanded use of local gas sources from \$7.35 in 2010 to an estimated \$5.12 as of October 1, 2012. Just by itself, the expiration of the Company’s contract with TETCO is reducing PGC rates by \$16.3 million annually or \$.52 per Mcf.

There, however, is another impact that is unjust and unreasonable resulting from the use of local Appalachian gas and, in particular, Marcellus Shale Gas to meet system supply needs. Marcellus Shale Gas, typically, has been hotter (*i.e.*, it has a higher Btu content) than other gas supply sources. As Btu content increases, consumers need to purchase fewer Mcfs to meet their energy needs, which results in reduced billing volume determinants. Accordingly, customers are receiving a windfall by not paying for their energy consumption. The effect of the reduced determinants is to unfairly penalize the Company for aggressively pursuing a local Appalachian and Marcellus Shale gas purchasing strategy that has otherwise significantly reduced gas costs for its customers. This penalty comes in the way of a subsidy by Equitable to its customers and also a subsidy from PGC to transportation customers.

Through Supplements Nos. 79, 80 or 81, Equitable is proposing to neutralize the reduced billing determinant fluctuations that are occurring as a result of variable and higher Btu content gas coming into the system. The proposals, which adjust for both higher and lower Btu content, are revenue neutral based on the billing determinants from the Company's 2008 Base Rate Proceeding. The Company's proposals would, in fact, have resulted in *reduced* rates to PGC customers during the twelve months ended April 2012 as addressed and explained by Equitable witness Wiggers in Equitable Statement No. 1R and calculated in Equitable Exhibit TPW-4R.

Supplements Nos. 79, 80 and 81 are non-general rate filings under Section 1308(b) of the Public Utility Code, 66 Pa. C.S. 1308(b). They are not a rate increase at all as stated above, but, even if they were, as argued by I&E, OCA and OSBA, the Commission, otherwise, has full discretionary authority and "maximum flexibility" to allow any of the Supplements to go into effect as "just and reasonable." *See Popowsky v. Pa. P.U.C.*, 683 A.2d 958 (Pa. Cmwlth. 1996); *Consolidated Communications Enterprise Services v. Omnipotent Communications, Inc. d/b/a T-Mobile, et al.*, Docket No. C-2010-2210014 (Opinion and Order entered March 15, 2012) ("*Consolidated Communications*").

In summary, Equitable is proposing a “just and reasonable” solution to remedy the unexpected negative impact on billing determinants that has resulted solely because of its pursuit of a favored local Appalachian and Marcellus Shale Gas purchasing strategy. The change in heat content and billing determinants that has occurred since the 2008 Base Rate Proceeding was not known nor could it have been known at the time of that proceeding. Equitable, moreover, cannot control the heat content of the gas coming onto its system. The arguments of other parties that the Company’s proposed adjustment mechanism cannot be accomplished in this non-general rate proceeding reflects a misreading of the Code and applicable court precedent and, if accepted by the Commission, would produce a result that is neither just nor reasonable.

The Commission also should approve the Company’s POR Program, which is the same under each Supplement. Equitable’s voluntary POR Program is consistent with the Revised Final Rulemaking Order and the POR Program design elements found in 52 Pa. Code § 62.224 adopted in that Order. In fact, the other parties readily concede that most of the design elements of the POR Program that they challenge are all that are required by the Revised Final Rulemaking Order and Section 62.224 of the Commission’s regulations. Their attempts to impose additional requirements beyond the requirements of the Revised Final Rulemaking Order and Section 62.224 for a program that is *voluntary* should be rejected.

V. ARGUMENT

A. The Btu Adjustment Proposals Present A “Just and Reasonable” Solution to Remedy the Subsidy Being Provided By the Company As a Result of Volatile and Upward Trending Heat Content

1. Just and Reasonable Rates Under Chapter 13 of the Public Utility Code

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility ... shall be just and reasonable[.]” In determining whether rates are just and reasonable, the Commission exercises broad discretion. *City of Pittsburgh v. Pa. P.U.C.*, 400 A. 2d 672 (Pa. Cmwlth. 1979). The Commission, moreover, is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates. *Popowsky v. Pa. P.U.C.*, 669 A. 2d 1029, 1040 (Pa. Cmwlth. 1995).

In *Popowsky v. Pa. P.U.C.*, 683 A. 2d 958 (Pa. Cmwlth. 1996) (“*Popowsky*”), the Commonwealth Court affirmed a Commission decision approving a non-general rate increase for Equitable to recover current costs of complying with a change in accounting standards for postretirement benefits other than pensions (“OPEBs”). In affirming the decision of the Commission which allowed Equitable to *increase* its rates outside of the general rate proceeding advocated by the opposing parties in that proceeding, the Court emphasized the important differences between non-general rate increases under section 1308(b) of the Code and general rate increases under Section 1308(d) of the Code explaining as follows:

Non-general rate filings are addressed in Section 1308(b) of the Code, while general rate filings are dealt with in Section 1308(d) of the Code. Both sections set forth the procedure for changing rates, the time limitations for the suspension of new tariffs and the PUC's actions.

* * *

The differences between the two subsections of 1308 include the length of any suspension of rates, the setting of temporary rates for non-general rate filings, and the mandate that the PUC is required to investigate every general rate

increase filing, whereas non-general rates may become effective based on a determination without a hearing because the PUC is given the discretion to initiate a hearing on its own motion. In creating a two-pronged procedure based on the size of the rate increase, the General Assembly revealed its intention that the full regulatory oversight may not be necessary for minor rate increases and left that decision to the PUC.

Id. at 961-62.

The court in *Popowsky* further emphasized how the Commission itself in implementing the statutory structure has created different evidentiary standards for non-general and general rate filings:

To implement the statutory structure, the PUC set forth in its regulations the evidence which must be produced by the public utility to support a rate case. Under 52 Pa. Code § 53.52(b), any utility filing a tariff or supplement must submit certain basic information, including reasons for the rate change, operating income for a 12-month period, the number of customers affected and the amount of the change on an annual basis. In addition to the basic information, those filings for a general rate increase require more elaborate supporting information and exhibits, including the book value of all property, a balance sheet and a calculation of the rate of return and anticipated rate of return. 52 Pa. Code §§ 53.52(c) and 53.53.

Id. at 962.

Citing specifically to the Commission's discretionary authority to address a non-general rate filing, the court held as follows:

... [W]e would agree with the PUC that the statutory and regulatory scheme do not make the same full-blown standards applicable [to a non-general rate filing]. If such a high standard applied, there would be no significant difference between non-general rate filings under Section 1308(b) and general rate filings under Section 1308(d). To the contrary, because of the modest nature of non-general rate filings, as required by the statute, we believe the PUC may determine whether the public utility's rates are just and reasonable based on the general information required under 52 Pa. Code § 53.52(b). That the non-general rate filing may be contested does not increase Equitable's evidentiary burden or limit the PUC's discretion.

Id.

In its recent Opinion and Order entered March 15, 2012 in *Consolidated Communications*, the Commission, citing *Popowsky*, expressly recognized its “maximum flexibility” in rate setting under Section 1308(b) “as different circumstances may require:”

... [T]he Commission has been given wide latitude in the conduct of proceedings under Section 1308(b), which governs non-general rate increase proceedings such as the one sought by CCES in this case. The permissive nature of the language that the Legislature used in drafting Section 1308(b) reflects the intent to provide maximum flexibility to the Commission to conduct non-general rate proceedings as different circumstances may require, consistent with procedural due process safeguards. Observing the differences between Section 1308(b) and Section 1308(d), which governs general rate increase proceedings, the Commonwealth Court held that, when the Legislature created the two-pronged procedure, it “revealed its intention that the full regulatory oversight may not be necessary for [non-general] rate increases and left that decision to the PUC.” *Popowsky v Pa. PUC*, 683 A.2d 958, 962 (Pa. Cmwlth. 1996) (affirming Commission's approval of non-general rate increase without the “full panoply” of Section 1308(d) supporting data). The Court held that the statutory scheme does not apply the same “full-blown” evidentiary standards to non-general rate increases as are applied to general rate increase proceedings. Considering that the Court in *Popowsky* was addressing substantive evidentiary requirements, while in the instant case we merely are addressing procedural requirements, we are confident that Section 1308(b) authorizes the Commission to establish rates in a non-general rate increase proceeding that is initiated by the filing of a complaint rather than a typical proposed tariff supplement. As stated above, to hold otherwise would elevate form over substance.

The Legislature's choice to grant the flexibility to the Commission under Section 1308(b) to select the procedures by which to conduct rate proceedings reflects the Legislature's recognition that rate proceedings are occasioned by a myriad of circumstances that would be impossible to anticipate, and accordingly for which it would be impossible to prescribe inflexible procedural requirements. The Courts have endorsed the view that the rate-setting procedures in the Code are flexible, and that the Code provides the Commission with implied powers that allow the Commission to discharge its duty to ensure that utility rates remain “just and reasonable.”

Consolidated Communications, slip op. at 42-43.

Similar to the Equitable filing in *Popowsky*, Equitable's Supplements Nos. 79, 80 and 81 are Section 1308(b) non-general rate filings. There can be no good faith dispute about this. The Commission, in its Suspension Order entered June 7, expressly suspended Supplements Nos. 79,

80 and 81 pursuant to Section 1308(b).¹³ Thus, the essential issue in this proceeding, as recognized in Ordering Paragraph No. 2 of the Suspension Order entered June 7, is whether the rates, rules and regulations proposed in Supplement No. 79 (or in the alternative Supplements Nos. 80 or 81) are “just and reasonable.”

As a Section 1308(b) non-general rate filing, the Commission has discretionary authority – maximum flexibility – to review the circumstances presented here and conclude that the tariff rates, rules and regulations presented in Supplement No. 79 (or alternative Supplements Nos. 80 or 81) are “just and reasonable.” Especially significant in support of the reasonableness of Supplement No. 79 (or alternative Supplements Nos. 80 or 81) are: (i) the Commission’s encouraged use of local Appalachian and Marcellus Shale Gas and the significant financial benefits to Equitable’s customers as a result of its gas procurement strategy; (ii) the revenue neutrality of the Company’s proposal; and (iii) the unjust and unreasonable subsidies that will be eliminated and the overall rate *decrease* that PGC customers will see as a result of the proposal. Each of these supporting circumstances is highlighted below. Although not highlighted below, we emphasize, again, in support of the Company’s proposals that they work both ways to neutralize the impact of both increases and decreases in heat content for the benefit of both customer and Company.

a. **Circumstances Supporting the Company’s Proposal**

i. **The Circumstances in Which Equitable Finds Itself Result from Natural Gas Purchases Encouraged and Approved by the Commission**

In its Order entered April 1, 2012 in *Jurisdictional and Pipeline Safety Issues Related to the Marcellus Shale*, Docket No. I-2010-2163461, the Commission stated that the Marcellus

¹³ See Suspension Order entered June 7, slip op. at 3.

Shale is one of the largest natural gas deposits in the world. In 2002, the United States Geological Survey estimated the Shale contained 1.9 trillion cubic feet of natural gas. Another estimate of 50 trillion cubic feet was published in 2008. Some estimate that the Marcellus Shale contains enough natural gas to meet this country's energy demand for over 20 years and Pennsylvania's energy demand for well over 100 years.

The Commission has encouraged NGDCs to purchase local Appalachian production, including Marcellus Shale Gas. For instance, in his Statement in Equitable's 2009 1307(f) proceeding at Docket No. R-2009-2088072, Vice Chairman Christy stated the following in regard to local Pennsylvania gas:

Local Pennsylvania produced gas supplies benefit customers through lower purchased gas costs, reductions in interstate transportation capacity and enhanced economic development.

In that same statement, Vice Chairman Christy referred to "the opportunity that exists today in Pennsylvania as a result of development of the Marcellus Shale gas resource" and, in that regard, stated further:

Now is not the time to be discouraging our natural gas utilities from procuring additional supplies of Pennsylvania produced natural gas. I believe that now is the time to do the exact opposite, to encourage greater reliance on this abundant state resource. In several of this years' purchased gas cost proceedings, including Equitable's, our jurisdictional local distribution companies have agreed to investigate the possibility of directly accessing Marcellus supplies into their distribution systems on a least cost basis. These agreements have been included within the context of joint petitions for settlement that have been approved by this Commission. I support these initiatives.

Equitable is maximizing its use of local Appalachian gas consistent with the Commission's wishes, all of which has been further supported in Equitable's various 1307(f) proceedings in which the herein contesting parties have actively participated. Since April 2012, Equitable has been relying exclusively on local Appalachian and Marcellus Shale Gas to meet

the needs of its customers. The benefit to customers in the form of reduced PGC rates has been substantial, but the inadvertent subsidies created by this “hotter” system gas must be addressed. Equitable’s substantial effort to acquire local Appalachian gas, including Marcellus Shale Gas, thereby reducing purchased gas costs, is unique and a special circumstance that supports the Commission exercising its “maximum flexibility” and approving Supplements Nos. 79, 80 or 81 as “just and reasonable.”

ii. **The Company’s Adjustment Proposal to Reflect Changes in Heat Content Is Revenue Neutral**

Supplements Nos. 79, 80 and 81 address the subsidy from Equitable to its customers as well as the subsidy from PGC to transportation customers as a result of Btu volatility. The tariff proposals are revenue neutral based on the billing determinants and heat content of gas from the 2008 Base Rate Proceeding. Attachment C to the Supporting Documentation for each of Supplements Nos. 79, 80 and 81 (Equitable Exhibits I, II and III, respectively) demonstrates how each alternative proposal produces the same level of rate class delivery service revenue as agreed to in the 2008 Base Rate Proceeding.

Other parties claim that the Company’s adjustment mechanism will increase amounts billed for delivery service and, thus, the adjustment mechanisms are not revenue neutral. Their claims, however, are inconsistent with the results intended by the settlement of the 2008 Base Rate Proceeding and otherwise ignore the subsidies that have been created by the increases in the heat content of the natural gas Equitable is delivering to its customers. The settlement of the 2008 Base Rate Proceeding contemplated recovery of the dollars captured by the Supplements that other parties now choose to characterize as a rate increase. It is only because of the increased use of high Btu content, local Marcellus Shale gas that the Company is now providing

a subsidy instead of realizing the terms of the settlement. Put simply, the proposed changes in billing practice will result in customers paying for the energy that they are consuming.

Multi-jurisdictional documents provided by I&E in discovery and admitted into the record as Equitable Cross Examination Exhibit 1 confirm that conversions to heat content billing can be accomplished on a revenue neutral basis contrary to the contentions of I&E, OCA and OSBA.

*Cheyenne Light Fuel & Power – Please note that [this] is not a revenue increase for Cheyenne Light. ... There isn't a financial advantage in billing by dekatherms. The conversion neither increases nor decreases Cheyenne Light's revenues. But billing by dekatherms is expected to streamline our billing process because it is consistent with how we are billed for the natural gas we buy from our suppliers and also with how we bill our industrial and large commercial customers.*¹⁴

*Jackson Energy Authority – In a move to become more aligned with how energy is billed across the United States and how Jackson Energy Authority purchases gas as a commodity, JEA will be changing natural gas billing standards from CCF to Therm. This move gives our customers the opportunity to become more aware of their natural gas “energy” consumption. ... This is a conversion process, not a rate increase. We are simply changing the way we bill from CCF's to Therms for natural gas we deliver to customers.*¹⁵

*Berkshire Gas Company – Will this raise the cost of gas? NO. The conversion process is NOT a rate increase. The cost of natural gas will not be affected. This is simply a change in the way we bill for the energy we deliver.*¹⁶

In Equitable Exhibit TPW-2R, Mr. Wiggers recalculated the delivery rates in the Summary of Settlement Adjustments and Proof of Revenue from the 2008 Base Rate Proceeding using the Dth billing determinants proposed in Supplement No. 81, instead of the Mcf billing

¹⁴ Equitable Cross Examination Exhibit 1 at 3 and 4.

¹⁵ Equitable Cross Examination Exhibit 1 at 10.

¹⁶ Equitable Cross Examination Exhibit 1 at 15.

determinants used in the Proof of Revenue reproduced in Exhibit TPW-1R.¹⁷ The Mcf billing determinants (TPW-1R, Sheet 1 of 8, Column (a)) were converted to Dth billing determinants (TPW-2R, Sheet 1 of 8, Column (a)) based on Equitable's 2008 system average Btu content of 1.056 Dth per Mcf. (46,633,777 Mcf x 1.056 = 49,245,269 Dth).

Calculating the delivery rates based on Dth billing determinants rather than Mcf billing determinants produces the very same \$38.4 million revenue increase reflected in the Settlement, as shown on Equitable Exhibit TPW-2R, Sheet 1 of 8, Column (j). Since the same revenue level is achieved using dekatherm billing determinants, by definition, the conversion is revenue neutral.

Equitable's billing adjustment addresses *only* the decreased billing determinants that have occurred as a result of changes in natural gas heat content. It does *not* address or impact, in any way, changes in billing determinants that have occurred or that might occur as a result of weather fluctuations or customer conservation, for example. To be clear, Equitable remains at risk for revenue variability due to changes in customer usage as a result of weather fluctuations, the economy and customer conservation. Accordingly, the revenue neutral impact of the Supplements, which also eliminate the two unfair and unjust subsidies, further supports the Commission exercising its "maximum flexibility" and finding that the rates are "just and reasonable." Moreover, even if one were to accept the opposing parties misguided argument that Equitable's proposals are not revenue neutral, the rates are still "just and reasonable" under the circumstance and should be approved.

¹⁷ Mr. Wiggers used Supplement No. 81 – dekatherm billing – in his example, rather than Supplement No. 79, because OCA witness Miller stated that dekatherm billing as proposed in Supplement No. 81 is an industry standard billing practice. See OCA St. No. 1 at 25.

iii. **Equitable Has Proposed An Overall Rate Decrease for PGC Customers and the Elimination of Subsidies**

The net impact of the Company's proposed adjustment to customer billing is a reduction in rates to PGC customers. As presented in Equitable Exhibit TPW-4R, if the Btu Adjustment proposal had been in effect for the twelve month period ended April 2012, the delivery rate impact on PGC customers of \$794,815 would have been more than offset by the elimination of the gas cost subsidy of (\$1,363,141) provided by PGC customers to transportation customers. The net positive impact of the billing adjustment to PGC customers is a rate reduction of \$582,326 annually.

In addition, Equitable, as a result of its increased purchases of local Appalachian Region gas, including Marcellus Shale Gas, has been able to eliminate interstate pipeline capacity that it used, historically, to bring gas from the Gulf and Mid-Continent Regions to the Pittsburgh area. The elimination of Equitable's last interstate pipeline contract (with TETCO) will reduce PGC rates by \$16.3 million annually or \$.52 per Mcf.

In total, the implementation of the Company's proposed heat content billing modification of delivery service rates and the elimination of gas cost subsidization through changes to Tariff Rule No. 11.22, together with Equitable's Marcellus Shale Gas and local Appalachian production procurement program, is projected to produce approximately \$17 million of *annual* rate savings for PGC customers.

The foregoing demonstrates, beyond any reasonable question, how the Company's proposal fairly balances the interests of the Company and its customers. Through the use of local Appalachian gas, including and especially Marcellus Shale Gas, customers have benefitted from substantial reductions in purchased gas costs. The Company's proposal leaves those gas cost savings in place, while justly and reasonably adjusting customer billing that accounts for the

actual energy consumption and the impact of the typically higher heat content of the local Appalachian and Marcellus Shale Gas. The net impact of the Company's proposal is a reduction in rates for PGC customers. I&E, OCA and OSBA do not contest the savings and benefits discussed above. They ask, however, that the Commission ignore the reality of the higher heat content gas and stop short of allowing the Company to implement its proposed adjustment mechanism and eliminate the current subsidies. In actuality, it is their position that is neither just nor reasonable and not in the public interest.

b. Summary

The Commission has broad discretion under the Public Utility Code in determining whether rates are "just and reasonable." It has especially wide latitude, *i.e.*, "maximum flexibility," in proceedings under Section 1308(b). In fact, the Commission relies frequently on its discretion and latitude in determining rates, without the need to engage in a full blown and costly Section 1308(d) proceeding as advocated by the other parties in this proceeding. Most recently, for example, the Commission as part of the Revised Final Rulemaking Order has directed NGDCs to submit tariff filings later this year, establishing a gas procurement charge and a merchant function charge. The Commission views the filings as a permissible revenue neutral shifting of costs between rate components and, significantly, in regard to the discussion below in Section V.A.2.b., the Commission finds no prospect of prohibited single issue ratemaking in these filings.¹⁸ There are many other examples of the Commission approving adjustments outside of a full blown Section 1308(d) general rate proceeding that impact rates without even a suggestion that the same would run afoul of the governing rules and regulations.¹⁹

¹⁸ Revised Final Rulemaking Order, slip op. at 25.

¹⁹ See discussion *infra* Section V.A.2.b.ii. and footnote 34.

Similar to the upcoming revenue neutral filings referenced above, the Company's proposal here is appropriate and otherwise revenue neutral. In fact, the Company's proposal will *reduce* rates to PGC customers. Moreover, the Commission has already approved heat content billing adjustments for Columbia Gas of Pennsylvania, Inc. and UGI – Central Penn. Adjustment mechanisms have also been approved in Illinois, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Oklahoma, Utah, Wisconsin and Wyoming. The OCA's own witness even described the billing mechanism in Supplement No. 81 as the "industry standard."²⁰

In the end, the matter is easy to resolve. Equitable submitted a Section 1308(b) non-general rate filing for Commission consideration, which provides the Commission with "maximum flexibility." The Commission instituted an investigation into the lawfulness, justness and reasonableness of the rates, rules and regulations proposed by the Company and, in its Suspension Order entered June 7, advised the parties to investigate any other issues they may deem important to the fair and thorough review and analysis of Equitable's tariff filings.²¹ Full and fair opportunity for investigation having occurred, the Commission for all the reasons set forth above, should exercise its broad discretion under Section 1308(b), determine Equitable's proposed rates, rules and regulations to be just and reasonable and approve the proposals presented in Equitable's Supplements Nos. 79, 80 or 81, as filed.

2. Contentions of Other Parties

a. The 2005 1307(f) Proceeding Is Inapposite

In their prepared direct testimony, I&E witness Boyd and OSBA witness Kalcic referenced the Commission's Order entered September 28, 2005 in Equitable's 2005 1307(f)

²⁰ OCA St. No. 1 at 24-25.

²¹ Suspension Order entered June 7, slip op. at 3.

proceeding at Docket No. R-00050272²² and suggest that the 2005 1307(f) Order is dispositive in this proceeding. In particular, the I&E and OSBA witnesses contend that Equitable’s current proposal should be rejected because the Commission rejected an allegedly similar proposal in the 2005 1307(f) proceeding.²³ That argument is, at a minimum, an overstatement of the 2005 1307(f) Order and must be rejected. Equitable made a proposal in the rebuttal phase of that 1307(f) proceeding in order to address higher Btu production from local conventional wells – before the production of Marcellus Shale gas. The Commission held – in the context of the 2005 1307(f) proceeding – that single issue ratemaking was involved and that the proposal by Equitable should be considered in a base rate proceeding. To be clear, the Commission did not address the issue and proposed solutions now before it. Of equal significance, Equitable has, in fact, specifically followed the procedure highlighted by the Commission in that Order – it has filed a base rate proceeding.

The I&E and OSBA witnesses’ reliance on this case is misplaced and they over simplify what the Commission said on pages 45-48 of the 2005 1307(f) Order. The principal rationale for denying Equitable’s proposed annual 1307(f) proceeding adjustment for Btu heat content was that the proposed adjustment was not “related to the transportation costs, storage costs, or any of the other elements set forth in Section 1307(h)” of the Code.²⁴ As such, the Commission concluded that “the issue was not properly brought in a 1307(f) proceeding” and, in a 1307(f) proceeding, constituted single issue ratemaking which should not take place outside of a base rate proceeding.²⁵ The Commission also stated that the matter could have been raised in

²² *Pa. P.U.C. v. Equitable Gas Co.*, Docket No. R-00050272 (Opinion and Order entered September 28, 2005) (“2005 1307(f) Order”).

²³ I&E St. 1 at 11-12; OSBA St. 1 at 4.

²⁴ 2005 1307(f) Order, slip op. at 47.

²⁵ *Id.*

Equitable's case-in-chief and that its appearance at the rebuttal stage conflicted with Commission regulations.²⁶

The important point is that the instant proceeding is indeed a Section 1308 base rate proceeding, not a Section 1307(f) "Sliding Scale of Rates; Adjustments" proceeding as was the case in 2005. In addition, the proposals at issue in this base rate proceeding were not made during the rebuttal phase of this proceeding, but rather were made up front as part of the case in chief, with full testimony and exhibits and all of the supporting information required by the Commission's regulations. Equitable's tariff filing was suspended for the statutory period, and, unlike the 2005 1307(f) proceeding, there was full opportunity for any party to conduct discovery and present testimony and exhibits, which almost every party did.

It is also important to remember that the circumstances in this docket are quite different than they were in 2005. Today's significant increases in Btu content have occurred with the Commission's encouragement and approval. The Marcellus Shale formation had not even been developed in 2005. Today, Equitable is no longer relying on natural gas from the Southwest but rather is utilizing local production, thereby obviating the need to renew the Company's contract with TETCO resulting in a revenue reduction for today's PGC customers of \$16.3 million annually. These savings were made possible by actions taken by Equitable and approved by the OCA, I&E and OSBA. This, in turn, inadvertently created the two herein identified subsidies that are unjust and unreasonable. This also was not the case in 2005. Equitable's proposals in this proceeding eliminate the two subsidies and result in an overall rate *decrease* for PGC customers, which, if approved by the Commission, is projected to result in a total annual

²⁶ Id.

reduction for PGC customers of approximately \$17 million.²⁷ The circumstances are considerably different than in 2005.

In short, the 2005 1307(f) Order has no bearing on the issues now before the Commission. This is all being done as part of a base rate filing which, in the aggregate results, in a revenue decrease. There is absolutely no relationship between this 1308(b) proceeding and Equitable's 2005 1307(f) proceeding, and the contesting parties reliance on that proceeding is, at a minimum, misplaced. Equitable has complied with the Public Utility Code and the Commission's regulations with respect to this filing under Section 1308(b) and a Btu billing adjustment should be approved at these dockets as "just and reasonable" pursuant to the "maximum flexibility" afforded the Commission.

b. Single Issue Ratemaking

I&E, OCA and OSBA argue that the Company's billing adjustment proposal is prohibited single issue ratemaking. They describe single issue ratemaking as occurring when only one item affecting rates is changed without examination of other factors which normally go into determining the revenue requirement for a utility.²⁸ Not only is Equitable not engaged in single issue ratemaking, the concept of single issue ratemaking is misplaced in this type of Section 1308(b) proceeding. Accordingly, the concept of single issue ratemaking is no bar to the approval of the Company's proposed adjustment mechanism.

i. The Concept of Single Issue Ratemaking Has No Application to This Section 1308(b) Proceeding

The attempt by I&E, OCA and OSBA to use the concept of single issue ratemaking as a bar to the implementation of the Company's billing adjustment proposal in this Section 1308(b)

²⁷ Equitable St. No. 1R at 14.

²⁸ See OCA St. No. 1 at 8.

proceeding is contrary to the Public Utility Code and applicable decisional law. As set forth above, the Commission has “maximum flexibility” and discretion under Section 1308(b) to weigh the relevant circumstances and determine what is “just and reasonable.” The Commission’s authority, flexibility and discretion under Section 1308(b) are unfettered by the concept of single issue ratemaking.

The application of single issue ratemaking to bar a Section 1308(b) rate filing was rejected by the presiding administrative law judge at the Commission level in *Popowsky*, although referred to as “piecemeal” ratemaking, not single issue ratemaking, in that proceeding. In his Recommended Decision subsequently unanimously adopted by the Commission approving Equitable’s OPEB filing, Administrative Law Judge Kashi addressed and rejected the “piecemeal ratemaking” argument raised by the OCA explaining as follows:²⁹

The OCA also relies on the cases of Pennsylvania Gas and Water Company v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Ct. 416, 470 A.2d 1066 (1984) (“PGW”) and Philadelphia Electric Company v. Pennsylvania Public Utility Commission, 93 Pa. Commonwealth Ct. 410, 502 A.2d 722 (1985) (“Philadelphia Electric”) to support its proposition that “piecemeal ratemaking” without complete revenue requirement review as supported by Section 1308(d) type data, cannot support a finding of “just and reasonable” rates.

These cases are inapplicable to the case at hand ...

The basic flaw which pervades the OCA’s legal analysis and is fatal to its presentation in this case is its complete and utter failure to distinguish between a Section 1308(b) non-general rate filing and a Section 1308(d) general rate filing. Even those cases cited by the OCA acknowledge the Commission’s broad discretion in the ratemaking process. The traditional standard of appellate review is that a court will accept the Commission’s discretionary authority findings “unless they are totally without support in record, are based on error of law, or are unconstitutional.” Arrowhead, 600 A.2d at 252, ftnt. 1.

²⁹ *Pa. P.U.C. v. Equitable Gas Co.*, Docket No. R-00943246 (Rec. Decision of ALJ Kashi dated July 28, 1995). Judge Kashi’s Recommended Decision, excluding Attachments, is appended to this Main Brief as Appendix A, along with the Commission’s Final Order entered August 31, 1995 adopting it. It is significant that, prior to issuing his OPEB decision and his untimely passing, Judge Kashi also held the position of Commission Chief Counsel.

* * *

By arguing that the Commission cannot find the rates agreed to by the OTS and Equitable “just and reasonable” without the supporting cost of capital data in the form demanded by the OCA, the OCA essentially contends that a rate filing made under authority of Section 1308(b) of the Code must always be supported in a fashion identical to that required for a Section 1308(d) rate filing. In addition to contradicting the express terms of the Code and the Commission’s regulations, such an interpretation of Section 1308(b) also effectively renders Section 1308(b) meaningless, a result that is contrary to all rules of statutory construction. See, Section 3(a) of the Statutory Construction Act of 1972, Act of December 6, 1972, P.L. 1339, No. 290 (1 Pa. C.S. §1291(a)) (“the Statutory Construction Act”). Also, see e.g., Commonwealth of Pennsylvania v. Lobiondo, 501 Pa. 599, 603, 462 A.2d 662, ___ (1983).³⁰

Thus, even ignoring the fact that Equitable is proposing a rate *decrease*, the Commission has already expressly rejected the argument by the other parties that Equitable is not entitled to invoke Section 1308(b) and must instead rely exclusively on Section 1308(d). This is the very type of situation that is covered by Section 1308(b). In addition to the foregoing, the Company’s proposal does not fall within the definition of “single issue ratemaking.” In its Revised Final Rulemaking Order, the Commission described “single issue ratemaking” as a situation in which the utility seeks increased rates for a single element of increased expenses without examination of other expenses that may have decreased.³¹ The Commission also recognized that revenue neutral proposals are not single issue ratemaking.

The Company’s proposal is much more than a one-sided request by a utility to adjust its rates as a result of a change in a single expense item. In fact, the request is not even based on an expense item at all. This is a unique situation, and there are several dimensions to the Company’s proposal, and it is worth repeating here and again below that the net impact is a rate *reduction* to PGC sales customers. Single issue ratemaking, certainly, should not prevent a

³⁰ Appendix A at 37-39.

³¹ Revised Final Rulemaking Order, slip opinion at 25.

utility from implementing a rate *reduction*. Moreover, Equitable’s proposals are revenue neutral and, as recognized by the Commission in its Revised Final Rulemaking Order, such revenue neutrality otherwise guts any single issue ratemaking argument.

In the end and perhaps most significantly, there is no prohibition against single issue ratemaking in the Public Utility Code. Section 1308(b) filings, like Equitable’s filing here, are, typically, non-general base rate filings,³² and the concept of single issue ratemaking, by definition, has no application to base rate filings.³³ The attempt by I&E, OCA and OSBA to use the concept of single issue ratemaking as a bar to the implementation of the Company’s billing adjustment proposal in this Section 1308(b) proceeding should be rejected. The Commission has broad discretion in this matter and, after considering the totality of the circumstances, the Commission should approve Supplement No. 79 (or alternative Supplements Nos. 80 or 81) as set forth above.

ii. **The Company’s Billing Adjustment Proposal Is Just and Reasonable Even if the Concept of Single Issue Ratemaking Were To Apply**

Single issue ratemaking even in its most direct application is no more than a general concept. In *PIEC*, the Commonwealth Court described single issue ratemaking as “similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.” As with any general rule, there are numerous exceptions to its application, for example, STAS, merchant function, CAP and numerous filings unique to individual companies such as Columbia Gas’ filing implementing temperature and pressure

³² As addressed in Section V.A.2.c below, in the context of testimony of I&E, OCA and OSBA witnesses, this proceeding is a Section 1308(b) non-general base rate filing.

³³ *In Pa. Indus. Energy Coalition v. Pa. P.U.C.*, 653 A.2d 1336 (Pa. Cmwlth. 1995) (“*PIEC*”), the Commonwealth Court described single issue ratemaking as “similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.” Accordingly, a matter raised in a base rate filing is not prohibited by single issue ratemaking.

adjustments.³⁴ The concept of single issue ratemaking has been ignored and changes in rates permitted when a filing involves a rate decrease or when the utility has no control over a change in circumstances due to an external event beyond its power to prevent or when a statutory regulatory provision specifically authorizes the rate relief being requested.³⁵ These exceptions would have direct application here, where Equitable cannot control the Btu content of the gas entering its system and the purchasing of higher Btu gas is being encouraged by the Commission and approved in 1307(f) proceedings. Although not reflected in a formal statutory regulatory provision, the Commission's encouraged use of local Appalachian and Marcellus Shale Gas is clearly in the nature of a Pennsylvania regulatory policy justifying an exception to the general concept prohibiting single issue ratemaking, even if the concept applies and an exception is necessary.

The Commission has "maximum flexibility" and discretion under Section 1308(b) to weigh and consider the circumstances and determine what is "just and reasonable." With this broad authority, it is simply not plausible to suggest that the concept of single issue ratemaking, even if it has any application, trumps all other circumstances in a matter. At most, the concept might be one of the myriad of circumstances material to the Commission's consideration of "just and reasonable" rates. Considered in this way, the Company's billing adjustment proposal is

³⁴ See, e.g., *City of Erie v. Pa. Elec. Co.*, 383 A.2d 575 (Pa. Cmwlth. 1978) (STAS); *Office of Consumer Advocate v. Metro. Edison Co.*, 97 Pa PUC 292 (2002) (STAS); Revised Final Rulemaking Order, *supra* (merchant function); *Application of Columbia Gas of Pennsylvania for Approval of a Restructuring Plan*, Docket No. R-00994781 (adjustment of customer bills to reflect temperature and pressure compensation); *Popowsky v. Pa. P.U.C.*, 13 A.3d 583 (Pa. Cmwlth. 2011) (recovery of increases in purchased water expense pursuant to automatic adjustment clause); *PIEC, supra* (automatic rate adjustment for demand-side management costs); *City of Pittsburgh, supra* (extraordinary purchase of power from other utility's required due to striking coal miners); *Pa. P.U.C. v. East McKeesport Water Co.*, 56 Pa PUC 570 (1982) (rate recovery permitted for increase in purchased water expense).

³⁵ *Petition of Pennsylvania-American Water Co. for Approval to Implement a Tariff Supplement Establishing a Facility Protection Charge and to Use Deferred Accounting for Certain Security-Related Costs*, Docket No. R-00027983 (Rec. Decision of ALJ Paist dated May 20, 2003). The Recommend Decision was subsequently adopted by the Commission's Opinion and Order entered July 24, 2003. *Re Pennsylvania-American Water Co.*, 98 Pa PUC 359 (2003).

“just and reasonable” even if the Commission were to consider the concept of single issue ratemaking in its weighing of the circumstances. It would be contrary to the public interest not to balance the interests of the Company and its customers as proposed by the Company through Supplement No. 79 (or alternative Supplements Nos. 80 or 81). The Commission has the discretionary authority under the Code to recognize the public benefit of Supplement No.79 (or alternative Supplements Nos. 80 or 81) and to allow one of the alternative billing mechanisms to go into effect.

c. **This Is A Base Rate Proceeding Under Section 1308(b)**

In their prepared statements of testimony, I&E, OCA and OSBA witnesses contend that the Company’s Btu billing proposals can only be considered in a base rate proceeding. For example, in her prepared testimony, I&E witness Boyd asserted that Equitable’s Btu billing proposals “should be dealt with as a whole in the context of a base rate proceeding.” I&E St. 1 at 7.

In his prepared testimony, OCA witness Miller used the terms “base rate case,” “base rate proceeding” and “base rates” more than thirty times contending that adoption of a Btu adjustment procedure should not be done outside of a base rate proceeding. *See, e.g.*, OCA St. 1 at 12. Mr. Miller even testified that “if Equitable files a complete base rate soon, I would support a change to dekatherm billing as proposed by Equitable in Supplement No. 81.” OCA St. 1 at 8.

OSBA witness Kalcic in his prepared testimony states that he had been advised by counsel that “it would not be appropriate to address Btu content outside of a base rate proceeding since doing so would be equivalent to single issue ratemaking.” OSBA St. 1 at 3.

None of these witnesses referred to any provision of the Public Utility Code and/or the Commission's regulations to support his/her base rate proceeding contentions. Nevertheless, contrary to the suggestions of these witnesses, it is clear that this proceeding is, in fact, a base rate proceeding – a non-general rate filing under Section 1308(b) of the Code. Under cross examination, I&E witness Boyd had to admit that this, indeed, is a “base rate proceeding”³⁶ and that Equitable had complied with the Commission's filing regulations for such a proceeding.³⁷

The fact that this is, indeed, a base rate proceeding should not be a complicated matter. Section 62.222 of the Commission's regulations, 52 Pa. Code § 62.222, which became final earlier this year, defines “Base Rate” as follows:

Base rate – The customer charge, distribution charge and other rates that are established in a Section 1308 proceeding under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

The conversions to Btu billings proposed by Supplements Nos. 79, 80 and 81 are voluntary changes in rates under Section 1308 of the Code. As previously noted, the Commission, in its Suspension Order entered June 7, expressly concluded that this is a proceeding pursuant to Section 1308(b) and acted to suspend the effective dates of each supplement for a period of six months.³⁸ The Commission also instituted an investigation at the three “R” dockets.

Because Supplements Nos. 79, 80 and 81 did not amount to an increase of 3% of Equitable's total gross annual intrastate operating revenues, they did not constitute a “general rate increase filing” under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), and Equitable was not required to submit the supporting information required by 52 Pa. Code § 53.53 for general

³⁶ N.T. 123.

³⁷ N.T. 140.

³⁸ Suspension Order entered June 7, slip op. at 2.

rate increase filings in excess of \$1 million. As a non-general rate filing under Section 1308(b), Equitable was required and did submit the supporting information required by 52 Pa. Code §§ 53.52(a) and (b). Equitable also submitted the supporting information required by 52 Pa. Code § 53.52(c). Included in its supporting information was financial information, consisting of rate of return calculations, a balance sheet, a plant account summary, depreciation reserve data, and an income statement with operating revenues and expenses by detailed accounts. None of the opposition witnesses took issue with the foregoing financial information in his/her respective testimony. Moreover, the parties had the opportunity and submitted whatever data requests that they deemed necessary to challenge the Supplements.

The supporting information for Supplements Nos. 79, 80, and 81 was not insubstantial and was entered into the record as Equitable Exhibits I, II and III.³⁹ Those exhibits along with the prepared statements of testimony, both direct and rebuttal, and accompanying exhibits of Equitable witnesses Wiggers and Scanlon provide a sufficient evidentiary basis for determining the justness and reasonableness of Equitable's Btu billing proposals without running afoul of single issue ratemaking concerns as the Commonwealth Court has so held. *See Popowsky, supra.*

d. I&E's, OCA's and OSBA's \$10 Million Barrier

As a final matter, it makes no practical sense to contend that a conversion to Btu billing can only be accomplished in a *general* base rate increase proceeding. Section 1308(d) defines a general rate increase as one which "affects more than 5% of the customers *and* amounts to in excess of 3% of total gross annual intrastate operating revenues of the public utility." 66 Pa. C.S. § 1308(d). Equitable's gross annual intrastate operating revenues exceed \$350,000,000.

³⁹ N.T. 44.

For Equitable this would mean that, to qualify as a Section 1308(d) general rate increase, the increase would have to be in excess of \$10 million before a conversion to Btu billing or any other rate revision could even be proposed. This is certainly not what Section 1308 of the Code requires and would not be in the public interest, especially where a filing as here is proposing an overall rate decrease. At some point, common sense and the public interest must prevail.

B. Equitable's Voluntary Purchase of Receivables Program

In its Revised Final Rulemaking Order, the Commission stated its belief that POR Programs offer the best means to increase supplier participation in the retail natural gas market and to compensate NGDCs for their risks and costs and, as such, are in the public interest.⁴⁰ While POR Programs are viewed as important by the Commission to the promotion of competition, the Commission also noted in the Revised Final Rulemaking Order that a question exists as to its legal authority to mandate such Programs. The creation of such Programs by NGDCs is, accordingly, voluntary.⁴¹

Equitable's voluntary POR Program is consistent with the Revised Final Rulemaking Order and the POR Program design elements found in 52 Pa. Code § 62.224 adopted in that Order. While there is some disagreement among the parties about elements of Equitable's POR Program design, there seems to be general agreement that the creation of a POR Program is appropriate. Modifications to Equitable's POR Program were proposed by OCA, I&E and RESA.⁴² Their modifications are discussed under separate headings below.

⁴⁰ Revised Final Rulemaking Order slip opinion at 40.

⁴¹ Revised Final Rulemaking Order slip opinion at 40-41.

⁴² OSBA witness Kalcic agrees with the POR Program provided that Equitable is not permitted to recover any NGS-related payment shortfalls from non-NGS customers. Equitable is not proposing to recover NGS-related payment shortfalls from non-NGS customers. Equitable St. No. 2R at 16.

1. The OCA's Proposed Modifications to Equitable's POR Program

OCA witness Barbara Alexander proposed modifications to the Company's voluntary POR Program. Equitable accepted three of Ms. Alexander's proposed modifications as follows:

- Ms. Alexander recommended that Equitable include the definition of "basic" service in its tariff. Equitable does not oppose this recommendation and will include the definition of "basic" services as defined by the Commission at 52 Pa. § 62.222 and § 62.72 in its tariff. Ms. Alexander also recommended in regard to "basic" service that the NGS be required to certify that its charges include only amounts allowed by the Company's definition of "basic supply service" as a condition to participation in the POR Program. Equitable agrees with Ms. Alexander's recommendation and will add language to the Consolidated Billing Service and Purchase of Receivables Agreement that will require an NGS to certify the charges meet the specified criteria. Equitable St. No. 2R at 7-9.
- Ms. Alexander expressed concern with the potential for an NGS to use a consolidated bill for some customers in a customer class while selecting others for the dual billing option. She suggested that Equitable's tariffs should require the NGS to use one of the three billing methods for the entire customer class and not allow an NGS to pick and choose among the options. Equitable will modify the Consolidated Billing Service and Purchase of Receivables Agreement to emphasize that an NGS may choose only one option. Equitable St. No. 2R at 9.
- Ms. Alexander recommended that Equitable require NGSs that participate in the POR Program to inform customers directly of the change in policy concerning termination of service for NGS charges and that NGSs revise their Terms and Conditions to reflect this policy change. Equitable does not oppose this recommendation and will include the foregoing condition in Section 11.29 of its Tariff. The enrollment letter issued by the Company to all customers enrolling in Equitable's CHOICE transportation program also will inform customers that service may be terminated for failure to pay basic supply service charges. Equitable will also place notification of this policy in the Customer CHOICE section of the Company's website. Equitable St. No. 2R at 10.

Ms. Alexander presents two comments about the POR Program with which Equitable does not agree. Her first comment is a recommendation that the parties not expend resources debating the structure of a POR Program until there is a documented level of interest in the Program by an NGS in Equitable's service territory. First, the Company will not initiate required billing system modifications to implement the POR program until receiving an

executed Consolidated Billing Service and Purchase of Receivables Agreement from an NGS operating on its system and electing participation in the program. Moreover, the Commission and NGSs clearly disagree with Ms. Alexander's suggestion. A POR was identified by NGSs, and ultimately by the Commission in its SEARCH Orders, as a program design element that could assist in the promotion of NGS competition with the goal of increasing alternative supply offers from NGSs to firm residential and small business CHOICE customers. The Commission has encouraged NGDCs to submit voluntary POR programs, even on an interim basis, to help stimulate NGS participation in residential and small business CHOICE programs. The "debating" of the structure of the program has already occurred in the form of testimony, cross examination and briefing. Equitable believes that the Commission should move forward and approve the structure of its POR Program, as filed.

Ms. Alexander's second comment is a claim that the POR Program is not in compliance with the Revised Final Rulemaking Order. As summarized by Equitable Witness Scanlon, Ms. Alexander stated three reasons why the program, in her view, is not compliant with the Order:

... First, she states that Equitable did not propose a method to remove the bad debt recovered through the program from base rates, resulting in possible double recovery of the uncollectible expense. She indicates that the Commission's requirement for a Merchant Function Charge (MFC) would prevent such double recovery of revenues but states this aspect was not addressed by Equitable in the program filing. Secondly, Ms. Alexander asserts that the Company's method for calculating the POR discount rate does not reflect the Commission's requirement to rely on the bad debt recovery factor established in the Company's most recent base rate proceeding. Lastly, she indicates Equitable has not complied with the requirement to state the Price to Compare (PTC) on customer bills.⁴³

Equitable will be submitting its MFC tariff filing on or before November 12, 2012, in accordance with the Commission's Secretarial letter of May 25, 2012. Ms. Alexander acknowledges that the establishment of a MFC would eliminate the potential of double recovery,

⁴³ Equitable St. No. 2R at 4.

thereby addressing her concern. Equitable's MFC will be in place to coincide with, or prior to, the commencement of the POR program. The MFC tariff filing will also address Ms. Alexander's concern regarding the PTC on customer bills with the PTC appearing on customer bills as part of the MFC filing and in place to coincide with, or prior to, the commencement of the POR program. Thus, Ms. Alexander's concerns on those two points are misplaced.

Finally, in regard to Ms. Alexander's claim that the POR Program discount rate does not reflect the bad debt recovery factor established in the Company's most recent base rate proceeding, the POR Program Regulation at 52 Pa. Code § 62.224, states as follows:

(5) An NGDC's POR program shall use a discount rate designed to reflect the NGDC's actual uncollectible rate for supply service customers and the incremental costs associated with the development, implementation and administration of the POR program.

Contrary to Ms. Alexander's comment concerning Equitable's determination of the discount rate, there is no Commission requirement, direct or indirect, in the Revised Final Rulemaking Order that mandates or even suggests that the uncollectible rate is equivalent to the bad debt recovery factor established in the most recent base rate proceeding. In fact, Equitable's most recent base rate case was approved as a black box settlement. A specific bad debt recovery factor was not addressed in settlement or by the Commission in that proceeding. Ms. Alexander's comment, moreover, is inconsistent with the view of the RESA supplier group of potential POR Program participants whose witness Sutherland testified that the proposed discount rates seem reasonable.⁴⁴

2. I&E's Proposed Modifications to Equitable's Voluntary POR Program

I&E witness Lisa A. Boyd commented on two areas of revision for the POR program. Equitable does not agree with either of her comments. Ms. Boyd's first comment concerns the

⁴⁴ RESA St. No. 1 at 5.

Company's use of a three year period of actual write off experience to determine the discount rate. With no statutory or other Commission support, she contends that the resulting discount rate is too high to attract POR Program participants and suggests that Equitable should revisit the percentage. Averages are often used in ratemaking proceedings to determine the appropriate level of a ratemaking expense.⁴⁵ Ms. Boyd's contention, moreover, is contrary to the view of the RESA supplier group of potential POR Program participants whose witness Sutherland, as noted above, testified that the proposed discount rates seem reasonable.⁴⁶ Ms. Boyd did not propose an alternative method of determining the discount rate, but any deviation from the Company's actual write off experience would constitute a program subsidy by shareholders. Such a subsidy has no legal support and is otherwise unacceptable.

Ms. Boyd's second comment concerns the administrative expense portion of the discount rate and Equitable's proposed recovery of that expense through a percentage calculation based on distribution revenue. She suggested that recovery of costs under the Company's proposal may be untimely and that an alternative recovery method, such as a per shopping customer bill charge or a percentage based, shopping customer count, would be more appropriate. Ms. Boyd's alternative recovery methods may have some hypothetical appeal but they are impractical. Ms. Boyd's proposals would require development of a forecast of shopping customers whose NGS chooses the POR Program. However, there is, presently, no known NGS interest in a POR Program in Equitable's service territory⁴⁷ and, consequently, no known shopping customer base

⁴⁵ See, e.g., *Pa. P.U.C. v. Nat'l Fuel Gas Distrib. Corp.*, 84 Pa PUC 134 (1995) (allowing a three-year historical average for worker's compensation claims and four-year historical average for injuries and damages claims); *Pa. P.U.C. v. Bloomsburg Water Co.*, 74 Pa PUC 244 (1990) (using a two-year average for outside contractor maintenance expense); *Pa. P.U.C. v. Nat'l Fuel Gas Distrib. Corp.*, 67 Pa PUC 264 (1988) (utilizing a five-year average for an injuries and damages expense claim).

⁴⁶ RESA St. No. 1 at 5.

⁴⁷ Dominion Retail which provides natural gas supply service to approximately 15,000 CHOICE customers has no present interest in participating in a POR Program. Dominion Retail St. No. 1-R at 2.

from which a shopping customer count charge to recover administrative costs could be based. This deficiency also could result in Equitable recovering far less than anticipated under Ms. Boyd's proposal. Accordingly, only the approach proposed by Equitable appropriately takes into consideration the practical hurdles to implement the POR Program on its system. Other approaches may be appropriate when the program is up and running but not now.

3. RESA's Proposed Modifications to Equitable's Voluntary POR Program

RESA witness Sutherland presents two proposed modifications to Equitable's POR Program each of which is contrary to the POR Program design elements found in the 52 Pa. Code § 62.224. His first proposal increases the POR Program annual cap from 300 Mcf to 5,000 Mcf. However, he acknowledges that Equitable's proposed cap of 300 Mcf is consistent with the SEARCH regulations.⁴⁸ In fact, there is no dispute that the Company's cap of 300 Mcf complies with the Revised Final Rulemaking Order and SEARCH regulation at 52 Pa. Code § 62.224.⁴⁹ That point and his concession of that point defeat his proposal as Equitable has complied with the applicable design elements under this *voluntary* program.

Nonetheless, Mr. Sutherland bases this proposal on his understanding that PECO's POR program has a participation cap of 5,000 Mcf annually. Equitable opposes Mr. Sutherland's proposal to increase the participation cap. Increasing the cap is not necessary to promote competition. Competition for large customers has existed for many years in Western Pennsylvania. Equitable has approximately 15,000 C&I customers with annual usage of 5,000 Mcf or less. Over two-thirds of those customers, have annual usage of 300 Mcf or less.⁵⁰

⁴⁸ RESA St. No. 1 at 8.

⁴⁹ Section 62.224(7) provides that POR programs must, at a minimum, include receivables on residential business customer accounts. 52 Pa. Code § 62.224(a)(7).

⁵⁰ RESA Cross Examination Exhibit No. 1.

Mr. Sutherland's second proposal would remove eligibility limitations from the POR Program, specifically the limitation which provides that all eligible customers served by the Pool Administrator (and its affiliate) *must* participate in the POR program. The Company's eligibility limitation is entirely consistent with 52 Pa. Code § 62.224 which provides in subpart (a)(2) that "[a]n NGS electing to sell its receivables to an NGDC shall include its accounts receivables related to CHOICE residential and small business basic services in the POR Program." 52 Pa. Code § 62.224(a)(2). The Commission included the eligibility limitation as part of Section 62.224 to deter any "cherry picking" by the NGS (either by itself or acting together with an affiliate) of best accounts for itself and worst accounts to the POR program.⁵¹ The removal of the eligibility limitation as proposed by Mr. Sutherland would undo the Regulation and should not be allowed.

4. Conclusion

Equitable's has agreed to modify its voluntary POR Program to reflect certain changes recommended by OCA witness Alexander as discussed above. The POR Program, as originally filed and as modified, is consistent with the Revised Final Rulemaking Order and the POR Program design elements found in 52 Pa. Code § 62.224 adopted in that Order. The Commission should allow the POR Program, as filed, with the modifications accepted by Equitable to take effect.

⁵¹ Revised Final Rulemaking Order, slip op. at 42.

VI. PROPOSED CONCLUSIONS OF LAW

1. Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility ... shall be just and reasonable ...”

2. In determining whether rates are just and reasonable, the Commission exercises broad discretion. *City of Pittsburgh v. Pa. P.U.C.*, 42 Pa. Cmwlth. 242, 400 A. 2d 672 (1979).

3. The Commission is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates. *Popowsky v. Pa. P.U.C.*, 669 A. 2d 1029, 1040 (Pa. Cmwlth. 1995).

4. Equitable Gas Company’s Supplement No. 79 to Tariff Gas – Pa. P.U.C. No. 22 is a non-general rate filing pursuant to Section 1308(b) of the Public Utility Code. Supplements Nos. 80 and 81 are also non-general rate filings pursuant to Section 1308(b).

5. The Commission has wide latitude and maximum discretion in the conduct of proceedings under Section 1308(b). *Consolidated Communications Enterprise Services v. Omnipotent Communications, Inc. d/b/a T-Mobile, et al.*, Docket No. C-2010-2210014.

6. Because of the modest nature of Section 1308(b) non-general rate filings, the Commission may determine whether the public utility’s rates are just and reasonable based on the general information required under 52 Pa. Code § 53.52(b). *Popowsky v. Pa. P.U.C.*, 683 A.2d 958, 962 (Pa. Cmwlth. 1996).

7. The evidence of record establishes that Equitable Gas Company has met its burden of proof under Section 315 of the Public Utility Code, 66 Pa. C.S. § 315, to support the reasonableness of Supplements Nos. 79, 80 and 81 to its Tariff Gas – Pa. P.U.C. No. 22.

8. The tariff rates, rules and regulations proposed in Supplement No. 79 or in the alternative Supplements Nos. 80 and 81 to Equitable Gas Company’s Tariff Gas – Pa. P.U.C.

No. 22 establishing a mechanism for adjusting customer billing as a result of changes in the Btu heat content of system natural gas are just and reasonable under Chapter 13 of the Public Utility Code, lawful and consistent with established regulatory principles.

9. The tariff rates, rules and regulations proposed in Supplements Nos. 79, 80 and 81 to Equitable Gas Company's Tariff Gas – Pa. P.U.C. No. 22, as modified by Equitable in partial agreement with the testimony of the Office of Consumer Advocate, creating a Purchase of Receivables Program are just and reasonable under Chapter 13 of the Public Utility Code and consistent with the Final Revised Rulemaking Order of the Public Utility Commission entered June 23, 2011 at Docket No. L-2008-2069114.

10. Equitable Gas Company may place its Supplement No. 79 or in the alternative Supplements Nos. 80 and 81 to Tariff Gas – Pa. P.U.C. No. 22 into effect, as filed with the POR modifications accepted by Equitable in partial agreement with the testimony of the Office of Consumer Advocate, on one day's notice following entry of the Order of the Public Utility Commission approving the Supplement.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That Equitable Gas Company may place its Supplement No. 79 or in the alternative Supplements Nos. 80 or 81 to Tariff Gas – Pa. P.U.C. No. 22 into effect, as filed, with the POR modifications accepted by Equitable in partial agreement with the testimony of the Office of Consumer Advocate, on one day's notice following entry of the Order of the Public Utility Commission approving the Supplement, said Supplement No. 79 or alternative Supplements Nos. 80 or 81 having been found to be just, reasonable and lawful.

2. That the formal complaints of the Office of Consumer Advocate at Dockets Nos. C-2012-2309502, C-2012-2309538 and C-2012-2309549 are hereby dismissed.

3. That the investigations of the Public Utility Commission at Dockets Nos. R-2012-2304727, R-2012-2304731 and R-2012-2304735 are terminated and the record marked closed.

VIII. CONCLUSION – REQUEST FOR RELIEF

Based on the foregoing, Equitable Gas Company, LLC requests that the Public Utility Commission allow Supplement No. 79 or in the alternative Supplements Nos. 80 or 81 to its Tariff Gas – Pa. P.U.C. No. 22 to go into effect, as filed, with the POR modifications accepted by Equitable in partial agreement with the testimony of the Office of Consumer Advocate.

Respectfully submitted,

EQUITABLE GAS COMPANY, LLC

By  _____

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Date: September 14, 2012

APPENDIX A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 31, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka
Robert K. Bloom

Pennsylvania Public Utility
Commission

R-00943246

AND

Irwin A. Popowsky,
Consumer Advocate

R-00943246C0001

v.

Equitable Gas Company,
a division of Equitable
Resources, Inc.

O R D E R

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge George M. Kashi dated July 28, 1995, and that Exceptions be denied; THEREFORE,

IT IS ORDERED:


1. Equitable's accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 be and is hereby approved as \$2,617,244. Such amount is hereby approved as a regulatory asset, whose recovery in rates will be deferred and considered in

Equitable's next general rate proceeding. The amount of such regulatory asset shall be increased by \$2,400.00 for each day after July 1, 1995 that Equitable's recovery of the annual amount of incremental OPEB expenses on a going forward basis is delayed.

2. Until revised in a subsequent rate proceeding, the annual going forward amount of Equitable's incremental SFAS 106 expense is \$876,206. The recovery of such expense shall be accomplished by increasing rates for non competitive sales customers by \$0.025 per Mcf and the rate for maximum rate transportation customers by \$0.023 per Mcf. The increase for non competitive sales customers includes gross receipts tax. The increase for maximum rate transportation customers does not. The rates for competitive customers would not be increased. The development of the increases is to be accomplished as shown on Attachment B of Appendix 1 hereto and utilized total throughput, excluding competitive sales and competitive transportation rate volumes. Attachment C hereto contains a markup of Supplement No. 133 showing the changes therein necessary to reflect this joint stipulation.

3. Equitable be and is hereby granted permission to file the tariff supplement which would be filed pursuant this Order to cancel and supersede Supplement No. 133 and effectuate the stipulation rates as set forth in Attachment D of Appendix 1 of this Order.

BY THE COMMISSION,


John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: August 31, 1995

ORDER ENTERED: AUG 31 1995

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility :
Commission : R-00943246
AND :
Irwin A. Popowsky, :
Consumer Advocate : R-00943246C0001
v. :
Equitable Gas Company, :
a division of Equitable :
Resources, Inc. :

RECOMMENDED DECISION

Before
George M. Kashi
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On November 10, 1994, Equitable filed Supplement No. 133 to the Company's Tariff Gas-Pa. P.U.C. No. 20, together with accompanying supporting information, to provide for the recovery of incremental SFAS 106 costs consistent with the Commission's Policy Statement regarding Implementation of Statement of Accounting Standards For Rule No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions ("SFAS 106") and 52 Pa. Code §69.351 of the Commission's Rules of Practice and Procedure. Supplement No. 133 was filed pursuant to Section 1308(b) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1308(b) and, given

the magnitude of the proposed revenue increase, viz \$1,748,621, constituted a non-general rate filing.

By Order entered December 16, 1994, the Commission instituted an investigation to determine the lawfulness, justness and reasonableness of the rates proposed in Supplement No. 133 and suspended its effectiveness until July 9, 1995, unless otherwise directed by Order of the Commission. The Commission also directed the Office of Trial Staff to participate in the proceeding. In addition to the Commission's investigation docketed at R-00943246, a complaint was filed by the OCA and docketed at R-00943246C0001. A timely answer to the OCA's complaint was filed by Equitable. No other complaints or interventions were filed in the matter.

The matter was assigned to this administrative law judge on December 21, 1994 and a prehearing conference was scheduled for and held before the undersigned on January 4, 1995, at which testimony submission, discovery, hearing, briefing and other dates were agreed upon and the possibility of settlement explored. In accordance with the schedule established at the prehearing conference, Equitable served the direct testimony and accompanying exhibits of three witnesses on January 20, 1995¹.

¹(1) Equitable Statement No. 1, containing the direct testimony of John A. Bargonzi and accompanying Exhibits 1A and 1B; (2) Equitable Statement No. 2, containing the direct testimony of John J. Drozdowski and accompanying Exhibits 2A, 2B and 2C; and (3) Equitable Statement No. 3, containing the direct testimony of Larisa D. Murphy and accompanying Exhibits 3A and 3B.

Both before and following the submission of Equitable's direct testimony, a considerable number of interrogatories and data requests were propounded by the Trial Staff and the Consumer Advocate. Informal discovery sessions were also held.

On February 16, 1995, this administrative law judge became unavailable to continue as Presiding Officer. However, given that, at that time, it was anticipated that the matter was to be settled, the matter was not transferred to another administrative law judge but was followed by Then-Chief Administrative Law Judge Allison K. Turner².

Settlement discussions were also continuing, as well as discovery, and the parties requested that the hearing scheduled for March 15, 1995, be continued. The request was granted by Judge Turner. The parties, however, never apprised Judge Turner of the progress, or lack thereof, of the negotiations until she formally asked them to do so and on March 28, 1995, counsel for Equitable

² In further accord with the schedule established at the prehearing conference:

- (a) the Trial Staff served the direct testimony (OTS Statement No. CTW-1) and the accompanying exhibit (OTS Exhibit No. CTW-1A) of its witness Charles T. Weakley III and the Consumer Advocate served the direct testimony of its witness Randy M. Allen (OCA Statement No. 1) on March 1, 1995;
- (b) Equitable served the rebuttal testimony of its witnesses John J. Drozdowski (Equitable Statement No. 2-1) and Larisa D. Murphy (Equitable Statement No. 3-1) on March 9, 1995; and
- (c) the Trial Staff served the surrebuttal testimony of its witness Charles T. Weakley III (OTS Statement No. CTW-2) and the Consumer Advocate served the surrebuttal testimony of its witness Randy M. Allen (OCA Statement No. 1-A) on March 13, 1995.

submitted a letter to the Chief Administrative Law Judge advising of a settlement which had been reached in principle by the Company and the Trial Staff and of the status of the efforts to reach a settlement with the Consumer Advocate. Judge Turner was told by counsel that the Office of Administrative Law Judge would be immediately notified "as soon as the Office of Consumer Advocate has advised the Company and the Office of Trial Staff concerning its willingness to join the Settlement." At this time the OALJ anticipated having an order to the Commission on or before May 19, 1995. On April 3, 1995 we were allowed to return to work under a Doctor's advisory to resume part time duty.

The Consumer Advocate continued to indicate that more time was needed for additional discovery before the OCA could reach a decision on the settlement and for a period of approximately six weeks extensive discovery sessions were held between Company personnel and OCA witness Allen and a great deal of additional information was provided by Equitable for the OCA's review. On May 9, 1995 we set a further prehearing conference to be held on May 19, 1995 and requested that the Company voluntarily extend the effective date of the tariff. Efforts to reach a settlement with the Office of Consumer Advocate continued, but on May 11, 1995, counsel for the OCA advised that his office wished to proceed to hearing, but did not oppose Equitable's willingness to voluntarily extend the suspended effective date to accommodate the entry of a Commission Order without the need for a further suspension.

By letter dated May 12, 1995, counsel for Equitable again confirmed that the OTS and Company had reached a settlement and that the Company would voluntarily postpone the suspended effective date of Supplement No. 133, as necessary up to 50 days, to permit Commission action in the matter without the need for a further three month suspension³. Counsel for Equitable also advised that the parties believed that only one day of evidentiary hearing would be required and that the parties would propose an evidentiary hearing date during the telephonic hearing scheduled for May 19, 1995.

In accordance with the schedule established at the telephonic hearing held on May 19, 1995, an evidentiary hearing was scheduled for and held before the undersigned on May 26, 1995. At the evidentiary hearing, the Trial Staff and the Company ("Stipulating Parties") presented a Joint Settlement Stipulation, setting forth the stipulation which had been reached between them in proposed settlement of the issues raised in the proceeding (OTS and Equitable Joint Exhibit No. 1 attached hereto and made part hereof as appendix No. 1). Equitable presented the testimony and exhibits of its witnesses Bergonzi, Drozdowski and Murphy and the Trial Staff the testimony and exhibit of its witness Weakley in support of the Joint Settlement Stipulation which was admitted into evidence (N.T. 98). The Consumer Advocate presented the testimony and exhibits of its witness Allen in opposition to the Joint

³The Company could have voluntarily extended the effective date for a period of 89 days with the need of Commission approval.

Settlement Stipulation and indeed in opposition to any revision in rates to reflect SFAS 106 accounting outside of a general rate proceeding under Section 1308(d) of the Public Utility Code, 66 Pa. C.S. §1308(d). A transcript of some 155 page was produced through the cross examination of the above decribed testimony and exhibits. At the close of the hearing we informed the parties that main briefs would be due twenty (20) days from the receipt of the transcript and reply briefs ten (10) days thereafter (N.T. 155).

Equitable on June 7, 1995, filed Supplement No. 141 to the Company's Tariff Gas-Pa. P.U.C. No. 20, voluntarily postponing until August 28, 1995, the effective date of Supplement No. 133. Main Briefs were filed on June 21 and Reply Briefs on July 5, 1995. We requested the Company to extend the effective date the remaining 39 days but received no response to our request. The record closed on July 17, 1995.

JOINT SETTLEMENT STIPULATION

The Stipulating Parties have agreed that it would be fair, reasonable and appropriate to settle this proceeding on a basis similar to that approved by the Commission for The Peoples Natural Gas Company SFAS 106 proceeding at Docket No. R-00943111 and to permit Equitable to effectuate the recovery in rates, applicable to non competitive customers, of the annual going forward amount of the Company's incremental SFAS 106 expense as soon after July 1, 1995 as possible and to establish the amount of accumulated incremental SFAS 106 expense from January 1, 1993 to the effective

date of the recovery of the going forward amount in rates with the understanding that such accumulated incremental SFAS 106 expense would be carried on the Company's books as a regulatory asset whose recovery in rates would be deferred and considered in Equitable's next general rate proceeding.

Specifically, the Stipulating Parties agree and stipulate as follows:

- (1) Equitable's accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 is \$2,617,244. Such amount should be approved as a regulatory asset, whose recovery in rates will be deferred and considered in Equitable's next general rate proceeding. The amount of such regulatory asset shall be increased by \$2,400.00 for each day after July 1, 1995 that Equitable's recovery of the annual amount of incremental OPEB expenses on a going forward basis is delayed. The development of Equitable's accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 is shown on Attachment A hereto.
- (2) Until revised in a subsequent rate proceeding, the annual going forward amount of Equitable's incremental SFAS 106 expense is \$876,206. The recovery of such expense shall be accomplished by increasing rates for non competitive sales customers by \$0.025 per Mcf and the rate for maximum rate transportation customers by \$0.023 per Mcf. The increase for non competitive sales customers includes gross receipts tax. The increase for maximum rate transportation customers does not. The rates for competitive customers would not be increased. The development of the increases is shown on Attachment B hereto and utilized total throughput, excluding competitive sales and competitive transportation rate volumes. Attachment C hereto contains a markup of Supplement No. 133 showing the changes therein necessary to reflect this joint stipulation. Attachment D hereto is the tariff supplement which would be filed pursuant to this joint stipulation to cancel and supersede Supplement No. 133 and effectuate the stipulation rates.

Under the proposed settlement stipulation, the total bill for an average Equitable residential customer using 127 Mcf of gas per

year would increase by approximately \$3.18, or less than one cent (\$0.01) per day.
(Joint Stipulation pp.15-17).

ISSUES

1. Whether it is just and reasonable for Equitable Gas Company to recover its incremental SFAS 106 costs through a Section 1308(b) non-general filing?

2. Whether it is just and reasonable for Equitable Gas Company to recover its incremental SFAS 106 costs in rates applicable to non-competitive customers as proposed in a Joint Settlement Stipulation and as permitted in a settlement approved by this Commission for The Peoples Natural Gas Company?

SUMMARY OF THE PARTIES POSITIONS'

A. OTS and Equitable

The recovery of incremental SFAS 106 costs in this proceeding would not result in impermissible piecemeal ratemaking. Section 1308(b) of the Public Utility Code is intended to cover the exact situation OPEB costs present. The Commission has on many occasions adjusted a utility's rates to reflect a change in one cost of service item and unanimously did so as recently as its May 25, 1995 Public Meeting in a Section 1308(b) filing involving changes in the West Virginia business and occupation tax expense of the West Penn Power Company. In cases involving matters identical in subject to Equitable's filing, the Commission also approved single item rate changes related to SFAS 106 for The Peoples Natural Gas Company and PECO Energy Company and did so through the approval of settlements joined in by the Consumer Advocates. Consistent with past practice, the Commission should approve the Joint Settlement

Stipulation proposed by the Trial Staff and the Company in this proceeding.

Contrary to the theoretical concerns raised by the Consumer Advocate, Equitable has not experienced decreases in the level of ratemaking expenses which would offset the increase in OPEB costs due to SFAS 106. In fact, it is Equitable's position that the evidence of record shows that the Company is not earning an adequate return at present rates. Equitable's experienced rate of return per books for the 12 months ended March 31, 1995 was only 8.48% and the annualized and normalized return was only 8.61%. Equitable's achieved return on equity for the same period was just 7.87%, which the Company submits should conclusively remove any concern that the \$876,206 revenue increase resulting from the proposed settlement stipulation would somehow produce an unreasonable return.⁴

The recovery of the Company's incremental SFAS 106 costs in rates applicable to non-competitive customers as proposed in the Joint Settlement Stipulation and as previously approved by the Commission for The Peoples Natural Gas Company at R-00943111 is an appropriate resolution of the revenue allocation issue in this proceeding. The impact on the non-competitive customer is minimal. Under the proposed settlement, the total bill for an average Equitable residential customer using 127 Mcf of gas per year would increase by approximately \$3.18, or less than one cent (\$0.01) per day. The Company would not be able to collect incremental revenue from competitive customers. The contribution to fixed and variable costs is already being maximized for competitive customers whose rates are set by the market. Raising rates for competitive customers would hurt other customers because their contribution to fixed costs could be lost entirely if they were to switch to another supplier.

(Joint Main Brief pp.13-15)

B. OCA

While it supported the settlement of the SFAS 106 non-general rate filing, which Peoples made pursuant to Section 1308(b) of the Public Utility Code at R-00943111, and on which the Trial Staff's and Company's Joint Settlement Stipulation in this proceeding was modeled, and although it supported a settlement in connection with

⁴The Trial Staff has not formed an opinion in the present proceeding whether Equitable has or has not earned an adequate return. See Section IV.F., *infra*.

SFAS 106 costs in the PECO Energy Company ("PECO") proceeding at R-00922479, the Consumer Advocate through its witness Allen not only opposes the Trial Staff's and Company's Joint Settlement Stipulation, it opposes any revision of Equitable's rates to reflect SFAS 106 accounting outside of a general rate proceeding.

(OCA Main Brief p. 3, Joint Main Brief p. 26).

(1) The Recovery of SFAS 106 Costs in This Proceeding Would Be Impermissible Piecemeal Ratemaking

Mr. Allen contends that the recognition of OPEB costs in this proceeding would result in impermissible "piecemeal ratemaking." Mr. Allen describes piecemeal ratemaking as a change in rates to reflect the effect of only one cost of service item. OCA St. No. 1 at 8.

(2) Expense Decreases Offset the Increase in OPEB Costs

Mr. Allen suggests that savings on health care coverage should be used to offset Equitable's claim for SFAS 106 costs.

(3) Equitable Has Not Demonstrated That It Is Not Earning an Adequate Return

Mr. Allen further testified that "[w]hen considering whether to increase rates for a single cost item, the Commission must also consider whether the utility is already earning a reasonable return." OCA St. No. 1 at 9. Mr. Allen presented various financial reports which purport to show that Equitable is earning a reasonable return.

(OCA Main Brief p. 3).

DISCUSSION

1. SFAS 106

SFAS 106 was issued by the Financial Accounting Standards Board ("FASB") in December 1990. FASB sets accounting standards for American finance and business. SFAS 106 changed the accounting treatment of post retirement benefits other than pensions for most American companies including regulated utilities, effective for fiscal years beginning after December 15, 1992. Concerned over increasing costs and potentially significant liabilities incurred by enterprises, but undisclosed in financial statements, FASB

initiated an investigation of the accounting for Other Post Employment Benefits ("OPEBs") in the mid-1980's. After a comprehensive review spanning several years, FASB determined that it was necessary for an employer to record its OPEB liability as its employees earned the resulting benefits during the course of their actual employment, i.e. OPEBs are to be treated as a form of deferred compensation, the cost of which must be accrued over the employee's period of active employment. OTS and Equitable Joint Exhibit No. 1 at 2-3 and Equitable St. No. 1 at 2.

Historically, utilities recognized the costs of OPEBs for both accounting and ratemaking purposes at the time those benefits were actually paid, i.e. the "pay-as-you-go (cash)" method. Under this method, no liability was recorded for OPEBs expected to be paid in the future for previous or current service. In contrast, under SFAS 106, OPEBs are treated as a form of deferred compensation, the cost of which must be accrued over the employee's period of active employment. This approach is commonly referred to as the "accrual" method. It requires the liability to be reflected during the period of employment giving rise to the expenditure, i.e. the liability is recognized on an estimated pro rata basis as employee service is rendered. OTS and Equitable Joint Exhibit No. 1 at 2 and Equitable St. No. 1 at 2-3.

Effective for fiscal years beginning after December 15, 1992, the provisions of SFAS 106 require all employers to convert from the pay-as-you-go (cash) method of accounting for OPEBs and to begin using the accrual method of accounting for these benefits.

In addition to the OPEB expense attributable to the current fiscal period, SFAS 106 requires employers to record an additional liability for the accumulated post employment benefit obligation (the "Transition Obligation") which arises from the change to accrual accounting. Under the pay-as-you-go (cash) method previously utilized, OPEBs already earned by employees for services rendered prior to the SFAS 106 implementation date were not recorded as a liability. SFAS 106 requires employers to recognize the Transition Obligation as a liability in a single fiscal year or ratably over a prospective period of up to 20 years (i.e. a twenty-year expense amortization). Equitable adopted SFAS 106 for financial reporting purposes effective January 1, 1993, and has elected to amortize the Transition Obligation over twenty years. OTS and Equitable Joint Exhibit No. 1 at 3-4 and Equitable St. No. 1 at 3.

2. Equitable's General Rate Proceeding at R-00912164

The Company included a claim for the incremental expense associated with SFAS 106 as part of its general rate filing at Docket No. R-00912164. Because the Commission had not yet developed its policy on the issue, the matter was settled as a part of an overall settlement of all issues in that proceeding except transportation rates. The settlement of Docket No. R-00912164 excluded recovery of the incremental cost of SFAS 106 keeping the Company on the pay-as-you-go method for ratemaking purposes. Nevertheless, under the settlement, the Company had the right to utilize accrual accounting for book purposes. The settlement

agreement further provided that the settlement would not in any way prejudice any position the parties may take as to the recovery of the cost of post retirement benefits other than pensions in future proceedings. OTS and Equitable Joint Exhibit No. 1 at 4 and Equitable St. No. 2 at 2-3.

3. The FERC and Pa. P.U.C. Policy Statements

Subsequent to the settlement of the Company's 1991-92 general rate proceeding at Docket No. R-00912164, both the FERC and Pa. P.U.C. adopted formal policies on SFAS 106. OTS and Equitable Joint Exhibit No. 1 at 5.

a. FERC Policy Statement

On December 17, 1992, the FERC issued a policy statement providing:

"It shall be the policy of the Commission [FERC] to recognize, as a component of jurisdictional cost based rates of natural gas pipeline companies and public utilities under its jurisdiction and oil pipelines should they elect to comply with this statement, allowances for prudently incurred cost of post-retirement benefits other than pensions. . .when determined on an accrual basis (and supported by independent actuarial studies) that are consistent with the accounting principles set forth in Statement of Financial Accounting Standards No. 106. .
."

OTS and Equitable Joint Exhibit No. 1 at 5.

b. This Commission's SFAS 106 Policy Statement

By Order entered May 20, 1993, this Commission issued a Policy Statement for Implementation of SFAS 106 at Docket No. M-930415 ("SFAS 106 Policy Statement") which was published in the Pennsylvania Bulletin on June 19, 1993, and formally established the Commission's regulation at 52 Pa. Code §69.351 regarding

Implementation of SFAS 106. In its SFAS 106 Policy Statement, the Commission indicated that a utility may seek formal approval to record on its books, a regulatory asset pursuant to SFAS 71 (Accounting for the Effects of Certain Types of Regulation) equal to the difference between its current rate recognition of OPEB costs and its accrued liability for such expenses under SFAS 106 subject to recovery in future rate proceedings to the extent that costs are prudently incurred and demonstrated to be reasonable. The Commission expressly stated that it intended:

" . . .to move jurisdictional utilities to SFAS 106 accrual accounting for ratemaking purposes within approximately 5 years and to allow the recovery in base rates of deferred amounts in approximately 20 years, to the extent that OPEB costs are prudently incurred and examined for reasonableness in a base rate proceeding prior to rate recognition."

OTS and Equitable Joint Exhibit No. 1 at 5-6 and Equitable St. No. 2 at 3-4.

4. Equitable's Petition at P-00940785

In accordance with the Commission's Policy Statement, Equitable filed a petition requesting that the Commission issue an order formally granting approval for the Company to record on its books a regulatory asset equal to the difference between the current rate recognition of OPEB costs and its accrued liability for expenses under SFAS 106 subject to recovery in future rate proceedings to the extent the costs are prudently incurred and demonstrated to be reasonable. However, subsequent to the filing of the Company's petition and before the Commission could act thereon, the Company voluntarily withdrew its petition, as did at

least one other company with a similar petition, following decisions by the Commonwealth Court in cases involving Pennsylvania American Water Company and Pennsylvania Power & Light Company and the appeal of those decisions to the Pennsylvania Supreme Court. In its letter to the Commission, the Company stated that it wished to voluntarily withdraw its petition without prejudice since it expected to make the instant filing and formal permission pursuant to the SFAS 106 Policy Statement to accrue a regulatory asset in the future as sought by the petition would no longer be necessary since the appropriate level of OPEB expense in rates would be determined in the instant proceeding. OTS and Equitable Joint Exhibit No. 1 at 6-7 and Equitable St. No. 2 at 4-5.

5. The SFAS 106 Incremental Expense Proposed for Recovery in Supplement No. 133

a. The Development of the Company's Claim for SFAS 106 Incremental Expense

(1). The Underlying Actuarial Studies

Equitable witness Bergonzi explained that to determine its additional OPEB costs under SFAS 106, Equitable retained its actuaries, The Wyatt Company, to prepare an actuarial valuation to determine the SFAS 106 costs and liabilities as of January 1, 1993. Wyatt has been the Company's actuary for a number of years and its studies were submitted in support of the Company's pension expense claims in prior Equitable general rate proceedings. Wyatt submitted its initial report dated March 16, 1993, which was admitted into the record as Equitable Exhibit 1A. Wyatt also

prepared another report dated October 24, 1994, for the purpose of determining the SFAS 106 costs and final disclosure liability for the 1994 fiscal year, which was admitted into the record as Equitable Exhibit 1B. Equitable St. No. 1 at 3-4. Mr. Bergonzi reviewed the significant assumptions used in each of the actuarial studies and the reasons for the change in assumptions. Mr. Bergonzi explained:

"Q. WOULD YOU EXPLAIN WHY THESE ASSUMPTIONS CHANGED?

. . . SFAS 106 is designed to work much like depreciation does, with the Company using its best estimate for the future. Although these are the Company's estimate, they are made in consultation with our actuaries, audited by our public accountants and are consistent with financial disclosure patterns of other companies. The discount rates were reduced in 1994 to reflect the general downward trend of Treasury Bonds and Moody's Aaa and Aa Bonds. The inflation factor and medical cost trend were reduced based on CPI and industry experience.

Q. ARE THERE ANY OTHER REASONS FOR THE CHANGE?

A. Yes, the decrease in health care costs. . ."
(Equitable St. No. 1 at 4-5)

(2). Equitable's Efforts to Contain Health Care Costs

Evidence of Equitable's efforts to contain health care costs and the prudence of its OPEB expenditures was provided by Mr. Bergonzi in Equitable Statement No. 1. Mr. Bergonzi testified:

". . . Equitable Resources has been concerned with the increasing costs of health care and has been revising its employee group medical program over the past decade in order to hold down costs.

Since 1984, the Company has implemented a number of changes in medical coverage and administration to control the increase in costs. Changes in coverage which shifted

some costs to participants and intended to encourage the prudent use of health care services have included: increased deductibles, increased level of participants' out-of-pocket expenses, contributions by active and retired participants, limitation of coverage for mental disorders, and emergency room co-payments.

Changes in administration to avoid unnecessary expenditures for health care services have included: requiring second opinions for surgical procedures, establishment of convalescent center and hospice care in lieu of inpatient hospital care, and patient advocate monitoring of inpatient hospital service.

In 1988, Equitable initiated employee contributions toward the cost of group medical coverage. This has been perhaps the most effective cost control tool. Employee contributions have continued to increase over the period and currently amount to approximately 20% of total health care costs. Retirees who were contributing to health care costs at retirement, and who do not qualify for Medicare coverage, continue to contribute at the same level as active employees. Substantially all Medicare retirees are also contributing toward their health care costs. This has helped hold down cost.

In addition, as of July 1, 1994, the Company shifted its health care coverage from a primarily self-insured comprehensive coverage administered by the Travelers and several health maintenance organizations ("HMOs") to a fully insured Point of Service ("POS") coverage administered by Blue Cross and one alternative HMO. The change is expected to decrease costs by approximately 20-25% per year over the anticipated cost of the previous coverage. This change allows the Company to exert greater control over the dispensing of health care. The fully insured rate limits the Company's exposure in the short term and is expected to allow greater control in the future."

Equitable St. No. 1 at 5-7

Mr. Bergenzi quantified the results of the Company's cost containment measures, pointing out that Equitable Resources' net per employee rate had actually decreased by about four percent from a high in 1992 of \$4,115 to \$3,961 in 1994 and was expected to decline further in 1995. The Company's rate of \$4,115 compares very favorably to a 1992 rate for all utilities of \$4,894 as

reported in The Foster Higgins Health Care Survey for 1992.
Equitable St. No. 1 at 7.

Mr. Bergonzi further explained that the Company intends to continue to contain health care costs and has moved its primary coverage to a POS style coverage, which should allow for greater control of the dispensing of health care. At the same time, Mr. Bergonzi cautioned that the Company did not expect to recognize an immediate reduction in the pay-as-you-go health care costs. The Company switched from self-insured coverage to a fully insured rate. This approach caused a short term increase in health care costs on a pay-as-you-go basis during 1994 as the Company continued to pay the "run out" from the self insured program and concurrently purchased insurance. The Company chose fully insured rates to guarantee the near term reduction in the cost of health care while the change in coverage is being implemented. After the coverage is in place for eighteen months, the Company will analyze claims data and reevaluate the fully-insured versus self-insured cost.
Equitable St. No. 1 at 7.

During the course of the proceeding, no party took issue with the Company's efforts to contain health care costs.

(3). The Computation of the Company's Incremental SFAS 106 Expense Claim

Supplement No. 133 reflects claimed incremental SFAS 106 expense of \$1,748,621 consisting of two components:

\$871,415 - representing accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 of \$2,617,244, amortized over a three-year period; and

\$876,206 - representing the annual amount required on a going forward basis.

Equitable St. No. 2 at 5 and OTS and Equitable Joint Exhibit No. 1 at 11.

As explained by Equitable witness Drozdowski in Equitable Statement No. 2, page 5, the computation of the \$2,617,244 of accumulated incremental SFAS 106 expense is shown in Equitable Exhibit 2A and is the summation of the individual amounts listed by period on that exhibit. The calendar year 1993 amount of \$1,302,935 was computed on Equitable Exhibit 2B and the calendar year 1994 amount of \$876,206 was computed on Equitable Exhibit 2C. The January 1, 1995 through July 1, 1995 amount is $\frac{1}{2}$ (6 months) of the annual number computed on Equitable Exhibit 2C for calendar year 1994. As stated in the Joint Settlement Stipulation, the Trial Staff and the Company agree that the foregoing incremental SFAS 106 expense computations are the appropriate cost levels for consideration in this proceeding. OTS and Equitable Joint Exhibit No. 1 at 11.

As also explained in Equitable Statement No. 2, pages 5-6, the derivation of the \$1,302,935 amount for calendar year 1993 shown on Equitable Exhibit 2B is composed of three sections: accrual cost, cash expense and incremental cost. The accrual cost conceptually represents the sum of the service cost, interest cost and amortization of the transition obligation over 20 years. The service cost is the amount of expected post retirement benefit obligation (EPBO) attributed to the current employment (annual) period. The interest cost is the increase in accumulated post

retirement obligation (APBO) due to accretion of discount with the passage of time. The transition obligation is the APBO as of the date the Company adopted SFAS 106 (January 1, 1993) and began accrual accounting (the APBO is the present value of the benefits attributed to employee services to date). Again, the Company is proposing to amortize the transition obligation over 20 years and this is reflected in the Joint Settlement Stipulation. OTS and Equitable Joint Exhibit No. 1 at 5-6.

As further explained by Mr. Drozdowski in Equitable Statement No. 2, pages 6-7, the accrual cost amounts shown in Column 3 of Equitable Exhibit 2B are from Table 7 of the Wyatt Company's actuarial report, dated March 16, 1993. As previously noted in Section IV.A.1.a., supra, a copy of this actuarial report is provided in Equitable Exhibit 1A and discussed by Equitable witness Bergonzi in Statement No. 1. Column 4 of Equitable Exhibit 2B is the percentage applicable to active and retired employees as allocated to Equitable Gas Company. Column 6 of Equitable Exhibit 2B factors the claim down to a Pennsylvania jurisdictional basis based upon number of employees. The cash expense is the pay-as-you-go or cash amount the Company is projected to spend on retirees currently receiving benefits. The cash expense amounts shown in Column 3 of Equitable Exhibit 2B are from Table 7 of the March 16, 1993 actuarial report. Column 4 and Column 6 percentages are the same as those described in the accrual cost section above. The incremental cost amount was computed by taking the difference

between the accrual cost and the cash expense. OTS and Equitable Joint Exhibit No. 1 at 12.

Mr. Drozdowski also testified regarding the derivation of the calendar 1994 amount of \$876,206 shown on Equitable Exhibit 2C and explained that it was derived in a conceptually similar manner as the \$1,302,935 computed on Equitable Exhibit 2B. The only differences are that Equitable Exhibit 2C uses the most recent Wyatt Company actuarial report dated October 24, 1994 (contained in Equitable Exhibit 1B and previously discussed in Section IV.A.1.a., supra) for the calendar year 1994, while Equitable Exhibit 2B uses the report dated March 16, 1993 for the calendar year 1993 and Equitable Exhibit 2C uses the current percentage of employee expenses allocated to Equitable in Column 4. The accumulated incremental expense was spread over three years because the amount will have accumulated over 2-1/2 years by July, 1995 and it was deemed appropriate to spread the recovery over a reasonable period of time (3 years). Equitable St. No. 1 at 7 and OTS and Equitable Joint Exhibit No. 1 at 12-13.

During the course of the proceeding, no party challenged the computation of the Company's incremental SFAS 106 expense claim.

B. The Proposed Recovery of SFAS 106 Incremental Expense Reflected in Supplement No. 133

Equitable witness Murphy addressed the development of the proposed increase in rates and explained that the total annual expenses of \$1,748,621, taken from Equitable Exhibit 2A were divided by annual weather normalized sales of 34,200,658 Mcf to core customers for the twelve months ended August 31, 1994. This

resulted in a rate of \$0.05/Mcf to recover incremental OPEB expenses. The \$0.05 rate was added to the commodity rates effective at the time of the filing to arrive at the rates shown in Supplement 133. Equitable St. No. 3 at 3 and OTS and Equitable Joint Exhibit No. 1 at 13.

As explained by Equitable witness Murphy, the Company in its filing proposed to recover the incremental OPEB expenses only from core customers because the Company would not be able to collect incremental revenue from competitive customers. Rates for the competitive customers are set by the market. Therefore, the contribution to fixed and variable costs is already maximized for these customers. Raising rates for competitive customers would hurt other customers because the contribution to fixed costs by a given customer could be lost entirely when the customer switches to another supplier. Equitable St. No. 3 at 3 and OTS and Equitable Joint Exhibit No. 1 at 13.

Under Equitable's proposed rates in Supplement No. 133, the total bill for an average Equitable residential customer using 127 Mcf of gas per year would have increased by approximately \$6.35 per year, or less than \$0.02 per day. Both the Trial Staff and Consumer Advocate challenged Equitable's original proposal to recover the SPAS incremental expense only from core sales customers.

C. The Disposition of SPAS 106 Incremental Costs Recovered in Rates

Equitable witness Bergonzi testified that the Company intends to place amounts collected in rates for the excess of

accrual over pay-as-you-go into several trust funds and that the Company expects to establish a separate Voluntary Employee Benefit Association ("VEBA") under §501(c)(9) of the tax code for collectively bargained and non-collectively bargained employees. In addition, the Company intends to modify its pension plan to allow contributions under §401(h) and expects that a grantor trust will be established for those amounts that are not currently deductible for tax purposes. Equitable St. No. 1 at 5.

It was also explained by Mr. Bergonzi in Equitable Statement No. 1 that funds placed in trust will not be used for anything except OPEBs. If costs incurred for a period of time are less or more than expected, future accruals will be adjusted. The Company will continue funding the amount authorized in this proceeding for recovery in rates until this amount is changed in a subsequent rate proceeding. To the extent that this amount reflects an amount greater or smaller than the accrual amount, it will reduce or increase future funding requirements. Equitable St. No. 1 at 8.

6. The Joint Settlement Stipulation

The Trial Staff and the Company have agreed that it would be fair, reasonable and appropriate to settle this proceeding on a basis similar to that approved by the Commission for The Peoples Natural Gas Company ("Peoples") SFAS 106 proceeding at Docket No. R-00943111. Under the settlement proposed, Equitable would be permitted to effectuate the recovery in rates, applicable to non-competitive customers, of the annual going forward amount of the Company's incremental SFAS 106 expense as soon after July 1, 1995,

as possible. The amount of accumulated incremental SFAS 106 expense from January 1, 1993, to the effective date of the recovery of the going forward amount in rates would also be established and carried on the Company's books as a regulatory asset whose recovery in rates would be deferred and considered in Equitable's next general rate proceeding. OTS and Equitable Joint Exhibit No. 1 at 15.

Specifically, the OTS and Equitable have agreed and stipulated as follows:

- (a) Equitable's accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 is \$2,617,244. Such amount should be approved as a regulatory asset, whose recovery in rates will be deferred and considered in Equitable's next general rate proceeding. The amount of such regulatory asset shall be increased by \$2,400.00 for each day after July 1, 1995, that Equitable's recovery of the annual amount of incremental OPEB expenses on a going forward basis is delayed. The development of Equitable's accumulated incremental SFAS 106 expense from January 1, 1993, to July 1, 1995, is shown on Attachment A to OTS and Equitable Joint Exhibit No. 1.
- (b) Until revised in a subsequent rate proceeding, the annual going forward amount of Equitable's incremental SFAS 106 expense is \$876,206. The

recovery of such expense shall be accomplished by increasing rates for non competitive sales customers by \$0.025 per Mcf and the rate for maximum rate transportation customers by \$0.023 per Mcf. The increase for non-competitive sales customers includes gross receipts tax; the increase for maximum rate transportation customers does not. As agreed to in the Peoples' case, the rates for competitive customers would not be increased. The development of the increases is shown on Attachment B to OTS and Equitable Joint Exhibit No. 1 and utilized total throughput, excluding competitive sales and competitive transportation rate volumes. Attachment C to OTS and Equitable Joint Exhibit No. 1 contains a markup of Supplement No. 133 showing the changes therein necessary to reflect the Joint Settlement Stipulation. Attachment D to OTS and Equitable Joint Exhibit No. 1 is the tariff supplement which would be filed pursuant to the Joint Settlement Stipulation to cancel and supersede Supplement No. 133 and effectuate the stipulation rates.

OTS and Equitable Joint Exhibit No. 1 at 15-16.

Under the proposed settlement, the total bill for an average Equitable residential customer using 127 Mcf of gas per year would

increase by approximately \$3.18, or less than one cent (\$0.01) per day.

We agree with the arguments set forth by the Stipulating parties in their Main Brief on pages 26-31 regarding the contentions of OCA and conclude that this matter has been settled in the public interest and in accord with Commission precedent. OCA's arguments in opposition to the settlement achieved between the Company and the OTS as already set forth above essentially comprise three arguments: (1) The Commission cannot find the rates agreed to in the settlement to be just and reasonable because Equitable has not provided evidence to the OCA's satisfaction of Equitable's current return on equity; (2) The Company's treatment of deferred OPEB expenses constitutes retroactive ratemaking; and (3) The Company's proposed allocation of the non-general rate increase is "improper." The Stipulating Parties argue that each of these arguments is founded on either an incorrect or invalid interpretation of governing law, including the very cases relied on by the OCA, as well as the Public Utility Code and the Commission's regulations, a misunderstanding or misstatement of the evidence of record or an improper construction of the Joint Settlement Stipulation presented by the OTS and the Company to the Commission for consideration.

In its brief, the OCA presents its interpretation of the evidentiary requirements upon which the Commission must base a finding in order to determine that utility rates are "just and reasonable." The OCA appears to have subjugated its overall

aversion to "piecemeal ratemaking," the assertion advanced during the hearing phase of this proceeding, to its own narrow interpretation of what constitutes a "just and reasonable" rate under the Public Utility Code. The cornerstone of OCA's argument is that no rate may be found to be just and reasonable unless a utility shows and the Commission finds that absent the requested rate change the utility's cost of capital prevents it from earning a fair rate of return. OCA M.B. at 5-15. Thus, even if the OCA were to drop its philosophical opposition to "piecemeal ratemaking," the Commission still could not approve the Joint Settlement because the Company did not provide, to the OCA's satisfaction, sufficient evidence of its investors' return requirements compared to Equitable's current return.

To support this argument, OCA represents its understanding of the financial evidence presented in this case. It cites Section 315(a) of the Public Utility Code, Act of July 1, 1978, P.L. 598, No. 116, 66 Pa.C.S. §315(a) ("Public Utility Code" or "Code") and relies on four cases viz: Arrowhead Public Service Corporation v. Pennsylvania Public Utility Commission, _____ Pa. Commonwealth Ct. ____, 600 A.2d 251 (1991), Lower Paxton Township v. Pennsylvania Public Utility Commission, 13 Pa. Commonwealth Ct. 135, 317 A.2d 917 (1974), Pennsylvania Gas and Water Company v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Ct. 416, 470 A.2d 1066 (1984) and Philadelphia Electric Company v. Pennsylvania Public Utility Commission, 93 Pa. Commonwealth Ct. 410, 502 A.2d 722 (1985).

OCA's argument is both factually inaccurate and legally insupportable for a number of reasons. First, the OCA misunderstands and misrepresents the factual evidence presented by the Company in support of its tariff supplement. Second, the OCA holds the Company's tariff supplement to an evidentiary standard that is supported neither by the cases cited nor by the requirements of the Public Utility Code or the Commission's own regulations. Third, acceptance of the OCA's argument would totally negate Section 1308(b) of the Code, 66 Pa.C.S. §1308(b), an absurd result that is contrary to all rules of statutory construction. And, finally, the OCA's approach to this rate filing by Equitable is inconsistent with and contrary to positions taken by the OCA in connection with other Section 1308(b) rate filings, at least three of which were SFAS 106 filings substantially identical in nature to that made by Equitable in this proceeding.

b. The Financial Evidence of Record

The OCA claims that Equitable presented its primary evidence of insufficient rates (i.e. financial reports for the twelve months ended December 31, 1994 and March 31, 1995) at the "final" hearing on May 26, 1995. OCA M.B. at 6. Although the reports for the twelve months ended December 31, 1994 and March 31, 1995, were submitted into evidence at the May 26 hearing, the only evidentiary hearing held in the matter, it is incorrect and misleading for the OCA to suggest that these reports were not made available to it prior to the hearing. The report was in fact filed with the Commission on March 17, 1995, (N.T. 53) and distributed to the OCA

on that same day. See N.T. 62-63. Thus, the OCA had Equitable's financial report for the twelve months ended December 31, 1994, approximately two months prior to the evidentiary hearing in this matter and had every opportunity to cross-examine the report (Joint Reply Brief pp.5-7).

Turning to the Public Utility Code, the Commission's Regulations and relevant case law we find no support for OCA'S position. The OCA did not take issue with the computation of Equitable's claim. Although Equitable provided current financial data indicating its current overall rate of return, the OCA faults the Company for not producing evidence of its current cost of capital and return on equity and generally quibbles with "piecemeal ratemaking," as OCA has dubbed this filing. OCA goes so far as to argue that "[t]he Company has failed to demonstrate that, when analyzed on a pro forma basis and considering normal levels of revenues and expenses and an appropriate rate base, that its current rates are insufficient to produce an adequate rate of return." OCA M.B. at 3.

Under the OCA's theory of law, the Commission must require any utility making a non-general rate filing under Section 1308(b) of the Code to support that filing in the same manner required by law for a Section 1308(d) general rate proceeding. Requiring Equitable, or, presuming this is an evidentiary standard the OCA intends to consistently apply to all utilities, any public utility to provide full rate of return/rate base/revenue and expense data and testimony to support a filing under Section 1308(b) would be

contrary to the express terms of the Public Utility Code, the Commission's regulations promulgated under the Code and relevant case law.

The Public Utility Code

Equitable filed Supplement No. 133 under authority of Section 1308(b) of the Public Utility Code. That Section provides as follows:

(b) **Hearing and suspension of rate change.--** Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision. The rate in force when the tariff stating the new rate was filed shall continue in force during the period of suspension, unless the commission shall establish a temporary rate as authorized in section 1310 (relating to temporary rates). The Commission shall consider the effect of such suspension in finally determining and prescribing the rates to be thereafter charged and collected by such public utility. This subsection shall not apply to any tariff stating a new rate which constitutes a general rate increase as defined in subsection (d).

66 Pa.C.S. §1308(b) (emphasis added).

Section 1308(d) of the Public Utility Code, on the other hand, is significantly different from Section 1308(b). It provides as follows:

(d) **General rate increases.--**Whenever there is filed with the commission by any public utility . . . any tariff stating a new rate which constitutes a general rate increase, the commission shall promptly enter into an investigation and analysis of said tariff filing and

may by order setting forth its reasons therefor, upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and the commission may, at any time by vote of a majority of the members of the commission serving in accordance with law, permit such tariff to become effective, except that absent such order such tariff shall be suspended for a period not to exceed seven months from the time such rate would otherwise become effective. Before the expiration of such seven-month period, a majority of the members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefor, granting or denying, in whole or in part, the general rate increase requested. If, however, such an order has not been made at the expiration of such seven-month period, the proposed general rate increase shall go into effect at the end of such period, but the commission may by order require the interested public utility to refund . . . to the persons in whose behalf such amounts were paid, such portion of such increased rates as by its decision shall be found not justified . . . during the period or periods for which the commission orders refunds. The rate in force when the tariff stating such new rate was filed shall continue in force during the period of suspension unless the commission shall grant extraordinary rate relief as prescribed in subsection (e). The commission shall consider the effect of such suspension in finally determining and prescribing the rates to be thereafter charged and collected by such public utility, except that the commission shall have no authority to prescribe, determine or fix, at any time during the pendency of a general rate increase proceeding or prior to a final determination of a general rate increase request, temporary rates as provided in section 1310, which rates may provide retroactive increases through recoupment. As used in this part, general rate increase means a tariff filing which affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility. . . .

66 Pa.C.S. §1308(d). Thus, there are two very specific and significantly different statutory provisions under which utilities may file a rate change.

Under Section 1308(b), the Commission may initially suspend a rate filing for up to six months, with the power to add an

additional three months prior to entering a final order. The Commission may also establish a temporary rate pursuant to Section 1310 of the Code during the period of suspension. And, by its very language, this section does not apply to any rate filing constituting a general rate increase.

Section 1308(d), on the other hand, contains provisions and restrictions that are not otherwise imposed on a non-general rate filing. For example, the period of suspension for a general rate filing is seven months, rather than the up to nine months provided under Section 1308(b). Additionally, the Commission cannot establish temporary rates during the period of suspension of any general rate increase. Specific provisions regarding the manner and nature of the Commission vote to be taken upon the general rate increase filing are detailed in the statute, as is a precise definition of a general rate increase, which is determined by the magnitude and applicability of the filing. None of these specific provisions is contained in Section 1308(b) authorizing non-general rate filings.

Equitable's Supplement No. 133 is exactly the type of rate filing contemplated under authority of Section 1308(b) of the Public Utility Code. It, therefore, is entirely appropriate under the Code and should be approved, as modified by the Joint Settlement, without having to satisfy the restrictions and constraints artificially imposed by the OCA.

The Commission's Regulations

Just as statutory authority and requirements differ for general and non-general rate filings under the Public Utility Code, so do the Commission's filing requirements duly promulgated in Chapter 52 of the Pennsylvania Code. The filing requirements for a general rate filing under Section 1308(d) (in excess of \$1,000,000) are set forth in 52 Pa. Code §53.53. The filing requirements applicable to a non-general Section 1308(b) rate filing are found in 52 Pa. Code §53.52.

Included in Section 53.53 is a separate subsection of data requests on rate of return. In addition, as part of every general rate filing, the filing utility must submit testimony in support of its position. Section 53.53 and the filing requirements for a general rate filing have no application here. As we have said many times, this proceeding is a non-general Section 1308(b) rate filing. Since the proposed increase falls below the modest threshold established for a general rate filing, the filing requirements for a non-general rate filing are much less extensive than they are for a general rate filing.

Equitable submitted the data required by Section 53.52 in support of Supplement No. 133. Equitable was not required by Section 53.52 to submit a rate of return analysis of the type submitted in a general rate filing. Equitable, accordingly, did not hire a rate of return expert to testify in this case. Equitable has fully complied with those regulatory requirements that the Commission has clearly articulated and published in

accordance with the Commonwealth Documents Law. It is unreasonable to hold Equitable to the arbitrary and retroactively imposed regulatory requirements the OCA would impose on the Company in this proceeding.

Relevant Case Law

The OCA contends that the Commission must first determine that the rates proposed in the Joint Settlement are "just and reasonable" before they may be approved. OCA M.B. at 7. We do not disagree with this as a basic proposition. However, the gravamen of the OCA's contention is that the Commission cannot determine that rates are just and reasonable unless the full panoply of Section 1308(d) revenue/expense and rate base/rate of return supporting data and testimony is provided.⁵ OCA M.B. at 10-15. We concur with the Stipulating Parties that this is not the case. As demonstrated above, nothing in the Public Utility Code or the Commission's regulations supports the evidentiary standard proposed by the OCA for a Section 1308(b) non-general rate filing. Moreover, as is discussed below, none of the cases relied upon by the OCA supports the proposition that revenue/expense and rate base/rate of return data in the form provided in a general rate case are prerequisites to the Commission's finding that rates

⁵Incredibly the OCA asserts that "the Commission should be particularly wary of claims to recover single item expense increases or single item expense decreases." OCA M.B. at 12 (emphasis added). Under this theory, the OCA should intervene in and the Commission should suspend and investigate all single item rate filings, even those such as West Penn Power Company's recent rate decrease due to a West Virginia tax change. OTS/Equitable Joint M.B. at 26-28. In reality, of course, that never happens.

proposed in a non-general rate proceeding are just and reasonable.

The first cases relied upon by the OCA are Arrowhead Public Service Corporation v. Pennsylvania Public Utility Commission, Pa. Commonwealth Ct. _____, 600 A.2d 251 (1991) ("Arrowhead") and Lower Paxton Township v. Pennsylvania Public Utility Commission, 13 Pa. Commonwealth Ct. 135, 317 A.2d 917 (1974) ("Lower Paxton"). The OCA holds these cases out for the premise that "[i]t is well-recognized that in establishing rates which are just and reasonable, the Commission must determine the fair rate of return for the utility and that the utility's cost of capital is the principal factor in determining that fair rate of return." OCA M.B. at 7. The OCA further contends that it is not aware of any recently "litigated" rate case in which the utility failed to provide supporting data of its cost of capital. Id. Several flaws are inherent in this argument.

First, Arrowhead was a general rate case as defined under Section 1308(d) of the Public Utility Code.⁶ Neither Equitable nor the OTS has ever contended that Section 1308(d) general rate case filings are not supported by the type of data the OCA demands in this proceeding, which was initiated under Section 1308(b). As argued throughout in this Reply Brief, however, the requirements

⁶Although the case as reported does not specify the authority under which the filing was made, the facts of the case reveal that the magnitude of the increase proposed was 53%, and there is no indication that it affected less than 5% of the customers. Therefore, by definition, it was a Section 1308(d) general rate change.

attendant a Section 1308(d) rate filing are not identical, by statute or regulation, to those attendant a Section 1308(b) rate filing. Further, while the Court in Arrowhead did assert that in determining a fair rate of return the Commission must determine the utility's cost of capital, it did so within the context of that utility's appeal of the Commission's calculation of its cost of debt. The case does not hold, as the OCA suggests, that reviewing a utility's cost of capital in the format required for a general rate case is the exclusive means by which the Commission can or may determine whether rates are just and reasonable.

The Lower Paxton case is similarly inapplicable because the filing was made in 1971, nearly 7 full years prior to the enactment of Section 1308, and its distinct subsections, of the Code (Joint Reply Brief pp 13-15):

The OCA's contention that it is unaware of any recent "litigated" rate case in which the utility did not provide cost of capital evidence is not very clearly presented or defined. We view "litigated" to include cases that were suspended but ultimately resolved by settlement of the parties approved by the Commission, Equitable has provided ample evidence of such cases in both the OTS/Equitable Joint Main Brief and Reply Brief. See, e.g., PECO Gas, infra, in which a rate determination was made without cost of capital data in a P-Docket; Pennsylvania Public Utility Commission v. The Peoples Natural Gas Company, Docket No. R-943111 (OTS/Equitable M.B. at 27); Pennsylvania Public Utility Commission

v. PECO Energy Company (Retail Electric Operations), Docket No. R-922479 (OTS/Equitable M.B. at 28).

The OCA also relies on the cases of Pennsylvania Gas and Water Company v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Ct. 416, 470 A.2d 1066 (1984) ("PG&W") and Philadelphia Electric Company v. Pennsylvania Public Utility Commission, 93 Pa. Commonwealth Ct. 410, 502 A.2d 722 (1985) ("Philadelphia Electric") to support its proposition that "piecemeal ratemaking" without complete revenue requirement review, as supported by Section 1308(d) type data, cannot support a finding of "just and reasonable" rates.

These cases are inapplicable to the case at hand. First, as was the case with Lower Paxton, the PG&W case was determined under prior law that contained only broad rate provisions, as opposed to the specific general and non-general rate provisions contained in the current Public Utility Code. Philadelphia Electric, in which the utility sought a \$228 million rate increase, provides relevant case law for a Section 1308(d) rate filing, like Arrowhead, but is not controlling here.

The basic flaw which pervades the OCA's legal analysis and is fatal to its presentation in this case is its complete and utter failure to distinguish between a Section 1308(b) non-general rate filing and a Section 1308(d) general rate filing. Even those cases cited by the OCA acknowledge the Commission's broad discretion in the ratemaking process. The traditional standard of appellate review is that a court will accept the Commission's discretionary

findings "unless they are totally without support in record, are based on error of law, or are unconstitutional." Arrowhead, 600 A.2d at 252, ftnt. 1.

Nowhere, not in the Public Utility Code, the Commission's regulations or relevant case law, has the OCA demonstrated that the particular type of evidentiary review it demands in this case is justified or warranted. A cost of capital or complete rate base/rate of return determination has never been established as the exclusive standard by which the Commission may appropriately determine "just and reasonable" rates under Section 1308(b). It is within the Commission's broad discretion to determine the nature, weight and sufficiency of the evidence to be presented in evaluating the justness and reasonableness of rates. This is perhaps best illustrated by the different filing requirements established by the Commission for general rate cases in excess of \$1 million. Equitable submits that the evidence of record in this proceeding satisfies the concerns of the Public Utility Code that the rates contained in Supplement No. 133, as modified by the Joint Settlement Stipulation, are just and reasonable. We reject the OCA's legal analysis.

The OCA's desire to hold Equitable, and all utilities, to a Section 1308(d) general rate case standard for a Section 1308(b) non-general rate case filing also fails because it is not supported by any rule of statutory construction.

By arguing that the Commission cannot find the rates agreed to by the OTS and Equitable "just and reasonable" without the

supporting cost of capital data in the form demanded by the OCA, the OCA essentially contends that a rate filing made under authority of Section 1308(b) of the Code must always be supported in a fashion identical to that required for a Section 1308(d) rate filing. In addition to contradicting the express terms of the Code and the Commission's regulations, such an interpretation of Section 1308(b) also effectively renders Section 1308(b) meaningless, a result that is contrary to all rules of statutory construction. See, Section 3(a) of the Statutory Construction Act of 1972, Act of December 6, 1972, P.L. 1339, No. 290 (1 Pa.C.S. §1921(a)) ("the Statutory Construction Act"). Also, see e.g., Commonwealth of Pennsylvania v. Lobiondo, 501 Pa. 599, 603, 462 A.2d 662, ___ (1983)

If for the sake of argument the specific requirements for general and non-general rate filings were assumed to be ambiguous, it would be appropriate to consider "[t]he consequences of a particular interpretation" and "[l]egislative and administrative interpretations of such [a] statute" in determining legislative intent. Sections 3(c)(6) and (8) of the Statutory Construction Act, 1 Pa.C.S. §§1921(c)(6) and (8). However, none of the cases cited by the OCA stands for the proposition that *only by reviewing cost of capital data in the Section 1308(d) general rate case format required by the OCA can the Commission determine that a rate is "just and reasonable."* Neither the Commission nor the Courts has ever construed Section 1308(b), and the regulations promulgated thereunder, as requiring the type of data the OCA deems necessary

in this proceeding. Therefore we will recommend the adoption of the Joint Stipulation in its entirety.

THEREFORE, IT IS RECOMMENDED THAT:

1. Equitable's accumulated incremental SFAS 106 expense from January 1, 1993 to July 1, 1995 be and is hereby approved as \$2,617,244. Such amount is hereby approved as a regulatory asset, whose recovery in rates will be deferred and considered in Equitable's next general rate proceeding. The amount of such regulatory asset shall be increased by \$2,400.00 for each day after July 1, 1995 that Equitable's recovery of the annual amount of incremental OPEB expenses on a going forward basis is delayed.
2. Until revised in a subsequent rate proceeding, the annual going forward amount of Equitable's incremental SFAS 106 expense is \$876,206. The recovery of such expense shall be accomplished by increasing rates for non competitive sales customers by \$0.025 per Mcf and the rate for maximum rate transportation customers by \$0.023 per Mcf. The increase for non competitive sales customers includes gross receipts tax. The increase for maximum rate transportation customers

does not. The rates for competitive customers would not be increased. The development of the increases is to be accomplished as shown on Attachment B of Appendix 1 hereto and utilized total throughput, excluding competitive sales and competitive transportation rate volumes. Attachment C hereto contains a markup of Supplement No. 133 showing the changes therein necessary to reflect this joint stipulation.

3. Equitable be and is hereby granted permission to file the tariff supplement which would be filed pursuant this Order to cancel and supersede Supplement No. 133 and effectuate the stipulation rates as set forth in Attachment D of Appendix 1 of this Order.

Dated:

[Handwritten signature]
5/28/95

[Handwritten signature]
GEORGE M. KASHI
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, LLC Request for Approval of Supplement No. 79 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304727
Equitable Gas Company, LLC Request for Approval of Supplement No. 80 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304731
Equitable Gas Company, LLC Request for Approval of Supplement No. 81 to Tariff Gas Pa. P.U.C. No. 22	:	R-2012-2304735
Office of Consumer Advocate	:	C-2012-2309502
	:	C-2012-2309538
v.	:	C-2012-2309549
	:	
Equitable Gas Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this 14th day of September, 2012, serving a true and correct copy of the Main Brief of Equitable Gas Company, LLC upon the persons below via electronic and first class mail, as follows:

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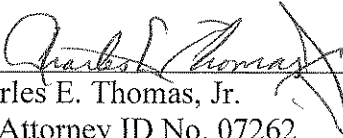
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