



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Teresa K. Schmittberger
Direct Dial: 717.237.5270
Direct Fax: 717.260.1688
tschmittberger@mwn.com

October 1, 2012

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the signed original of the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA") in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers of Pennsylvania

TKS/sar

Enclosures

c: Administrative Law Judge Elizabeth H. Barnes (via Hand Delivery)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

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

VIA E-MAIL AND FIRST CLASS MAIL

Allison Kaster, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105
akaster@pa.gov

Tanya J. McCloskey, Esquire
Darryl A. Lawrence, Esquire
James A. Mullins, Esquire
Pennsylvania Public Utility Commission
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
tmcloskey@paoca.org
dlawrence@paoca.org
jmullins@paoca.org

Elizabeth Rose Triscari, Esquire
Sharon E. Webb, Esquire
Pennsylvania Public Utility Commission
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
sgray@pa.gov
etriscari@pa.gov
swebb@pa.gov

Theodore J. Gallagher, Esquire
Nisource Corporate Services Company
121 Champion Way, Suite 100
Canonsburg, PA 15317
tjgallagher@nisource.com
*Counsel for Columbia Gas of Pennsylvania,
Inc.*

Mark C. Morrow, Esquire
Melanie J. Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
morrowm@ugicorp.com
elatiehm@ugicorp.com

William H. Roberts, II, Esquire
Peoples Natural Gas Company LLC
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
william.h.roberts@peoples-gas.com

Jennifer L. Petrisek, Esquire
Peoples TWP
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
jennifer.petrisek@peoples-gas.com

Maureen Geary Krowicki, Esquire
National Fuel Gas Distribution Corporation
PO Box 2081
1100 State Street
Erie, PA 16512
krowickim@natfuel.com

Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Hawke McKeon Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
welehman@hmslegal.com
*Counsel for The Pennsylvania State
University*

Certificate of Service

Docket Nos. P-2011-2277868 and I-2012-2320323

Page 2

Amy Neufeld, Esquire
Exelon Business Services Company
500 North Third Street, Suite 800
Harrisburg, PA 17110
amy.neufeld@exeloncorp.com

Michael S. Swerling, Esquire
Exelon Business Services Company
2301 South Market Street, S23-1
Philadelphia, PA 19101
michael.swerling@exeloncorp.com
Counsel for PECO Energy Company

Donna M.J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17101
dclark@energypa.org

Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500
cthomasjr@thomaslonglaw.com
tniesen@thomaslonglaw.com
Counsel for Equitable Gas Company, LLC

David W. Gray, Esquire
Equitable Gas Company, LLC
225 North Shore Drive
Pittsburgh, PA 15212
dgray@equitablegas.com



Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers of
Pennsylvania

Dated this 1st day of October, 2012, at Harrisburg, Pennsylvania

On December 8, 2011, the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Peoples TWP LLC ("Peoples TWP"), and Peoples Natural Gas Company LLC ("Peoples") (collectively, "Joint Parties") filed the above-referenced Petition at the Pennsylvania Public Utility Commission ("PUC" or "Commission"), requesting that the Commission institute an investigation or rulemaking into gas-on-gas competition. Specifically, the Joint Parties requested that the Commission evaluate the practice of rate flexing by natural gas distribution companies ("NGDCs") with overlapping service territories.

On December 28, 2011, the Industrial Energy Consumers of Pennsylvania ("IECPA") filed an Answer not opposing an investigation or rulemaking regarding gas-on-gas competition, asserting that current public utility law and policy supports the continued use of rate flexing.

On July 25, 2012, the PUC issued a Secretarial Letter in the above-referenced proceeding finding as follows:

The Commission has determined that separately resolving NGDC gas-on-gas competition issues in each of the NGDC's next individual base rate proceedings could lead to inequitable results. We also agree with Joint Petitioners that the issues related to a NGDC's flexing of distribution rates to meet the lower rates from other NGDCs and the treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings should be resolved through a generic investigation. Accordingly, we will assign this matter to the Office of Administrative Law Judge for disposition and resolution.

On August 31, 2012, Administrative Law Judge ("ALJ") Elizabeth H. Barnes held a prehearing conference, during which she requested that parties to the proceeding submit comments regarding the proposed procedural and substantive scope of the gas-on-gas proceeding.

These comments are sponsored by IECPA, an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania, including companies served by NGDCs that offer flexed rates based on overlapping service territories with other NGDCs. IECPA provides the following comments regarding the scope of this proceeding:

COMMENTS

I. Procedural Scope

IECPA does not oppose an investigation into gas-on-gas competition. The Joint Parties explicitly requested either an investigation or rulemaking at the outset of this proceeding. In the Commission's July 25 Secretarial Letter, the PUC chose an investigation as the appropriate vehicle for evaluating rate flexing. IECPA would not oppose an investigation approach, but requests that the investigation be structured to promote an efficient process.

In their original Petition, the Joint Parties proposed that the Commission "institute an investigation or rulemaking" to evaluate gas-on-gas competition. Pet. 1. In fact, the title of this docket refers to each of these procedural processes. Thus, the Commission's chosen course of action should determine the procedural scope of this proceeding.

In its Secretarial Letter, the Commission specifically stated that gas-on-gas competition issues should be resolved through a generic investigation. It is not immediately clear, however, whether the Commission envisioned an informal or formal investigation, both of which are defined in the Pennsylvania Code. *See* 52 Pa. Code § 1.8. An informal proceeding is instituted by Commission staff and concludes in a formal complaint, settlement, or dismissal. *See id.* By contrast, a formal investigation includes the development of a record, *i.e.*, through hearings and the preparation of testimony and briefing. *See id.*

Because this matter was referred to the Office of Administrative Law Judge, IECPA submits that the Commission intended for gas-on-gas competition to be evaluated as part of a formal investigation. *See* 66 Pa. C.S. § 331(b) ("All on-the-record proceedings shall be referred to an administrative law judge...."). As a result, IECPA contends that this proceeding should include testimony, hearings, briefing, a Recommended Decision by ALJ Barnes, and Final Order by the Commission.

As reinforced by its December 28 Answer, IECPA would not oppose an investigation. IECPA would only request that the investigation be structured to minimize the resources expended by parties. A paper process, *e.g.*, two rounds of testimony, supplemented by limited hearings, would be preferable to a more burdensome approach. Once the scope of the proceeding is defined, IECPA will work with the other parties to fashion an appropriate process and schedule.

II. Substantive Scope

The substantive scope of this proceeding is limited to evaluation of rate flexing in the context of gas-on-gas competition. The original Petition and Secretarial Letter are fairly straightforward in this respect. IECPA agrees that this is the appropriate substantive scope of the proceeding.

The Joint Parties begin their Petition by proposing that the investigation or rulemaking "address distribution base rate discounting among natural gas distribution companies ("NGDCs") with overlapping service territories, often referred to as gas-on-gas competition." Pet 1. The Secretarial Letter similarly limits the substantive scope to gas-on-gas competition. After referring to potentially inconsistent results that could arise from individual NGDC base rate proceedings, the Commission instituted an investigation to evaluate the treatment of flexed rates

among competing NGDCs. Accordingly, the substantive scope of this proceeding is limited to rate flexing issues presented by NGDCs in overlapping service territories. IECPA would oppose the introduction of any new issue that would expand the scope of this proceeding beyond what is intended by the Commission.¹

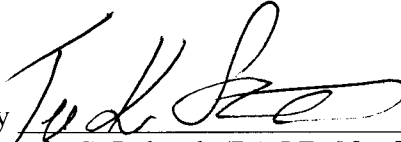
In discerning the extent and nature of rate flexing in the context of gas-on-gas competition, it will become apparent that the discounting of rates for certain customers benefits both the customers who receive the negotiated rate and the other customers of the NGDC. Conversely, the elimination of this practice would deprive customers of a choice that they can make regarding service options, and would create a myriad of transitional issues for customers and the NGDCs.

¹ Although it does not appear that any party to this proceeding intends for a broader scope, IECPA would note that a more expansive substantive scope would waste the time and resources of parties in contravention of the Commission's direction.

WHEREFORE, the Industrial Energy Consumers of Pennsylvania respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (PA I.D. No. 78276)
Charis Mincavage (PA I.D. No. 82039)
Vasiliki Karandrikas (PA I.D. No. 89711)
Teresa K. Schmittberger (PA I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to the Industrial Energy Consumers of
Pennsylvania

Dated: October 1, 2012