



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

October 1, 2012

E-FILED

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

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

**Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional
Natural Gas Distribution Companies
Docket No. I-2012-2320323**

Dear Secretary Chiavetta:

Enclosed for filing today are the Comments, on behalf of the Office of Small Business Advocate, in the above-captioned proceedings.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies	:	:	Docket No. P-2011-2277868
	:	:	
Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies	:	:	Docket No. I-2012-2320323

**COMMENTS OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
ON THE SCOPE OF THE GENERIC INVESTIGATION**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On December 8, 2011, the Office of Small Business Advocate (“OSBA”), the Office of Trial Staff (“OTS”), now the Bureau of Investigation and Enforcement (“BI&E”), the Office of Consumer Advocate (“OCA”), Peoples TWP LLC (“Peoples TWP”), and Peoples Natural Gas Company (“Peoples”) (together, “Joint Petitioners”) jointly filed a petition (“Joint Petition”) requesting that the Commission institute an investigation or rulemaking to address distribution rate discounting among natural gas distribution companies (“NGDCs”) with overlapping service territories, often referred to as “gas-on-gas” competition.

The Joint Petition arose out of the settlement of Peoples’ base rate proceeding at Docket No. R-2010-2201702 (“Peoples Settlement”). In the Peoples Settlement, Peoples, OTS, the OCA, and the OSBA agreed that issues related to gas-on-gas competition should be resolved by requesting a generic proceeding rather than in Peoples’ base rate case.

At the time of the Peoples Settlement, other NGDCs had also agreed that gas-on-gas competition issues should be uniformly resolved on a state-wide basis; specifically, Equitable Gas Company LLC (“Equitable”) in the settlement of its 2008 base rate proceeding at Docket No. R-2008-2029325 (“Equitable Settlement”), Columbia Gas of Pennsylvania, Inc. (“Columbia”) in the settlement of its base rate proceeding at Docket No. 2010-2215623 (“Columbia Settlement”), and in the settlement of the acquisition of T.W. Phillips Gas and Oil Co. at Docket No. A-2010-2210326 (“TW Phillips Settlement”).

The Commission assigned the matter to the Office of Administrative Law Judge (“OALJ”) for a generic investigation pursuant to a Secretarial Letter dated July 25, 2012 (“Secretarial Letter”). Notably, the Commission did not assign the matter to the Law Bureau for comments and a rulemaking.

Administrative Law Judge (“ALJ”) Elizabeth H. Barnes issued a Prehearing Conference Order on August 23, 2012, inviting other parties to intervene and participate in these proceedings. Notices or Petitions of Intervention were filed by The Pennsylvania State University (“Penn State”), National Fuel Gas Distribution Corporation (“NFG”), The Industrial Energy Consumers of Pennsylvania (“IECPA”), PECO Energy Company (“PECO”), UGI Distribution Companies (“UGI”), Columbia, and Equitable.

At the Initial Prehearing Conference on August 31, 2012, the parties disagreed about the appropriate scope of the proceeding. Certain NGDCs argued that the Secretarial Letter had greatly limited the scope from that requested in the Joint Petition. They argued that this proceeding should not deal with the question of whether gas-on-gas competition should be permitted to continue, but rather only how flexed revenues should be treated for ratemaking

purposes. The OSBA and the OCA, in contrast, argued that the Secretarial Letter did not intend to limit the scope of the proceeding from that requested in the Joint Petition.

ALJ Barnes issued a Prehearing Order on August 31, 2012, directing the parties to file formal comments regarding the scope of issues to be addressed in this proceeding. The OSBA submits these comments pursuant to the Prehearing Order.

II. SCOPE OF ISSUES

A. Joint Petition

The Joint Petition that commenced the instant proceeding unambiguously defined the scope of the investigation requested. Specifically, it made clear that the investigation should include whether gas-on-gas competition should be permitted to continue and, if so, how flexed revenues should be treated for ratemaking purposes.

In explaining why gas-on-gas competition issues should not be resolved in individual NGDC base rate proceedings, but rather uniformly in a generic proceeding, the Joint Petition stated:

A Commission decision in a base rate case to force one NGDC **to end “gas-on-gas competition”** could result in lost revenues for that NGDC, and higher rates for its remaining customers, if other NGDCs are permitted to continue engaging in such “competition.”¹

This language clearly signals that the scope of issues requested to be investigated in the Joint Petition encompasses the possibility that gas-on-gas competition should no longer be permitted.

The Joint Petition also extensively quotes from the Peoples Settlement, which provides, in relevant part:

¹ Joint Petition at 3 (emphasis added).

[The Joint Petitioners] agree to request...that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address **whether NGDC to NGDC competition should be permitted to continue** and, if permitted to continue, under what circumstances it will be considered appropriate...²

Peoples therefore should be estopped from disingenuously advocating for a narrower scope in this proceeding than the scope of issues Peoples agreed to in the Peoples Settlement and requested in the Joint Petition.

Similarly, language from the Columbia Settlement was quoted in the Joint Petition as follows:

Columbia agrees to join with OTS, OCA and/or OSBA in a request that the Commission initiate a generic investigation or rulemaking to address **whether flex discounts solely as a result of competition from other NGDCs should be permitted to continue** and, if permitted to continue, under what circumstances it will be considered appropriate.³

Thus, Columbia, while not a party to the Joint Petition, agreed in the Columbia Settlement to a broader scope of investigation than the one for which they are now advocating. Columbia should also be estopped from disingenuously advocating for a narrower scope in this proceeding than the scope of issues Columbia agreed to in the Columbia Settlement.

The scope of issues defined in the Joint Petition is clear. The Commission granted that Joint Petition. Thus, the scope defined in the Joint Petition is the proper scope of these proceedings.

² Joint Petition at 4 (emphasis added). This same language is contained in the TW Phillips Settlement and was also quoted in the Joint Petition.

³ Joint Petition at 4 (emphasis added).

B. Secretarial Letter

The basis for certain of the NGDCs to argue that the Commission has narrowed the scope of this proceeding is the one-page Secretarial Letter assigning this matter to the OALJ. The OSBA submits, however, that the plain language of the Secretarial Letter does not limit the scope of these proceedings. Moreover, it certainly does not limit the scope when read in conjunction with the Joint Petition. In addition, if the Commission had intended to limit the scope of these proceedings, it could have merely assigned the matter to the Law Bureau for comments and a rulemaking, but instead the Commission referred this matter to the OALJ for a more comprehensive proceeding, which would presumably include discovery, testimony and hearings.

First, the Secretarial Letter acknowledges the assertions made by the Joint Petitioners in the Joint Petition. Specifically, the Secretarial Letter recognizes that:

... a Commission decision in one base rate case that suspends a NGDC's use of gas-on-gas competition could result in lost revenues for that that particular NGDC and higher rates from its remaining customers, especially of another NGDC, in its subsequent individual base rate proceeding, is permitted to continue engaging in gas-on-gas competition.⁴

The Commission thus determined that a generic proceeding is necessary because "... separately resolving the NGDC gas-on-gas competition issues in each of the NGDCs next individual base rate proceeding could lead to inequitable results."⁵ The Commission is clearly concerned about the potential inequity of one NGDC no longer being permitted to engage in gas-on-gas competition while other NGDCs continue the practice. It is nonsensical to somehow conclude that this same letter would also dispose of the issue.

⁴ Secretarial Letter at ¶3 (emphasis added).

⁵ Secretarial Letter at ¶4.

Second, if the Commission intended to cut the heart out of the investigation the statutory advocates fought for in settlement and requested in the Joint Petition (along with Peoples and Peoples TWP), it would have done so explicitly and definitively. Limiting the scope would mean that the Commission had definitively determined that gas-on-gas competition will continue to be permitted and that the only remaining issues would be about ratemaking. However, the Secretarial Letter is brief, arguably vague, and contains no analysis of the merits of gas-on-gas competition. It is hard to imagine the Commission summarily deciding such a contentious issue with such broad impact in a few paragraphs in a Secretarial Letter. The only interpretation of the Secretarial Letter that makes sense is that the Commission intended for the investigation to proceed with the scope of issues requested in the Joint Petition.

III. NECESSITY OF DISCOVERY, TESTIMONY, AND EVIDENTIARY HEARINGS

The OSBA's prehearing memorandum identifies the scope of issues to be determined in the course of this investigation. These issues are as follows:

1. The current extent and nature of gas-on-gas rate discounting, in terms of number of customers and load by rate class, geographical regions affected, NGDCs involved, etc.;
2. Whether discounting rates for certain customers to meet competition from other NGDCs is appropriate.
3. If the Commission determines that discounting rates is appropriate:
 - a. What types of rate discounting should be permitted and under what circumstances;
 - b. How the cost of the discounts should be absorbed and/or allocated;

4. If the Commission determines that discounting rates is not appropriate:
 - a. How the existing discounting policies and practices should be phased out or eliminated.

In order to adequately evaluate these issues, the OSBA, in consultation with its witnesses, has determined that a more in-depth procedure than just a comment period is necessary.

Discovery is required to obtain factual information that has not been provided by NGDCs in other proceedings, that will allow the parties and the Commission to evaluate the scope of the problem, so that potential remedies can be evaluated. To that end, the OSBA has drafted the following initial interrogatories to be directed to the NGDCs to evaluate the magnitude of gas-on-gas competition by class.

1. Please provide a copy of the Company's most recent cost allocation study (or studies).
2. For each customer who is granted a distribution rate that is discounted below the cost of a regular tariff rate in order to meet competition from another Pennsylvania NGDC, please provide the following information in MS Excel electronic format:
 - a. Customer ID (disguised as necessary);
 - b. Customer class;
 - c. Estimated annual load;
 - d. Contract demand, if applicable;
 - e. Discounted flex rate revenues;
 - f. Full tariff revenues;
 - g. Identity of competing NGDC(s).
3. For each customer who is subject to a negotiated distribution rate that is set based on a need to meet competition from another Pennsylvania NGDC (and is not otherwise reported in the response to the previous interrogatory), please provide the following information in MS Excel electronic format:
 - a. Customer ID (disguised as necessary);
 - b. Customer class;
 - c. Estimated annual load;
 - d. Contract demand, if applicable;

- e. Discounted flex rate revenues;
 - f. Estimated revenues in the absence of NGDC competition;
 - g. Identity of competing NGDC(s).
4. For each customer who is granted a retainage rate that is set below the regular retainage rate in order to meet competition from another Pennsylvania NGDC, please provide the following information in MS Excel electronic format:
- a. Customer ID (disguised as necessary, but consistent with that used in the previous two interrogatories);
 - b. Customer class;
 - c. Estimated annual load;
 - d. Contract demand, if applicable;
 - e. Discounted retainage rate;
 - f. Regular retainage rate;
 - g. Identity of competing NGDC(s).
5. For each customer who is granted a preferential rate other than those identified in the preceding three interrogatories as a result of gas-on-gas competition with another NGDC, please provide:
- a. Customer ID (disguised as necessary);
 - b. Customer class;
 - c. Estimated annual load;
 - d. Contract demand, if applicable;
 - e. Nature of preferential rate;
 - f. Revenues under the preferential rate;
 - g. Revenues under normal rates;
 - h. Identity of competing NGDC(s).
6. To the extent not otherwise provided, please estimate the distribution revenue and gas retainage that the Company would lose if customers with discounted or flexed rates resulting from NGDC competition were to switch to an alternative NGDC. Please include supporting workpapers, in working electronic format as applicable.
7. To the extent not otherwise provided, please estimate the distribution revenue and gas retainage increase that the Company would gain if customers with discounted or flexed rates resulting from NGDC competition were to pay the Company's regular tariff rates. Please include supporting workpapers, in working electronic format as applicable.

The OSBA further observes that, based on its experience with the responses of NGDCs in various litigated proceedings and the obvious initial intransigence of certain NGDCs in this proceeding, it may take more than one round of interrogatories in order to elicit the information necessary to reasonably evaluate the scope of the gas-on-gas competition issue.

Certain of the NGDCs have expressed concerns about discovery due to the fact that competitors and customers of competitors are in the same proceeding. This is not the first (or the last) time the parties to a Commission proceeding will be competitors. Protective Orders are routinely granted to address confidentiality issues and the OSBA encourages the NGDCs to request them. However, confidentiality concerns are not a reason to forego discovery on the factual issues identified by the OSBA.

IV. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the ALJ enter an order defining the scope of issues to be determined in this proceeding consistent with those identified herein and establishing a procedural schedule providing for discovery, testimony, and evidentiary hearings.

Respectfully submitted,



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Dated: October 1, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Generic Investigation or Rulemaking:

Regarding "Gas-On-Gas Competition" : Docket No. P-2011-2277868
Between Jurisdictional Natural Gas :
Distribution Companies :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Comments, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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