

COMMONWEALTH OF PENNSYLVANIA



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IRWINA. POPOWSKY
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October 1, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

RE: 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 please find the Office of Consumer Advocate's Comments in the
above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached
Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "James A. Mullins".

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures

cc: Hon. Elizabeth H. Barnes, ALJ
Certificate of Service

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BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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| Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies | : | |
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COMMENTS OF THE OFFICE
OF CONSUMER ADVOCATE

I. INTRODUCTION

On December 8, 2011, the Bureau of Investigation and Enforcement (BI&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Peoples TWP LLC (TWP) and Peoples Natural Gas Company (Peoples), (collectively, Joint Petitioners) filed a Petition (Joint Petition) with the Pennsylvania Public Utility Commission (Commission) in consideration of certain agreements reached in the settlement of Peoples’ base rate case at Docket No. R-2010-2201702. In relevant part, the Joint Petition provided:

In accordance with the Settlement of Peoples' base rate case, the Joint Petitioners request that the Commission initiate a generic investigation or rulemaking with regard to competition among NGDCs, flexing of distribution rates to meet such competition, and treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings. All interested parties should be permitted to participate.

Joint Petition at 8.

On July 25, 2012, the Commission issued a Secretarial Letter with respect to the Joint Petition. The Secretarial Letter granted the relief sought in the Joint Petition, ordered a generic investigation and assigned the matter to the Office of Administrative Law Judge. In relevant part, the Secretarial Letter provided:

The Joint Petitioners assert that it is problematic to attempt to resolve the issues related to gas-on-gas competition in the NGDCs' individual base rate proceedings. They further assert 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 particular NGDC and higher rates for its remaining customers, especially if another NGDC, in its own subsequent individual base rate proceeding, is permitted to continue engaging in gas-on-gas competition. Consequently, in several recent NGDC proceedings, the statutory parties and the NGDCs have agreed that gas-on-gas competition issues should be uniformly resolved on a statewide basis through a generic investigation or rulemaking.

Generic Investigation on Gas-on-Gas Competition Issues, Docket No. P-2011-2277868

(Secretarial Letter issued July 25, 2012). The Letter continued:

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. Other interested parties are invited to file interventions in order to participate in these proceedings.

Id. This matter was assigned to Administrative Law Judge Elizabeth H. Barnes (ALJ Barnes).

Subsequent to the Secretarial Letter being issued, numerous parties intervened in this matter. On August 23, 2012, ALJ Barnes issued a Prehearing Conference Order to notify interested parties that a Prehearing Conference was scheduled for August 31, 2012.

On August 31, 2012, ALJ Barnes convened a Prehearing Conference. At that time, petitions to intervene, the composition of the service list, e-mail distribution list and the matter of protective orders were discussed and resolved. One area of contention arose, however, as to the scope of the generic investigation as the parties expressed differing views as to the interpretation of the Secretarial Letter.

The OCA and OSBA stated that the scope of this generic investigation encompasses the entire set of issues addressed in the Joint Petition, specifically: (1) competition among NGDCs; (2) flexing of distribution rates to meet such competition; and, (3) treatment of flexed revenues for ratemaking purposes. See Joint Petition at 8; see e.g. Tr. at 9-10. Conversely, several of the natural gas distribution companies (NGDCs), specifically Peoples, Equitable, Columbia and UGI generally argued that the Secretarial Letter reduced the scope of this generic investigation to deal with only the ratemaking implications of gas-on-gas competition, and not whether the practice itself should be allowed to continue. See e.g., Tr. at 8-9, 11-12, 14-15.

In light of these contrasting viewpoints, ALJ Barnes directed the parties to file written Comments as to their respective positions on the scope of the generic investigation. Tr. at 19. In a Prehearing Order issued that same day, August 31, 2012, ALJ Barnes specifically directed the parties to:

file formal comments regarding what the scope of the generic investigation should be and to specify the exact issues to be involved in a generic investigation in the case within thirty (30) days from the entry date of this order.

Prehearing Order of August 31, 2012 at 4 (Prehearing Order). In accord with the Prehearing Order, Comments are due October 1, 2012.

The OCA files these Comments in support of its position that this generic investigation should address all issues raised by the Joint Petitioners and that the Secretarial Letter did not, in

any way, limit the scope of the instant proceeding. As further detailed below, the OCA submits that this investigation should address: (1) whether NGDC to NGDC competition (gas-on-gas competition) should be permitted to continue; (2) if permitted to continue, whether the flexing of distribution rates to meet such competition is reasonable; and, (3) if permitted to continue, the treatment of any flexed discounts for ratemaking purposes.

II. COMMENTS

The OCA submits that the scope of this generic investigation covers the entire relief sought by the Joint Petition. Joint Petitioners requested the Commission to open either a rulemaking or a generic investigation to address three broad issues – 1) whether gas-on-gas competition should continue; 2) if it should continue, whether the practice of flexing distribution revenues is reasonable; and, 3) if it continues, the subsequent ratemaking treatment of any flexed discounts. The Secretarial Letter granted the Joint Petitioners' request for a generic investigation into these matters, with no limiting language.

The NGDCs' arguments at the Prehearing Conference that the Secretarial Letter has somehow limited the scope of this generic investigation are misplaced. The OCA submits that accepting such arguments would result in a limited process, incapable of addressing the entirety of the issues raised in the Joint Petition and incapable of reaching any resolution as to the main controversy among the parties that gave rise to the Requests and Settlements in the first place. Such a strained interpretation of the Secretarial Letter should be rejected, as the OCA discusses next.

A. The Secretarial Letter Is Clear That The Scope Of This Proceeding Encompasses The Entire Relief Set Out In The Joint Petition.

The language of the Joint Petition was clear and unambiguous. In relevant part, the Joint Petition provided that:

Various NGDCs, the statutory parties, and other interested parties cannot resolve issues related to "gas on gas competition" in the NGDCs' individual base rate proceedings, because each proceeding can address the distribution rates for only one NGDC. *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."* Therefore, the aforementioned parties have agreed that "gas-on-gas competition" should be uniformly resolved through a generic investigation or rulemaking.

In several recent NGDC proceedings, the statutory parties and the NGDCs have agreed that "gas-on-gas competition" issues should be uniformly resolved on a state-wide basis through a generic investigation or rulemaking.

Joint Petition at 3 (emphasis added). The Joint Petition was seeking a broad inquiry into gas-on-gas competition, and specifically whether such practice should be allowed to continue. The specific agreements reached in settlement of several NGDC filings are also clear that a broad investigation was intended. The Joint Petition lists these various agreements, as follows:

OTS, OCA, OSBA, and *Peoples* agree to request, by separate filing made within 60 days of the Commission's approval of this Settlement, 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*, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other parties reserve the right to challenge the necessity for any such investigation or rulemaking. The Joint Petitioners acknowledge and agree that the terms and conditions of this Settlement are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking, and that the Joint Petitioners will continue to fully support the remaining terms and conditions of this Settlement notwithstanding whether the Commission commences the requested generic investigation or rulemaking.¹

...

¹ Pennsylvania Public Utility Commission v. Peoples Natural Gas Company LLC (Joint Petition for Approval of Settlement of All Issues), Docket No. R-2010-2201702 (April 7, 2011).

Equitable agrees to join with the OCA in petitioning the Commission to open a generic investigation concerning gas-on-gas competition in western Pennsylvania.²

...

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*. Other Parties reserve the right to challenge the necessity for any such investigation or rulemaking. The terms and conditions of this Settlement proposal are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking.³

...

T. W. Phillips agrees to join with OTS, OCA, and OSBA, in a request to be made by separate filing, that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address *whether Natural Gas Distribution Company ("NGDC") to NGDC competition should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate*, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other Signatory Parties and any other party not a signatory to the Settlement reserve the right to challenge the necessity for any such investigation or rulemaking. The Signatory Parties acknowledge and agree that the terms and conditions of this Settlement are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking, and that the Signatory Parties will continue to support fully the remaining terms and conditions of this Settlement notwithstanding whether the Commission commences the requested generic investigation or rulemaking.⁴

² Pennsylvania Public Utility Commission v. Equitable Gas Company (Joint Petition for Settlement of Consolidated Proceedings), Docket No. R-2008-2029325 (December 19, 2008).

³ Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. (Joint Petition for Partial Settlement), Docket No. R-2010-2215623 (June 30, 2011).

⁴ Joint Application for All of the Authority and the Necessary Certificates of Public Convenience to Transfer All of the Issued and Outstanding Shares of Capital Stock of T. W. Phillips Gas and Oil Co., currently owned by TWP INC., to LDC Holdings II LLC, an Indirect Subsidiary of SteelRiver Infrastructure Fund North America LP, and to Approve the Resulting Change in Control of T. W. Phillips Gas and Oil Co. (Joint Petition for Settlement of All Issues), Docket No. A-2010-2210326 (April 15, 2011).

See also Joint Petition at 4-5 (emphasis added). After setting out all of the various agreements between the statutory parties and the NGDCs, the Joint Petition provided exactly what the Joint Petitioners were requesting the Commission to do, as follows:

In accordance with the Settlement of Peoples' base rate case, the Joint Petitioners request that the Commission *initiate a generic investigation* or rulemaking [1] with regard to competition among NGDCs, [2] flexing of distribution rates to meet such competition, and [3] treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings. All interested parties should be permitted to participate.

Joint Petition at 8 (emphasis added).

The Secretarial Letter then addressed each issue raised by the Joint Petition: (1) whether gas-on-gas competition should continue; (2) the flexing of distribution rates associated with gas-on-gas competition; and, (3) the treatment of flexed revenues, as follows:

The Commission has determined that [1] separately resolving NGDC gas-on-gas competition issues in each of the NGDC's next individual base rate proceedings could lead to inequitable results. [2] 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* [3] the treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings should be resolved through a generic investigation.

Secretarial Letter ¶ 4 (emphasis added). The OCA submits that any attempted construction of the Secretarial Letter to narrow this generic investigation to a single issue involving only the ratemaking treatment of flexed revenues is misplaced.

Accordingly, and as requested by ALJ Barnes, the OCA submits that the specific areas of inquiry in this generic investigation should include:

1. The current extent and nature of gas-on-gas rate discounting, as to the:
 - a. NGDCs involved;
 - b. NGDCs that are involved, the geographic regions within their service territories where this activity takes place;

- c. Numbers of customers involved, delineated by rate class and load;
 - d. Total resources employed by the NGDCs to participate in this activity; and,
 - e. Total dollar amounts in revenues that are associated with this activity on an NGDC by NGDC basis.
2. Whether discounting rates for certain customers to meet competition from other NGDCs (gas-on-gas competition) should be allowed to continue;
 3. If the Commission determines that gas-on-gas competition should be discontinued, how the existing discounting policies and practices should be phased out;
 4. If the Commission determines that gas-on-gas competition should be allowed to continue:
 - a. Under what circumstances would this activity be appropriate; and
 - b. Once an NGDC has provided specific facts as support for the activity, how the cost of the discounts should be treated.

The OCA submits, however, that once discovery commences it is possible that other issues and sub-issues may arise that could not reasonably have been anticipated at this stage of the process. Accordingly, the OCA specifically requests the right to raise and pursue such additional issues as this proceeding develops.

B. The Commission Has Reviewed The Joint Petition And The Pleadings And Correctly Recognized That Controversies Exist That Can Only Be Reasonably Resolved After A Sufficient Level Of Fact Finding And Investigation Is Completed.

As discussed above, on December 8, 2011, Joint Petitioners filed the Joint Petition seeking either a rulemaking or a generic investigation into all aspects of gas-on-gas competition. As Joint Petitioners explained, divisions exist as to the practice of gas-on-gas competition that cannot be reasonably resolved within the context of one NGDC's rate case. The Joint Petition captured this point as follows:

Peoples argued in the base rate proceeding that it could not eliminate flex rates unilaterally without losing its customers to other NGDCs that would be permitted to continue offering flex

rates; that loss of such customers would result in higher fixed cost charges to all other customers, thereby resulting in higher rates; and that Peoples is entitled to the reasonable opportunity to recover all of its costs, which opportunity would be denied if Peoples were forced to absorb the difference between tariff rates and the flexed rates received from serving customers who otherwise would obtain lower rates from another NGDC.

The Joint Petitioners agreed to address the "gas-on-gas competition" issues by requesting that the Commission review the effect of distribution rate "competition" among NGDCs on a generic basis for all affected NGDCs.

Joint Petition at 2-3 (emphasis added). As the Joint Petition provides, Joint Petitioners requested that the Commission provide a forum whereby these divisions over the issue of gas-on-gas competition could be fully explored and ultimately resolved. As Peoples argued in its base rate case, ending gas-on-gas competition for the Company would be inequitable so long as neighboring NGDCs could still engage in that practice. In granting the Joint Petition, it is reasonable to conclude that the Commission recognized the controversy and intended that *all* of the Joint Petitioners' stated concerns over gas-on-gas competition would be investigated and reviewed during the generic investigation.

In addition, consistent with the Commission's Regulations, on December 28, 2011, the Industrial Energy Consumers of Pennsylvania (IECPA) filed an Answer to the Joint Petition. Generic Investigation on Gas-on-Gas Competition Issues, IECPA Answer, Dock. No. P-2011-2277868 (served on December 28, 2011) (IECPA Answer). In its Answer, IECPA takes issue with the Joint Petition as follows:

Although IECPA agrees with the Joint Parties that an investigation or rulemaking may be necessary, IECPA disagrees with the Joint Parties' position that the practice of rate flexing is "uneconomical and inequitable," and should be treated differently during base rate proceedings or perhaps eliminated altogether.

IECPA Answer at 2. The IECPA Answer goes on to provide various arguments in favor of maintaining the general practice of gas-on-gas competition, but “does not oppose a rulemaking on negotiated transportation rates.” IECPA Answer at 2-4.

The Commission had the benefit of the Joint Petition (December 8, 2011) and the IECPA Answer (December 28, 2011) well in advance of the Secretarial Letter (July 25, 2012) being issued. These pleadings indicate a controversy as to the basic question of whether gas-on-gas competition should continue, in any form. The OCA submits that the Secretarial Letter, by opening a generic investigation, has provided a forum for an investigation, analysis and ultimately a Commission decision as to the resolution of this controversy.

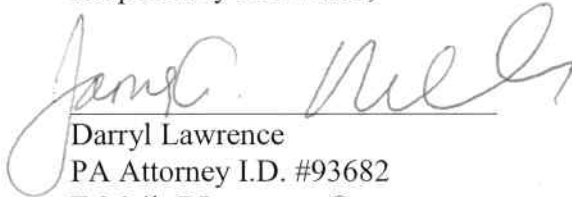
It is not reasonable to assume, as some of the Parties argued at the Prehearing Conference, that the Commission would open a generic investigation to address only part of the issues presented by the Joint Petition. If such were the case, the Commission would have clearly stated such in its Secretarial Letter, *i.e.*, the scope would have been clearly limited. Indeed, without considering the primary cause for submitting the Joint Petition – to investigate whether gas-on-gas competition should continue – this contentious issue would remain.

The OCA submits that such a narrow reading of the Secretarial Letter is simply not supported and must be rejected. Accordingly, the OCA supports a broad scope to the generic investigation regarding gas-on-gas competition in the Commonwealth.

III. CONCLUSION

The Office of Consumer Advocate submits that this generic investigation should address the entire set of issues raised by the Joint Petitioners. Such an investigation is not in any way limited by the Secretarial Letter, and accordingly, this generic investigation should address all relevant aspects of gas-on-gas competition as detailed herein.

Respectfully Submitted,



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Dated: October 1, 2012

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CERTIFICATE OF SERVICE

Re: 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

I hereby certify that I have this day served a true copy of the foregoing document,
the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in
accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in
the manner and upon the persons listed below:

Dated this 1st day of October 2012.

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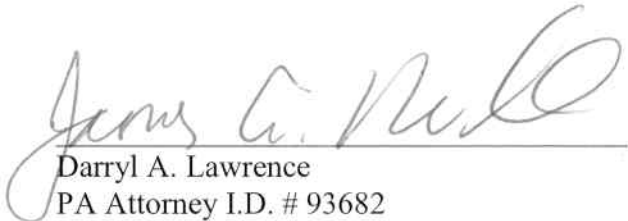
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