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October 1, 2012

Via Electronic Filing

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

In re: Dockets Nos. P-2011-2277868 and I-2012-2320323
Generic Investigation or Rulemaking Re "Gas-On-Gas Competition"

Dear Secretary Chiavetta:

We are counsel to Equitable Gas Company, LLC in connection with the above matter and are enclosing for filing its Comments pursuant to Ordering Paragraph No. 3 of the Prehearing Order of Administrative Law Judge Barnes dated August 31, 2012. Copies of Equitable's Comments are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By


Charles E. Thomas, Jr.

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

121001-Chiavetta (Comments).wpd

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Elizabeth H. Barnes, Presiding**

Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies	:	:	P-2011-2277868
		:	
Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies	:	:	I-2012-2320323
		:	

COMMENTS OF EQUITABLE GAS COMPANY, LLC

AND NOW comes Equitable Gas Company, LLC (“Equitable” or “Company”) and, pursuant to Ordering Paragraph No. 3 of the Prehearing Order dated August 31, 2012 (“Prehearing Order”), submits the following Comments regarding the scope of proceeding and the issues to be addressed in a generic investigation regarding gas-on-gas competition:

INTRODUCTION

This proceeding concerns the joint petition of the Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”), Office of Small Business Advocate, Peoples TWP LLC (“Peoples TWP”) and Peoples Natural Gas Company (“Peoples”) asking the Public Utility Commission (“Commission”) to 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.”

Following the filing of the joint petition on December 8, 2011, the Commission issued a Secretarial Letter dated July 25, 2012 (“Secretarial Letter”), stating as follows:

The Commission has permitted NGDCs with overlapping service territories to offer distribution service to end users at rates below an incumbent NGDC’s approved maximum tariff rates to compete with lower distribution rate offers from other NGDCs. It has been argued that it is necessary to flex distribution rates to meet lower rate offers from other NGDCs in order to avoid the loss of all revenues that would occur if these customers were to migrate to another NGDC. The Commission has also permitted NGDCs to reflect the lower level of revenue related to this flexing of distribution rates in determining the revenue requirement in base rate proceedings.

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.

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.

On August 23, 2012, Equitable filed a petition to intervene in the proceeding. Although not a joint petitioner, Equitable agreed in settlement of its 2008 base rate proceeding to join with the OCA in petitioning the Commission to open a generic investigation concerning gas-on-gas competition in western Pennsylvania. Equitable’s petition was granted and memorialized in the Prehearing Order.

The matter was assigned to Administrative Law Judge Elizabeth H. Barnes and a prehearing conference was held on August 31, 2012. Pertinent to these Comments, the parties participating in the prehearing conference discussed, without resolution, their differing views as to the scope of the proceeding and the issues to be addressed. As these matters are critical to the advancement of the generic investigation, Judge Barnes directed the parties to file formal comments regarding (1) the scope of the generic investigation and (2) the exact issues involved.

COMMENTS

Scope of the Generic Investigation

Judge Barnes states in the Prehearing Order that she believes that the Commission intended for a generic investigation to occur and evidentiary hearings to take place. Equitable agrees that the Secretarial Letter reflects a Commission intent to open a generic investigation, but disagrees with the assumed need for evidentiary hearings.

Equitable believes that the Commission can adequately explore the material issues in this generic investigation through the submission of written, verified comments and reply comments. There is no need for either discovery or the presentation of witnesses at a formal evidentiary hearing. Generic investigations are often conducted through the submission of comments and reply comments, without discovery or formal hearing. *See, e.g., Investigation re Transmission Reconciliation Service Charge (TSC) Reconciliation Methods*, Docket No. M-2011-2239714; *Generic Proceeding Regarding Section 712 of the Energy Policy Act*, Docket No. M-00930410 (Order entered October 15, 1993) (generic “on-paper hearing” conducted through filed written comments); *Re Contributions in Aid of Construction and Customer Advances*, Docket No. I-880083, 70 Pa.P.U.C. 44 (1989). Since this generic investigation will likely raise only non-

factual/policy related issues, the submission of written comments will be sufficient to develop a full and complete record while ensuring judicial efficiency and due process are maintained.

Moreover, moving forward with a process that addresses the issues through written comments and reply comments without discovery or evidentiary hearing, obviously, would conserve the resources of the Commission and the parties involved. That in itself is a worthwhile goal, but, more importantly, addressing the issues as suggested above will allow the utilities and their customers to avoid the significant tension that would arise if the investigation takes on the discovery and hearing attributes of an adversarial complaint type proceeding.

While Equitable, of course, is aware of the use of Protective Order(s) in necessary rate and other proceedings, Equitable does not see those Orders as adequate protection for the interests of the competing utilities and their customers in this generic matter. Both utilities and customers have a legitimate interest in not disclosing highly confidential, competitively sensitive information unless absolutely necessary, even under Protective Order protection. Everyone is well aware of the rate issues that should be addressed, and disclosure of highly confidential, competitively sensitive information is simply not necessary.

Issues to Be Addressed

The Secretarial Letter frames the issues as rate related. The fourth paragraph of the Secretarial Letter states the following with direct reference to rate matters:

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.

Other parties at the prehearing conference argued that, based on their reading of the Secretarial Letter, the Commission intended to address gas-on-gas competition more generally. They, apparently, would go as far as to suggest that the Commission intended for the investigation to include consideration of whether gas-on-gas should be allowed to continue.

Irrespective of the view of other parties, Equitable believes the Secretarial Letter is clear and that it expresses a Commission intent to limit the generic investigation to rate matters. The limitation of issues in this way is consistent with the Commission's unwillingness several years ago to entertain an investigation into competitive practices. *See Petition of the Office of Trial Staff for the Commencement of an Investigation of Competitive Practices Between Natural Gas Distribution Companies*, Docket No. P-00052160 (Order entered October 6, 2005). The Commission, in that matter, concluded that it cannot prohibit an NGDC from serving customers located within its grandfathered service territory.

The Commission addressed gas cost rate related discounting in Equitable and Peoples Section 1307(f) proceedings at R-00050272 and R-00050267, respectively, providing guidance, in those proceedings, on the treatment of gas cost rate related discounts and waivers in future 1307(f) proceedings. Similarly, the Commission in this generic investigation should address delivery and other non-gas cost rate related discounting and, after review of written comments and reply comments of the parties provide guidance on the treatment of non-gas cost rate related discounting for future base rate proceedings.

Commission Review of Material Questions

Equitable supports the conclusion that this proceeding is a generic investigation of rate matters related to gas-on-gas competition that can be handled through written, verified comments

and reply comments without discovery and without hearing. Recognizing, however, that there were differing views of the Secretarial Letter expressed at the Prehearing Conference and recognizing that there likely will be differing views expressed in the parties' comments, Judge Barnes may wish to take advantage of Section 5.305 of the Commission's Rules and Regulations, 52 Pa. Code § 5.305, and certify a material question or questions to the Commission. Certification of question(s) may be the most expeditious way of determining what the Commission intended in the Secretarial Letter in regard to the scope of the proceeding and the issues to be addressed.

Equitable suggests the following questions for certification to the Commission in the event Judge Barnes would decide to proceed under Section 5.305:

1. Did the Commission intend, through its Secretarial Letter of December 8, 2011, and is it otherwise appropriate to require full discovery and an evidentiary hearing in this investigation of matters related to gas-on-gas competition or did it intend and is it more appropriate for this investigation to move forward with written and reply comments and no discovery or evidentiary hearing?
2. Did the Commission intend, through its Secretarial Letter of December 8, 2011, and is it otherwise appropriate to limit the generic investigation to the rate treatment in future base rate proceedings of delivery and other non-gas cost rate related discounting?

WHEREFORE Equitable Gas Company, LLC requests that Administrative Law Judge Elizabeth H. Barnes and the Public Utility Commission accept these Comments and conclude that this proceeding is a generic investigation of rate matters related to gas-on-gas competition

that can be handled through written, verified comments and reply comments without discovery and without hearing.

Respectfully submitted,

By  _____

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DATE: October 1, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Elizabeth H. Barnes, Presiding**

Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On’Gas” Competition Between Jurisdictional Natural Gas Distribution Companies : **P-2011-2277868**

Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies : **I-2012-2320323**

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of October 2012 served a true and correct copy of Equitable Gas Company, LLC’s Comments, upon the persons and in the manner set forth below:

EMAIL AND/OR FIRST CLASS MAIL, POSTAGE PREPAID

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