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Via UPS Overnight Delivery

October 1, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

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

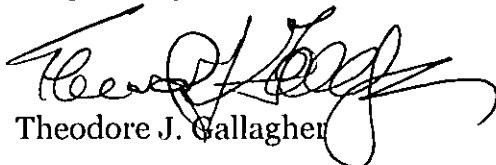
**Generic Investigation Regarding Gas-On-Gas Competition
Between Jurisdictional Natural Distribution Companies
Docket No. I-2012-2320323**

Dear Secretary Chiavetta:

Enclosed for filing please find an original and four (4) copies of Columbia Gas of Pennsylvania, Inc.'s Comments Regarding Scope of Proceeding in the above-referenced matter. Please return one file-stamped copy to me in the enclosed envelope.

As indicated on the Certificate of Service, copies have been served on the parties.

Respectfully submitted,


Theodore J. Gallagher

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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
COLUMBIA GAS OF PENNSYLVANIA, INC.
REGARDING SCOPE OF PROCEEDING**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

Columbia Gas of Pennsylvania, Inc. (“Columbia” or “the Company”), by and through its counsel, hereby submits its Comments regarding the scope of the docketed proceedings, pursuant to the Prehearing Order issued on August 31, 2012 (“Prehearing Order”).

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I. INTRODUCTION

On December 8, 2011, Peoples Natural Gas (“Peoples”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) jointly filed a Petition for Generic Investigation or Rulemaking Regarding “Gas on Gas Competition” Between Jurisdictional Natural Gas Distribution Companies (“Joint Petition”). The Joint Petition was filed pursuant to an approved settlement of Peoples base rate proceeding at Docket No. R-2010-2201702, whereby Peoples, BI&E, OCA, and OSBA agreed to

address “gas-on-gas competition” issues by requesting that the Commission review the effect of distribution rate competition among Natural Gas Distribution Companies (“NGDCs”) on a generic basis for all NGDCs, as more fully described in paragraphs 4 through 6 of the Joint Petition.

The approved partial settlement of Columbia’s base rate proceeding at Docket No. R-2010-2215623 also addressed the issue of gas-on-gas competition, and included a similar provision to the Peoples rate case settlement. Specifically, the Columbia partial settlement provided, in relevant part:

Columbia agrees to join with [BI&E], 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.

Accordingly, on March 19, 2012, Columbia filed a petition to intervene in the Joint Petition.

On July 25, 2012, the Commission issued a Secretarial Letter (“Secretarial Letter”) essentially granting the petition and assigning this matter to the Office of Administrative Law Judge. In its Secretarial Letter, the Commission stated that: (1) it 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, and; (2) it agrees with the 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. Further, the Commission invited other parties to file interventions in order to participate in these proceedings.

This matter was assigned to Your Honor, and the Commission issued a notice of prehearing conference to take place on August 31, 2012. At the prehearing conference, in addition to procedural matters, the parties addressed the issue of the scope of the proceedings. While OSBA and OCA advocated for a broad scope, including an evidentiary hearing, the NGDCs advocated for a narrow scope. Subsequently, Your Honor issued the Prehearing Order, which stated that “The scope of procedures and issues is so critical to the advancement of the generic investigation that I am directing 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[.]” Columbia hereby submits its comments in response to that directive.

II. COMMENTS

As discussed more fully below, Columbia submits that the scope of the generic investigation should be narrow, and should focus on rate matters related to gas-on-gas competition. Further, this matter should be conducted through written comments and reply comments without evidentiary hearings.

A. The Narrow Issue

In Columbia’s base rate proceeding at Docket No. 2010-2215623, I&E addressed the issue of rate flexing to meet gas-on-gas competition among NGDCs with overlapping service territories in Western Pennsylvania. I&E took the position that Columbia should be permitted to flex rates to meet such competition, but that the Commission should disallow the recovery of the revenue shortfall associated with rate flexing from tariff customers. In response, Columbia argued that this issue cannot be resolved in a proceeding involving any one NGDC, that it cannot be resolved simply by prohibiting

recovery of flexed revenues, and that it cannot be resolved in the context of a rate case. Columbia further noted that it would be willing to participate in a generic proceeding that involved all stakeholders to this issue. It is within this context that the settlement of Columbia's base rate proceeding included the provision quoted above in the Introduction to these Comments. Columbia submits that the similar settlement provisions in rate cases involving Peoples and Equitable Gas Company, and the acquisition case involving T.W. Phillips Gas and Oil Co., as described in the Joint Petition, each likely came about in a similar fashion.

Thus, the issues that resulted in the Joint Petition are policy issues that will not be assisted by an inquiry into the "current extent and nature of gas-on-gas rate discounting, in terms of number of customers involved and load by rate class, geographical regions affected, NGDCs involved, etc." (Prehearing Order at p. 3). It is noteworthy that the Secretarial Letter makes no mention of such an inquiry. Rather, the Secretarial Letter frames the inquiry at hand to rate matters, specifically "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[.]"

Accordingly, the issues under consideration are narrow, and wholly involve matters of policy. Columbia respectfully submits that no evidentiary hearing is necessary in order for the Commission to address this policy.

B. Evidentiary Hearings Are Not Necessary Where There is no Factual Dispute

The Commission's initiation of a generic investigation need not involve an evidentiary hearing. Indeed, the Commission's consideration of this matter through the

submission of written comments and reply comments, without the presentation of evidence at a hearing, would be consistent with past Commission practice. *See, e.g. Investigation of Issuance of Local Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers*, Docket No. P-00981404; *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. Where, as here, the parties can adequately develop a record for the Commission's consideration through written comments, an evidentiary hearing would not comport with judicial economy.

It is an axiom of law that evidentiary hearings are not necessary in a proceeding where material facts are not in dispute. The Commonwealth Court of Pennsylvania has applied this rule in the context of an appeal from a Commission ruling on a petition for declaratory order where the Commission issued a declaratory order that interfered with the Borough of Olyphant's attempt to force the petitioner to abandon its certificated electric service within an industrial park. *See Borough of Olyphant v. Pa.PUC*, 861 A.2d 377 (2004). On appeal the Borough argued, in part, that the matter should be remanded for an evidentiary hearing. The Court disagreed, noting that no evidentiary hearing would be required since the issues set forth by the Borough were fundamentally legal issues. *Id.* at 385. Columbia submits that the Joint Petition is similar to a request for declaratory order, inasmuch as it seeks guidance from the Commission regarding the manner in which gas-on-gas competition should be treated. This is fundamentally a legal issue for which no evidentiary hearing should be required.

C. Issues Regarding the Scope of This Proceeding May Be Resolved By Seeking Guidance from the Commission

As noted in the Prehearing Order, the scope of the procedure and issues is critical to the advancement of this generic investigation. This would, then, appear to be a material question. Since it is inevitable that the parties Comments submitted on that issue will lack consensus, Columbia respectfully submits that one way to resolve any uncertainty about the scope of this matter would be to certify the question to the Commission for review and answer, pursuant to 52 Pa. Code § 5.305. Columbia submits that the interest of judicial economy would serve as a compelling reason under §5.305(a) as to why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

WHEREFORE, for the reasons stated above, Columbia Gas of Pennsylvania, Inc. requests that Administrative Law Judge Elizabeth H. Barnes accept these Comments and that, upon due consideration of all comments submitted, conclude that the scope of this generic investigation concerns rate matters related to gas-on-gas competition and that this matter can be conducted by way of written comments and reply comments, without the need for evidentiary hearings.

Respectfully submitted,



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Date: October 1, 2012

*Counsel for
Columbia Gas of Pennsylvania, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, in the manner indicated, upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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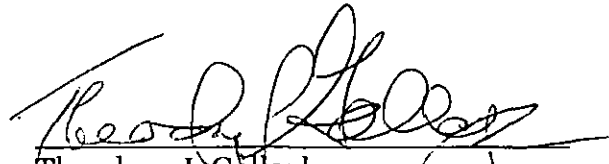
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Dated this 1st day of October, 2012


Theodore J. Gallagher
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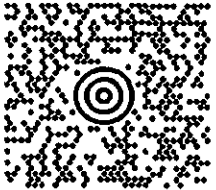

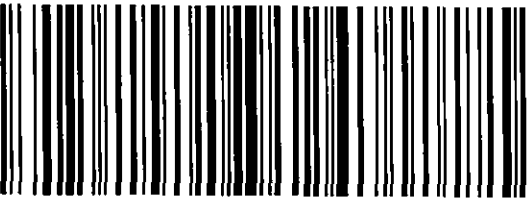
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