



COMMONWEALTH OF PENNSYLVANIA

January 23, 2013

E-FILED, E-MAIL, AND HAND DELIVERY

Hon. Elizabeth H. Barnes
Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

**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 Judge Barnes:

Enclosed are two copies of the Second Prehearing Memorandum, on behalf of the Office of Small Business Advocate, in the above-captioned proceedings.

As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,

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

Enclosures

cc: Parties of Record
Robert D. Knecht
Brian Kalcic

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, I&E, 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 issued a Secretarial Letter on July 25, 2012, assigning this matter to the Office of Administrative Law Judge for a generic investigation. The matter was assigned to Administrative Law Judge ("ALJ") Elizabeth H. Barnes who 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, the parties disagreed about the appropriate scope of the proceeding. The participating 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 (“August 31 Order”), directing the parties to file formal comments regarding the scope of issues to be addressed in this proceeding. Accordingly, the OSBA, OCA, I&E, Equitable, IECPA, Penn State, Columbia, and Peoples each filed comments.

On December 11, 2012, ALJ Barnes issued an Order (“December 11 Order”), which states in pertinent part:

Upon review of the parties’ comments, I agree with BI&E, OCA and OSBA that the intention of the Secretarial Letter was to initiate a fully litigated proceeding, specifically to determine the full impact of flexing distribution rates, to address if this competition should be allowed to continue, and if so, how that should be fairly applied as outlined in the Joint Petition for Settlement, page 4. The merits of gas-on-gas competition shall be a part of the scope of this proceeding...A more in-depth procedure than just a comment period will be required and discovery will be allowed such that the parties will have time to evaluate the scope of the issues so that potential remedies can be evaluated.¹

The Order also scheduled a second prehearing conference for January 24, 2013. The OSBA submits this Second Prehearing Memorandum pursuant to Section 5.222(d)(1) of the Commission’s regulations.²

¹ Order at 4.

² 52 Pa. Code §5.222(d)(1).

II. SECOND PREHEARING CONFERENCE ISSUES

Pursuant to the August 31 Order and December 11 Order, the issues of the scope of the investigation, petitions to intervene (with the exception of the subsequently filed Petition to Intervene of the Pennsylvania Independent Oil and Gas Association (“PIOGA”)), the service list and e-mail distribution list have all been addressed. The following are issues that the OSBA has identified as unaddressed.

A. PROCEDURAL SCHEDULE

The OSBA has been notified by counsel for Peoples that it intends to file a motion requesting that this proceeding be held in abeyance pending a recently proposed merger of Peoples and Equitable. At the time of this writing, Peoples and Equitable have not yet filed the proposed merger with the Commission, nor has the Peoples filed the motion to hold the instant proceeding in abeyance. Once the motion is filed, the OSBA intends to respond to it more fully in the time allowed under the Commission’s regulations. However, for the purposes of the second prehearing conference tomorrow, the OSBA’s position is that this proceeding should move forward with no further delays. A procedural schedule should be established, despite the anticipated motion.

This proceeding has already been significantly delayed. The Joint Petition requesting this proceeding was filed over a year ago, the Commission Secretarial Letter granting the Joint Petition and directing that this investigation be commenced was issued six months ago, and yet the matter has not moved beyond the prehearing conference stage. The NGDCs have indicated their reticence to proceed with this investigation, both at the prehearing conference and in comments arguing to limit its scope. Now Peoples

intends to seek a further delay. The OSBA is concerned that the NGDCs will always point to some reason to delay this investigation, perhaps indefinitely.

The OSBA acknowledges that Peoples and Equitable engage in gas-on-gas competition. However, the proposed merger of these two NGDCs is not a valid reason to hold this proceeding in abeyance. First, the merger may never be approved and more time will have been wasted. Second, even if the merger is successful, it does not dispose of the issue of gas-on-gas competition. There are other NGDCs who engage in the practice. The issues raised by the OSBA simply will not be resolved by a merger of Peoples and Equitable.

Therefore, the OSBA proposes the following procedural schedule:

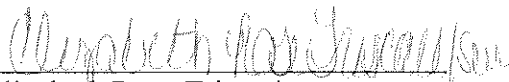
All Parties Direct Testimony	June 4, 2013
Rebuttal Testimony	July 16, 2013
Surrebuttal Testimony	August 6, 2013
Evidentiary Hearings	August 20-21, 2013
Main Briefs	September 18, 2013
Reply Briefs	October 9, 2013
Recommended Decision	TBD

B. DISCOVERY AND PROTECTIVE ORDERS

The procedural schedule proposed above allows several months for discovery. However, the OSBA believes that the data it seeks (significantly similar to the sample interrogatories contained in the OSBA's first prehearing memo) is fairly simple and not the Herculean task the NGDCs may assert. Nor does the OSBA anticipate it to be

duplicative of discovery in the proposed merger proceeding. The OSBA served its first set of interrogatories on the participating NGDCs on January 18, 2013, which are due on February 7, 2013, pursuant to Section 5.342(d) of the Commission's regulations.³ As discussed at the first prehearing conference, the responses may contain confidential information and the OSBA encourages the respondents to file motions for protective orders.

Respectfully submitted,


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For:

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Dated: January 23, 2013

³ 52 Pa. Code §5.342(d).

**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 :

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Second Prehearing Memorandum, 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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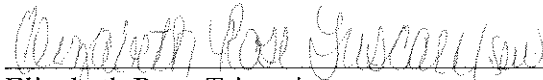
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Date: January 23, 2013



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