



COMMONWEALTH OF PENNSYLVANIA

February 1, 2013

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 is the Answer, 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

**ANSWER OF THE OFFICE OF SMALL BUSINESS ADVOCATE
TO MOTION TO HOLD PROCEEDING IN ABEYANCE**

Pursuant to 52 Pa. Code § 5.103(c), the Office of Small Business Advocate (“OSBA”) submits this Answer to the Motion To Hold Proceedings In Abeyance Pending Final Action In Proposed Acquisition of Equitable Gas Company, LLC by Peoples Natural Gas Company, LLC (“Motion”) filed by Peoples Natural Gas Company, LLC (“Peoples” or the “Company”) on January 23, 2013. The OSBA responds to the Motion as follows:

I. PROCEDURAL BACKGROUND

On December 8, 2011, the OSBA, together with the Commission’s Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”), Peoples TWP LLC (“TWP”), and Peoples Natural Gas Company (“Peoples”) (together, the “Joint Petitioners”) filed with the Commission a Joint Petition requesting that the Commission institute an investigation or rulemaking to address distribution base 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, 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 TWP in the settlement of its 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 "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.¹

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

¹ Subsequent Petitions to Intervene filed by the Pennsylvania Independent Oil & Gas Association ("PIOGA") and Duquesne Light Company ("Duquesne") were granted at the second prehearing conference on January 24, 2013.

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 determined the proper scope of the Investigation and stated 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.²

The Order also scheduled a second prehearing conference for January 24, 2013.

On December 20, 2012, Peoples issued a press release announcing its agreement to acquire Equitable (the “Proposed Acquisition”). However, it was not until January 23, 2013, over a month after announcing the Proposed Acquisition and one day prior to the second prehearing conference, that Peoples filed its Motion requesting that this proceeding be held in abeyance pending final Commission action with respect to the Proposed Acquisition. According to the Motion, Peoples anticipates filing an application for a certificate of public convenience

² Order at 4.

with the Commission by the end of the first quarter of 2013, *i.e.*, by March 31, 2013. The Proposed Acquisition will also need to be approved by the Federal Trade Commission (“FTC”). Additionally, the Motion confirmed that Peoples intends to extend discounted rates offered to Peoples and Equitable customers through *at least* 2018.

Peoples’ second prehearing memorandum, also filed on January 23, 2013, further requested that ALJ Barnes rule on the Motion the following day at the second prehearing conference. ALJ Barnes did not rule on the Motion, instead allowing the parties the opportunity to provide a written response as provided in the Commission’s regulations, but shortened the time to answer until February 1, 2013, at the request of the parties.

II. ANSWER

A. Further Delay of Investigation Unwarranted

Peoples’ potential acquisition of Equitable is not a valid reason to further delay the Commission-ordered Investigation of gas-on-gas competition in the Commonwealth. Commencement of the Investigation has already been significantly delayed. The Joint Petition requesting the Investigation was filed on December 8, 2011, over a year ago. The Commission’s Secretarial Letter ordering the Investigation was filed on July 25, 2012, over six months ago. The participating NGDCs caused the latter delay by arguing that the Secretarial Letter greatly limited the scope of the Investigation as requested. This argument prompted a comment period and a written decision by ALJ Barnes. After an Order was entered that contradicted its position on scope, Peoples then filed the instant Motion to halt the Investigation yet again due to the mere *announcement* of an acquisition it is endeavoring to make.

Peoples must file a request for a certificate of public convenience in order to begin the acquisition review process in Pennsylvania. Peoples admits it does not anticipate filing an application before the end of March. Furthermore, once the application is filed, the Proposed Acquisition process could take over a year to complete since it requires multiple regulatory approvals, from not only the Commission, but also the FTC. Notably, the FTC challenged a previous proposed transaction to merge Peoples and Equitable, which transaction was abandoned due to the delay in obtaining regulatory approvals, *e.g.*, FTC approval.³ The OSBA is not taking a position on the merits of the Proposed Acquisition at this time, but has reasonable concerns that it may never be approved. If this Investigation were to be held in abeyance until final action on the Proposed Acquisition, and the Proposed Acquisition were not approved, the status quo will have remained unchanged and the Commission-ordered Investigation will have been needlessly delayed for yet another year.

B. The Proposed Acquisition Will Not Resolve Gas-on-Gas Competition Issues

Even if the Proposed Acquisition does receive the necessary approvals, issues related to gas-on-gas competition in the Commonwealth will not have been resolved. Although Peoples and Equitable may be two of the largest offerors of gas-on-gas related discounts, they are not the only NGDCs with overlapping service territories that engage in this practice. A generic investigation would still be necessary to determine how to handle the issue globally, whether Peoples acquires Equitable or not.

Nor would the Proposed Acquisition even resolve gas-on-gas competition issues between Peoples and Equitable. Peoples' Motion anticipates that Peoples and Equitable customers with discounted rates would have those discounted rates extended until at least 2018, maybe longer

³ *In the Matter of Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company*, Docket No. 9322, Order Dismissing Complaint (Jan. 31, 2008), available at <http://www.ftc.gov/os/adjpro/d9322/080204complaint.pdf>.

(under Peoples' yet to be filed acquisition proposal).⁴ Despite Peoples' argument to the contrary, the facts with regard to gas-on-gas competition and the resultant discounted rates are not going to be "evolving and changing" as a result of the Proposed Acquisition.⁵ If anything, the Proposed Acquisition makes a Commission decision on gas-on-gas competition all the more urgent, since failing to resolve the issue is likely to result in "business as usual" for the next several years.

C. Going Forward With the Investigation Is Not Burdensome

Peoples has also asked that the Investigation be halted so its employees and the employees of Equitable can focus on the Proposed Acquisition and not be subjected to duplicative discovery requests.⁶ The OSBA can only speculate as to when Peoples and Equitable will file a request for a certificate of public convenience with the Commission. Even more unknown is when the FTC's investigation will commence and what it will entail. In contrast, this proceeding was filed over a year ago and the NGDCs in this proceeding have already been served with the OSBA's discovery requests. If anything similar is requested in the Proposed Acquisition proceeding before the Commission or by the FTC (likely several months from now), the information will have already been culled and can easily be provided again. Rather than cause more work, this Investigation may even give the Peoples and Equitable employees a head start on future data requests.

Finally, the OSBA believes that the Commission's prior resolution of issues surrounding gas-on-gas competition in Pennsylvania will be helpful in the Commission's and the FTC's subsequent evaluation of the Proposed Acquisition.

⁴ Motion at 3.

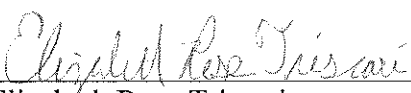
⁵ See Motion at 3, 5-6.

⁶ Motion at 6.

IV. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the ALJ deny Peoples' Motion in its entirety and direct the parties to proceed with the procedural schedule.

Respectfully submitted,


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

For:
Steven C. Gray
Acting Small Business Advocate
Attorney ID No. 77538

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Dated: February 1, 2013

**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 Answer, 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:

Hon. Elizabeth H. Barnes
Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1191
(717) 787-0481 (fax)
ebarnes@pa.gov
(E-mail and Hand Delivery)

William H. Roberts, Esquire
Peoples Natural Gas Company, LLC
375 North Shore Drive - #600
Pittsburgh, PA 15212
(412) 208-6527
(412) 208-6577 (fax)
william.h.roberts@peoples-gas.com

Dawn Lindner, Esquire
Jennifer L. Petrisek, Esquire
Peoples TWP, LLC
205 N. Main Street
Butler, PA 16001
(724) 431-4924
dawn.lindner@peoples-gas.com
jennifer.petrisek@peoples-gas.com

Darryl A. Lawrence, Esquire
James A. Mullins, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
dlawrence@paoca.org
jmullins@paoca.org
tmccloskey@paoca.org
(E-mail and Hand Delivery)

Allison C. Kaster, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
akaster@pa.gov
(E-mail and Hand Delivery)

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street - #400
Harrisburg, PA 17101-1236
(717) 703-5892
(215) 989-4216 (fax)
dzambito@cozen.com

Theodore J. Gallagher, Esquire
NiSource Corporate Services Company
121 Champion Way - #100
Canonsburg, PA 15317
(724) 416-6355
(724) 416-6384 (fax)
tjgallagher@nisource.com

Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas Long Niesen & Kennard
P. O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7615
(717) 236-8278 (fax)
cthomasjr@thomaslonglaw.com
tniesen@thomaslonglaw.com

David W. Gray, Esquire
Equitable Gas Company, LLC
225 North Shore Drive
Pittsburgh, PA 15212-5861
(412) 395-3634
(412) 395-3155 (fax)
dgray@equitablegas.com

Maureen Geary Krowicki, Esquire
National Fuel Gas Distribution Corp.
P. O. Box 2081
1100 State Street
Erie, PA 16512
(814) 871-8035
KrowickiM@natfuel.com

Amy Neufeld, Esquire
500 North Third Street - #800
Harrisburg, PA 17110
amy.neufeld@exeloncorp.com

Donna M. J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street - #205
Harrisburg, PA 17101
dclark@energypa.org

Mark C. Morrow, Esquire
Melanie J. Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
(610) 768-3628
morrowm@ugicorp.com
Elatiehm@ugicorp.com

Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
tjsniscak@hmslegal.com
welehman@hmslegal.com


Teresa K. Schmittberger, Esquire
Pamela C. Polacek, Esquire
McNees Wallace and Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108
(717) 237-5270
tschmittberger@mwn.com
ppolacek@mwn.com

Michael S. Swerling, Esquire
PECO Energy Company
2301 Market Street - S23-1
Philadelphia, PA 19101-8699
(215) 841-4220
(215) 568-3389 (fax)
michael.swerling@exeloncorp.com

Kevin J. Moody, Esquire
Pennsylvania Independent Oil & Gas Assoc.
212 Locust Street - #300
Harrisburg, PA 17101-1510
(717) 234-8525 ext. 113
(717) 234-8812 (fax)
kevin@pioga.org

Tishekia E. Williams, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
(412) 393-1541
(412) 393-5757 (fax)
Twilliams@duqlight.com

Date: February 1, 2013



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