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February 1, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**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:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Answer of the Industrial Energy Consumers of Pennsylvania ("IECPA") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being duly served with a copy of this document.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers of Pennsylvania

TKS/sar

Enclosures

c: Administrative Law Judge Elizabeth H. Barnes (via E-mail and First Class Mail)  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Certificate of Service

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Dated this 1<sup>st</sup> day of February, 2013, at Harrisburg, Pennsylvania



concludes. *Id.* at 2. At this time, neither Peoples nor Equitable has instituted a PUC proceeding related to the referenced acquisition proceeding.

The instant proceeding began on December 8, 2011 by the Bureau of Investigation and Enforcement ("I&E"), Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), and Peoples, who filed a Petition at the PUC requesting an investigation or rulemaking into gas-on-gas competition ("Petition"). On December 28, 2011, IECPA filed an Answer not opposing an investigation or rulemaking regarding gas-on-gas competition, asserting that current public utility law and policy supports the continued use of rate flexing. Approximately seven months later, the PUC instituted such an investigation, which led to an initial prehearing conference on August 31, 2012. At that prehearing conference, Administrative Law Judge ("ALJ") Elizabeth H. Barnes requested that parties to the proceeding submit comments regarding the proposed procedural and substantive scope of the gas-on-gas proceeding. On December 11, 2012, ALJ Barnes issued an Order ("Order") determining that the investigation should include an analysis of "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...." Order, p. 4.

At the subsequent January 24, 2013, prehearing conference, ALJ Barnes established a procedural schedule that would conclude at the end of 2013. In addition, intervenors agreed to provide Answers and Objections to Peoples' Motion by February 1, 2013. Accordingly, IECPA opposes Peoples' Motion for the following reasons:

1. Admitted.
2. Admitted.
3. Admitted.

4. Denied. Other than information included within Appendix A of Peoples' Motion, after reasonable investigation, IECPA lacks the knowledge and information sufficient to form a belief as to the truth of these averments, and the same are, therefore, denied. Peoples has yet to file any documentation or begin any proceeding at the PUC related to its proposed acquisition of Equitable. This creates a number of concerns for IECPA related to Peoples' Motion. Initially, there is no indication of when Peoples will formally institute an acquisition proceeding at the Commission. Although the Motion refers to a potential filing date "prior to the end of the first quarter of 2013," IECPA has no evidence that this timeline would remain intact. Motion, p. 3. Moreover, if and when an acquisition proceeding begins at the Commission, it is possible that the acquisition proceeding could continue for an extensive period of time, well after the conclusion of the procedural schedule in the instant proceeding.

5. Admitted.

6. Denied. After reasonable investigation, IECPA lacks the knowledge and information sufficient to form a belief as to the truth of these averments, and the same are, therefore, denied. For purposes of this Answer, however, IECPA will assume the accuracy of this assertion.

7. Denied. After reasonable investigation, IECPA lacks the knowledge and information sufficient to form a belief as to the truth of these averments, and the same are, therefore, denied.

8. Denied. After reasonable investigation, IECPA lacks the knowledge and information sufficient to form a belief as to the truth of these averments, and the same are, therefore, denied.

9. Admitted.

10. Denied. Peoples' contention that the outcome of the acquisition proceeding should influence the gas-on-gas competition proceeding is without merit. In its Motion, Peoples admits that under the proposed acquisition, it intends to propose that the practice of gas-on-gas competition would be retained in its current form until at least 2018. Motion, p. 3. As a result, the outcome of the acquisition proceeding would not have any impact on the Commission's ability to analyze the practice of gas-on-gas competition. In addition, the "future structure of the market" would not change upon potential acquisition approval due to Peoples' commitment to retain negotiated rates until 2018. *Id.* at 4. Gas-on-gas competition would continue to exist in all NGDC overlapping service territories in the Commonwealth, including those of Peoples and Equitable, whether or not the acquisition is approved or rejected.

11. Admitted. Pursuant to 52 Pa. Code § 5.483(a), the presiding officer may "exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding." For reasons addressed below, however, application of this section does not justify postponement of the instant proceeding.

12. Admitted. The Rules of Administrative Practice and Procedure provide for a "just, speedy and inexpensive determination of every action or proceeding to which it is applicable." 52 Pa. Code § 1.2. As discussed in more detail below, contrary to Peoples' assertions, this provision supports continuation of the gas-on-gas competition along the currently adopted procedural schedule.

13. Denied. Due to the uncertainty of Peoples' future acquisition proceedings at both the PUC and Federal Trade Commission, including the filing dates, lengths of proceedings, and outcomes of the proceedings, the gas-on-gas competition should not be delayed. The original

Petition that led to this investigation was filed at the Commission over a year ago. In addition, based on the recently established procedural schedule, this investigation will not conclude until the end of 2013, over two years after the Petition was filed. A "just, speedy and inexpensive" determination, consistent with 52 Pa. Code § 1.2, is only possible if the gas-on-gas competition continues as planned.

14. Denied. The acquisition proceeding, which impacts only Peoples and Equitable, is wholly independent from the gas-on-gas competition investigation, which impacts all NGDCs in Pennsylvania. All NGDCs with overlapping service territories have participated in gas-on-gas competition and offered rate flexing for over two decades. Motion, p. 7. This historical data related to gas-on-gas competition is all that is required for analyzing the benefits of the practice. A future acquisition proceeding between only two NGDCs is entirely irrelevant for evaluating this practice considering the current data that already exists with respect to NGDCs throughout the Commonwealth.

Despite the difference in the scope of these proceedings, however, the outcome of a future Peoples-Equitable acquisition proceeding would establish an evidentiary record that, while only applying to two NGDCs, could substantively impact a subsequent gas-on-gas competition proceeding. Specifically, IECPA anticipates that a central issue of the acquisition proceeding will be whether the "affirmative public benefit" test pursuant to the *City of York* can be satisfied by a transaction that eliminates the opportunity for customers to negotiate transportation and other rates due to overlapping territories. See *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972). In making that assessment, the Commission may be faced with the underlying issue of whether this historic practice is a beneficial public policy for the Commonwealth, an issue which is almost identical to one of the issues in the investigation.

Thus, the due process rights of those participating in the gas-on-gas competition proceeding, who are not Peoples or Equitable customers, could be harmed if the instant proceeding is delayed further.<sup>1</sup> More appropriately, the instant proceeding, which evaluates the comprehensive effects of gas-on-gas competition throughout the state, should occur before or coincidentally with the acquisition proceeding, to ensure that the practice itself is evaluated, rather than the practice as it has occurred between only two NGDCs.

15. Denied. The potential future acquisition proceedings related to Peoples and Equitable would address a range of issues, only one of which being gas-on-gas competition between Peoples and Equitable. The existence of a limited crossover issue in future acquisition proceedings simply cannot warrant halting the gas-on-gas competition. Based on the limited commonality between the proceedings, there would likely be little repetitive evidence, cross-examination, or discovery. Utilities often engage in multiple state and federal proceedings at the same time that include certain common issues without remarkable difficulty. Accordingly, continuation of the gas-on-gas competition is perfectly consistent with 52 Pa. Code § 5.483(a).

16. Denied. Because Peoples' Motion should be denied in its entirety, there is no need to hold a subsequent prehearing conference.

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<sup>1</sup> IECPA's members include natural gas customers of Columbia and other NGDCs.

**WHEREFORE**, the Industrial Energy Consumers of Pennsylvania respectfully request that the Pennsylvania Public Utility Commission deny Peoples' Motion to hold the instant proceeding in abeyance in its entirety. IECPA recommends that the instant proceeding continue according to the procedural schedule determined at the January 24, 2013, prehearing conference.

Respectfully submitted,

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