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April 10, 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

A handwritten signature in black ink, appearing to read 'Teresa K. Schmittberger', written over a horizontal line.

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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Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers of Pennsylvania

Dated this 10<sup>th</sup> day of April, 2013, at Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Joint Petition for Generic Investigation or Rulemaking Regarding "Gas-on- Gas" Competition Between Jurisdictional Natural Gas Distribution Companies</b>	:	
	:	<b>Docket No. P-2011-2277868</b>
	:	
	:	
	:	
	:	
<b>Generic Investigation Regarding Gas- On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies; Docket No. I-2012-2320323</b>	:	
	:	<b>Docket No. I-2012-2320323</b>
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**ANSWER OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA  
IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

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**TO THE HONORABLE ELIZABETH H. BARNES:**

Pursuant to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations at 52 Pa. Code §§ 5.61 and 5.103, the Industrial Energy Consumers of Pennsylvania ("IECPA") file this Answer in Opposition to the *Motion for Protective Order* ("Motion") filed with the Commission on April 3, 2013, by Peoples Natural Gas Company, LLC, and Peoples TWP LLC (together, "Peoples") at the above-captioned proceeding. IECPA is an intervenor in the instant proceeding.

**I. BACKGROUND OF THE 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") (collectively, "State Advocates"), and Peoples, who filed a Joint Petition at the PUC requesting an investigation or rulemaking into gas-on-gas competition.<sup>1</sup> On December

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<sup>1</sup>Gas-on-gas competition exists among Natural Gas Distribution Companies ("NGDCs") with overlapping service territories in the Commonwealth. This competition may result in discounted rates offered to customers who could be served by either NGDC.

28, 2011, IECPA filed an Answer not opposing an investigation or rulemaking regarding gas-on-gas competition, but rather asserting that current public utility law and policy supports the continued use of customer-specific discount rates. 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.

On January 24, 2013, ALJ Barnes held a Prehearing Conference and established a procedural schedule beginning with the submission of Direct Testimony on June 4, 2013. In addition, IECPA and Peoples agreed to initiate discussions regarding the terms of a Protective Order to govern disclosure of information throughout the proceeding. Since this Prehearing Conference, IECPA and Peoples have participated in numerous discussions in an attempt to reach mutually-agreeable language for a Protective Order. Despite these ongoing efforts, IECPA and Peoples were unable to reach satisfactory terms.<sup>2</sup>

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<sup>2</sup> Because of the on-going efforts to reach resolution on this issue, IECPA believes that all parties have been denied access to information that would be subject to the protective order. As a result, until resolution of this issue occurs, the parties face a roadblock in terms of being able to review and analyze information required for purposes of presenting their case-in-chief. To that end, IECPA submits that a two-week extension of the litigation schedule in this proceeding may be appropriate to allow for adequate time of both resolution of the protective order and review of the resulting information. IECPA believes that two weeks, at the most, would provide adequate, additional time for review, while still ensuring a just and speedy investigation consistent with 52 Pa. Code § 1.2. IECPA would oppose any extended delay of the instant proceeding as inconsistent with this section of the Commission's regulations, as well as the ALJ's Scheduling Order dated February 5, 2013. In addition, IECPA would strenuously object to any extension that would result in this proceeding extending beyond the timeframe of any proceeding reviewing the potential Peoples' acquisition of Equitable Gas Company, LLC. *See Answer of the Industrial Energy Consumers of Pennsylvania in Opposition to Motion to Hold Proceeding in Abeyance*, P-2011-2277868 and I-2012-2320323 (February 1, 2013).

On April 3, 2013, Peoples filed the above-referenced Motion at the Commission, as well as an attached draft Protective Order ("Peoples' Protective Order"). As part of Peoples' Protective Order, Peoples provides for three classes of protection for information that would be disclosed throughout the proceeding. First, Confidential or Proprietary Information includes all information that is deemed confidential or proprietary. Peoples' Protective Order, p. 2. Second, Highly Confidential Information is any Confidential Information that would relate to competitive strategies or pricing. *See id.* at 2-3. Lastly, Customer-Specific Discount Information is a subset of Highly Confidential Information that specifically refers to customer-specific discount pricing. *Id.* at 5. Although the restrictions within Peoples' Protective Order relating to Confidential Information appear reasonable, Peoples proposes significant barriers of access to Highly Confidential Information and Customer-Specific Discount Information, specifically with respect to non-statutory intervenors.

All Highly Confidential Information and Customer-Specific Discount Information would only be available for **inspection** by **two attorneys** of a non-statutory intervenor party at a mutually-agreeable location to the Producing Party and the intervenor. *Id.* at n. 2. By contrast, State Advocate attorneys and experts in this proceeding would receive **delivery** of Highly Confidential and Customer-Specific Discount Information, which could then be disseminated among **unlimited attorneys and experts**. *Id.* at n. 3-4. In addition, Peoples applies elevated standards, in some respects similar to those included within a Federal Energy Regulatory Commission ("FERC") protective order, to Customer-Specific Discount Information for purposes of expert witness review. *See id.* at 7-8.

IECPA has a number of concerns related to Peoples' Protective Order, the most pressing of which being the inequitable and prejudicial treatment of non-statutory intervenors in

comparison to State Advocates regarding access to Highly Confidential Information and Customer-Specific Discount Information. The protections governing disclosure of Highly Confidential Information and Customer-Specific Discount Information are highly restrictive and uncharacteristic of traditional PUC protective orders. Because Highly Confidential Information and Customer-Specific Discount Information have been disclosed in numerous, prior PUC proceedings, a more fair and balanced protective order should be adopted consistent with the Commission's Rules of Administrative Practice and Procedure.

For the reasons discussed in more detail herein, IECPA recommends that Peoples' Protective Order be rejected. Instead, the proposed Protective Order ("IECPA's Protective Order"), attached hereto as Appendix A, should be adopted consistent with protective orders adopted in comparable PUC proceedings. In the event that IECPA's Protective Order is not adopted in its entirety, any resulting protective order must provide all parties to this proceeding with a level playing field regarding access to Highly Confidential Information and Customer-Specific Discount Information.

## **II. ANSWER**

### *A. Peoples' Protective Order Fails to Comport with the Commission's Requirement for a "Least Restrictive" Protective Order and Must Be Rejected.*

IECPA submits that the sections of Peoples' Protective Order related to Highly Confidential Information and Customer-Specific Discount Information should be rejected as unnecessarily restrictive and prejudicial for non-statutory intervenors. Specifically, IECPA will show that Peoples' Protective Order fails to comport with the Commission's requirement that all protective orders must include the "least restrictive means" for limiting disclosure of information. As a result, these sections of Peoples' Protective Order should be rejected for less

burdensome protective order language, *e.g.*, the language included within IECPA's Protective Order.

The Commission's Rules of Administrative Practice and Procedure explain that a protective order should only be approved:

when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the *least restrictive* means of limitation which will provide the necessary protections from disclosure.

52 Pa. Code § 5.423(a)(emphasis added). The Commission's Rules also note that an ALJ should consider the following factors when evaluating whether a Protective Order is warranted:

- (1) The extent to which the disclosure would cause unfair economic or competitive damage.
- (2) The extent to which the information is known by others and used in similar activities.
- (3) The worth or value of the information to the party and to the party's competitors.
- (4) The degree of difficulty and cost of developing the information.
- (5) Other statutes or regulations dealing specifically with disclosure of the information.

*Id.* Crucially, where a protective order is deemed necessary, the Commission requires that the "least restrictive means of limitations ... provide the necessary protections from disclosure." *Id.*

IECPA agrees that a protective order is appropriate in this proceeding, and thus, it is unnecessary to discuss the applicability of the five foregoing factors. As a result, the central consideration for evaluating adherence to the Commission's Rules of Administrative Practice and Procedure is whether or not Peoples' Protective Order represents the least restrictive means for disclosure. IECPA submits that Peoples' Protective Order would violate this "least restrictive" requirement.

As noted in Section I, *supra*, Peoples' Protective Order holds non-statutory intervenors to inequitable and prejudicial standards as compared to State Advocates with respect to both Highly Confidential Information and Customer-Specific Discount Information. First, non-statutory intervenors would be subject to highly burdensome inspection requirements that would not apply to State Advocates who would receive automatic delivery (*i.e.*, hard copies either via mail or email) of all Information. Peoples' Protective Order, n. 2. Second, only two attorneys for non-statutory intervenors would receive access to Highly Confidential Information and Customer-Specific Discount Information whereas unlimited State Advocate attorneys and experts could access the information. *Id.* at n. 3-4. This starkly differential treatment of intervenors and State Advocates would hinder non-statutory intervenors' ability to develop their cases and ultimately prejudice their positions. Such disparate treatment creates an unnecessarily restrictive protective order as applied to intervenors.

In addition, Customer-Specific Discount Information is given its own category of protection with provisions related to Competitive Duty Personnel that are foreign to traditional PUC protective orders. *See id.* at 7-8. As noted in Section II.B., *infra*, Customer-Specific Discount Information can remain protected under traditional PUC protective order language without including extra hurdles such as those applying to Competitive Duty Personnel. Because Highly Confidential Information and Customer-Specific Discount Information have been disclosed in numerous PUC proceedings that included less burdensome protective orders, there is no reason a less restrictive protective order cannot be adopted for the instant proceeding.

In fact, IECPA submits that Peoples and the other NGDCs of the proceeding have tacitly endorsed less restrictive requirements for disclosure of Highly Confidential Information and Customer-Specific Discount Information, such as those included within other PUC protective

orders. Although Peoples contends this information warrants extra protection, all NGDCs have agreed that State Advocates and their experts may receive unlimited disclosure of this information as opposed to requiring inspection by a limited number of attorneys. There is nothing inherently more sensitive about this information when it is disclosed to other non-statutory intervenors in light of the fact that all attorneys in this proceeding are held to the same legal and ethical professional code of conduct. As a result, even the NGDCs are comfortable with less restrictive treatment of Highly Confidential Information and Customer-Specific Discount Information.

IECPA agrees that Highly Confidential Information in general, and Customer-Specific Discount Information in particular, is sensitive information. Nevertheless, IECPA is satisfied that traditional PUC protective order language sufficiently protects disclosure of both kinds of Information as it has in prior NGDC proceedings involving Customer-Specific Discount Information. Accordingly, IECPA has modified the Protective Order adopted in the recent base rate proceeding of Columbia Gas of Pennsylvania, Inc. ("Columbia"), attached hereto as Appendix B ("Columbia's Protective Order"), and submits it as IECPA's Protective Order, attached hereto as Appendix A.<sup>3</sup> See Docket No. R-2012-2321748.

Equally restrictive treatment, consistent with the Commission's Rules of Administrative Practice and Procedure, is included for all parties in IECPA's Protective Order. IECPA's Protective Order groups Customer-Specific Discount Information and Highly Confidential Information within the single category of Proprietary Information, which includes all information that the "Producing party customarily treats as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of

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<sup>3</sup>The language of Columbia's Protective Order was modified by removing all Columbia-specific references.

competitive disadvantage or other business injury."<sup>4</sup> See Appendix A, p. 1. All Proprietary Information would be disclosed to all parties to the proceeding, but subject to multiple protections included within a traditional PUC protective order, *i.e.*, ensuring that the information is sealed and separate from other discovery in the proceeding and destroyed or returned at the conclusion of the proceeding. *Id.* at 2-3. Because an identical protective order was used in Columbia's recent base rate case, which also featured disclosure of highly confidential and customer-discounted rate information, IECPA's Protective Order should be approved as a less restrictive means for disclosure in the instant proceeding.

Peoples' Protective Order is far more restrictive than necessary with respect to Highly Confidential and Customer-Specific Discount Information, and would inequitably apply such restrictions among the parties of the proceeding. IECPA's Protective Order includes less restrictive means of protections for both sets of information and should be approved in place of Peoples'. At a minimum, the sections in Peoples' Protective Order related to Highly Confidential and Customer-Specific Discount Information must be rejected.

*B. Peoples' Protective Order Differs Materially from Protective Orders Adopted in Similar PUC Proceedings and Must Be Rejected.*

As initially set forth above, Peoples' Protective Order is substantially different from protective orders adopted in comparable PUC proceedings. The disclosure of Customer-Specific Discount Information does not sufficiently justify this difference from other proceedings as such information has been made available in many prior Commission proceedings. Moreover, Highly Confidential Information is also subject to heightened protections beyond those imposed in other PUC proceedings. Finally, the language borrowed in Peoples' Protective Order from a FERC protective order is overly restrictive and unnecessary for ensuring the protection of information

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<sup>4</sup>This definition would seem to apply to both Highly Confidential Information and Customer-Specific Discount Information as defined in Peoples' Protective Order.

in the instant proceeding. Consistent with these positions, Peoples' Protective Order should be rejected, and IECPA's Protective Order, which mimics the language from another approved PUC protective order, should instead be adopted.

In its Motion, Peoples incorrectly, and somewhat misleadingly, contends that Peoples' Protective Order "is substantially similar to the standard protective order used in most Commission proceedings." Motion, p. 3. IECPA has not encountered similar treatment of Customer-Specific Discount Information in other Commission proceedings. This information is regularly disclosed as a part of NGDC base rate proceedings and is treated with the same level of protection as all other confidential information. In addition, IECPA submits that heightened inspection standards for both Highly Confidential Information and Customer-Specific Discount Information are significantly more restrictive than those standards generally adopted with respect to such information.

Most recently at the PUC, discounted customer rate information was available for disclosure as part of Columbia's base rate proceeding. *See* Docket No. R-2012-2321748. As demonstrated in Columbia's Protective Order, there is no separate protective treatment for Confidential Information, Highly Confidential Information, and Customer-Specific Discount Information. Columbia's Protective Order provides for elevated protections with respect to a single, general category of Proprietary Information. Appendix B, p. 2. As evidenced by comparison to Columbia's Protective Order, the three separate categories of protection for Confidential Information, Highly Confidential Information, and Customer-Specific Discount Information within Peoples' Protective Order are irregular and certainly not "substantially similar to the standard protective order used in most Commission proceedings."

Moreover, under the terms of Columbia's Protective Order, all counsel, for third party intervenors and State Advocates alike, receive disclosure of Proprietary Information. By contrast, Peoples' Protective Order only permits two attorneys from each non-statutory intervenor party to inspect Highly Confidential Information at a mutually-convenient location for the Producing Party and the intervenor. Peoples' Protective Order, n. 2. Conversely, the State Advocates would receive disclosure of Highly Confidential Information to both attorneys and experts with no limitation on the number of individuals who would access the information. *Id.* at n. 3-4. This same disparate treatment would apply to Customer-Specific Discount Information. *Id.* Certainly, this inequitable and prejudicial treatment of intervenors and State Advocates is highly divergent from other PUC protective orders.

Finally, Peoples includes additional heightened restrictions for "Competitive Duty Personnel" in order to view Customer-Specific Discount Information that are not traditionally included in PUC protective orders. *Id.* at 7-8. Peoples admits that this language was drawn from a FERC protective order and implicitly acknowledges its absence from other PUC protective orders. Motion, p. 4. Importantly, in the spirit of compromise, IECPA was willing to agree to utilizing the general terms of a FERC protective order as a basis for this proceeding, assuming that the heightened restrictions (*e.g.*, Competitive Duty Personnel requirements) set forth therein were applicable to all parties. Because, however, Peoples' Protective Order goes beyond the scope of the purview of FERC language by bifurcating the parties' access to the confidential information, Peoples' Protective Order cannot be adopted.<sup>5</sup> Moreover, in such treatment,

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<sup>5</sup> FERC protective orders do not generally limit the parties to two, named reviewing attorneys. Moreover, FERC protective orders do not create different standards for Competitive Duty Personnel depending upon whether these personnel are on behalf of State Advocates or non-statutory parties. Rather, all parties, including any personnel, are treated equally under the general FERC standards for protective orders.

Peoples' Protective Order is inconsistent with other PUC protective orders that address disclosure of similar information.

IECPA recommends that IECPA's Protective Order be adopted instead of Peoples' Protective Order due to its similarity to other adopted PUC protective orders. Highly Confidential Information and Customer-Specific Discount Information would be treated with a single level of protection applied to all Proprietary Information and disclosure of both sets of Information would be permitted for attorneys of all parties. Appendix A, p. 1. To protect this Information from impermissible disclosure, however, attorneys could only use the Information for purposes of the proceeding and be required to destroy the Information at the conclusion of the proceeding. *Id.* at 2-3. Unlike Peoples' Protective Order, IECPA's Protective Order is equitably applied to all intervenors and State Advocates, but would still maintain sufficient protection for sensitive information. Accordingly, IECPA's Protective Order, or one with similar components, should be adopted in the instant proceeding.

*C. In the Alternative, Any Protective Order Should Ensure That Parties Remain on a Level Playing Field.*

Whether the ALJ adopts Peoples' Protective Order, IECPA's Protective Order, or sections of each, the final protective order must provide for disclosure of information in an equitable manner among all parties of the proceeding. Peoples' Protective Order unfairly restricts intervenor access to Highly Confidential Information and Customer-Specific Discount Information despite allowing open, unlimited access to State Advocates. All parties' attorneys and experts must receive equal treatment to ensure that parties have the same opportunity to support their arguments and, ultimately, to facilitate a fair and balanced resolution.

If the ALJ chooses to adopt certain aspects of Peoples' Protective Order relating to Highly Confidential Information and Customer-Specific Discount Information, these aspects

should apply to all parties equally. Under Peoples' Protective Order, intervenors would invest significant time: (1) traveling to a central inspection location; (2) taking notes from the Information; and (3) requiring only two attorneys to partake in all discovery efforts, while State Advocates could have the full, detailed information at their finger tips available for review by as many attorneys as needed. Specifically, State Advocates and their experts would have this data available in its original format throughout the testimony and litigation process to continue to analyze and review, while other parties would be limited in the days and times that the information could be viewed, as well as be required to rely on notes for any analysis outside of the viewing opportunity. This treatment places the two categories of parties on unequal and inequitable footing in developing and presenting their positions in this proceeding. As a result, IECPA recommends that all protective order restrictions apply evenly among the parties. If the attorneys of intervenors may only inspect this Information at a mutually-convenient location, then so must attorneys for State Advocates. Likewise, if only two attorneys for each intervenor party may access the Information, then only two attorneys for each State Advocate should receive access. To hold otherwise would provide an unreasonable advantage to the State Advocates throughout the proceeding.

Similarly, all parties should be subject to identical protective order restrictions related to experts. Currently, Peoples' Protective Order does not permit intervenor experts to access Highly Confidential Information and subjects all experts to a higher Competitive Duty Personnel analysis with respect to Customer-Specific Discount Information. Here again, the extra barriers impacting certain experts would adversely and unjustly impact parties' case development.

To ensure that the gas-on-gas investigation reaches an equitable conclusion, it is essential that all parties to the proceeding have the opportunity to fully support their positions during

hearings and briefing. If the protective order hinders parties' ability to do so by establishing overly burdensome conditions of access to Highly Confidential and Customer-Specific Discount Information, the success of the gas-on-gas investigation would be threatened. If these overly burdensome conditions only impact certain parties and not others, the result of the gas-on-gas investigation would be suspect if not inherently flawed. Accordingly, any protective order restrictions must be equally applied to all parties, their attorneys and experts alike.

### III. CONCLUSION

**WHEREFORE**, the Industrial Energy Consumers of Pennsylvania respectfully request that the Pennsylvania Public Utility Commission deny Peoples' Motion for Protective Order and provide relief as follows:

- (1) Reject Peoples' Protective Order;
- (2) Adopt IECPA's Protective Order included herein as Appendix A;
- (3) Alternatively, ensure that all protective order restrictions apply to all parties in an equitable manner; and
- (4) Provide any other relief at the Commission deems necessary.

Respectfully submitted,

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By 

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Counsel to the Industrial Energy Consumers of  
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Dated: April 10, 2013

**Appendix A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Joint Petition for Generic</b>	:	
<b>Investigation or Rulemaking</b>	:	<b>Docket No. P-2011-2277868</b>
<b>Regarding "Gas-on-Gas" Competition</b>	:	
<b>Between Jurisdictional Natural Gas</b>	:	
<b>Distribution Companies</b>	:	
	:	
<b>Generic Investigation Regarding Gas-</b>	:	
<b>On-Gas Competition Between</b>	:	<b>Docket No. I-2012-2320323</b>
<b>Jurisdictional Natural Gas Distribution</b>	:	
<b>Companies; Docket No. I-2012-2320323</b>	:	

**PROTECTIVE ORDER**

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to the material and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. "CONFIDENTIAL" materials (hereinafter referred to as "Proprietary Information") are those materials that the Producing party customarily treats as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury.

3. Proprietary Information shall be made available to counsel for the non-producing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the

Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.

4. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

5. The nonproducing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be non-proprietary.

6. Any public reference to Proprietary Information by a Party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

7. Part of any record of this proceeding containing Proprietary Information, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the

agreement of the Parties or pursuant to an order of the Administrative Law Judge, the Commission or appellate court.

8. The nonproducing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a nonproducing Party challenges the designation of a document or information as proprietary, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

9. Each Party shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

10. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the nonproducing Party, upon request, shall either destroy or return to the producing Party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the nonproducing Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing Party, the nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge  
Elizabeth H. Barnes

Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2012-2321748
	:		M-2012-2323645
Office of Consumer Advocate	:		C-2012-2330240
Office of Small Business Advocate	:		C-2012-2330539
Anastasia Stratigos	:		C-2012-2330724
Louis and Joanne Quahliero	:		C-2012-2332087
Angela Burnett	:		C-2012-2332497
G. Thomas Smeltzer	:		C-2012-2333247
Michelle Swartz	:		C-2012-2328788
Columbia Industrial Intervenors	:		C-2012-2334026
Johanna Shigle	:		C-2012-2336033
	:		
	:		
v.	:		
	:		
Columbia Gas of Pennsylvania, Inc.	:		

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by Columbia Gas of Pennsylvania, Inc. on February \_\_\_\_, 2013;

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to the material and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The material or information subject to this Protective Order is Columbia Exhibit JTG-R1 attached to the January 28, 2013 rebuttal testimony of Jeffery T. Gore, Columbia Statement No. 104-R. The rebuttal testimony of Columbia witness Gore has not been marked as confidential. However, Exhibit JTG-R1 attached to Columbia Statement No. 104-R is

confidential as it contains wage information and has been designated by being stamped "CONFIDENTIAL" (hereinafter referred to as "Proprietary Information"). To the extent any additional Proprietary Information is filed with the Commission or presented in this proceeding, such information shall also be subject to this Protective Order.

3. "CONFIDENTIAL" materials are those materials that the Producing party customarily treats as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury.

4. Proprietary Information shall be made available to counsel for the non-producing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.

5. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

6. The nonproducing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of

February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be non-proprietary.

7. Any public reference to Proprietary Information by a Party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

8. Part of any record of this proceeding containing Proprietary Information, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to an order of the Administrative Law Judge, the Commission or appellate court.

9. The nonproducing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a nonproducing Party challenges the designation of a document or information as proprietary, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

17. Each Party shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

18. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the

nonproducing Party, upon request, shall either destroy or return to the producing Party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the nonproducing Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing Party, the nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge  
Mark A. Hoyer

\_\_\_\_\_  
Administrative Law Judge  
Jeffrey Watson