



June 27, 2013

E-FILE

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

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

ANSWER OF PEOPLES NATURAL GAS COMPANY LLC TO IECPA MOTION FOR CLARIFICATION OF PROTECTIVE ORDER

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the original of Peoples Natural Gas Company LLC's Answer to IECPA Motion for Clarification of Protective Order in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Please date-stamp the extra copy and return it with our courier. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for Peoples Natural Gas Company LLC

DPZ/kmg
Enclosure

cc: Honorable Elizabeth H. Barnes
Per Certificate of Service

Per Certificate of Service

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CERTIFICATE OF SERVICE
Docket Nos. P-2011-2277868 and I-2012-2320323

I hereby certify that I have this day served a true copy of the foregoing Peoples Natural Gas Company LLC's Answer to IECPA Motion for Clarification of Protective Order upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Date: June 27, 2013

VERIFICATION

I, Joseph A. Gregorini, hereby state that I am Vice President, Rates and Regulatory Affairs, of Peoples Natural Gas Company LLC; that I am authorized to and make this verification for it; that the facts set forth in the foregoing Answer of Peoples Natural Gas Company LLC to IECPA Motion for Clarification of Protective Order are true and correct (or are true and correct to the best of my knowledge, information and belief); and that I expect Peoples Natural Gas Company LLC to be able to prove the same at a hearing in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 6/27/13

Joseph A. Gregorini
(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge
Elizabeth H. Barnes

Joint 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 :

**ANSWER OF PEOPLES NATURAL GAS COMPANY LLC TO
IECPA MOTION FOR CLARIFICATION OF PROTECTIVE ORDER**

AND NOW COMES Peoples Natural Gas Company LLC ("Peoples") and, pursuant to Section 5.103(c) of the Pennsylvania Public Utility Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.103(c) (regarding "Response to motions"), answers the Motion of the Industrial Energy Consumers of Pennsylvania ("IECPA") for Clarification and Request for Expedited Consideration, filed on June 24, 2013, ("Motion for Clarification") as follows:

I. DELAY HAS BEEN CAUSED BY IECPA

The dispute raised by IECPA in its Motion for Clarification involves access by IECPA's consultant, Ms. Diane Burgraff, to Customer-Specific Discount Information produced by

Peoples, Equitable Gas Company LLC, and Columbia Gas of Pennsylvania, Inc. in response to Set I discovery of the Office of Small Business Advocate (“OSBA Set I Discovery”).¹

Peoples responded to OSBA Set I Discovery on May 13, 2013. The responses included, among other things, “Customer-Specific Discount Information” (as defined by Paragraph 4.c. the Protective Order issued May 2, 2013 in this matter). Peoples designated the Customer-Specific Discount Information as “Highly Confidential – Customer-Specific Discount Information” in accordance with the process directed by the Protective Order. The Customer-Specific Discount Information was available for inspection by “Authorized Inspecting Lawyers” (as defined by Paragraph 4.c. of the Protective Order) beginning on May 13, 2013 at both the office of Peoples’ in-house counsel in Pittsburgh, Pennsylvania and at the office Peoples’ undersigned outside counsel in Harrisburg, Pennsylvania (*located in the building immediately adjacent to IECPA’s counsel*).

Despite the ease of access by IECPA’s Authorized Inspecting Lawyers, IECPA did not make a request to inspect Peoples’ Customer-Specific Discount Information until June 17, 2013 – 35 days later. Moreover, when IECPA at last made its request, it insisted that: (a) IECPA’s consultant have immediate access to Customer-Specific Discount Information without initial review by an Authorized Inspecting Lawyer; (b) IECPA’s Authorized Inspecting Lawyer and its consultant be permitted to take notes on the Customer-Specific Discount Information; and, (c) Peoples be restricted from having a representative in the room during the inspection of Customer-Specific Discount Information.

Peoples responded to IECPA’s request by insisting simply that IECPA comply with the directives of the Protective Order – namely initial inspection of Customer-Specific Discount

¹ Peoples is able to respond only with regard to its dispute with IECPA and cannot respond as to the positions taken by Equitable and Columbia.

Information by an Authorized Inspecting Lawyer, followed by a discussion between counsel as to the what information is relevant and material and the form of production of the information to IECPA's consultant. Instead of following the Protective Order's process and engaging in a constructive discussion between counsel, IECPA filed the instant Motion for Clarification – claiming that its ability to prepare direct testimony by August 8, 2013 is now being prejudiced and ignoring the fact that IECPA waited nearly five weeks before even making a request to see the information.

II. IECPA IS ATTEMPTING TO CIRCUMVENT PROTECTIVE ORDER PROCESS

Under the Protective Order, Customer-Specific Discount Information is a form of Highly Confidential Information. *See* Protective Order, ¶ 4.c. “Highly Confidential Information shall be produced for inspection by a Party’s counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the Producing Party’s counsel.” Protective Order, ¶ 4.b. This is standard language from the standard protective order used in most Commission proceedings. It calls for the inspecting lawyer to make a good faith determination of what Highly Confidential Information is needed for the Receiving Party to prepare its case effectively and then to engage in good faith discussion with counsel for the Producing Party as to how that necessary Highly Confidential Information can be made available to the Receiving Party’s expert while balancing the Producing Party’s interest in maintaining its confidentiality. It is indeed possible that the inspecting lawyer could conclude that she needs to share with her expert every bit of the Highly Confidential Information in exactly the form that it was produced, but Peoples suggests that this is highly unlikely and, more importantly, that it can be determined only after

the inspecting lawyer has inspected the Highly Confidential Information. Counsel for the Receiving Party need not “provide to Peoples the list of information that [its expert] would need to prepare her testimony” (Motion for Clarification, p. 10) or share case strategy with counsel for the Producing Party, but a good faith discussion obviously contemplates back-and-forth discourse of how the needs of the Receiving Party can be met in a way that minimizes the release of Highly Confidential Information. With respect to this specific proceeding, *a generic investigation*, if one is balancing the protection of case strategy against the disclosure of the Producing Party’s most proprietary and confidential information, it is difficult to see why protecting case strategy would have substantial weight.

The only material difference between the standard protective order and the Protective Order in this proceeding is that an additional layer of protection has been adopted for Highly Confidential Customer-Specific Discount Information. This additional protection is necessary because of the sensitivity of the information and the number parties involved in this proceeding. Those other parties range from customers with competitive options, such as IECPA, to competing natural gas distribution companies.

In order to compensate for its own delay in requesting to see Peoples’ responses to OSBA Set I Discovery, IECPA is now asking for permission to circumvent the protections promised to the parties in the Protective Order. The Protective Order was initially contested by IECPA. IECPA had its opportunity to be heard on process and its arguments were rejected. It should not now be permitted to ignore the process and deprive Peoples of the protections promised by the Protective Order. Indeed, Peoples’ production of its Customer-Specific Discount Information was made in reliance upon the Protective Order.

III. INSPECTION DOES NOT INCLUDE NOTE TAKING

The Protective Order clearly contemplates inspection only. *See* Protective Order, ¶ 4.b. Under its plain meaning, “inspect” means to allow a party to review the information – not to copy it. It would be very easy to write down discount information as presented in Peoples’ response to OSBA Set I Discovery. Accordingly, note taking would frustrate the purpose of the Protective Order.

The Protective Order envisions a process in which an Authorized Inspecting Lawyer “inspects” the Customer-Specific Discount Information, determines what information her client’s consultant may need to see (as not all produced information may be relevant or material), and then discusses with the producing party’s counsel how such information should be produced to the consultant. Upon production of the information to the consultant, a further conversation would be held between counsel as to how the information should be incorporated in testimony so as to minimize the possibility of release of the Highly Confidential Information. IECPA’s Motion for Clarification proposes to skip these necessary protective steps.

IV. PRESENCE OF PRODUCING PARTY’S REPRESENTATIVE IS REASONABLE

The only reasonable way to ensure that a party’s Authorized Inspecting Lawyer and consultants do not take notes, photograph, or otherwise copy Customer-Specific Discount Information is to have a representative of the producing party in the inspecting room. This protection is particularly necessary because of smart phone technologies.

The presence of a producing party representative in the inspection room is a common practice that should not be prohibited in this proceeding. To the extent that a party’s Authorized Inspecting Lawyers and consultants wish to discuss Customer-Specific Discount Information,

they can do so after inspection. They will also have an opportunity to do so after the production of information in a negotiated format. Again, IECPA is attempting to circumvent a necessary protection in order to compensate for its own delay in requesting inspection.

V. LOCATION OF INSPECTION IS NOT AN ISSUE FOR PEOPLES

Peoples' Highly Confidential discovery responses are available for inspection in both Pittsburgh and Harrisburg. IECPA has not availed itself of either location.

VI. ON-DEMAND ACCESS IS UNREASONABLE

IECPA's Motion for Clarification requests access to Customer-Specific Discount Information at any time, Monday through Friday, if note taking is not permitted. Peoples cannot promise on-demand access to Customer-Specific Discount Information. Such access would require the constant availability of a Peoples' representative to sit in the inspection room. Instead, Peoples can only promise that it will permit access by IECPA at reasonable times upon appointment and that it will not unreasonably delay access. Again, this is an issue that should be resolved through reasonable conversations between counsel.

VII. COMPETITIVE DUTY STATUS OF IECPA CONSULTANT

Despite concerns regarding Ms. Burgraff's historic provision of consulting services for entities that market, sell, or purchase natural gas or natural gas transportation services to Peoples or competitors of Peoples or on Peoples' or its competitors' systems, or explore for or produce natural gas, and her ability to market herself as having worked for Peoples' predecessor, Peoples does not intend at this time to assert that Ms. Burgraff is Competitive Duty Personnel under the

Protective Order. Peoples nevertheless reserves its right to assert that Ms. Burgraff is Competitive Duty Personnel should her provision of consulting services change during the course of this proceeding.

VIII. PUBLIC ADVOCATES DO NOT HAVE AN ECONOMIC INTEREST

Through its Motion for Clarification, IECPA is again challenging the Public Advocates' receipt of Customer-Specific Discount Information. This is an issue that was raised by IECPA in its answer to Peoples' Motion for Protective Order and that has already been decided. There is a rational basis for drawing a distinction between the Public Advocates and other parties to this proceeding. The Public Advocates are not engaged in business-related activities on Peoples' system. In contrast, Customer-Specific Discount Information can provide a direct economic advantage to the members of IECPA -- several of whom are customers on Peoples' system who have competitive options. Accordingly, a distinction in the method of production of Customer-Specific Discount Information is warranted. IECPA is not prejudiced by the distinction. IECPA still has access. It simply has to follow a different process in order to protect the competitive interests of Peoples and the other natural gas distribution companies.

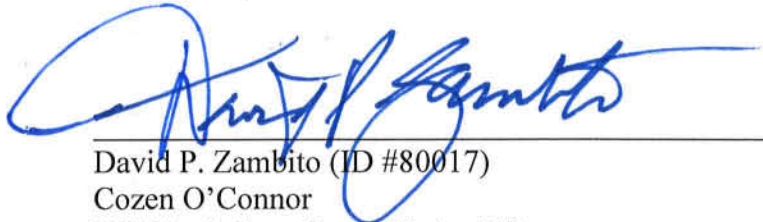
IX. CONCLUSION AND REQUEST FOR RELIEF

IECPA has been dilatory in requesting access to Peoples' Customer-Specific Discount Information. It now requests that the protections promised by the Protective Order in this matter be ignored for expediency purposes. The Protective Order represents a reasonable accommodation of competing interests and the processes detailed therein for access to Customer-Specific Discount Information should be followed.

WHEREFORE, Peoples Natural Gas Company LLC respectfully requests that:

- (a) the Motion of IECPA for Clarification and Request for Expedited Consideration, filed on June 24, 2013, be denied in its entirety;
- (b) IECPA be required to follow the processes detailed in the Protective Order for inspection of Highly Confidential Information (including Customer-Specific Discount Information), including initial inspection of Customer-Specific Discount Information by Authorized Inspecting Lawyers;
- (c) IECPA and other similarly-situated parties be restricted from taking notes during inspection of Highly Confidential Information (including Customer-Specific Discount Information); and,
- (d) Producing parties be permitted to have a representative present in the room during the inspection of Highly Confidential Information (including Customer-Specific Discount Information).

Respectfully submitted,



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