



July 23, 2013

**VIA HAND DELIVERY**

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Honorable Elizabeth H. Barnes  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
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**

**PEOPLES NATURAL GAS COMPANY LLC AND PEOPLES TWP LLC'S LETTER IN LIEU OF ANSWER TO MOTION TO COMPEL OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA, DATED JULY 18, 2013**

Dear Administrative Law Judge Barnes:

Please be advised that neither Peoples Natural Gas Company LLC ("Peoples") nor Peoples TWP LLC ("PTWP") will be filing a formal answer to the Motion to Compel of the Industrial Energy Consumers of Pennsylvania ("IECPA"), dated July 18, 2013 ("Motion to Compel") and, instead, Peoples and PTWP will provide written responses to the disputed interrogatories by Friday, July 26, 2013. Nevertheless, Peoples and Peoples TWP take this opportunity to emphasize the objectionable character of IECPA's discovery and to re-emphasize that Peoples' proposed Equitable acquisition will have a substantial impact on the scope and nature of gas-on-gas competition within the Commonwealth – resulting in the potential for changed facts during the course of this proceeding.

Attached for your reference are copies of Peoples' and PTWP's Objections, dated July 8, 2013, to IECPA-to-Peoples Set IV, Nos. 5, 10, 13 and 17 and IECPA-to-PTWP Set IV, No. 6 ("Objections"). IECPA failed to attach copies of the Objections to its Motion to Compel.

IECPA-to-Peoples Set IV, No. 6 and IECPA-to-PTWP Set IV, No. 5 request specific details (down to the street level) regarding the location of Equitable Gas Company, LLC's ("Equitable") distribution pipelines in relation to those of Peoples and PTWP. As explained to IECPA's counsel prior to the filing of IECPA's Motion to Compel, Peoples and PTWP do not have within their control detailed information regarding the location of Equitable's distribution pipelines. Instead, all that Peoples and PTWP can offer is a general description of where they believe Equitable's pipelines to be located in proximity to their pipelines. Peoples and PTWP intend to respond to these data requests by providing a listing of municipalities within their respective service territories in which they believe there to be Equitable pipelines. Peoples has also produced a distribution system map in response to OCA-to-Peoples Set I, No. 12 which

indicates, to the best of Peoples' knowledge, where there are overlapping service territories with other natural gas distribution companies, including Equitable. Peoples and PTWP hope that the responses will satisfy IECPA's requests and, again, express their willingness to work with IECPA to find solutions to discovery disputes without resorting to formal filings.

With regard to IECPA-to-Peoples Set IV, Nos. 10, 13, and 17, Peoples' Objections point out the fact that IECPA is now taking a position that is wholly inconsistent with the position it took in its Answer, dated February 1, 2013, to Peoples' Motion to Hold Proceeding in Abeyance, dated January 23, 2013 ("Abeyance Motion"). In its Answer, IECPA stated with regard to the pending acquisition of Equitable by Peoples: "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. . . . This historical data related to gas-on-gas competition is all that is required for analyzing the benefits of this 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." IECPA Answer to Abeyance Motion, p. 5 (emphasis added). By "Scheduling Order" dated February 5, 2013, Your Honor denied Peoples' Abeyance Motion.

In stark contrast to its February assertions, IECPA now asserts that: "IECPA continues to believe that, particularly with respect to the two NGDCs involved in the merger proceeding, *i.e.*, Peoples and Equitable, the impact of the merger on their positions on gas-on-gas competition is **highly relevant** to the instant proceeding." IECPA Motion to Compel, p. 5 (emphasis added). The inconsistency of IECPA's positions within the same proceeding is damaging to the Commission's hearing process, and IECPA would properly be estopped from now asserting a position different from the position it successfully asserted earlier in the proceeding. *See, e.g., Trowbridge v. Scranton Artificial Limb Co.*, 560 Pa. 640, 747 A.2d 862, 864 (2000)(explaining that a party to an action is judicially estopped from assuming a position inconsistent with a previous assertion if his or her contention was successfully maintained); *see also Associated Hosp. Serv. Of Phila. v. Pustilnik*, 497 Pa. 221, 439 A.2d 1149, 1151 (1981). The purpose of judicial estoppel is to uphold the integrity of the courts by preventing litigants from "playing fast and loose" with the judicial system by changing positions to suit their legal needs. *Trowbridge*; *see also Gross v. City of Pittsburgh*, 686 A.2d 864, 867 (Pa. Cmwlth. 1996).

Peoples, nevertheless, upon reflection, has elected to answer IECPA's discovery requests with regard to its pending acquisition of Equitable rather than prolonging this discovery dispute by pushing it to judicial resolution. In answering the objectionable discovery requests, Peoples does not waive, and, in fact, through this response has maintained the integrity of, its own position, which it set forth in its Abeyance Motion (albeit unsuccessfully), that the Equitable acquisition will have a substantial impact on the scope and nature of gas-on-gas competition within the Commonwealth.


Honorable Elizabeth H. Barnes  
July 23, 2013  
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Thank you for your attention to this matter. Please do not hesitate to contact the undersigned with any questions.

Respectfully,

COZEN O'CONNOR



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

DPZ/kmg  
Enclosures

**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 Letter in Lieu of Answer to Motion to Compel of the Industrial Energy Consumers of Pennsylvania, dated July 18, 2013, 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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David P. Zambito, Esquire  
Counsel for *Peoples Natural Gas Company LLC*

Date: July 23, 2013

**PEOPLES NATURAL GAS COMPANY LLC'S  
OBJECTIONS TO INDUSTRIAL ENERGY  
CONSUMERS OF PENNSYLVANIA'S  
INTERROGATORIES, SET IV  
QUESTION NOS. 5, 6, 10, 13, AND 17**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge  
Elizabeth H. Barnes

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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 :

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**PEOPLES NATURAL GAS COMPANY LLC'S  
OBJECTIONS TO INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA'S  
INTERROGATORIES, SET IV, QUESTION NOS. 5, 6, 10, 13, and 17**

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Pursuant to 52 Pa. Code §§ 5.342(c) and (e), Peoples Natural Gas Company LLC ("Peoples") hereby objects to the Interrogatories propounded by the Industrial Energy Consumers of Pennsylvania ("IECPA") on Peoples on June 28, 2013 as follows:

**IECPA to Peoples Set IV, Question No. 5**

*Q5. Would Peoples' position on gas-on-gas discounting elimination and the need for cost-based rates be the same if the merger of Peoples and Equitable does not occur?*

**Objection**

A party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Information is relevant if it is reasonably

calculated to lead to the discovery of admissible information. See 52 Pa. Code § 5.321(c)(regarding “Scope” of discovery).

“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. . . . This historical data related to gas-on-gas competition is all that is required for analyzing the benefits of this 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.” IECPA Answer, dated Feb. 1, 2013, to Motion to Hold Proceeding in Abeyance Pending Commission Final Action in Proposed Acquisition of Equitable Gas Company, LLC by Peoples Natural Gas Company LLC, Docket Nos. P-2011-2277868, I-2012-21320323, p. 5 (emphasis added); cf. Scheduling Order of Administrative Law Judge Elizabeth Barnes, dated Feb. 5, Docket Nos. P-2011-2277868, I-2012-21320323, p. 5 (agreeing with IECPA and denying Motion to Hold Proceeding in Abeyance).

IECPA has successfully asserted that information related to the acquisition of Equitable by Peoples is “entirely irrelevant” to the instant generic proceeding; therefore, IECPA is precluded – for the sake of the integrity of the Commission’s hearing process – from now asserting that facts related to the acquisition are relevant. A party to an action is judicially estopped from assuming a position inconsistent with a previous assertion if his or her contention was successfully maintained. See *Trowbridge v. Scranton Artificial Limb Co.*, 560 Pa. 640, 747 A.2d 862, 864 (2000); *Associated Hosp. Serv. of Phila. v. Pustilnik*, 497 Pa. 221, 439 A.2d 1149, 1151 (1981). The purpose of judicial estoppel is to uphold the integrity of the courts by

preventing litigants from “playing fast and loose” with the judicial system by changing positions to suit their legal needs. *Trowbridge*; see also *Gross v. City of Pittsburgh*, 686 A.2d 864, 867 (Pa. Cmwlth. 1996). For this reason, Peoples objects to the instant interrogatory.

**IECPA to Peoples Set IV, Question No. 6**

Q6. Please breakdown the 200 miles which was the Company's response to IECPA Set III, No. 005, by street name, and to the extent available, by city, borough, or township and county.

**Objection**

Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden, or expense. *Id.* § 5.361(a)(regarding “Limitation of scope of discovery”). The instant interrogatory would cause unreasonable annoyance, oppression, burden, and expense because Peoples does not maintain this information with the degree of specificity requested and does not have access to the information necessary to develop the specific information requested.

**IECPA to Peoples Set IV, Question No. 10**

Q10. If the Peoples-Equitable merger is approved, will Columbia Gas of Pennsylvania, Inc., be Peoples' only gas-on-gas competitor NGDC? If no, list the others.

**Objection**

Please see the objection to IECPA to Peoples Set IV, Question No. 5, which is incorporated herein as if fully set forth.

**IECPA to Peoples Set IV, Question No. 13**

*Q13. If it is Peoples' plan to have cost based rates for service for its customers, will those cost based rates include negative surcharges that will be filed to reduce its rates between rate cases as economies of scale take effect due to the merger of Peoples and Equitable and costs of service decrease? (similar to positive surcharges such as DSICs which are used as cost of providing service increase)*

**Objection**

Please see the objection to IECPA to Peoples Set IV, Question No. 5, which is incorporated herein as if fully set forth.

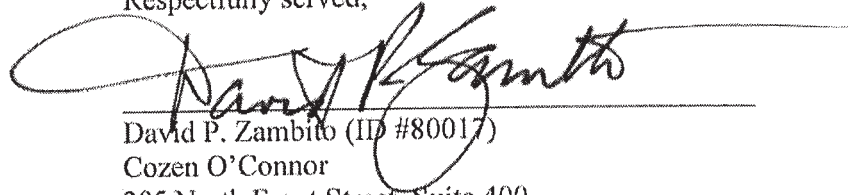
**IECPA to Peoples Set IV, Question No. 17**

*Q17. Referring to the response to IECPA Set III, No. 014, Peoples states that it would "propose to honor the rates and provisions for the term of existing contracts for discounted NGDC-on-NGDC customers and to permit recovery of such discounts until those contracts expire." If Peoples' plant is transferred to Equitrans in the Peoples-Equitable merger, and Equitrans gets FERC approval for a modernization and compliance tracker, will Peoples be offsetting any compliance and modernization tracker increases with reductions to its distribution negotiated rates so that the rates paid by the customers will remain the same throughout the term of the contract? Similarly, is this Peoples' intent when saying it will "honor the rates and provisions" of the existing contracts as stated in the response to IECPA Set III, No. 014?*

Objection

Please see the objection to IECPA to Peoples Set IV, Question No. 5, which is incorporated herein as if fully set forth.

Respectfully served,



David P. Zambito (ID #80017)

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**PEOPLES TWP LLC'S  
OBJECTIONS TO INDUSTRIAL ENERGY  
CONSUMERS OF PENNSYLVANIA'S  
INTERROGATORIES, SET IV  
QUESTION NO. 5**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge  
Elizabeth H. Barnes

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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
	:	:	

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**PEOPLES TWP LLC'S  
OBJECTIONS TO INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA'S  
INTERROGATORIES, SET IV, QUESTION NO. 5**

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Pursuant to 52 Pa. Code §§ 5.342(c) and (e), Peoples TWP LLC ("PTWP") hereby objects to the Interrogatories propounded by the Industrial Energy Consumers of Pennsylvania ("IECPA") on PTWP on June 28, 2013 as follows:

**IECPA to PTWP Set IV, Question No. 5**

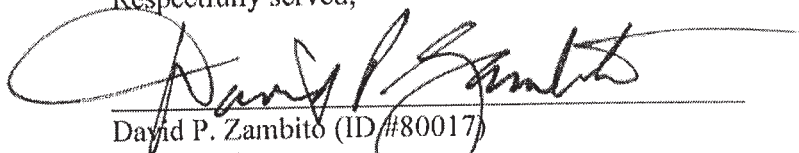
*Q5. Please breakdown the 200 miles [sic – correct reference is 100 miles] which was the Company's response to IECPA Set III, No. 005, by street name, and to the extent available, by city, borough, or township and county.*

**Objection**

Discovery is not permitted if it would cause unreasonable annoyance, oppression, burden, or expense. Id. § 5.361(a)(regarding "Limitation of scope of discovery"). The instant

interrogatory would cause unreasonable annoyance, oppression, burden, and expense because PTWP does not maintain this information with the degree of specificity requested and does not have access to the information necessary to develop the specific information requested.

Respectfully served,



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