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September 18, 2013

Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17015

VIA E-MAIL AND FIRST CLASS MAIL

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 Judge Barnes:

Enclosed please find the Motion for Stay on behalf of the Industrial Energy Consumers of Pennsylvania ("IECPA") which was filed electronically with the Pennsylvania Public Utility Commission in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, copies of the Motion have been duly served upon the participants in this proceeding. Please contact us if you have any questions regarding the enclosed documents. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

Counsel to the Industrial Energy Consumers of Pennsylvania

TKS/sar
Enclosures

c: Rosemary Chiavetta, Secretary (Via Electronic Filing)
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

Docket Nos. P-2011-2277868 and I-2012-2320323

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Dated this 18th day of September, 2013, at Harrisburg, Pennsylvania

2. On September 5, 2013, ALJ Barnes issued an Order in response ("September 5 Order"), which granted Peoples' Motion to Compel. The September 5 Order further required IECPA to provide written responses and verifications to these Interrogatories by no later than September 20, 2013. The September 5 Order also made the following finding with respect to IECPA's corporate status: "IECPA has intervened as a collective group but there is no evidence that it is a corporation. It appears to be an ad hoc affiliation of natural gas customers with a common interest in this proceeding, whose standing comes from its individual members' interests." September 5 Order, p. 4.

3. On September 9, 2013, IECPA filed its Petition. IECPA's Petition requested that ALJ Barnes certify the following question to the Commission for review: "whether, as a matter of law, a party to a proceeding may ask interrogatories from individual business entities (including their representatives) that are not parties to the same proceeding, specifically when the individual business entities are only involved in the proceeding as members of a corporation that is a party to the proceeding." Petition, pp. 1-2. Action by Your Honor on IECPA's Petition remains pending.

4. On September 16, 2013, Peoples submitted its Responsive Brief to IECPA's Petition. Peoples argues, in part, that a stay of this proceeding is warranted if ALJ Barnes elects to certify IECPA's question to the Commission for interlocutory review. Peoples further argues that a stay of this proceeding should be granted if ALJ Barnes elects to hold hearings regarding IECPA's corporate status.

5. Also on September 16, 2013, Peoples submitted its Set III Interrogatories to IECPA. As with the disputed interrogatories in Peoples' Set II, a number of Peoples' Set III

Interrogatories request answers not from IECPA, as the party to the proceeding, but from each of IECPA's individual members.

II. ARGUMENT

6. Pursuant to the Commission's regulations at 52 Pa. Code § 5.483(a), a presiding officer's authority includes, but is not limited to, "the power to 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." This authority must be construed liberally to "secure the just, speedy and inexpensive determination of every action or proceeding" 52 Pa. Code § 1.2. Accordingly, Your Honor is procedurally authorized to rule on the instant Motion for Stay to ensure that this proceeding progresses in a just, efficient, non-discriminatory, and reasonable manner.

7. The Commission has adopted the standards set forth in *Pa. Pub. Util. Comm'n v. Process Consumer Gas Group* as the applicable law in determining whether a stay should be granted. Pursuant to the requirements of *Process Gas*, a stay is warranted if:

- (1) the petitioner makes a strong showing that he is likely to prevail on the merits;
- (2) the petitioner has shown that without the requested relief, he will suffer irreparable injury;
- (3) the issuance of a [stay] will not substantially harm other interested parties in the proceedings; and
- (4) the issuance of a stay will not adversely affect the public interest.

Pa. Pub. Util. Comm'n v. Process Consumer Gas Group, 467 A.2d 805, 808-09 (Pa. 1983) (citing *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958)). As discussed more fully herein, IECPA's request for a stay of this proceeding satisfies all four prongs of the *Process Gas* test and, thus, is warranted in the instant situation pending final disposition by the Commission of IECPA's Petition.

8. First, as demonstrated in IECPA's Petition, the intent of the Commission's regulations is to facilitate participation in the discovery process by parties to a proceeding. The PUC's regulations only allow for interrogatories to be served by parties on other parties to the proceeding. 52 Pa. Code § 5.341(a). An entity, other than the statutory advocates, becomes a party to a PUC proceeding after its Petition to Intervene is granted. *See* 52 Pa. Code § 5.71(a)(2). IECPA filed a Petition to Intervene in this proceeding, which was granted by Your Honor on August 31, 2012, based on IECPA's longstanding practice of participation in PUC proceedings. Moreover, IECPA, the entity that filed this Petition, is an incorporated entity; IECPA did not file this Petition as individual members of an "ad hoc affiliation" as contemplated in the Order. Given that IECPA is able to demonstrate that it is a corporate entity for purposes of participation in this proceeding, a verifiable question arises as to why IECPA members, rather than IECPA itself, should be required to individually answer interrogatory requests in this proceeding.¹ Such a question constitutes a "significant legal issue involving interpretation of the Public Utility Code," which the Pennsylvania Supreme Court has deemed sufficient to demonstrate a "substantial case on the merits" warranting a stay. *See Pa. Pub. Util. Comm'n v. Process Consumer Gas Group*, 467 A.2d 805, 809 (Pa. 1983). In light of the aforementioned PUC regulations only allowing for a party to answer interrogatory requests, combined with IECPA's status as a corporation, IECPA submits that it will prevail in confirming that the PUC does not intend to expand its regulations to require individual members of a corporation to respond to interrogatory requests, especially when those individuals are not parties to the proceeding. Accordingly, the first prong of granting a stay of this proceeding is met. *See id.*, 467 A.2d at 810.

¹ *See* Petition for Interlocutory Review of a Material Question of Law of the Industrial Energy Consumers of Pennsylvania, Docket Nos. P-2011-2277868, *et al.*, Appendix A (Sept. 9, 2013) (providing IECPA's Certificate of Good Standing).

9. Second, IECPA will suffer irreparable injury if a stay is not granted. As discussed in Paragraph 5, *supra*, Peoples' Set III Interrogatories includes irrelevant requests for answers directed at IECPA's individual members rather than IECPA, as party to this proceeding. Absent Commission action on the certified question set forth in IECPA's Petition, the discovery dispute between Peoples and IECPA regarding these irrelevant Interrogatories is likely to continue, and will therefore likely impact IECPA's ability to effectively prepare its Rebuttal Testimony prior to the October 17, 2013, deadline. A stay of this proceeding pending final action by the Commission on IECPA's Petition is therefore necessary to prevent the harm IECPA will suffer if required to develop Rebuttal Testimony while this discovery dispute remains ongoing.

Moreover, if a stay of this proceeding is not granted, the September 5 Order will serve as precedent to allow parties to demand that each individual member of an organization, rather than the organization that maintains party status in the proceeding, provide individual answers to all interrogatory requests. Such a requirement would have a crippling effect on the ability of these organizations to participate effectively in PUC proceedings by overwhelming their resources and eliminating the efficiencies of collective participation in PUC proceedings. Compliance with the directives of the Order would require IECPA to produce cumbersome, time-consuming written responses and verifications for each of its 22 members. Unlike Peoples and other utility corporations, which employ corporate executives, in part, for the purpose of participating in PUC proceedings, IECPA's member representatives' responsibilities are with their individual job positions at their business entities. That focus is one of the main reasons IECPA members sought participation as an incorporated entity. Requiring these employees to answer individual interrogatories would necessitate considerable time away from their jobs, which can never be recouped if IECPA is successful in its Petition. A stay of this proceeding is therefore warranted

to avoid "unreasonable annoyance, embarrassment, oppression, burden or expense" to IECPA. 52 Pa. Code § 5.361(a)(2).

10. Third, a stay of this proceeding will not substantially harm other interested parties in the proceedings. Rather, in light of the ongoing discovery disputes, IECPA submits that a stay of this proceeding pending final action by the Commission on IECPA's Petition would benefit other interested parties by ensuring that all parties' current and future interrogatory requests comport with the intent of the Commission's regulations. Given the current uncertainty surrounding the discovery process, interested parties will not be harmed by a stay of this proceeding, and their ability to participate fully in this proceeding will not be affected.

11. Finally, granting a stay of this proceeding will not adversely affect the public interest. In fact, failure to stay this proceeding will give precedential effect to the September 5 Order, which is detrimental to the public interest. As previously discussed, organizations that frequently participate in PUC proceedings on behalf of individual members, including IECPA, the Pennsylvania Independent Oil and Gas Association ("PIOGA"), the Energy Association of Pennsylvania ("EAP"), and the Retail Energy Supply Association ("RESA"), will now be required to answer interrogatories directed at their individual members rather than at the group as a whole. Such a requirement contravenes the effectiveness of group participation in PUC proceedings and is detrimental to the public interest.

12. Accordingly, IECPA's Motion meets the standard set forth by the Commission in granting a stay in a proceeding. As detailed above, the four prongs required for allowance of a stay are evidenced by IECPA, and, as such, IECPA's request for a Motion to Stay this proceeding until resolution of the Petition can be achieved should be granted.

WHEREFORE, for all the foregoing reasons, the Industrial Energy Consumers of Pennsylvania respectfully request that the Administrative Law Judge issue an Order staying the instant proceeding until resolution of the September 9, 2013, Petition for Interlocutory Review is achieved.

Respectfully submitted,

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Dated: September 18, 2013

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