



COMMONWEALTH OF PENNSYLVANIA

September 23, 2013

HAND DELIVERY

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

**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:

I am delivering for filing today the Objections to the Amended Discovery Order, on behalf of the Office of Small Business Advocate, in the above-captioned proceedings.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: Parties of Record
Robert D. Knecht

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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 |
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**OBJECTIONS OF THE OFFICE OF SMALL BUSINESS
ADVOCATE TO AMENDED DISCOVERY ORDER**

I. BACKGROUND

Peoples Natural Gas Company (“Peoples”) submitted its Set II interrogatories to the Industrial Energy Consumers of Pennsylvania (“IECPA”) on July 5, 2013. On July 15, 2013, IECPA timely objected to certain of these interrogatories because they requested responses from each of IECPA’s individual members in addition to IECPA. IECPA argued that such interrogatories are unduly burdensome and irrelevant given that only IECPA, and not its individual members, is a party to this proceeding.

In response, Peoples filed a Motion to Compel on July 25, 2013. Peoples argued that IECPA had presented no evidence that it is anything other than an unincorporated *ad hoc* group, and even if it were incorporated, it derives its standing from its individual members and such members should not be permitted to hide behind the veil of a collective group to avoid discovery requests. Moreover, Peoples argued that in this proceeding, the facts surrounding IECPA individual members’ rate discounts as a result of gas-on-gas competition is clearly relevant to this investigation, or, at the least, is likely to lead to the discovery of admissible evidence.

IECPA filed an Answer to Peoples' Motion to Compel on July 30, 2013, which, in addition to making the arguments mentioned above, argued for the first time that because it is in fact incorporated, each of its individual members should not be subject to discovery. In apparent support of that argument, IECPA attached a copy of its by-laws.

Administrative Law Judge ("ALJ") Elizabeth H. Barnes issued an order on September 5, 2013 ("Discovery Order"), ruling that Peoples' discovery request is relevant and not unduly burdensome and ordering IECPA to respond no later than September 20, 2013, to the interrogatories to which it had objected.

IECPA filed a Petition for Interlocutory Review on September 9, 2013, asking that the following specific question be submitted to the Commission for review:

[W]hether, 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.¹

On September 16, 2013, Peoples, IECPA, and the Office of Small Business Advocate ("OSBA") each filed briefs in response to IECPA's Petition.

ALJ Barnes treated IECPA's Petition for Interlocutory Review as a Petition for Reconsideration and by Order dated September 20, 2013 ("Amended Discovery Order"), granted the Petition based upon IECPA's submission of a certificate from the Department of State stating that IECPA is a corporation, rather than an *ad hoc* association as ALJ Barnes had initially believed.

¹ Petition at 2. The Petition also attached as an appendix IECPA's Certificate of Good Standing issued by the Commonwealth of Pennsylvania Department of State on September 6, 2013, and certifying that IECPA is duly incorporated as a Pennsylvania Corporation.

The Amended Order also denied Peoples' request for an evidentiary hearing to determine whether IECPA is a *bona fide* corporation and whether the corporate veil should be pierced to permit discovery from IECPA's individual members.

The OSBA objects to the Amended Order as follows.

II. OBJECTIONS

The OSBA objects to the Amended Order in that it takes judicial notice of a fact without giving the parties adequate notice and opportunity to respond. Pursuant to the regulations of the Pennsylvania Public Utility Commission ("Commission"), when the decision of a presiding officer rests on judicial notice of a material fact not appearing in the evidence of the record, the parties are to be notified.² Upon being notified, adversely affected parties are to be given the opportunity to show that the facts are not properly noticed or that alternative facts should be noticed.³

The Amended Order takes judicial notice of the Certificate of Good Standing submitted by IECPA and deems it to be sufficient evidence of IECPA being a *bona fide* corporation. The other parties, however, have not been given the opportunity to object to judicial notice of this fact or to offer alternative facts.

Due process requires an evidentiary hearing to determine whether IECPA, since its incorporation, has satisfied the requirements necessary to be a *bona fide* corporation and avoid piercing the corporate veil. The Amended Order makes a summary decision as to whether IECPA is a *bona fide* corporation without sufficient record evidence and without a hearing to permit the presentation of other facts by adversely affected parties.

² 52 Pa. Code §5.408(b).

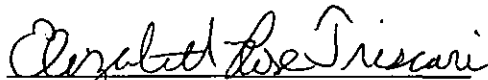
³ 52 Pa. Code §5.408(c).

The OSBA and other parties' due process rights have been violated by the Amended Order. Accordingly, if in the course of this proceeding, IECPA submits testimony or makes arguments that rely on evidence on which the parties were prohibited from taking discovery pursuant to the Amended Order, the OSBA will (a) move to strike such testimony and/or arguments and (b) have a basis to appeal any decisions that rely on such evidence.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully objects to the Amended Order, but does not seek any affirmative relief at this time.

Respectfully submitted,



Elizabeth Rose Triscari
Assistant Small Business Advocate
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For:

John R. Evans
Small Business Advocate

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Dated: September 23, 2013

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Objections to the Amended Discovery Order, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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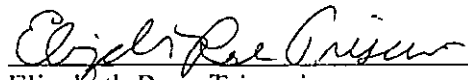
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Date: September 23, 2013


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