



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

February 25, 2014

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
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

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's  
(I&E) **Main Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please  
contact me at (717) 783-7998.

Sincerely,

Allison C. Kaster  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #93176

ACK/sea  
Enclosure

cc: Parties of Record  
Hon. Elizabeth H. Barnes

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GENERIC INVESTIGATION	:	
REGARDING GAS-ON-GAS	:	Docket No. P-2011-2277868
COMPETITION BETWEEN	:	I-2012-2320323
JURISDICTIONAL NATURAL	:	
GAS DISTRIBUTION COMPANIES	:	

---

**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

---

Allison C. Kaster  
Prosecutor  
PA Attorney I.D. No. 93176

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

Dated: February 25, 2014

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
	A. Explanation of Gas-on Gas Competition .....	1
	B. History of the Proceeding .....	1
II.	SUMMARY OF ARGUMENT .....	6
III.	ARGUMENT .....	7
	A. Ratepayer Funded Gas-on-Gas Competition Results in Unjust, Unreasonable and Discriminatory Rates.....	7
	B. The Commission Previously Determined that Ratepayer Funded Gas-on Gas Competition is Not in the Public Interest.....	9
	C. Ratepayer Funded Gas-on-Gas Competition is Not in the Public Interest.....	14
	1. Ratepayer Funded Gas-on Gas Competition Harms Captive Customers and NGDCs.....	14
	2. Specially Situated Flex Customers Benefit from Ratepayer Funded Gas-on-Gas Competition at the Expense of Captive Consumers .....	20
	3. Despite the Recent Merger of Competitive NGDCs, it is in the Public Interest for the Commission to Eliminate Ratepayer Funded Gas-on Gas Competition in this Investigation.....	23
	D. Peoples/PTWP Recommendation to Continue Gas-on-Gas Competition in a Modified Form Should be Rejected.....	26
IV.	CONCLUSION .....	31

## TABLE OF AUTHORITIES

### Cases

<i>Application of Equitable Gas Company</i> Docket No. A-121100F0003, (Order entered August 13, 1999) .....	10
<i>Fed. Power Comm'n v. Hope Natural Gas Co.,</i> 320 U.S. 592 (1944) .....	19
<i>Kossman v. Pa. PUC, 694</i> A.2d 1147, 1151 (Pa. Cmwlth. Ct. 1997) .....	27
<i>Joint Application of Equitable Resources, Inc.,</i> <i>and The Peoples Natural Gas Company, d/b/a Dominion Peoples,</i> <i>for approval of the transfer of all stock and rights of</i> <i>The Peoples Natural Gas Company to Equitable Resources, Inc.,</i> <i>and for the approval of the transfer of all stock of Hope Gas, Inc.,</i> <i>dba Dominion Hope, to Equitable Resources, Inc.,</i> Docket No. A-122250F5000, (Order entered April 13, 2007) .....	8, 12, 14, 21, 27
<i>Joint Application of Peoples Natural Gas Company LLC,</i> <i>Peoples TWP LLC, and Equitable Gas Company, LLC</i> <i>for all of the Authority and the Necessary Certificates of Public</i> <i>Convenience (1) to transfer all of the Issued and Outstanding</i> <i>Limited Liability Company Membership Interest in Equitable Gas</i> <i>Company, LLC to PNG Companies LLC, (2) to Merge Equitable</i> <i>Gas Company, LLC with the Peoples Natural Gas Company, LLC. (3)</i> <i>to Transfer Certain Storage and Transmission Assets of Peoples</i> <i>Natural Gas Company, LLC to Affiliates of EQT Corporation, (4)</i> <i>to Transfer Certain Assets Between Equitable Gas Company, LLC</i> <i>and Affiliates of EQT Corporation, (5) for Approval of Certain</i> <i>Ownership Changes Associated with the Transaction, (6)</i> <i>for Approval of Certain Associated Gas Capacity and Supply</i> <i>Agreements, and (7) for Approval of Certain Changes in the</i> <i>Tariff of Peoples Natural Gas Company LLC,</i> Docket No. A-2013-2353647, (Order entered November 14, 2013) .....	25
<i>Joint Application of T.W. Phillips Gas and Oil Company,</i> <i>TWP INC., and LDC Holdings II LLC for approval of</i> <i>a change of control of T.W. Phillips and Oil Company</i> <i>from TWP INC. to LDC Holdings II LLC, an indirect subsidiary</i> <i>of SteelRiver Infrastructure Fund North America LP,</i>	

Docket No. A-2010-2210326, (Order entered May 23, 2011).....	3
<i>Middletown Township v. Pa. P.U.C.</i> , 482 A.2d 674 (Pa. Cmwlt. 1984) .....	21
<i>Pa. PUC v. Columbia Gas of Pennsylvania, Inc.</i> , Docket No. R-2010-2215623, (Order entered October 14, 2011).....	3
<i>Pa. PUC v. Equitable Gas Company</i> , <i>a division of Equitable Resources, Inc.</i> , Docket No. R-00050272, (Order entered September 28, 2005) .....	11
<i>Pa. PUC v. Peoples Natural Gas Company</i> , Docket No. R-2010-2201702, (Order entered June 9, 2011).....	2
<i>Pa. PUC v. The Peoples Natural Gas Company, t/a Dominion Peoples</i> , Docket No. R-00050267, (Order entered September 30, 2005).....	11
<i>Pennsylvania Electric Co. v. Pa. P.U.C.</i> , 509 Pa. 324, 502 A.2d 130 (1985) .....	19
<i>Pennsylvania Public Utility Commission v. Duquesne Light Co.</i> , 57 Pa. P.U.C. 1, 61, 51 PUR 4th 198, 252 (1983) .....	28
<i>Pennsylvania Public Utility Commission v.</i> <i>National Fuel Gas Distribution Corporation</i> , 40 PUR 4th 101, 46 (1980) .....	28
<i>Shenango Township Board of Supervisors v. Pa. PUC</i> , 686 A.2d 910, 914 (Pa. Cmwlt. Ct. 1996) .....	27
<i>Zucker v. Pa. PUC</i> , 401 A.2d 1377 (Pa. Cmwlt. Ct. 1979) .....	27
 <b><u>Statutes</u></b>	
66 Pa.C.S. § 1301 .....	7, 26
66 Pa.C.S. § 1304 .....	7

## I. INTRODUCTION

### A. Explanation of Gas-on-Gas Competition

Four natural gas distribution companies (NGDCs) in western Pennsylvania have overlapping service territories that allow commercial and industrial customers to be served by more than one NGDC. These four NGDCs, comprised of Equitable Gas Company, LLC (Equitable),<sup>1</sup> Peoples Natural Gas Company LLC (Peoples), Peoples TWP LLC (PTWP) and Columbia Gas of Pennsylvania, Inc. (Columbia), currently engage in gas-on-gas competition. This practice allows NGDCs to offer distribution rates that are below the approved maximum tariff rate in order to retain or gain customers who have the ability to be served by a competitor NGDC. The difference between the discounted rate and the full tariff rate creates a revenue shortfall that the NGDC recovers from its captive customers who do not have a competitive alternative. As a result, tariff rates for captive customers are higher than what they would otherwise be because those customers pay for discounts that are enjoyed by a select group of commercial and industrial customers. In total, 401 flex customers currently receive gas-on-gas distribution discounts, resulting in a \$19.0 million revenue shortfall that is recovered from captive customers in western Pennsylvania.

### B. History of the Proceeding

Concerns about the ratemaking treatment of the revenue shortfall caused by gas-on-gas discounts have been raised in several Commission proceedings. Parties in those

---

<sup>1</sup> On December 17, 2013, Peoples Natural Gas Company LLC acquired Equitable Gas Company LLC with that company becoming the Equitable Division of Peoples Natural Gas Company LLC (Peoples-Equitable Division).

proceedings agreed that it was appropriate to address issues surrounding gas-on-gas competition uniformly in a generic investigation rather than in individual base rate proceedings because gas-on-gas competition impacts multiple NGDCs and their respective customers. Accordingly, on December 8, 2011, the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), PTWP and Peoples (collectively, Joint Petitioners) filed a Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies (Joint Petition).

The initiation of this generic investigation arose from a series of settlement agreements. The Peoples 2010 base rate settlement provided:

OTS, OCA, OSBA, and Peoples agree to request, by separate filing made within 60 days of the Commission’s approval of this Settlement, that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address whether NGDC to NGDC competition should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other parties reserve the right to challenge the necessity for any such investigation or rulemaking.<sup>2</sup>

Columbia’s 2010 base rate settlement contained a similar term:

Columbia agrees to join with OTS, OCA and/or OSBA in a request that the Commission initiate a generic investigation or rulemaking to address whether flex discounts solely as a result of competition from other NGDCs should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate. Other Parties

---

<sup>2</sup> *Pa. PUC v. Peoples Natural Gas Company*, Docket No. R-2010-2201702, Settlement ¶ 29 (Order entered June 9, 2011).

reserve the right to challenge the necessity for any such investigation or rulemaking.<sup>3</sup>

Additionally, the settlement in T.W. Phillips Gas and Oil Co.'s merger with Peoples stated that:

T. W. Phillips agrees to join with OTS, OCA, and OSBA, in a request to be made by separate filing, that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address whether Natural Gas Distribution Company ("NGDC") to NGDC competition should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other Signatory Parties and any other party not a signatory to the Settlement reserve the right to challenge the necessity for any such investigation or rulemaking.<sup>4</sup>

As a result of these settlements, the Joint Petitioners filed the instant Joint Petition requesting the Commission to:

initiate a generic investigation or rulemaking with regard to competition among NGDCs, flexing of distribution rates to meet such competition, and treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings.

On July 25, 2012, the Commission issued a Secretarial Letter stating that the issues related to a NGDC's flexing of distribution rates to meet the lower rates from other NGDCs and the treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings should be resolved through a generic investigation. Accordingly,

---

3 *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2010-2215623, p. 15 (Order entered October 14, 2011).

4 *Joint Application of T.W. Phillips Gas and Oil Company, TWP INC., and LDC Holdings II LLC for approval of a change of control of T.W. Phillips and Oil Company from TWP INC. to LDC Holdings II LLC, an indirect subsidiary of SteelRiver Infrastructure Fund North America LP*, Docket No. A-2010-2210326, Settlement ¶ 67 (Order entered May 23, 2011).

the Commission assigned this matter to the Office of Administrative Law Judge for disposition and resolution.

The case was assigned to Administrative Law Judge (ALJ) Elizabeth H. Barnes, who conducted an initial prehearing conference on August 31, 2012, during which the scope of this generic investigation was discussed. By Prehearing Order dated August 31, 2012, the ALJ found that “[t]he scope of procedure and issues is so critical to the advancement of the generic investigation that I am directing the parties to file formal comments regarding what the scope of the generic investigation should be and to specify the exact issues to be involved in a generic investigation...” Parties filed comments on October 1, 2012, and by Order dated December 11, 2012, ALJ Barnes found:

I agree with BI&E, OCA and OSBA that the intention of the Secretarial Letter was to initiate a fully litigated proceeding, specifically to determine 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 as outlined in the Joint Petition for Settlement, page 4. The merits of gas-on-gas competition shall be a part of the scope of this proceeding.

A second prehearing conference was held January 24, 2013, at which a procedural schedule was developed and memorialized in the Scheduling Order dated February 5, 2013. By Order dated May 16, 2013, the procedural schedule was amended and postponed by approximately two months. I&E, OCA and OSBA requested this revised schedule because a dispute over the protective order significantly delayed the discovery process.

Pursuant to the revised procedural schedule, the parties exchanged direct, rebuttal, and surrebuttal testimony. I&E introduced the following statements of testimony and exhibits:

- I&E Statement No. 1, I&E Exhibit No. 1, the prepared direct testimony and exhibits of Ethan Cline;
- I&E Statement No. 1-R, the prepared rebuttal testimony of Ethan Cline; and,
- I&E Statement No. 1-SR, the prepared surrebuttal testimony of Ethan Cline

On December 4, 2013, ALJ Barnes was notified that no party wished to present rejoinder testimony and that all parties agreed to waive cross-examination of witnesses. Accordingly, the parties requested that the hearing on December 10, 2012, be convened for the purpose of entering the prepared testimony and exhibits into the record. At the December 10<sup>th</sup> hearing, Peoples requested that the evidentiary record be held open for the sole purpose of filing a subsequent statement regarding the closing of Peoples' acquisition of Equitable. On January 23, 2014, Peoples/PTWP filed supplemental testimony indicating that the sale of Equitable to PNG Companies LLC closed on December 17, 2013, which merged Equitable into Peoples with Peoples being the surviving legal entity.<sup>5</sup>

Pursuant to the requirements contained in Commission regulations, the Bureau of Investigation and Enforcement submits this Main Brief in support of the positions set forth in the testimony and exhibits of its expert witness presented in this proceeding.

---

5 Peoples/PTWP 1-Supp., p. 2.

## II. SUMMARY OF ARGUMENT

Approximately 401 commercial and industrial customers in western Pennsylvania are geographically fortunate to be served by two or more natural gas distribution companies.<sup>6</sup> These competing NGDCs discount their tariff rates in order to retain current customers or induce prospective customers to switch service. Revenue lost due to this rate flexing practice is not borne by the NGDC, but is simply shifted to the utility's captive customers who are not as geographically fortunate to have NGDCs compete for their business. The revenue shifted to captive customers is significant, totaling approximately \$19.0 million.

I&E maintains that captive customers should no longer be required to fund gas-on-gas competition. Requiring captive ratepayers to subsidize rate discounts given to specially situated commercial and industrial customers results in unjust, unreasonable and discriminatory rates. I&E does not take a position as to whether NGDCs should be permitted to continue to offer discounts to flex customers; however, NGDCs should not be permitted to recover the revenue shortfall generated by gas-on-gas discounts from customers who pay full tariff rates. I&E's recommendation is consistent with several Commission Orders wherein the Commission recognized that gas-on-gas revenue shifting was discriminatory and not in the public interest. Additionally, Peoples and PTWP, two of the four NGDCs who engage in this rate discounting practice, recognize that the current form of gas-on-gas competition should end.

The only parties advocating for the continuation of the current form of gas-on-gas

---

6 OSBA St. No. 1, p. 5.

competition are flex customers who receive the benefit of discounted rates at the expense of the utility's captive customers. These self-serving positions must fail and the Commission must abolish ratepayer funded gas-on-gas competition.

### III. ARGUMENT

#### A. **Ratepayer Funded Gas-on-Gas Competition Results in Unjust, Unreasonable and Discriminatory Rates.**

The current form of gas-on-gas competition allows NGDCs to discount tariff rates for a select group of commercial and industrial customers who are geographically fortunate to be served by more than one NGDC and recover those discounts from captive customers who pay full tariff rates. This practice violates the Public Utility Code's mandate that rates must be just, reasonable and nondiscriminatory:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.<sup>7</sup>

The current form of gas-on-gas competition violates these well settled regulatory principles because flex customers are unreasonably advantaged by receiving substantial rate discounts and captive customers are unreasonably disadvantaged by paying for those discounts through higher tariff rates. In Equitable's attempted acquisition of Peoples in 2007, the Commission recognized the discriminatory nature of gas-on-gas competition:

To continue to allow contract customers the ability to maintain their current rates would be to allow discriminatory treatment to continue. It would not cause the initiation of discriminatory rates. Currently, due to gas-on-gas

---

7 66 Pa.C.S. §§ 1301, 1304.

distribution competition, contract customers' rates are below the cost to serve, and the deficit is paid for by the non-contract customers. This is precisely what needs to be reversed.<sup>8</sup>

However, this discriminatory practice continues today and must be abolished in this Investigation.<sup>9</sup> OCA witness Watkins testified that “the current practice of ratepayers subsidizing those commercial and industrial NGDC customers who happen to be located in an area served by multiple regulated NGDCs results in nothing more than undue price discrimination to captive ratepayers.”<sup>10</sup> Similarly, OSBA contends that “what the Pennsylvania NGDCs do is simply lower their prices to some specially situated customers, and then charge the shortfall to the captive customer base. This is price discrimination which is achievable only because the NGDC has a set of captive customers from whom it can recover the discounts.”<sup>11</sup> Even NGDCs who engage in this form of competition recognize that captive customers are harmed. Both Peoples and PTWP “understand that the discounting of rates in NGDC-on-NGDC competitive situations may not be in the best interest of the overall customer base across multiple systems”<sup>12</sup> and testified:

[W]e also recognize the legitimacy of the argument made by opponents of gas-on-gas competition that the benefits of gas-

---

8 *Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc.,* Docket No. A-122250F5000, p. 64 (Order entered April 13, 2007).

9 The Commission approved Equitable's purchase of Peoples in April 2007; however, the Federal Trade Commission opposed the sale and sought a preliminary injunction in federal court. In January 2008, Equitable abandoned its planned acquisition of Peoples. Although the acquisition was ultimately abandoned, this Commission addressed the issue of gas-on-gas competition at length in its April Order and determined that this practice was discriminatory and not in the public interest.

10 OCA St. No. 1, p. 3.

11 OSBA St. No. 2, p. 6.

12 I&E Ex. No. 1, Sch. 2.

on-gas competition are not fairly distributed among all customers and customer classes, with the greatest benefits going to customers who just happen to be fortuitously located near more than one NGDC.<sup>13</sup>

The only parties in this proceeding who maintain that the current form of gas-on-gas competition should continue are commercial and industrial customers who enjoy discounted distribution rates.<sup>14</sup> Preservation of that self-serving interest should not drown out the fact that the advocates who represent small businesses, residential consumers and the public interest, and even NGDCs who currently engage in this practice, all maintain that the current form of gas-on-gas competition should end. This Commission previously determined that benefiting select customers at the expense of the remaining customer base is a clear violation of the Public Utility Code's just, reasonable and nondiscriminatory mandate and it should reaffirm that position in the instant Investigation.

**B. The Commission Previously Determined that Ratepayer Funded Gas-On-Gas Competition is Not in the Public Interest.**

In support of its position that the current gas-on-gas rate discounting practice should continue, IECPA contends that "there is no reason to make changes to a practice that has served all customers of Western Pennsylvania utilities well for almost three decades."<sup>15</sup> This position ignores the fact that the Commission has consistently and

---

13 Peoples/PTWP St. No. 1, p. 15.

14 In direct testimony, Equitable witness Carol Scanlon advocated for the continuation of gas-on-gas competition in its current form. However, that testimony was filed before Equitable was merged into Peoples on December 17, 2013, and is directly at odds with the positions advanced by Peoples/PTWP in this proceeding. Ms. Scanlon's testimony reflects the position of Equitable Gas Company, LLC, which no longer exists as a legal entity or a Commission-certificated public utility.

15 IECPA St. No. 1, p. 2.

repeatedly determined that gas-on-gas competition is harmful and not in the public interest.

In *Application of Equitable Gas Company*, the Commission concluded that "[p]resent Commonwealth law and public policy do not favor competition among gas distribution utilities" and further stated:

We agree with the ALJ's finding that the building of a competitive distribution system would necessarily result in wasteful duplication of facilities contrary to the public interest. The creation of another distribution pipeline system and related facilities for the physical delivery of gas supplies to a competitor's gas customers' premises is contrary to the public interest. We agree with the Protestants that gas-on-gas *distribution* competition in overlapping service territories is wasteful and a duplication of fixed distribution facilities. We shall adopt the ALJ's finding as our own that there is nothing in the record that shows how that result might be in the public interest.<sup>16</sup>

Additionally, in both the Peoples and Equitable 2005 purchased gas cost (PGC) proceedings, the Commission indicated that it would not permit gas purchase related discounts to be recovered from other customers when such discounts arose from gas-on-gas distribution competition. In those proceedings, the Office of Trial Staff recognized the utility's ability to waive or discount certain tariff rates for customers with competitive options, but objected to the recovery of those waived or discounted charges from captive PGC customers. The Commission agreed finding that:

It is unreasonable to allow a gas utility to transfer the costs of discounts in retainage and other gas delivery requirements to captive PGC customers where these costs were incurred in

---

16 Docket No. A-121100F0003 (Order entered August 13, 1999)(Emphasis in original).

order to entice a customer from a jurisdictional NGDC or as a reaction to defend against another jurisdictional gas utility.

\*\*\*

We reluctantly accept a resolution of these issues in the current proceedings, which would allow the claims made by Equitable without adjustment. However, in the next Section 1307(f) investigations, any discounts incurred in order to compete with a jurisdictional natural gas utility will not be allowed to be recovered from other customers, including any PGC customers.<sup>17</sup>

Given that the Commission has already determined that retainage discounts arising from gas-on-gas distribution competition should not be shifted to other customers, it follows that other discounts arising from gas-on-gas distribution competition should similarly be disallowed.<sup>18</sup> No party has explained why it is appropriate to disallow the recovery of retainage discounts caused by gas-on-gas competition from captive customers but continue to allow the recovery of other distribution discounts. I&E's recommendation to disallow recovery of flexed distribution rates from captive customers is a logical extension of what was approved by the Commission in the Equitable and Peoples PGC proceedings.

Finally, in Equitable's 2007 acquisition of Peoples, the ALJ found that discounts arising from gas-on-gas distribution competition were not in the public interest because such discounts negatively impact captive customers and the Commission recognized that elimination of such competition was in the public interest:

---

17 *Pa. PUC v. Equitable Gas Company, a division of Equitable Resources, Inc.*, Docket No. R-00050272, pp. 43-44 (Order entered September 28, 2005). See also, *Pa. PUC v. The Peoples Natural Gas Company, t/a Dominion Peoples*, Docket No. R-00050267, pp. 33-34 (Order entered September 30, 2005).

18 I&E St. No. 1-R, p. 4. I&E Exh. 1, Sch. 3, p. 13.

After a careful review of the record, we conclude that the economics of the elimination of gas-on-gas distribution competition is correctly presented by Equitable. Equitable witness, Dr. Hieronymus, characterized gas-on-gas distribution competition that creates rate discounts as a dead weight loss and wholly uneconomic. (Equitable St. No. 6-R at 7). Dr. Hieronymus also explained that with or without an actual merger, Equitable and Peoples will retain the ability and incentives they have today to provide economic development discounts. (Equitable St. No. 6-R at 10). Furthermore, Dr. Hieronymus concluded that maintenance of gas-on-gas distribution competition is poor public policy. (Equitable St. No. 6-R at 11-13; I.D. at 65). Overall, customers will benefit more from an effectively competitive retail market through choice and opportunities for savings on gas commodity purchases than they will from gas-on-gas distribution competition. (I.D. at 62).<sup>19</sup>

Despite the Commission's repeated criticism of gas-on-gas competition and its determination that retainage discounts should not be recovered from captive customers, IECPA witness Burgraff contends that the "Commission presumably also sees merits of continuing to allow the practice."<sup>20</sup> I&E disagrees and maintains that the Commission could not be more clear given that, in the Orders above, it stated such competition is "wasteful," "unreasonable," "wholly uneconomic," "poor public policy" and "discriminatory." IECPA's misguided belief is based on the fact that the Commission has approved settlements that involve gas-on-gas discounting.<sup>21</sup> IECPA's reliance on those settlements to infer that the Commission has somehow approved gas-on-gas competition is incorrect.

---

19 *Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc., Docket No. A-122250F5000, pp. 58, 63 (Order entered April 13, 2007).*

20 IECPA St. No. 1R, p. 11.

21 IECPA St. No. 1R, p. 11.

Many of those settlements contained express terms that required NGDCs to initiate and participate in this Investigation; therefore, it is clear that the settling parties and the Commission recognized that gas-on-gas competition needed to be addressed. IECPA appears to suggest that I&E and the Commission should have refrained from entering into and approving settlements where gas-on-gas competition was an issue. The interests of the utility and its customers would not have been served by imposing a moratorium on settlements until the gas-on-gas competition issue was adjudicated by the Commission.<sup>22</sup> Instead, I&E was able to settle ratemaking issues in those proceedings and include a settlement term requiring that NGDCs participate in this generic investigation.

Second, IECPA's position that entering into a settlement reflects tacit acceptance of gas-on-gas competition is flawed given that, due to the black box nature of settlements, a party to the settlement had the ability to impute gas-on-gas revenue into the agreed upon revenue requirement. For example, as discussed by I&E witness Cline, assuming hypothetically that I&E's settlement limit is \$40 million and I&E recommends that \$3 million should be imputed due to gas-on-gas competition, I&E could: (1) reduce its settlement limit to \$37 million and allow the settlement to be silent about the amount imputed for gas-on-gas competition; or, (2) require the settlement to expressly state that the agreed upon increase is \$40 million with \$3 million imputed for gas-on-gas competition.<sup>23</sup> The result is the same \$37 million increase for customers but in the first scenario the settlement is

---

22 I&E St. No. 1-SR, pp. 15-17.

23 I&E St. No. 1-SR, p. 15.

silent about the imputation of gas-on-gas revenue and in the second scenario the settlement expressly states the amount of the revenue imputation. Either way, the settled revenue requirement could reflect some or all of I&E's proposed gas-on-gas revenue adjustment. Therefore, it is entirely improper for IECPA to conclude that the parties to various settlements and the Commission have somehow endorsed gas-on-gas competition when IECPA has no idea how the parties individually or collectively reached the agreed upon black box revenue requirement.

**C. Ratepayer Funded Gas-on-Gas Competition is Not in the Public Interest.**

**1. Ratepayer Funded Gas-on-Gas Competition Harms Captive Customers and NGDCs.**

In Equitable's acquisition of Peoples, Equitable witness Dr. Hieronymus accurately characterized gas-on-gas competition as a "negative sum game":

This means that participants, in this case all customers collectively, are harmed even though some customers benefit...The division of the revenue requirement pie is a "zero sum game"- what one customer wins via discounts, others lose via higher tariff rates.<sup>24</sup>

Moreover, the current gas-on-gas distribution competition harms NGDCs because it encourages them to unfairly keep or siphon customers away from another NGDC; therefore, every flex customer that makes a contribution to NGDC A's fixed costs does not make a contribution to NGDC B's fixed costs. As articulated by OSBA, "the only

---

24 I&E Ex. No. 1, Sch. 3, p. 8. *Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc., Docket No. A-122250F5000, pp. 55 (Order entered April 13, 2007).*

real incentive created by ‘gas-on-gas’ competition is for NGDCs to poach one another’s customers in between base rate cases.”<sup>25</sup> As a result, the NGDC absorbs the loss, tries to siphon the customer back by discounting rates further, or files a base rate case to raise all rates to recover the revenue shortfall as a result of this customer switching to another NGDC.<sup>26</sup> This was discussed by Equitable witness Hieronymus in the 2007 acquisition proceeding:

the substitution of one distributor for the other creates no new revenues. Indeed, what is lost by Equitable if Peoples gains a customer is almost assuredly more than Peoples gained (otherwise, the customer would not switch). Once the effects of the transaction are flowed through revenue requirements, Equitable’s remaining customers will lose the revenues previously garnered from the customer while Peoples customers will benefit from a smaller increment of revenues and bear the dead-weight loss of the incremental costs incurred to gain the customer. For customers other than the customer who benefits, the loss will be equal to the cost of accessing the customer plus the additional discount that the customer was able to bargain for.<sup>27</sup>

I&E maintains that NGDCs should strive to receive the most fixed costs as possible from customers and proposes that NGDCs should no longer be permitted to recover the revenue shortfall caused by gas-on-gas discounts from its captive customers. Currently, 401 customers receive discounted rates due to gas-on-gas competition; therefore, those customers are not making the maximum contribution to fixed costs because they are not paying full tariff rates.<sup>28</sup> I&E’s recommendation encourages NGDCs to maximize revenue because it requires flex rate customers to pay the full tariff

---

25 OSBA St. No. 1, p. 3.

26 I&E St. No. 1, p. 9.

27 I&E Ex. No. 1, Sch. 3, p. 10.

28 I&E St. No. 1, p. 10. I&E St. No. 1-SR, p. 9.

rate, or, if the NGDC decides to offer a discount, it requires the utility to absorb the revenue shortfall rather than shift it to other customers. These customers are presumably paying the lowest rate possible and making the lowest contribution to fixed costs possible.<sup>29</sup> OCA's Highly Confidential Schedule GAW-2 illustrates the substantial discounts that these fortunate flex customers receive from the NGDCs at the expense of captive ratepayers. As stated by OCA witness Watkins, "As long as a quoted price exceeds the variable cost per unit of serving a customer, some contribution to each NGDC's fixed costs and profits will be obtained. However, because the vast majority of a NGDC's distribution costs are fixed in nature, this variable cost floor tends to be *exceptionally low* compared to full tariff rates."<sup>30</sup> IECPA counters that utilities "attempt to maximize" revenue from gas-on-gas competitive customers and do not simply offer the lowest rate possible.<sup>31</sup> There is simply no reason to only "attempt to maximize" revenue when utilities can, in fact, maximize revenue by recovering their full, Commission approved tariff rates from competitive customers.

Both the retaining NGDC's captive customers and the competing NGDC are harmed by providing the minimum discount in order to prevent the customer from switching to a competitive NGDC. For example, as discussed by OSBA, assume hypothetically that NGDC A currently has a large industrial customer who would pay \$547,000 under full tariff rates but NGDC A discounts that rate to recover only \$100,000 in order to keep the customer from switching to competitor NGDC B whose full tariff

---

29 I&E St. No. 1, p. 10.

30 OCA St. No. 1, p. 12 (Emphasis added).

31 IECPA St. No. 1R, p. 22.

rates are approximately \$424,000.<sup>32</sup> If flex rates are permitted, NGDC A receives \$100,000 in annual revenue but its captive customers have to pay the discounted amount of \$447,000 in order to keep the customer from switching, and NGDC B receives no revenue from this customer despite the fact that its tariff rates are lower than NGDC A. Allowing the customer to take service from NGDC A rather than NGDC B at deeply discounted rates imposes a \$324,000 (\$424,000-\$100,000) net additional cost to captive customers in the Commonwealth.<sup>33</sup> However, if rate flexing is no longer permitted, the customer will likely switch to NGDC B. As a result, NGDC A would receive no revenue but NGDC B would receive an additional \$424,000 in revenue and its captive customers would not have to make up any revenue shortfall.

Despite the obvious harm caused by this practice, IECPA contends that “[b]y offering discounts to gas-on-gas competitive customers, the utility keeps the customer on the utility’s system, which benefits all customers of the utility.”<sup>34</sup> Similarly, PSU states, “[f]rom a ratemaking perspective, all customer classes benefit from the ability of a utility to retain a customer on its system without closing its doors or moving off the system, to either a nearby utility or out of Pennsylvania altogether.”<sup>35</sup> As illustrated above, this mindset of keeping the customer on the system at whatever the cost is harmful to NGDC A’s captive customers because those customers have to pay the revenue shortfall caused by the discount and is harmful to NGDC B because it loses the additional revenue

---

32 OSBA St. No. 2, pp. 3-4. Also, see OCA’s Highly Confidential Schedule GAW-2 for an illustration of the magnitude of discounts given to flex customers.

33 OSBA St. No. 2, pp. 3-4. I&E St. No. 1-SR, p. 11.

34 IECPA St. No. 1, p. 9.

35 PSU St. No. 1, p. 7.

generated by the customer. IECPA further asserts that eliminating the rate discounting will create “a winner and a loser. The loser could lose a sizeable amount of large volume load.”<sup>36</sup> It is clear that IECPA wants to focus on NGDC A’s loss without acknowledging the benefit to NGDC B by gaining the customer. The goal of this generic proceeding is not to ensure that customers stay with a particular NGDC or switch to a particular NGDC. To be clear, I&E takes no position about which NGDC should receive the contribution to its fixed costs, but is concerned that the contribution be maximized regardless of the NGDC serving the customer.<sup>37</sup> The current gas-on-gas rate discounting does not maximize the customer contribution; therefore, it harms captive customers and the NGDCs.

IECPA wants the Commission to ignore the harm caused by this rate discounting practice and instead paint NGDCs as the victim by asserting that ending the rate recovery practice will impair the utilities’ ability to earn their Commission approved rate of return.<sup>38</sup> This is not a sufficient reason to allow this harmful cost recovery practice to continue. IECPA’s concern is misleading in that it implies that disallowance of the revenue shortfall generated by flexed rates is the only thing keeping an NGDC from earning its Commission approved rate of return. As discussed by I&E witness Cline, the time between rate cases is dynamic where countless different factors can impact the utility’s return:

Several variables impair the utility’s reasonable opportunity to earn a rate of return between rate cases, such as warm

---

36 IECPA St. No. 1, p. 6.

37 I&E St. No. 1, p. 10.

38 IECPA St. No. 1, pp. 8-9; IECPA St. No. 1-R, p 8.

winters, changes in local tax codes, changes to debt costs, and increases in operating expenses. In contrast, acquiring new customers, existing customers using more gas and savings in operating expenses are items that can increase the reasonable opportunity to earn a rate of return.<sup>39</sup>

For this reason, it is well settled that the Commission grants the opportunity to earn a rate of return, but provides no guarantee that the utility will, in fact, earn that rate of return.<sup>40</sup>

Moreover, the Supreme Court has found “no authority, in *Hope* or in other decisions, indicating that broad public interests are to yield to the interests of investors whenever the financial integrity of a utility company is imperiled.”<sup>41</sup> Given that the Commission has previously determined that the gas-on-gas revenue shifting is not in the public interest, those interest should not yield under the claim that utilities will not be able to realize their authorized returns. The outcry about not earning the appropriate return is especially disconcerting given that NGDCs have been on notice for several years that rate discounting and revenue shifting due to gas-on-gas competition has not been endorsed by the Commission. They have been in control over the rates, terms, and length of the contracts; therefore, NGDCs should bear the risk if they are no longer permitted to recover this revenue.<sup>42</sup>

Some parties in this Investigation have advocated for a transition period to implement the shift from the current form of gas-on-gas competition. OSBA proposed

---

39 I&E St. No. 1-SR, p. 13.

40 *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 592 (1944) (“[U]nder the just and reasonable standard pursuant to traditional regulation, a utility was never entitled to a guaranteed recovery of revenues. Under traditional regulation, rates were set to provide a reasonable opportunity for the utility to earn an anticipated revenue requirement, including an authorized rate of return on its investment.”). *Pennsylvania Electric Co. v. Pa. P.U.C.*, 509 Pa. 324, 502 A.2d 130 (1985).

41 *Pennsylvania Electric Co. v. Pa. P.U.C.*, 509 Pa. 324, 502 A.2d 130 (1985).

42 I&E 1-R, p. 6.

that NGDCs immediately stop granting new discounts to flex customers and recommended that NGDCs not be permitted to recover the revenue shortfall associated with gas-on-gas discounts after December 31, 2016.<sup>43</sup> OCA proposed several options to end ratepayer funded gas-on-gas rate discounting and, regardless of the ultimate mechanism approved to abolish this competition, recommended a three to five year transition period after the issuance of a Commission Order in this Investigation.<sup>44</sup> Peoples/PTWP supported the transition period concept and stated that OCA's proposed five year period is "both realistic and reasonable for implementing my proposed revised form of gas-on-gas competition."<sup>45</sup> Although I&E did not initially propose a transition period, it does not oppose a reasonable transition period as long as the practice of recovering the gas-on-gas revenue shortfall from captive customers ends.<sup>46</sup>

**2. Specially Situated Flex Customers Benefit from Ratepayer Funded Gas-on-Gas Competition at the Expense of Captive Customers.**

Commercial and industrial customers who are geographically fortunate to be served by more than one NGDC are the only beneficiaries gas-on-gas competition and, unsurprisingly, are the most vocal about retaining the status quo. In support of this position, both IECPA and PSU maintain that the current gas-on-gas competition benefits all of the utility's customers because it allows the NGDC to retain flex customers and the revenue generated from those customers rather than lose flex customers to a competitor.<sup>47</sup>

---

43 OSBA St. No. 1, pp. 6-7.

44 OCA St. No. 1, p. 20

45 Peoples/PTWP St. No. 1-R, p. 14.

46 I&E St. No. 1-SR, p. 21.

47 IECPA St. No. 1, p. 5. PSU St. No. 1, p. 7.

However, there is no evidence to support this claim.<sup>48</sup> As discussed above, the opposite is true because flex customers are contributing the lowest possible amount towards the NGDCs fixed costs.<sup>49</sup> The Commission has already rejected IECPA and PSU's premise that all customers benefit from gas-on-gas competition by finding that such competition is "wasteful," "unreasonable," "wholly uneconomic," "poor public policy" and "discriminatory" in the various Commission Orders quoted above. Additionally, the Commission has determined that gas-on-gas discounting improperly enriches flex customers at the expense of captive customers:

In conclusion, the ALJ found that discounts arising from gas-on-gas distribution competition are not in the public interest because they have a negative impact on captive customers...A properly functioning and effectively competitive retail natural gas market must be one which assures an opportunity for all customers to benefit — not just a select few. In *Middletown Township v. Pa. P.U.C.*, 482 A.2d 674 (Pa. Cmwlth. 1984), the Commonwealth Court stated that "when the 'public interest' is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or geographic subdivision as might have occurred in this case."<sup>50</sup>

In support of its position that ratepayer funded gas-on-gas competition should continue, IECPA and PSU assert that flex customers may change their business operations or relocate if they are no longer able to receive an attractive flex rate. PSU witness Crist contends that eliminating gas-on-gas competition would "incent customers

---

48 I&E St. No. 1-R, p. 7.

49 I&E St. No. 1, pp. 5, 10.

50 *Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc.*, Docket No. A-122250F5000, p. 58 (Order entered April 13, 2007).

to seek and find other ways to lower costs, such as scaling back operations, perhaps cutting employees, seeking bypass opportunities, or relocating all or portions of their facility work to another lower-cost region.”<sup>51</sup> This is an unsupported scare tactic as Penn State has provided no evidence that it will adjust its operations, move out of state or enact any of the other scenarios presented in testimony. Similarly, IECPA witness Burgraff contends that customers may not simply pay higher rates without making any adjustment to their current business models.<sup>52</sup> IECPA is comprised of approximately 22 commercial and industrial customers and, like PSU, it provided no evidence detailing how its members will adjust their business models, if at all, when presented with a change to gas-on-gas competition.<sup>53</sup> Instead, IECPA and PSU prefer to speak in generalities and offer worst case scenarios of what may happen without presenting any evidence of how the change will actually impact them.

The expressed concern about customers shutting down production or moving out of state is overstated given that the competitive NGDCs currently have commercial and industrial customers paying full tariff rates.<sup>54</sup> Moreover, gas-on-gas competition is unique to western Pennsylvania; therefore, these competitive customers will not be able to move to another state where this type of competition and rate discounting exists.<sup>55</sup> OCA witness Watkins was similarly unpersuaded that flex customers will become nonviable or relocate if the discounted rates are eliminated because: (1) those customers

---

51 PSU St. No. 1, p. 10.

52 IECPA St. No. 1R, p. 22.

53 IECPA Petition to Intervene, Appendix A (Updated August 7, 2013).

54 I&E St. No. 1-SR, p. 12.

55 I&E St. No. 1-SR, p. 12.

enjoy lower delivered natural gas prices due to the proximity to the Marcellus Shale and other local gas fields which may not be available in other states; (2) the commodity cost of gas has been volatile in recent years and flex customers survived gas prices that were three to four times higher than the current level only a few years ago; (3) a survey of rates for major utilities in nearby states shows that customers located in higher cost service areas are able to remain viable even though their rates are significantly higher than the full tariff rates of Peoples/PTWP/Peoples-Equitable Division/Columbia; and, (4) if it becomes clear that a customer will go out of business or relocate due to the higher cost, the Commission can consider and approve an economic development or discounted rate for that customer.<sup>56</sup> Accordingly, the Commission should ignore the IECPA and PSU's unsupported threats and find that forcing the utility's captive customer base to pay higher rates in order to make up the revenue shortfall caused by discounts given to a select group of customers is not in the public interest.

**3. Despite the Recent Merger of Competitive NGDCs, it is in the Public Interest for the Commission to Eliminate Ratepayer Funded Gas-on-Gas Competition in this Investigation.**

The landscape of gas-on-gas competition changed during the course of this proceeding because, as of December 18, 2013, Equitable was merged into and started operating as a separate division of Peoples. Therefore, of the four NGDCs who have the ability to compete, three are now owned by the same parent company. On the surface these mergers appear to resolve the lion's share of the issues surrounding gas-on-gas competition; however, it remains important to address this issue because gas-on-gas

---

56 OCA St. No. 1, pp. 18-19.

competition will continue to exist in western Pennsylvania and because Peoples and Peoples-Equitable Division committed to extending flex discounts for an additional five years in the recent acquisition. As a result, it is important that the Commission end ratepayer funded competition in this Investigation.

Although it is anticipated that the merger of three competitive NGDCs will decrease the amount of gas-on-gas revenue that is shifted to captive customers, such competition will not completely be extinguished given that Columbia will still be in competition with Peoples/PTWP/Peoples-Equitable Division. Currently, those companies compete with Columbia for 74 customers resulting in a \$4.3 million revenue shortfall.<sup>57</sup> Columbia has a significant amount of service territory that overlaps with the PNG entities; therefore, it remains important for the Commission to abolish ratepayer funded gas-on-gas competition in this Investigation.

Additionally, a Commission ruling on this issue is still timely given that any reduction to the revenue shifted to captive customers will not be realized for many years because Peoples committed to extending flex discounts for an additional five years in its recent merger with Equitable. With these five year extensions, gas-on-gas discounting and revenue recovery from captive customers will continue in 2020 and beyond.<sup>58</sup> Despite these contract extensions, this Investigation can and should end the practice of recovering discounts from captive customers. In the Peoples/Equitable merger settlement, the utilities recognized that they could be required to absorb the rate discounts based on the outcome of this Investigation:

---

57 OSBA St. No. 1, p. 6.

58 OSBA St. No. 3, p. 5.

If the Commission determines in the Investigation at Docket No. I-2012-2320323, that all natural gas distribution companies that offer discounted distribution rates must absorb all or a portion of gas on gas discounts by the effective date of Peoples' or Peoples TWP's next general rate proceeding, Peoples and Peoples TWP agree to impute revenues for those competitive service customers whose rate discounts are solely the result of competition between the Joint Applicants (Peoples, Peoples TWP and Equitable), to the extent required, and at the levels proscribed, by the Commission's action at Docket No. I-2012-2320323, in the test period used to establish rates. Nothing in this paragraph shall be construed to prohibit Peoples or Peoples TWP from contending in such proceeding that the tariff rates for classes of customers receiving such discounts be set at the cost to serve tariff rate.<sup>59</sup>

Several parties argue that current contracts should be honored and, to be clear, I&E is not recommending that the current contracts not be permitted to run their full term.<sup>60</sup> NGDCs can continue to honor discounts for the length of the contracts; however, that does not mean that the revenue shortfall caused by the discounts should continue to be recovered from the utility's captive customers.<sup>61</sup> As stated by OSBA witness Knecht,

---

59 *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC for all of the Authority and the Necessary Certificates of Public Convenience (1) to transfer all of the Issued and Outstanding Limited Liability Company Membership Interest in Equitable Gas Company, LLC to PNG Companies LLC, (2) to Merge Equitable Gas Company, LLC with the Peoples Natural Gas Company, LLC. (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company, LLC to Affiliates of EQT Corporation, (4) to Transfer Certain Assets Between Equitable Gas Company, LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff of Peoples Natural Gas Company LLC, Docket No. A-2013-2353647, Joint Petition for Settlement ¶ 32 (Order entered November 14, 2013).*

60 IECPA St. No. 1, p. 2 ("whatever the outcome of the instant proceeding, all contracts entered into with gas-on-gas competitive customers should continue to be honored...it is in the best interests of businesses and captive customers that these contracts remain in place through at least those terms."). Peoples/PTWP St. No. 1-R, p. 15 ("it would be unreasonable and blatantly unfair to both NGDCs and their customers to arbitrarily not permit the recovery of the revenue shortfall associated with these agreements before the end of the contract terms."). PSU St. No. 1, p. 11 ("Such contracts should be honored for their term, even if in some cases those terms extend into the future for multiple years."). Columbia St. No. 1R, p. 4 ("[I]n the event that the Commission abolishes or changes the current rules regarding gas-on-gas rate discounting, current gas-on-gas flex agreements should be permitted to run for their full term.").

61 I&E St. No. 1-R, p. 8.

“[a]dherence to the contracts is a matter of the law of contracts” but the revenue shifting is regulatory matter governed by this Commission.<sup>62</sup> As demonstrated in the recent merger of Equitable with Peoples, those entities acknowledged in the Settlement that they may be required to absorb the revenue discounts depending on the outcome of this Investigation. This is precisely what I&E urges the Commission to do, and the NGDCs should be fully prepared for that outcome.

**D. Peoples/PTWP Recommendation to Continue Gas-on-Gas Competition in a Modified Form Should be Rejected.**

Peoples/Peoples TWP recognize that the current form of gas-on-gas competition should end and recommend that such competition should continue based on full margin, cost-based rates.<sup>63</sup> Under its proposal, competitive customers would be required to pay full tariff rates; therefore, there would no longer be a need to recover the discounted revenue from captive customers.<sup>64</sup>

In order to effectuate this policy, Peoples/PTWP argues that sufficient time is needed for NGDCs to file base rate cases that establish cost-based rates because the current rates, which were the product of black box settlement agreements, are not actually cost-based.<sup>65</sup> I&E disagrees. Section 1301 of the Public Utility Code requires that rates be just and reasonable, and there is a presumption of fairness to any rates that have been approved by the Commission.<sup>66</sup> Tariff provisions that have been properly submitted to

---

62 OSBA St. No. 3, p. 4.

63 Peoples/PTWP St. No. 1, pp. 15-19.

64 Peoples/PTWP St. No. 1, p. 17.

65 Peoples/PTWP St. No. 1, pp. 17-18.

66 Pa.C.S. § 1301.

and approved by the Commission are *prima facie* reasonable.<sup>67</sup> Similarly, OSBA contends that the Commission has already determined that each NGDC's tariff rates are just and reasonable and, since the Commonwealth Court determined that cost of service should be the polestar for setting rates, it follows that the approved tariff rates are reasonably reflective of costs.<sup>68</sup> In Equitable's 2007 acquisition of Peoples, PEMI raised a similar argument which was rejected by the Commission. In support of its position that gas-on-gas competition should continue, PEMI argued that maximum transportation rates were set above cost-of-service levels, with the understanding that customers could use any available competitive leverage, including gas-on-gas competition, to reduce their transportation prices.<sup>69</sup> PEMI opined that they would be subjected to unjust and unreasonable maximum rates if they were no longer able to negotiate a discount.<sup>70</sup> The Commission disagreed and stated, "for both Equitable and Peoples, the existing maximum tariff rates were determined on a cost-of-service basis and, therefore, are deemed just and reasonable under Chapter 13 of the Public Utility Code."<sup>71</sup> Therefore, the fact that current tariff rates were the product of black box settlements does not necessarily indicate that those rates are not cost-based.

---

67 *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. Ct. 1979), *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. Ct. 1996), *Kossmann v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. Ct. 1997).

68 OSBA St. No. 2, p. 9.

69 *Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc.*, Docket No. A-122250F5000, p. 62 (Order entered April 13, 2007).

70 *Id.*

71 *Id.* at 63.

Additionally, in order to ensure that NGDCs are on a level playing field, Peoples/PTWP recommend that a standardized cost allocation methodology be established in either a separate generic proceeding or individual base rate proceedings.<sup>72</sup> This proposal is not necessary or workable. Cost of service allocation is one of the most subjective elements in ratemaking and the Commission has long recognized that cost of service involves judgment and engineering estimates.<sup>73</sup> The Commission commented on the subjective nature of cost of service studies by asserting that the “validity and acceptability of a cost-of-service study involves judgments regarding both the methodology and the demand and other data utilized.”<sup>74</sup> Cost of service is a matter of debate among parties in a base rate case comprised of one set of costs, one capital structure, one cost of debt and one overall rate of return applicable to that NGDC; therefore, attempting to standardize each of these ratemaking criteria over several NGDCs may not be feasible.<sup>75</sup>

The testimony of parties in this proceeding echo I&E’s concern about the difficulty implementing Peoples/PTWP proposal to standardize cost of service. IECPA witness Burgraff stated, “There is no one true cost-of-service even though every party to a rate case believes there is. Every cost allocation witness has his or her preferred

---

72 Peoples/PTWP St. No. 1, p. 18. Peoples/PTWP St. No. 1-S, pp. 5-6.

73 *Pennsylvania Public Utility Commission v. Duquesne Light Co.*, 57 Pa. P.U.C. 1, 61, 51 PUR 4th 198, 252 (1983).

74 *Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation*, 40 PUR 4th 101, 46 (1980).

75 I&E St. No. 1-R, p. 12.

method...This should be done for each utility in its base rate proceedings.”<sup>76</sup> Similarly,

National Fuel Gas Distribution Corporation (NFG) witness Meinel testified:

Individual company cost of service studies include class allocations that are specific to that company’s service structure which may not be the most appropriate allocation for another company that has structured its services differently. Allowing each company to accurately reflect its unique, individual allocation provides more accurate results than could a generic proceeding.<sup>77</sup>

NFG witness Meinel further testified that NFG included approximately 50 class allocations and four cost of service studies in its prior rate case; therefore, standardizing cost allocation factors for multiple NGDCs “would be a significant task and would likely be subject to intensive litigation as each party advances its own allocations.”<sup>78</sup> OSBA witness Knecht contended that the proposed generic proceeding was unnecessary because the “Commission has already determined that each NGDC’s tariff rates are just and reasonable, and therefore must be assumed to be reasonably reflective of costs.”<sup>79</sup> Rates for utilities under Commission jurisdiction should continue to be determined using utility-specific inputs; therefore, there is no need to standardize cost allocations as Peoples/PTWP proposes.

In order to effectuate its recommendation, Peoples/PTWP state that sufficient time is necessary to allow current gas-on-gas agreements to run their terms and to permit NGDCs to file rate cases.<sup>80</sup> Peoples/PTWP’s request to continue ratepayer funded gas-on-gas competition for the length of its current gas-on-gas agreements in this

---

76 IECPA St. No. 1R, p. 26.

77 NFG St. No. 1, p. 5.

78 NFG St. No. 1, p. 6.

79 OSBA St. No. 2, p. 9.

80 Peoples/PTWP St. No. 1, p. 17.

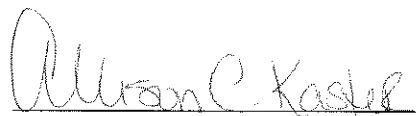
Investigation is self-serving and simply too long to continue to recover gas-on-gas discounts from captive customers. As discussed above, Peoples extended its gas-on-gas contracts for five years during its recent acquisition of Equitable, but agreed in Settlement that it might have to absorb those discounts based on the outcome of this Investigation. Peoples/PTWP can continue to honor its gas-on-gas contracts with its competitive customers; however, there is no reason to allow the continued revenue recovery from captive customers.

I&E agrees with Peoples/PTWP that NGDCs should compete on tariff rates. The main difference is that Peoples/PTWP believes that its current tariff rates are not cost-based; therefore, it recommends that the current form of gas-on-gas competition continue until a standard cost allocation methodology and cost-based rates are established in the next round of rate cases filed by the various NGDCs. This approach is not necessary given that NGDCs currently have Commission approved tariff rates. Accordingly, the Commission can eliminate ratepayer funded gas-on-gas competition without implementing the protracted and potentially controversial policy recommended by Peoples/PTWP.

#### IV. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Administrative Law Judge and the Commission end ratepayer funded gas-on-gas distribution competition by finding that the revenue shortfall generated from discounting tariff rates for customers who are served by more than one NGDC can no longer be recovered from captive customers.

Respectfully submitted,



Allison C. Kaster

Prosecutor

PA Attorney I.D. No. 93176

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-6155

Dated: February 25, 2014

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief** dated February 25, 2014, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Theodore J. Gallagher, Esquire  
NiSource Corporate Services Co.  
121 Champion Way  
Suite 100  
Canonsburg, PA 15317

Mark C. Morrow, Esquire  
Melanie El Atieh, Esquire  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406

William Roberts II, Esquire  
Peoples Natural Gas Company LLC  
375 North Shore Drive  
Suite 600  
Pittsburgh, PA 15212

Charles Thomas Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas, Long, Niesen & Kennard  
212 Locust Street  
Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Aron J. Beatty, Esquire  
Darryl A. Lawrence, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Elizabeth Rose Triscari, Esquire  
Sharon Webb, Esquire  
Office of Small Business Advocate  
300 North Second Street  
Suite 1102  
Harrisburg, PA 17101

Teresa K. Schmittberger, Esquire  
Pamela Polacek, Esquire  
Charis Mincavage, Esquire  
McNees, Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Michael S. Swerling, Esquire  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699

Amy Neufeld, Esquire  
500 North Third Street  
Suite 800  
Harrisburg, PA 17110

Dawn Lindner, Esquire  
Peoples TWP LLC  
205 North Main Street  
Butler, PA 16001

Donna M.J. Clark, Esquire  
Energy Association of Pennsylvania  
800 North Third Street  
Suite 205  
Harrisburg, PA 17101

Bruce V. Miller, Esquire  
Cullen and Dykman, LLP  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530

David W. Gray, Esquire  
Equitable Gas Company LLC  
225 North Shore Drive, Third Floor  
Pittsburgh, PA 15212

Benjamin L. Shechtman, Esquire  
Stevens & Lee  
620 Freedom Business Center  
Suite 200  
King of Prussia, PA 19406

Jennifer L. Petrisek, Esquire  
Peoples TWP  
375 North Shore Drive  
Suite 600  
Pittsburgh, PA 15212

Maureen Geary Krowicki, Esquire  
National Fuel Gas Distribution Corp.  
P.O. Box 2081  
1100 State Street  
Erie, PA 16512

Thomas J. Sniscak, Esquire  
William E. Lehman, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105

David P. Zambito, Esquire  
Cozen O'Connor  
305 North Front Street  
Suite 400  
Harrisburg, PA 17101-1236

Kevin J. Moody, Esquire  
PIOGA  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101-1510

Tishekia Williams, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 16<sup>th</sup> Floor  
Pittsburgh, PA 15219



Allison C. Kaster  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #93176