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February 25, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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

MAIN BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY

Dear Secretary Chiavetta:

Enclosed is the Main Brief of The Pennsylvania State University in the above-referenced matter. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please feel free to contact the undersigned at 717-236-1300 with any questions.

Very truly yours,

Thomas J. Sniscak
William E. Lehman

Counsel to The Pennsylvania State University

TJS/das

Enclosures

cc: Honorable Elizabeth Barnes
Per Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document 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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Dated this 25th day of February, 2014

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MAIN BRIEF OF
THE PENNSYLVANIA STATE UNIVERSITY**

Before Administrative Law Judge Elizabeth H. Barnes

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I. INTRODUCTION

The Pennsylvania State University (“PSU”), intervenor in this proceeding, hereby submits its Main Brief on Generic Investigation on Gas-on-Gas Competition Issues.¹ Utilities that offer flex rates for gas-on-gas competition should continue to do so and recover any costs not collected from the balance of their customers. Flex offerings, or this sort, should continue in Pennsylvania, as they have for almost 30 years, and PSU submits that any change to the existing status quo with flex offerings could have unintended adverse economic consequences.² From a ratemaking perspective, all customer classes benefit from the ability of a utility to retain a customer on its system³ as it lessens the overall cost of service to those other customers. Anything a utility can do by use of flex rates to attract new business or retain businesses in Pennsylvania provides benefits to our Commonwealth’s citizens by providing jobs, valuable income to local municipalities, and the Commonwealth via taxes.⁴

A. Background

PSU receives distribution service from several natural gas distribution companies (“NGDCs”) at its campuses throughout the Commonwealth.⁵ PSU is a major sales and distribution service customer of Columbia Gas of Pennsylvania (“Columbia”) at the following campuses or locations: University Park, Beaver, Fayette, Mount Alto, and York, and the

¹ Gas-on-gas means there is more than one natural gas distribution company (NGDC) having rights to serve, or facilities existing or proximate and able to serve, a customer. It does not and should not mean competition faced by an NGDC for gas distribution service from a non-NGDC. Thus, all references in this Brief to “gas-on-gas” mean competition between or among NGDCs with overlapping territories.

² PSU Statement No. 1, Rebuttal Testimony of James L. Crist, P.E. on behalf of PSU, Page 8.

³ *Id.* at 7.

⁴ *Id.* at 8.

⁵ *Id.* at 3.

Biglerville Ag Extension Farm.⁶ In 2012, PSU received 1,320,521 Dth through distribution service from Columbia.⁷

PSU also receives natural gas distribution service at the following campuses or locations: from Peoples Natural Gas LLC (“Peoples”) at Altoona, Greater Allegheny (through the recent acquisition of Equitable Gas Company LLC (“Equitable”)), and New Kensington; from National Fuel Gas Company at Erie, Shenango, and Dubois; from UGI at Hazleton, Hershey, Carlisle, Lehigh Valley, Worthington Scranton, Wilkes-Barre, Berks, Schuylkill; and from PECO Energy Company at Abington and Brandywine.⁸

B. Procedural History

On July 25, 2012, the Commission issued a Secretarial Letter directing the Office of Administrative Law Judge, through a generic proceeding, to address “the issues related to an 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.”⁹ The Secretarial Letter also requested that “other interested parties are invited to file interventions in order to participate in these proceedings.”¹⁰ On August 17, 2012, PSU filed its Petition to Intervene in this case and on October 17, 2013, filed PSU Statement No. 1, the Rebuttal Testimony of James L. Crist, P.E.

On December 10, 2013, the Administrative Law Judge (“ALJ”) assigned to this matter held a hearing to enter evidence into the record. The parties agreed to stipulate all pre-filed testimony and associated exhibits into the record and to waive cross-examination, and the ALJ

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ PUC Secretarial Letter of July 25, 2012 regarding Generic Investigation on Gas-on-Gas Competition Issues.

¹⁰ *Id.*

approved such process. The ALJ directed that the record will be held open until February 14, 2014, for a statement from Peoples Natural Gas Company regarding the closing of Peoples' acquisition of Equitable Gas Company.¹¹ On December 17, 2013, according to the Supplemental Testimony of Joseph A. Gregorini, Peoples Natural Gas Company LLC acquired Equitable which became the Equitable Division of Peoples Natural Gas Company LLC ("Equitable Division").¹² On January 8, 2014, Equitable Division requested to withdraw Equitable Statements Nos. 1 and 1R and Highly Confidential Equitable Exhibit 1 (Proprietary Version) and Highly Confidential Equitable Exhibit 1 (Public Version) from the evidentiary record.¹³

II. SUMMARY OF ARGUMENT

Flex offerings should continue in Pennsylvania, as they have for almost 30 years, and PSU submits that any change to the existing status quo with flex offerings could have significant adverse unintended economic consequences. All customers of a utility benefit from customers that have been retained or added due to flex rates because the revenue that is generated from that customer helps to contribute toward, and lower, the cost of service for all customers.

Elimination of gas-on-gas flex offerings would (1) have the Commission ignore the fact that certain customers have more than one NGDC with capable facilities existing or proximate to their customer burner-tip location or property; (2) remove such customers' ability to negotiate their best price from two or more available suppliers of distribution service; and, (3) prevent available NGDC providers of the same distribution service from competing with each other for said customers. In the general business and economic world, for which the Commission was

¹¹ Letter Motion for Admission of Peoples/PTWP Statement No. 1-Supp into the Evidentiary Record and to close the Evidentiary Record.

¹² Prepared Supplemental Testimony by Joseph A. Gregorini on behalf of Peoples Natural Gas Company and Peoples Twp LLC, Page 2.

¹³ Peoples Natural Gas- Letter to ALJ - Withdrawing Testimony- January 8, 2014.

intended to be a surrogate in establishing regulation policies, such customers can and should enjoy the benefits of having price competition from more than one available NGDC provider of natural gas distribution service.

The opponents of gas-on-gas flex would treat these customers with options as if, for price competition purposes, they had no other distribution service alternative when that is not the case. This way of thinking is fundamentally flawed. The opponents of gas-on-gas flex offerings here seek to end such competition by undermining or removing one of an NGDC's incentives to compete. Specifically, the opponents would discourage NGDCs with overlapping territories or facilities to offer discounts by eliminating an NGDC's ability to recover the discount as a cost of service element.

Competition, where competitive circumstances exist, is a good thing that should be promoted and protected and here results in lower energy prices to those customers who have competitive alternatives, and still permits the flex customer receiving the benefit of the competition to contribute beneficially to total cost of service thereby reducing what otherwise would be the cost burden of all other customers. The Commission's present policy of permitting gas-on-gas flex rates better approximates common business and economics principles where alternative providers of a service or good exist.

The Commission should also use this matter to confirm that flex offerings in situations not involving overlapping franchises, such as bypass, alternative fuels, economic development and customer retention, is not impacted directly or indirectly by this proceeding. Several of the opponents to gas-on-gas flex offerings have stated flex offerings in those situations should be permitted or that they are not challenging the need or suitability of flex offerings in those contexts. It is particularly important for Pennsylvania's large business, industrial and

institutional customers, to have certainty and reliability as to flex rates for purposes of planning, budgeting, and making business decisions. A lack of flex rates, or a lack of certainty and reliability regarding flex rates, will harm Pennsylvania's economic development and the ability to attract and retain businesses and jobs.

III. ARGUMENT

A. Flex Offerings Should Continue in Pennsylvania Because Any Change to the Status Quo Could Have Unintended Adverse Economic Consequences.

If flex offerings are discontinued, there may be unintended economic consequences that Pennsylvania does not need. For instance, as PSU's witness Crist states in his rebuttal testimony, some customers may scale back their operations, may cut employees, may seek bypassing opportunities, or they may relocate all or portions of their facility work to another lower-cost region.¹⁴ Similarly, if NGDCs have to absorb the flex rate discount and not collect it from their customers, a utility may have trouble retaining businesses or customers which then impacts Pennsylvania on a greater economic scale.¹⁵ From a greater public interest and economic perspective, anything a utility can do by use of flex rates to attract new business or retain businesses in Pennsylvania provides obvious benefits to our Commonwealth's citizens generally by providing jobs, valuable income to local municipalities and the Commonwealth via taxes that fund government and public works.¹⁶ If flex rates are discontinued, there will be many potential adverse local and state economic implications that Pennsylvania's economy does not need.

¹⁴ Rebuttal Testimony of James L. Crist, P.E. on behalf of PSU, Page 10.

¹⁵ *Id.*

¹⁶ *Id.* at 8.

B. All Customers and the General Public Benefit from Flex Offerings and the Commission Should Decline the Invitations of Flex Opponents to End Flex Offerings or Adopt Rate Treatments that Discourage it.

NGDCs with overlapping territories first engaged in aggressive price competition to hold on to customers and reduce the loss of customers. As PSU witness Crist states, “[f]rom a ratemaking perspective, all classes of customers benefit from the ability of a utility to retain a customer on its system without closing its doors and moving off the system, to either a nearby utility or out of Pennsylvania altogether.”¹⁷ So if flex rates are eliminated and a customer drops off the system, all customers are being harmed by this because their cost of service will increase.¹⁸

Those customers that receive flex rates should not lose the benefit that flex rates provide because they happen to live in a locale that is subject to gas-on-gas competition due to more than one NGDC with rights and facilities available. There is no discrimination with other customers that do not have gas-on-gas flex options. They are different, and differences can be a basis for different rate treatment.¹⁹ Indeed, Section 1304 of the Public Utility Code, 66 Pa.C.S. § 1304, allows for preferences or advantages as to rates so long as it is not “unreasonable.” Here, there is a factual basis for different treatment—some customers have circumstances that give them competitive options while others do not have those circumstances.

Other customers that are not competitively situated still receive positive benefits by the competitively situated flex customers. As IEPCA’s witness Diane Burgraff explains about the gas-on-gas competition in Western Pennsylvania, “[t]he competition that exists ensures that industrial and large commercial load is more likely to be spread out among the utilities that serve

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *U.S. Steel Corp. v. Pa. Pub. Util. Comm’n*, 390 A.2d 865 (Pa. Cmwlth. 1978)(mere differences in rates among classes of customers is not a violation of the Public Utility Code section prohibiting discrimination in rates.)

the same geographic area, which provides a contribution to cost of service for the captive customers of all competing utilities.”²⁰

Elimination of gas-on-gas flex would (1) have the Commission ignore the fact that certain customers have more than one NGDC with capable facilities existing or proximate to their customer burner-tip location or property; (2) remove such customers’ ability to negotiate their best price from two or more available suppliers of distribution service; and, (3) prevent available NGDC providers of the same distribution service from competing with each other for said customers. In the general business and economic world, for which the Commission was intended to be a surrogate in establishing regulation policies, such customers can and should enjoy the benefits of having price competition from more than one available NGDC provider of natural gas distribution service.

The opponents of gas-on-gas flex would treat these customers with options as if, for price competition purposes, they had no other distribution service alternative when that is not the case. This way of thinking is fundamentally flawed. The opponents of gas-on-gas flex here seek indirectly to end such competition by undermining or removing one of an NGDC’s incentives to compete. Specifically, the opponents discourage NGDCs with overlapping territories or facilities to offer discounts by eliminating an NGDC’s ability to recover the discount as a cost of service element.

NGDCs are in the best position at the outset to apply their tariff flex provisions and determine, based upon a financial analysis, if a customer would be a positive contributor to the company’s revenue and cost of service.²¹ When evaluating the acquisition of a new or retention of an existing customer, the investment of capital must be weighed against the new annual

²⁰ Direct Testimony of Diane Burgraff- IEPCA Witness, Page 11.

²¹ Rebuttal Testimony of James L. Crist, P.E. on behalf of PSU, Page 4.

revenue and expense to determine if such an investment is practical.²² If an NGDC decides²³ that a customer would be a positive contributor, then acquiring or retaining that customer leads to the reduction in cost of service for all customers. However, if a customer either drops off the system, or is not given an incentive to use more of the service, then the remaining customers are not afforded the contribution that the former customer was adding or could add to cost of service.

From PSU's perspective, gas-on-gas flex offerings and flex generally has been in effect for nearly 30 years, works well, and is in the public interest as a ratemaking feature that promotes many positive benefits. Flex cuts both ways for PSU, as it takes service under a flex rate for an eligible account and does not for many others for which its rates bear its share of the flex discounts to other customers.

Simply put, there is nothing broke to be fixed, and the parties to this proceeding who want to do away with such flex arrangements invite an unnecessary risk that very well may result in negative unintended consequences. Moreover, with the merger of Peoples and Equitable, much of the concerns of the parties who oppose NGDC gas-on-gas flex have evaporated as these two major competitors will eventually no longer compete.

The Commission further should take notice of OSBA witness Robert Knecht's Surrebuttal Testimony that "customers who have alternative fuel, transmission bypass, and economic relocation options will still remain eligible for discounted rates."²⁴ PSU would like the Commission to make clear in its Final Order that should any relief to the parties opposing NGDC gas-on-gas flex be granted—which PSU believes should not—that such ruling will only apply to

²² *Id.* at 4-5.

²³ This is subject of course to Commission review if necessary or challenged under Chapter 13 of the Public Utility Code, Section 1301 *et seq.*, 66 Pa.C.S. §§1301 *et seq.*

²⁴ OSBA Surrebuttal Testimony by Robert Knecht on November 26, 2013, Page 3.

NGDC gas-on-gas competition and the other types of flex accounts like alternative fuel, transmission bypass, and economic relocation options remain unaffected.

In sum, it is particularly important for Pennsylvania's large business, industrial and institutional customers, to have certainty regarding flex rate applicability for purposes of planning, budgeting, and making business decisions. A lack of flex rates, or a lack of certainty and reliability regarding flex rates, will harm Pennsylvania's economic development and the ability to attract and retain businesses and jobs.

IV. CONCLUSION

PSU believes that gas-on-gas flex offerings should continue in Pennsylvania, as they have for almost 30 years, and submits that any change to the existing status quo with flex offerings could have significant unintended adverse economic consequences that Pennsylvania does not need. From a ratemaking perspective, all customer classes benefit from the ability of a utility to retain a customer on its system. By having a flex customer stay on the system, it lessens the overall cost of service to those other customers. Anything a utility can do by use of flex rates to attract new business or retain businesses in Pennsylvania provides benefits to our Commonwealth by providing jobs, valuable income to local municipalities, and the Commonwealth via taxes.

Several of the opponents to NGDC gas-on-gas flex have stated flex in those situations should be permitted or that they are not challenging the need or suitability of flex in those contexts. It is particularly important for Pennsylvania's large business, industrial and institutional customers, to have certainty regarding flex rate applicability for purposes of planning, budgeting, and making business decisions. A lack of flex rates, or a lack of certainty

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