



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

IN REPLY PLEASE  
REFER TO OUR FILE

March 12, 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) **Reply 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/snc  
Enclosure

cc: Certificate of Service  
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	:	

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

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Dated: March 12, 2014

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## I. INTRODUCTION

The procedural history of this proceeding is detailed in the Bureau of Investigation and Enforcement's (I&E) Main Brief filed on February 25, 2014. In its Main Brief, I&E presented the evidence and law in support of its recommendation that ratepayer funded gas-on-gas distribution competition must end by finding that the revenue shortfall generated from discounting tariff rates for customers who are served by more than one natural gas distribution company (NGDC) can no longer be recovered from captive customers. The instant Reply Brief is supplemental to the I&E Main Brief. As such, I&E will not repeat arguments set forth in Main Brief but will address certain arguments raised by proponents of ratepayer funded gas-on-gas competition.

## II. ARGUMENT

### A. Ratepayer Funded Gas-On-Gas Competition Must End.

#### 1. The Commission has Correctly Determined that Ratepayer Funded Gas-On-Gas Competition is Not in the Public Interest.

The Industrial Energy Consumers of Pennsylvania (IECPA) incorrectly contend that public utility law and regulations promote gas-on-gas competition and believes that this investigation provides the Commission the opportunity "to once again endorse the practice of gas-on-gas competition."<sup>1</sup> This challenge is misplaced given that the Public Utility Commission (Commission) has consistently and repeatedly determined that ratepayer funded gas-on-gas competition is not in the public interest.

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1 IECPA M.B., p. 10.

IECPA argues that within Commission regulations “there exists a presumption that discounted rates for any purpose, including gas-on-gas competition, are appropriate.”<sup>2</sup>

The argument that such a presumption exists with regard to rate discounting, let alone gas-on-gas discounting, is entirely incorrect. Just the opposite is true given that the Commission has expressly held that discounting retainage for gas-on-gas competition is not in the public interest and has further stated that utilities should exercise great discretion when flexing rates for bypass and energy alternatives:

For approximately twenty years, this Commission allowed NGDCs to negotiate or flex their tariff rates in order to compete with bypass and energy alternatives. One of the principal goals intended to be achieved was to benefit all customers through the retention of the service to large use customers. In granting certain utilities the ability to negotiate or flex their tariff rates, the Commission did not grant a blanket authorization to the utilities. The Commission anticipated that the utility would exercise great discretion in allowing variations from their tariff rates. At no time was it anticipated that the burden of proof concerning the utility’s application of this discretion would be diminished or waived. This is true in instances where costs may be transferred within a customer class and is especially true where costs were to be shared among other classes of customers.<sup>3</sup>

It is well settled that any rate approved by the Commission must be just, reasonable and non-discriminatory.<sup>4</sup> Given that the Commission has previously determined that flexing rates for gas-on-gas competition is discriminatory, there is clearly no “presumption” that gas-on-gas rate discounting is appropriate as IECPA alleges.

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2 IECPA M.B., p. 10.

3 *Pa. PUC v. Equitable Gas Company, a division of Equitable Resources, Inc.*, Docket No. R-00050272, p. 43 (Order entered September 28, 2005). See also, *Pa. PUC v. The Peoples Natural Gas Company, t/a Dominion Peoples*, Docket No. R-00050267, p. 32 (Order entered September 30, 2005).

4 66 Pa.C.S. §§ 1301, 1304.

Next, IECPA appears to argue that the Commission has somehow endorsed gas-on-gas competition because Commission regulations require NGDCs to establish a “maximum rate” for transportation service, which implicitly acknowledges that rates may be offered below the maximum tariff rate.<sup>5</sup> I&E agrees that in some limited instances rate discounting and revenue shifting to captive customers is acceptable; however, it does not automatically follow that gas-on-gas competition is one of those instances. In the Peoples and Equitable 2005 purchased gas cost (PGC) proceedings the Commission found that it may be reasonable to shift discounts to captive PGC customers in certain circumstances, such as direct bypass and alternative fuels.<sup>6</sup> However, in those proceedings, the Commission expressly found that it was not appropriate to engage in such cost shifting due to gas-on-gas competition:

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 order to entice a customer from a jurisdictional NGDC or as a reaction to defend against another jurisdictional gas utility.<sup>7</sup>

Therefore, the fact that NGDCs set maximum rates and can discount those rates in certain circumstances does not support IECPA’s contention that gas-on-gas competition is one of those approved circumstances.

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<sup>5</sup> IECPA M.B., p. 10.

<sup>6</sup> *Pa. PUC v. Equitable Gas Company, a division of Equitable Resources, Inc.*, Docket No. R-00050272, p. 44 (Order entered September 28, 2005). *Pa. PUC v. The Peoples Natural Gas Company, t/a Dominion Peoples*, Docket No. R-00050267, p. 33 (Order entered September 30, 2005).

<sup>7</sup> *Pa. PUC v. Equitable Gas Company, a division of Equitable Resources, Inc.*, Docket No. R-00050272, p. 43 (Order entered September 28, 2005). *Pa. PUC v. The Peoples Natural Gas Company, t/a Dominion Peoples*, Docket No. R-00050267, p. 33 (Order entered September 30, 2005).

IECPA ignores this important distinction as it argues that gas-on-gas discounting “is equivalent to rate discounting due to bypass, alternative fuels or economic development.”<sup>8</sup> IECPA further argues that “because the OCA supports rate discounting due to bypass, alternative fuels, and economic development, the OCA should support rate discounting due to gas-on-gas competition to the same extent.”<sup>9</sup> This position is simply incorrect given that the Commission has expressly distinguished between discounting for gas-on-gas competition and discounting for bypass and alternative fuels. Specifically, in the Equitable and Peoples 2005 PGC Orders, the Commission determined that discounts arising from gas-on-gas competition could not be recovered from captive customers, but articulated other circumstances where such discounting and cost shifting could be appropriate:

Notwithstanding that we conclude that it is unreasonable to allow a utility to transfer the costs of discounts in waived retainage to PGC customers under the circumstances of gas on gas competition discussed, above, we believe that there are circumstances in which it may be reasonable to require captive PGC customers to bear the costs of discounted or waived gas delivery related charges incurred to retain throughput. The circumstances may include instances in which a customer may obtain service by direct bypass, receive service through facilities which could not produce the system average retainage (company use/ unaccounted for gas) percentage, a competitive offer from a non-jurisdictional entity, economic development and job retention and instances where there is a *bona fide* competitive offer from an alternative energy source.<sup>10</sup>

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8 IECPA M.B., p. 17.

9 IECPA M.B., p. 18.

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

As such, the Commission clearly and appropriately determined that it was improper for two regulated NGDCs to engage in such discounting, but recognized that such discounting was appropriate to keep a customer from leaving a regulated NGDC's system for an unregulated entity. This distinction is important because if a customer leaves a jurisdictional NGDC for an unregulated competitor, the NGDC and its regulated customers will lose the flex customer's contribution to fixed costs entirely. The opposite occurs in gas-on-gas competition because the flex customer will remain with a jurisdictional NGDC and will contribute to the fixed costs of a regulated distribution system; however, that contribution is significantly reduced because gas-on-gas competition allows the customer to pit two Commission regulated NGDCs against each other to receive the largest discount. Accordingly, contrary to IECPA's position, the Commission has articulated that gas-on-gas discounting is not "equivalent" to discounting for bypass or alternative fuels and has correctly determined that revenue recovery from captive customers for gas-on-gas competition is not in the public interest.

Next, IECPA broadly interprets the following language from the Natural Gas Customer Choice and Competition Act (Competition Act) as an endorsement of gas-on-gas competition from the legislature:

The natural gas distribution company may continue to provide natural gas service to its customers under all tariff rate schedules and riders incorporated into its tariff, and policies or programs, existing on the effective date of this chapter.<sup>11</sup>

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11 66 Pa.C.S. § 2203(14).

IECPA interprets this language as confirmation that gas-on-gas competition is proper because the “legislature endorsed all current practices of NGDCs at the time that Competition Act was passed.”<sup>12</sup> I&E maintains that IECPA’s interpretation is overly broad. It is clear that the Competition Act does not expressly authorize gas-on-gas competition. It is further evident that since the passage of the Competition Act, the Commission has repeatedly determined that gas-on-gas competition is not in the public interest, which is why IECPA’s contention that the Commission has not seen a need to review gas-on-gas competition is puzzling.<sup>13</sup> This assertion ignores the fact that the Commission has repeatedly reviewed this form of competition and has determined that it is not in the public interest. In *Application of Equitable Gas Company*, the Commission found that “gas-on-gas *distribution* competition in overlapping service territories is wasteful and a duplication of fixed distribution facilities” and concluded that “[p]resent Commonwealth law and public policy do not favor competition among gas distribution utilities.”<sup>14</sup> Additionally, in both the Peoples and Equitable 2005 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 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

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12 IECPA M.B., p. 11.

13 IECPA M.B., p. 11.

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

elimination of such competition was in the public interest.<sup>15</sup> Moreover, gas-on-gas competition was raised in several base rate cases culminating in the initiation of this very Investigation. The Commission could not be clearer that this form of competition must end and this Investigation is the appropriate forum to finally accomplish that goal on a generic basis for all NGDCs.

## **2. Sound Ratemaking Principles Do Not Support the Continuation of Ratepayer Funded Gas-On-Gas Competition.**

IECPA argues that rate discounting for gas-on-gas competition is justified under the concept of “value of service” and is consistent with established ratemaking principles.<sup>16</sup> Under IECPA’s theory, the NGDC identifies the value a customer contributes to its system and offers a discount below the maximum tariff rate due to the value of the gas-on-gas customer to the system.<sup>17</sup>

In surrebuttal testimony, IECPA argued that Peoples’ blended cost of service study presented in its most recent rate case indicated that large commercial and industrial customers are paying above their cost of service at 9.93%, while residential and small commercial customers are paying below their cost of service at 5.52% and 5.10% respectively when compared to an overall system rate of return of 6.07%.<sup>18</sup> IECPA believes this supports its position that gas-on-gas discounting is appropriate because large

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15 *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).*

16 IECPA M.B., p. 12.

17 IECPA M.B., p. 13.

18 IECPA M.B., p. 14.

commercial and industrial customers are paying in excess of their cost of service. As previously noted, this was presented for the first time in IECPA's surrebuttal testimony so parties have not had an opportunity to challenge the information presented. However, a review of the testimony in the Peoples base rate case demonstrates that parties challenged the allocations contained in the cost of service studies because they did not reasonably reveal an accurate indication of class allocated cost responsibilities. In fact, OCA conducted its own Peak and Average cost of service study and demonstrated that residential customers pay at or above the system average while small general service customers pay below the system average.<sup>19</sup> Peoples accepted the majority of OCA's recommended cost of service modifications in rebuttal testimony.<sup>20</sup> Therefore, IECPA's use of the blended cost of service study in Peoples most recent rate case to illustrate that gas-on-gas discounting adheres to cost of service principles was improper.

Moreover, a similar argument was raised in Equitable's 2007 acquisition of Peoples and was rejected by the Commission. In that proceeding, the Peoples/Equitable Merger Intervenors (PEMI), an *ad hoc* group of commercial and industrial customers, objected to the merger of Equitable and Peoples because it was concerned that the merging companies would no longer provide gas-on-gas discounts and have an incentive to set rates at maximum tariff levels without competition to discipline natural gas prices. PEMI argued that maximum transportation rates were set on a "value of service" basis

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19 *Pa. PUC v. Peoples Natural Gas Company, LLC*, Docket No. R-2012-2285985, Recommended Decision, p. 34.

20 *Pa. PUC v. Peoples Natural Gas Company, LLC*, Docket No. R-2012-2285985, Recommended Decision, pp. 33-34.

with the understanding that transportation customers would be able to negotiate more favorable rates because of the competition between Equitable and Peoples.<sup>21</sup> Equitable countered that Peoples' value-of-service based maximum transportation rates were effectively equal to the cost-of-service based maximum rate; therefore, a negotiated rate that is less than the tariff maximum is below cost-of-service in either instance.<sup>22</sup> The Commission agreed with Equitable:

The ALJ found that PEMI's concept of a cost based rate is at odds with the Commission regulations. Section 60.2 of the Regulations, 52 Pa. Code § 60.2, provides that the maximum rate allowed for transportation shall be the weighted average retail rate for the otherwise applicable retail service, less costs related to natural gas supply, and that the maximum rate for transporting gas produced in the Commonwealth shall be based on a cost-of-service study. The cost-of-service argument raised by PEMI suggests a departure from established principles of cost allocation and rate design or unbundling. (I.D. at 37-39, n. 20). The ALJ found that 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. (I.D. at 66).<sup>23</sup>

Similarly, IECPA argues that gas-on-gas rates are factored into the total revenues provided by large commercial and industrial customers; therefore, the fact that gas-on-gas rates are below the maximum tariff rate does not violate cost of service principles.<sup>24</sup> As demonstrated above, the Commission has rejected a similar argument by finding that maximum tariff rates were determined on a cost-of-service basis; therefore, discounting

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21 *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. 2, 29 (Order entered April 13, 2007).

22 *Id.* at 61.

23 *Id.* at 62-63.

24 IECPA M.B., pp. 14-15.

those rates for gas-on-gas competition was improper. The Commission determined 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.”<sup>25</sup> Consistent with its determination in the 2007 Equitable proceeding, the Commission should end ratepayer funded gas-on-gas competition in this Investigation.

Last, IECPA argues that “price discrimination among customer classes is perfectly acceptable when there is a legitimate ratemaking principle that justifies the discrimination.”<sup>26</sup> IECPA maintains that gas-on-gas competition falls into the camp of perfectly acceptable price discrimination. Similarly, Pennsylvania State University (PSU) contends that gas-on-gas rate discounting is not unreasonable price discrimination.<sup>27</sup> This Commission has found just the opposite to be true. In Equitable’s attempted acquisition of Peoples, the Commission recognized the discriminatory nature of gas-on-gas competition and held that this form of competition must end:

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25 *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. 63 (Order entered April 13, 2007).

26 IECPA M.B., p. 15.

27 PSU M.B., p. 6.

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 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>28</sup>

Additionally, this Commission has determined that it is "unreasonable" to transfer the cost of gas-on-gas retainage discounts to captive customers.<sup>29</sup> Given that cost shifting gas-on-gas retainage discounts is prohibited, the Commission should find that shifting the cost of other distribution discounts due to gas-on-gas competition to captive customers is likewise unreasonable. Indeed, even the NGDCs who engage in gas-on-gas competition "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>30</sup> and:

recognize the legitimacy of the argument made by opponents of gas-on-gas competition that the benefits of gas-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>31</sup>

PSU states that I&E's position is "fundamentally flawed" because "opponents of gas-on-gas flex would treat these customers with options as if, for price competition

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28 *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).

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

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

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

purposes, they had no other distribution service alternative when that is not the case.”<sup>32</sup>

I&E recognizes that some customers have competitive options and I&E has no objection to NGDCs competing for customers based on their Commission approved tariff rates.

This position recognizes that certain customers have service alternatives and allows customers to choose their provider based on approved tariff rates or any other factor that the customer deems to be important (i.e., service quality). Contrary to PSU’s assertion, I&E has not ignored the fact that some customers have distribution service options; however, NGDCs should not be permitted to discount their tariff rates to pennies and recover the shortfall caused by those discounts from captive customers.

**B. A Reasonable Transition Period Does Not Require Expiration of Current Flex Agreements and Base Rate Filings.**

IECPA and Peoples/PTWP argue that if gas-on-gas competition in its current form ends or is modified; there should be an appropriate transition period to shift away from the discounted rates under the current form of gas-on-gas competition.<sup>33</sup> I&E did not initially propose a transition period, but indicated that it does not oppose a reasonable transition as long as it is made clear that the practice of recovering the gas-on-gas revenue shortfall from captive customers will be ended at a future point in time.<sup>34</sup> However, as identified by Peoples/PTWP, there is considerable debate over what constitutes a reasonable transition period.<sup>35</sup>

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32 PSU M.B., p. 7.

33 IECPA M.B., pp. 20-28.

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

35 Peoples/PTWP M.B., pp. 26-29.

First, IECPA, Peoples/PTWP and Columbia Gas of Pennsylvania, Inc. (Columbia) contend that a reasonable transition requires that all contracts between NGDCs and customers be honored until their expiration dates.<sup>36</sup> IECPA characterizes Office of Small Business Advocate's (OSBA) position as recommending that all gas-on-gas contracts terminate by 2016 and Peoples/PTWP cautions against using the Commission's Section 508 powers to rescind or modify existing agreements.<sup>37</sup> To be clear, no party is recommending that contracts between NGDCs and flex customers be modified or rescinded. OSBA's position is just the opposite:

- Q. Is OSBA proposing that customer contracts which allow for gas-on-gas discounts beyond December 31, 2016 be nullified by the Commission?
- A. No. OSBA is proposing only that the Commission rule that gas-on-gas discounts after December 31, 2016 may not be explicitly claimed as part of the revenue requirement for regular rate customers in base rate proceedings for gas distribution service after that date. Parties to any such contracts will presumably continue to meet their obligations under the specific terms of those contracts.<sup>38</sup>

Similarly, I&E is not recommending that the current contracts be extinguished prior to running their full term.<sup>39</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. Columbia disagrees stating that "NGDCs have entered into these agreements with the understanding that, if

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36 Peoples/PTWP M.B., p. 17. IECPA M.B., p. 21. Columbia M.B., p. 6.

37 IECPA M.B., p. 21. Peoples/PTWP M.B., p. 28.

38 OSBA St. No. 1, p. 8.

39 I&E St. No. 1-R, p. 8. I&E M.B., p. 25.

the discounting was justified to meet competition, the resulting shortfall would be recoverable.”<sup>40</sup> However, Columbia’s position ignores the fact that Peoples/PTWP recognized in the recent Peoples/Equitable merger settlement that they could be required to absorb the rate discounts based on the outcome of this Investigation:

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.<sup>41</sup>

As such, rescinding existing contracts is not necessary because flex customers can continue to receive discounts for the length of their respective contracts and Peoples/PTWP can absorb the costs of those gas-on-gas discounts rather than shift it to captive customers. Accordingly, the length of the current contracts should not factor into the Commission’s determination of a reasonable transition period away from current form of gas-on-gas competition.

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40 Columbia M.B., pp. 6-7.

41 *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).*

IECPA and Peoples/PTWP further maintain that base rate cases should occur before competitive customers are transitioned away from discounted rates to tariff rates.<sup>42</sup> IECPA contends that “[b]ecause the rates of gas-on-gas customers are currently derived based on principles outside of the NGDC’s tariff, it is unclear what the just and reasonable tariff rate would be for these customers.”<sup>43</sup> IECPA argues that waiting until the next base rate case is necessary to ensure that large commercial and industrial customers are offered just and reasonable, cost-based rates.<sup>44</sup> This position implies that the current Commission approved tariff rates are unjust, unreasonable and not cost-based. I&E disagrees with this premise because, as discussed in Main Brief, all NGDCs currently have tariff rates that have been determined to be just and reasonable by this Commission.<sup>45</sup> Because the Commission has already determined that each NGDC’s tariff rates are just and reasonable, it follows that the approved tariff rates are reasonably reflective of costs.<sup>46</sup> Moreover, a concern exists about timing the end of gas-on-gas competition with the next round of NGDC base rate filings given that such filings are entirely within the discretion of the utilities. NGDCs can refrain from making a base rate filing for years if they choose.<sup>47</sup> Additionally, Peoples and Equitable currently have a stay-out provision that caps their rates until January 1, 2018; therefore, IECPA and Peoples are requesting that the status quo remain in effect for at least the next four years but possibly longer depending on when the NGDCs decide make their next base rate

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42 IECPA M.B., p. 22.

43 IECPA M.B., p. 22.

44 IECPA M.B., p. 25.

45 I&E M.B., p. 27.

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

47 For example, UGI Utilities, Inc. has not filed a base rate case since 1995.

filings. For these reasons, I&E does not agree that a reasonable transition period requires that all NGDCs file for and receive Commission approval of new rates.

Finally, IECPA argues that there must be a transition period between the expiration of the gas-on-gas discounted rates and the new tariff rates because the financial hardship of the new rates “would be eased if the customer is given long-term notice of the potential increase.”<sup>48</sup> IECPA further contends that such customers would benefit from the advance notice of a transition period because “they will have an opportunity to make appropriate budgeting decisions in light of the future increased natural gas prices.”<sup>49</sup> The history of this issue demonstrates that customers have had long-term notice of a potential increase to their discounted rates. The concept of addressing gas-on-gas competition in a generic proceeding was raised in individual base rate proceedings in 2010 and the Petition initiating this Investigation was filed on December 8, 2011. It is still months away from an Initial Decision and Final Order; therefore, even if this proceeding is resolved by mid-2014 at the earliest, it is apparent that flex customers have had years to digest the fact that their discounted rates may end. Accordingly, while I&E does not disagree with a reasonable transition period, it is important to remember that such a period does not have to be inordinately long given that this issue has been pending for quite a long time.

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48 IECPA M.B., p. 26.

49 IECPA M.B., p. 27.

**C. If the Commission Does Not Accept I&E's Recommendation to End the Current Form of Gas-on-Gas Competition, Peoples/PTWP's Proposed Modifications to Gas-On-Gas Competition should be Adopted.**

If the Commission disagrees with I&E's recommendation to end ratepayer funded gas-on-gas competition, the proposal put forth in Peoples/PTWP's Surrebuttal testimony as modified by Appendix B of its Main Brief presents the most workable solution and is vastly preferable to allowing the status quo to continue.<sup>50</sup> The proposal provides protection to ratepayers as it allows gas-on-gas competition to continue but in a modified form so that the tariffed rates set the floor for discounting. Unlike the current form of competition where there is no limit to the discount, the Peoples/PTWP proposal permits NGDCs to reduce tariff rates only to the level required to meet the tariff rates of the competitor NGDC. The revenue shortfall will continue to be recovered from captive customers; however, the amount will be significantly reduced given that there will be an established floor that the discount cannot go below. Additionally, while the proposal allows existing gas-on-gas agreements to be honored for their existing terms, all new and renewal agreements will be subject to the new form of competition. As such, the status quo of gas-on-gas competition will end immediately for all new contracts and will be fully extinguished once existing contracts have run their full terms. Although I&E prefers that ratepayer funded gas-on-gas competition end, the modified form of competition presented by Peoples/PTWP addresses I&E's concerns about the significant amount of discounts currently recovered from captive customers and transitions away from the status quo immediately rather than permitting it to continue for a prolonged

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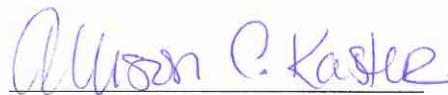
<sup>50</sup> Peoples M.B., pp. 23-25, Appendix A-B.

period. For these reasons, if the Commission declines to end ratepayer funded gas-on-gas competition, the Peoples/PTWP proposal is a reasonable way to continue such competition in a modified form that incorporates protections for captive customers.

### III. 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. If the Commission declines to end ratepayer funded gas-on-gas competition, I&E respectfully requests that the modified form of gas-on-gas competition presented by Peoples/PTWP be adopted.

Respectfully submitted,



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PA Attorney I.D. No. 93176

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Brief** dated March 12, 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):

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