



March 12, 2014

VIA E-FILE

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Rosemary Chiavetta, Secretary  
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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**

**REPLY BRIEF OF PEOPLES NATURAL GAS COMPANY LLC (INCLUDING ITS  
EQUITABLE DIVISION) AND PEOPLES TWP LLC**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply Brief of Peoples Natural Gas Company LLC (including its Equitable Division) and Peoples TWP LLC in the above-referenced proceeding. Copies of the Reply Brief are being served on the Presiding Officer, Administrative Law Judge Elizabeth H. Barnes, and on all parties, as indicated on the enclosed Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Please date-stamp the extra copy and return it with our courier. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito  
Counsel for *Peoples Natural Gas Company LLC*  
and *Peoples TWP LLC*

DPZ/kmg  
Enclosures  
cc: Per Certificate of Service

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**CERTIFICATE OF SERVICE**  
**Docket Nos. P-2011-2277868 and I-2012-2320323**

I hereby certify that I have this day served a true copy the Reply Brief of the Peoples Natural Gas Company LLC and Peoples TWP LLC, 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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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge  
Elizabeth H. Barnes

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

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**REPLY BRIEF OF  
PEOPLES NATURAL GAS COMPANY LLC  
(INCLUDING ITS EQUITABLE DIVISION) AND  
PEOPLES TWP LLC**

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## I. INTRODUCTION

On February 25, 2014, the following parties submitted Main Briefs in the above-captioned generic investigation regarding “gas-on-gas competition” within the Commonwealth of Pennsylvania: Peoples Natural Gas Company LLC (including its Equitable Division) (“Peoples”) and Peoples TWP LLC (“Peoples TWP”); the Office of Consumer Advocate (“OCA”); the Bureau of Investigation & Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”); the Office of Small Business Advocate (“OSBA”); the Industrial Energy Consumers of Pennsylvania (“IECPA”); Columbia Gas of Pennsylvania, Inc. (“Columbia”); National Fuel Gas Distribution Corporation (“NFGD”); and, The Pennsylvania State University (“Penn State”). With due consideration to the arguments raised by the other parties in their Main Briefs and for the reasons that follow, Peoples and Peoples TWP respectfully submit that the most appropriate outcome of this generic investigation proceeding is a recommendation by the Honorable Administrative Law Judge Elizabeth H. Barnes (“Presiding Officer”) to the Commission that it promulgate a statement of policy or final order, following appropriate due process, that substantially complies with the alternative proposal for modification of gas-on-gas competition set forth by Peoples and Peoples TWP in the “Potential Acceptable Options” column of “Appendix B” to their Main Brief (as set restated below in Paragraph II.A.; hereinafter, the “Peoples Proposal”).

## II. MODIFICATION OF GAS-ON-GAS COMPETITION IS IN THE PUBLIC INTEREST

### A. The Peoples Proposal Would Continue Gas-on-Gas Competition in a Modified Form that is in the Public Interest.

The Peoples Proposal recognizes that there are certain benefits to the continuation of gas-on-gas competition (*cf.* the Main Briefs of IECPA and Penn State) but also addresses the major

criticisms levied against the current form of gas-on-gas competition (*cf.* the Main Briefs of OCA, I&E, and OSBA). It strikes an appropriate balance between the competing interests of the advocates of the *status quo* and the advocates of the complete elimination of gas-on-gas competition.

Other parties have presented extreme, provincial positions that should be rejected in favor of a more moderate approach that recognizes that gas-on-gas competition has deep historic roots in Western Pennsylvania that cannot simply be displaced by regulatory fiat. *See* Peoples/Peoples TWP Main Brief, 20-21; Peoples/Peoples TWP St. No. 1, 15:9-19; OCA St. No. 1, 20:6-10 (“The practices and unfairness associated with ratepayer funded gas-on-gas discounting have existed for decades, and . . . cannot be fairly resolved overnight.”). Indeed, customers and natural gas distribution companies (singularly “NGDC” or collectively “NGDCs”) alike have made substantial business investments in reliance upon the existence of some form of competition for natural gas transportation service. *See* Peoples/Peoples TWP Main Brief, 6-9 (regarding “History of Gas-on-Gas Competition”); Peoples/Peoples TWP St. No. 1, 4:16-5:3 (discussing the fact that Peoples and Peoples TWP have made business, system planning, and investment decisions based upon Commission and court decisions regarding gas-on-gas competition); *see also* Columbia St. No. 1R, 5:11-21; Equitable St. No. 1, 4:14-5:2. Nevertheless, it is undeniable that the current form of discounting produces inequities between customers. Peoples/Peoples TWP St. No. 1, 15:9-19 (“[T]he 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.”)

Under the Peoples Proposal, gas-on-gas competition would be permitted to continue. NGDCs would be permitted to compete on non-rate/non-price factors or bases -- which may

include, but are not limited to, service quality, tariffed terms and conditions of service, and access to reliable and low-cost gas supplies. NGDCs would also be permitted to compete on price, subject to certain reasonable limitations designed to mitigate the most obvious problem of the current form of gas-on-gas competition — *i.e.*, the lack of a reasonable floor on the level of discount that an NGDC may offer to a customer.

Under the Peoples Proposal, an NGDC could compete without limitation at its non-discounted tariffed rates. NGDCs would also be permitted to compete at discounted rates under the following terms and conditions:

1. There shall be no new and renewal gas-on-gas discount agreements, except as provided in Paragraphs 3 and 4 below.

2. All existing gas-on-gas discount agreements shall be honored for their existing terms without modification. An NGDC shall be permitted to recover the discount adjustment associated with the existing agreement in future base rate cases, if the NGDC demonstrates that the discount has been prudently awarded and is reasonable.

3. For all new and renewal gas-on-gas discount agreements beginning on the date of entry of the Commission's final order implementing this statement of policy, an NGDC may offer a discount in order to meet a competitor NGDC's non-discounted tariffed rate. Such a discount may be offered only to an existing or former customer of the NGDC or to a potential customer associated with new development; and may not be offered to a customer of a competitor NGDC unless such customer was formerly served at that service location by the offering NGDC. A competing NGDC may not offer a rate below the lowest non-discounted tariffed rate available to a customer, even if the NGDC is willing to forgo recovery of a discount adjustment in future base rate cases.

4. The term for any such rate discount agreement shall not exceed five years; provided however that there shall be no restriction on the term if the agreement contains a provision requiring the reexamination and resetting of the discounted rate consistent with the requirements of paragraph 3 on a no-less-frequent basis than every five years.

5. An NGDC shall be permitted to recover the discount adjustment in future base rate cases for any discount that is necessary to meet the non-discounted tariffed rate of a competitive NGDC, if the NGDC demonstrates that the discount has been prudently awarded and is reasonable.

6. In order for an NGDC to offer gas-on-gas discounts prospectively, the NGDC must obtain a Commission finding or determination in its next base rate case and future base rate proceedings that the new rates are within a range that reasonably reflects cost of service.

7. An NGDC which provides a gas-on-gas discount shall maintain reasonable records relating to each gas-on-gas discount customer demonstrating that a competitive NGDC actually exists, that the customer could have chosen service from a competitive NGDC without a prohibitive connection expense, and that the discounted rate represents the maximum amount that could be achieved from that customer.

As discussed below, the Peoples Proposal addresses the major concerns raised in the Main Briefs of the other parties regarding the continuation, elimination, or modification of gas-on-gas competition.

**B. The Peoples Proposal Addresses the Primary Concerns of Other Parties.**

**i. *IECPA and Penn State's Concerns about the Continuation of Gas-on-Gas Competition Would be Addressed.***

Both IECPA and Penn State argue that gas-on-gas competition benefits customers through lower rates and improved service.<sup>1</sup> IECPA Main Brief, 5-9; Penn State Main Brief, 5-9. Peoples and Peoples TWP agree that competition is generally beneficial to customers who have competitive options but also recognize that, in the context of rate-regulated public utility service, the discounts awarded to certain customers have detrimental consequences on either the utility's captive ratepayers or the utility's shareholders compared to a situation where no competition and, therefore, no discounting exists.

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<sup>1</sup> IECPA cites at several locations in its Main Brief to the testimony of Equitable Gas Company LLC ("Equitable"). See IECPA Main Brief, 7, 9, 12, 19, 24, 27. However, Equitable no longer exists as a legal entity and, therefore, is no longer technically a party to this proceeding. On December 17, 2013, Equitable was merged into Peoples with Peoples being the surviving entity. See Peoples St. No. 1-Supp., 2:1-4. Peoples does not support or adopt the positions set forth in Equitable's testimony and, accordingly, such positions should be afforded little to no weight.

IECPA goes so far as to claim that the Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2201 *et seq.*, and the Commission's "Natural Gas Transportation Service" regulations, 52 Pa. Code § 60.1 *et seq.*, support the continuation of the *status quo* for gas-on-gas competition. IECPA Main Brief, 10-12. A careful read of the Act and the regulations however lend no support to IECPA's contention. IECPA has simply cobbled together generic pro-competition passages in an attempt to suggest that the Commission cannot change the current form of gas-on-gas competition. There is however no mandate that gas-on-gas competition continue in its current form. To the contrary, the Commission is free, subject to constitutional limitations (as discussed below), to craft a modified form of gas-on-gas competition that is in the public interest.

The challenge is to find a workable solution that preserves the benefits of competition (low prices and improved service) while protecting the interests of captive ratepayers and utility shareholders.<sup>2</sup> The Peoples Proposal is the only proposal that achieves these dual goals. Customers with competitive options would benefit from low prices because they could either take service from the NGDC with the lowest tariffed distribution rate or from a competitive NGDC that would be permitted to match the lower tariffed distribution rate. *See* Peoples Proposal, ¶ 3. The customers with competitive options could benefit from the lowest, cost-based rate of the competing NGDCs and/or could choose an NGDC based on factors unrelated to distribution cost -- such as service quality, tariffed terms and conditions of service, and access to more-reliable or lower-cost gas supplies.

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<sup>2</sup> With regard to the magnitude of gas-on-gas competition, it should again be noted that the merger of Equitable into Peoples significantly reduced the amount of gas-on-gas competition occurring within the Commonwealth. Only Peoples, Peoples TWP (which shares a common parent with Peoples), and Columbia remain active in gas-on-gas competition. As a result of the merger, the number of customers currently involved in gas-on-gas discounting was dramatically decreased from 401 to 74.

ii. ***The Public Advocates' Concerns Regarding Rate Recovery of Excessive Discount Adjustments Would be Addressed Through a Reasonable Discount Floor.***

The overarching concern of OCA, I&E, and OSBA is that captive ratepayers are forced to absorb the revenue shortfall that results from gas-on-gas discounting (“Discount Adjustment”) and that there is no reasonable floor on the permissible level of discounting. OCA Main Brief, 12-25; I&E Main Brief, 7-9, 14-20; OSBA Main Brief, 12-17. The Peoples Proposal directly addresses this concern by creating, for all new and renewal gas-on-gas discount agreements, a reasonable floor on the level of discount that may be awarded by an NGDC. *See* Peoples Proposal, ¶¶ 1, 3, 5. The level of discount would be dictated by the lowest tariffed distribution rates of a competitive NGDC. In other words, the allowable discount would be limited to what is actually necessary to meet the competition. This limitation would greatly mitigate the level of Discount Adjustments claimed and recoverable in NGDC base distribution rate cases.

Currently, the only floor on gas-on-gas discounts is the incremental cost to serve the competitive customer. *See* IECPA St. 1-S, 10:4-19. As such, a customer who receives a discount may not be required to pay its cost of service in the ratemaking sense. In other words, the discounted rate may not be fully compensatory of the NGDC’s ratemaking cost to serve the customer. A larger discount results in a larger Discount Adjustment, which in turn results in a greater rulemaking burden on captive ratepayers. Likewise, NGDC shareholders, who are constitutionally entitled to the opportunity to earn a return on and of their investment, should not be forced to absorb Discount Adjustments in order to retain customer load for the benefit of the system.

While admittedly not perfect, the Peoples Proposal presents the best possible resolution to an imperfect situation that has developed over decades and that cannot be unraveled without significant litigation over stranded costs, regulatory takings, and impairment of contracts. The

creation of a reasonable cost-based floor (even if it is based on a competitor NGDC's cost to serve) will encourage the development of true cost-based rates for competitive customer classes, which, in turn, protects captive ratepayers from substantial Discounts Adjustments and protects competing NGDCs from having to "race to the bottom" in order to attract and retain customer load.

**iii. *NGDCs' Concerns Regarding Rate Recovery of Discount Adjustments Would be Addressed.***

NGDCs are entitled to a fair return on and of their investment in providing service to the public. Rates which do not provide a utility with the opportunity to earn a fair rate of return are confiscatory and unconstitutional. *See Fed. Power Comm'n v. Hope Nat'l Gas*, 320 U.S. 591 (1944); *Bluefield Waterworks and Imp. Co. v. Pub. Serv. Comm'n of W.V.*, 262 U.S. 679 (1923); *Pa. Pub. Util. Comm'n v. Pa. Gas and Water Co. – Water Div.*, 424 A.2d 1213 (Pa. 1980); *see* Columbia Main Brief, 6-7; Peoples/Peoples TWP Main Brief, 28-29. NGDCs accordingly have a constitutional right to rates which would provide them with the opportunity to earn their full revenue requirement — including recovery of shortfalls that would otherwise result from Discount Adjustments associated with gas-on-gas discounting.

The Peoples Proposal would avoid this potential constitutional problem by allowing for rate recovery of Discount Adjustments associated with existing gas-on-gas discount agreements as well as the reduced level of Discount Adjustments associated with new and renewal gas-on-gas discount agreements. *See* Peoples Proposal, ¶¶ 2, 5. The NGDCs would nevertheless maintain the burden of proof to demonstrate that the Discount Adjustments were prudently awarded and are reasonable. Peoples Proposal, ¶¶ 2, 5; *cf.* 66 Pa. C.S. § 315 ("Burden of proof").

Regardless of whether the Peoples Proposal is adopted, NGDCs must be allowed to recover Discount Adjustments related to existing gas-on-gas discount agreements. The agreements were entered into in reliance upon decades of Commission policy that permitted and, at times, encouraged the practice. *See generally The Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 554 A.2d 585 (Pa. Cmwlth. 1988)(upholding Commission decision that held that it is in the public interest to spur the efficiencies created by competition by permitting customers to choose among suppliers in overlapping service territories). It would be fundamentally unfair, confiscatory, and constitutionally impermissible, *see Hope, Bluefield Waterworks, and Pa. Gas & Water supra*, for the Commission to end the NGDC's right to recovery of the Discount Adjustments without a reasonable transition period in which the NGDCs could move away from existing gas-on-gas discount agreements in a prudent manner.

**iv. *Competitive Customer Concerns Regarding the Commission's Honoring of Existing Discount Agreements Would be Addressed.***

Customers have made business planning decisions based on their projected energy costs and the continued existence of their current gas-on-gas discount agreements. Likewise, competing NGDCs have made system investment decisions based upon their projected loads, which are supported in part by their existing gas-on-on gas discount agreements. IECPA Main Brief, 21-22; Columbia Main Brief, 6-7; Peoples/Peoples TWP Main Brief, 27-28. Thus, it is imperative that existing gas-on-gas discount agreements be honored for their stated terms. The Peoples proposal would do so. *See Peoples Proposal*, ¶ 2.

As expressed by Peoples, Peoples TWP, Columbia and IECPA, the modification or rescission of existing contracts would be fundamentally unfair and potentially lead to unnecessary litigation. *See IECPA Main Brief*, 21-22; *Columbia Main Brief*, 6-7;

Peoples/Peoples TWP Main Brief, 27-28. Any Commission attempt to modify or rescind the agreements would require compliance with the requirements of Section 508 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 508 (“Power of commission to vary, reform and revise contracts”). The Commission has been traditionally and rightly reluctant to interfere with existing agreements that were lawfully negotiated at arms-length. It should not deviate from that policy with regard to gas-on-gas discount agreements. The existing agreements should simply be allowed to run their course.

The modification or rescission of existing gas-on-gas discount agreements would also raise serious issues related to the unconstitutional impairment of contractual relationships in violation of the Contract Clause of Article I, Section 10 of the United States Constitution. U.S. Const. Art. I, § 10, cl. 1 (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . .”); *see generally United States Trust Co. v. N.J.*, 431 U.S. 1 (1977)(invalidating New Jersey law retroactively altering a statutory bond covenant); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)(explaining that the threshold issue is “whether the state law has, in fact, operated as a substantial impairment of the contractual relationship.”). The Commission should not impair the existing contractual obligations of NGDCs and competitive customers. Gas-on-gas competition has existed for over three decades in the Commonwealth and there is no compelling reason as to why existing agreements must be immediately terminated. The agreements should be honored and permitted to run their course; and, as explained above, the NGDCs should be allowed rate recovery of the associated Discount Adjustments.

v. ***OCA's and OSBA's Concerns Regarding Unnecessary Duplication of Facilities Would be Addressed.***

Both OCA and OSBA raise concerns regarding the unnecessary duplication of facilities if gas-on-gas competition is permitted to continue. OCA Main Brief, 17-18; OSBA Main Brief, 17. Peoples and Peoples TWP acknowledge that the duplication of facilities is inconsistent with traditional utility regulation, which typically favors monopolistic service territories in order to limit the unnecessary duplication of facilities. However, as OCA witness Mr. Watkins has noted: “[T]he issues surrounding the ultimate approach and mechanism to abolish ratepayer funded gas-on-gas rate discounts are clearly complex. There are no obvious or clear-cut approaches that are simple, and at the same time, fair to all stakeholders.” OCA St. No. 1, 20:18-20. The task is to figure out how to avoid the unnecessary duplication in a manner that is fair to all stakeholders and avoids litigation.

The only way to eliminate completely the duplication of NGDC facilities is to create specific and exclusive service areas in Western Pennsylvania for each NGDC, as suggested by OCA in its first option. OCA St. No. 1, 21:13-18. However, this proposal is simply not feasible. It would result in extensive and contentious litigation between competing NGDCs regarding the allocation of service territories, and require rate recovery of stranded costs or alternatively create a constitutional regulatory taking problem. *See* Peoples/Peoples TWP St. No. 1-R, 9:9-13; OSBA St. No. 2, 11:3-12; IECPA St. No. 1-R, 9:17-10:3; Columbia St. No. 1R, 5:11-6:2; *see also Pa. Coal Co. v. Mahon*, 260 U.S. 393 (1922)(explaining that property can be taken by government regulation and compensation is due). The more practical approach is for the Commission to take steps to mitigate the unnecessary duplication of facilities prospectively.

The Peoples Proposal would mitigate the unnecessary duplication of facilities going forward. Under the Proposal, a gas-on-gas discount could be offered only to an existing or

former customer of the NGDC or to a potential customer associated with new development; and may not be offered to a customer of a competitor NGDC unless such customer was formerly served at that service location by the offering NGDC. Peoples Proposal, ¶ 3. The practical effect of limiting discounts to new, existing, and former customers is that new facilities would be built only for new customers where, presumably, no other facilities are currently in place. Service to existing and former customers would likely be via existing facilities.

While not completely eliminating duplicative facilities, the Peoples Proposal would mitigate the problem going forward. It would essentially prohibit the poaching of one NGDC's existing customers by another NGDC. Gas-on-gas competition would be limited to new development and protection of existing load.

In the end, the problem of existing duplicative facilities is best left for the free market. As with the acquisition of Peoples TWP by the parent of Peoples and with the merger of Equitable into Peoples, mergers, acquisitions, and voluntary service territory abandonments will likely solve the problem of duplicative facilities at some point in the future. The Commission should not hasten this natural process through policies that would artificially pick winners and losers.

**vi. *OCA's and OSBA's Concerns Regarding Contracting Methods and Contract Terms Would be Addressed.***

In its Main Brief, OCA asserts that: “[A]llowing the NGDCs to continue their current contracting methods, unchecked, could also lead to contract terms that run well into the future and are no longer representative of economic conditions or costs that were in place when the contract was negotiated.” OCA Main Brief, 31. Similarly, OSBA also raised concerns regarding “unusually long-term flex rate agreements.” OSBA Main Brief, 18-19.

The Peoples Proposal addresses concerns regarding contracting methods by requiring the contracting NGDC to maintain relevant records to demonstrate that the discount was justified. Specifically, an NGDC would have to maintain reasonable records relating to each gas-on-gas discount customer demonstrating that a competitive NGDC actually exists, that the customer could have chosen service from a competitive NGDC without a prohibitive connection expense, and that the discounted rate represents the maximum amount that could be achieved from that customer. Peoples Proposal, ¶ 7. These requirements, coupled with establishing cost-based tariff rates, a reasonable floor on the discount level and the NGDC's burden of proof in rate proceedings, would ensure that captive ratepayers are not paying for unreasonable gas-on-gas Discount Adjustments.

With regard to the allowable term of future gas-on-gas discount agreements, the Peoples Proposal provides that the term for a gas-on-gas discount agreement shall not exceed five years; provided however that there would be no restriction on the term if the agreement contains a provision requiring the reexamination and resetting of the discounted rate on a no-less-frequent basis than every five years. Peoples Proposal, ¶ 4. This provision would prevent an NGDC and customer from locking in a discount based on a competitor NGDC's lower tariffed rate for a long period of time. The discount rate would have to be periodically reset to reflect the competitor NGDC's then-current cost-justified tariffed rate, as resulting from base rate proceedings.

**vii. *IECPA's Concerns Regarding Current Rates Not Being Cost-Based Would be Addressed.***

IECPA has expressed concern that, contrary to the assertions of the public advocates, large commercial and industrial customers are subsidizing smaller customers under non-discounted tariffed rates in certain circumstances. In other words, large commercial and

industrial customers, but for gas-on-gas discounts, would be paying in excess of their true cost of service. Accordingly, IECPA argues that, because the discounts offset non-cost-based rates, the public advocates arguments regarding undue discrimination in violation of Section 1304 of the Code, 66 Pa. C.S. § 1304, must fail. IECPA Main Brief, 13-16.

Peoples and Peoples TWP share the concern of IECPA that, in certain circumstances, NGDC non-discounted tariffed rates do not reflect true of cost service and, as a result, large commercial and industrial customers are in fact subsidizing smaller customers. For this reason, Peoples and Peoples TWP's initial proposal in this proceeding was for gas-on-gas competition to continue without discounts at full margin, cost-based rates after a reasonable transition period. *See* Peoples/Peoples TWP St. No. 1, 15:1-17:21; Peoples/Peoples TWP St. No. 1-R, 13:18-14:7; *cf.* Columbia Main Brief, 9 (supporting movement to full-margin, cost-based rates if the *status quo* is changed); NFGD Main Brief, 2-3 ("If gas-on-gas competition should be allowed to continue, Distribution believes that where a specific customer has gas-on-gas competition available to them, the competing NGDCs should be required to prove that the rate they are providing to that specific customer is a cost-based rate that appropriately recovers the costs of facilities used in providing service to the customer.").

The Peoples Proposal maintains Peoples' commitment to move rates to true cost of service, consistent with the Commonwealth Court of Pennsylvania's direction in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007). The only material discounting difference between Peoples and Peoples TWP's initial position and the Peoples Proposal is that the Peoples Proposal recognizes that some form of discounting (with a reasonable floor) is necessary for two reasons. First, discounts preserve an enhanced level of competition beyond that provided by competition

limited to non-price benefits such as service quality, tariffed terms and conditions of service, and access to more-reliable or lower-cost gas supplies. Second, a modified form of discounting protects the captive ratepayers of the higher-tariff-cost NGDC by allowing the NGDC to attract new load and maintain existing load. But for some form of discounting, the lower-cost-tariff NGDC could easily poach the customers of the higher-tariff-cost NGDC — creating financial difficulties for the higher-tariff-cost NGDC and its captive ratepayers. *See* OCA St. No. 1-R, 8:1-14; IECPA St. No. 1, 6:4-7:17 (“Thus, there would be both winner and loser utilities in the quest for competitive load if rate discounting in gas-on-gas competition is eliminated.”).

The Peoples Proposal strikes an appropriate balance between preserving the benefits of competition through discounting while requiring competing NGDCs to eliminate inter-class subsidies — making the newly created discount floor (*i.e.*, the non-discounted tariffed rate of the competitor NGDC) reasonably cost-based. In order for an NGDC to offer gas-on-gas discounts prospectively, the NGDC would have to obtain a Commission finding or determination in its next base rate case and future base rate proceedings that its new rates are within a range that reasonably reflects cost of service. Peoples Proposal, ¶ 6.

**viii. *Other Forms of Discounting Would be Preserved to Protect Customers and NGDCs.***

Finally, it is worth noting that this generic investigation deals only with gas-on-gas discounting and not with other forms of discounting (*e.g.* discounting for pipeline bypass, alternative fuel, and economic development). OCA Main Brief, 22-24; OSBA Main Brief, 13; Penn State Main Brief, 8-9. IECPA nevertheless tries to drag these other forms of discounting into this proceeding by arguing that there is no reason to distinguish between gas-on-gas discounting and these other forms of discounting. IECPA Main Brief, 16-18.

Peoples and Peoples TWP do not agree that the rationale for other forms of discounting is equally applicable to gas-on-gas discounting. Those other forms of discounting do not pit one Commission-regulated NGDC against another. They are intended to deal with outside threats to an NGDC's financial well-being. Peoples and Peoples TWP agree with the OCA that "pipeline bypass, dual fuel and economic development discounting practices reflect legitimate business practices, result in reasonable price discrimination, and are in the public interest." OCA Main Brief, 23. The Peoples Proposal accordingly addresses only prospective modification of gas-on-gas competition. Discounting for pipeline bypass, alternative fuel, and economic development was not part of the scope of this generic investigation (*see* Commission Secretarial Letter, dated July 25, 2012, initiating this proceeding) and should continue without modification.

### **III. CONCLUSION**

Peoples and Peoples TWP have presented the only reasonable proposal that would preserve the benefits of the gas-on-gas competition for large customers (such as lower prices, improved service quality, the availability of different tariffed terms and conditions of service, and access to more-reliable and lower-cost gas supplies) -- while ensuring that captive ratepayers are not being held responsible for excessive Discount Adjustments and that NGDCs recover a return on and of their investment. Peoples and Peoples TWP are, in essence, proposing the creation of a reasonable, cost-based floor on gas-on-gas discounting for all new and renewal gas-on-gas discount agreements. That floor would be the lowest non-discounted tariffed distribution rates of any NGDC competing for the customer's load. All existing gas-on-gas discount agreements would be permitted to run their terms and the NGDCs would be allowed rate

recovery for Discount Adjustments for both existing and new/renewal agreements; provided that the NGDC can demonstrate that the discounts were prudently awarded and are reasonable.

The Presiding Officer should recommend that the Commission promulgate a statement of policy or otherwise issue a final order, following appropriate due process, that is consistent with the Peoples Proposal as set forth in Paragraph II.A. above. If implemented, the Peoples Proposal would allow the continuation of gas-on-gas competition in a modified form that is consistent with the public interest.

#### **IV. REQUEST FOR RELIEF**

WHEREFORE, Peoples Natural Gas Company LLC (including its Equitable Division) and Peoples TWP LLC respectfully request that the Presiding Officer recommend that the Commission, after affording appropriate notice and opportunity to be heard to interested parties through a tentative order or other comment process, promulgate a statement of policy or enter a final order reflecting the fundamental concepts and principles for the modification of gas-on-gas competition set forth in the Peoples Proposal of Paragraph II.A. above.

Respectfully submitted,



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Dated: March 12, 2014

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