



COMMONWEALTH OF PENNSYLVANIA

July 14, 2014

E-FILED

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

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

Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies
Docket No. I-2012-2320323

Dear Secretary Chiavetta:

Enclosed for filing are the Exceptions, on behalf of the Office of Small Business Advocate in the above-docketed proceedings. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

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Assistant Small Business Advocate
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Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Generic Investigation Regarding Gas-on-Gas :
Competition Between Jurisdictional Natural Gas : Docket No. I-2012-2320323
Distribution Companies :**

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Exceptions, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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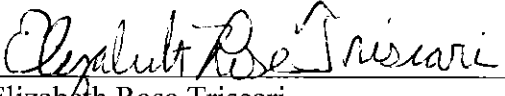
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Date: July 14, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Generic Investigation Regarding Gas-on-Gas :	
Competition Between Jurisdictional Natural Gas :	Docket No. I-2012-2320323
Distribution Companies :	

**EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: July 14, 2014

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I. INTRODUCTION

On December 8, 2011, the Office of Small Business Advocate (“OSBA”), together with the Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”), Peoples TWP LLC (“PTWP”), and Peoples Natural Gas Company (“Peoples”) filed a Joint Petition with the Pennsylvania Public Utility Commission (“Commission”) requesting that the Commission institute an investigation or rulemaking to address distribution base rate discounting among natural gas distribution companies (“NGDCs”) with overlapping service territories, *i.e.*, gas-on-gas competition.

In response to the Joint Petition, the Commission issued a Secretarial Letter on July 25, 2012, initiating a generic investigation (the “Investigation”) and referring this matter to the Office of Administrative Law Judge. The matter was assigned to Administrative Law Judge (“ALJ”) Elizabeth H. Barnes who issued a Prehearing Conference Order on August 23, 2012, inviting other parties to intervene and participate in the Investigation. Petitions to Intervene were filed by The Pennsylvania State University (“Penn State”), National Fuel Gas Distribution Corporation (“NFG”), The Industrial Energy Consumers of Pennsylvania (“IECPA”), PECO Energy Company (“PECO”), UGI Distribution Companies (“UGI”), Columbia, and Equitable.¹

At the Initial Prehearing Conference, the parties disagreed about the appropriate scope of the Investigation. ALJ Barnes issued a Prehearing Order on August 31, 2012, directing the parties to file formal comments regarding the appropriate scope of issues to be addressed in the Investigation. Accordingly, the OSBA, OCA, I&E, Equitable, IECPA, Penn State, Columbia, and Peoples each filed comments.

¹ Subsequent Petitions to Intervene filed by the Pennsylvania Independent Oil & Gas Association (“PIOGA”) and Duquesne Light Company (“Duquesne”) were granted at the Second Prehearing Conference on January 24, 2013.

On December 11, 2012, ALJ Barnes issued an Order, which determined the proper scope of the Investigation and stated in pertinent part:

Upon review of the parties' comments, 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 more in-depth procedure than just a comment period will be required and discovery will be allowed such that the parties will have time to evaluate the scope of the issues so that potential remedies can be evaluated.²

The Order also scheduled a Second Prehearing Conference for January 24, 2013.

On December 20, 2012, Peoples issued a press release announcing its agreement to acquire Equitable (the "Equitable Acquisition"), an NGDC whose service territory overlaps with Peoples/PTWP. Peoples/PTWP filed a Motion on January 23, 2013, requesting that the Investigation be held in abeyance pending final Commission action with respect to the Equitable Acquisition.

The Second Prehearing Conference was held on January 24, 2013, as scheduled. ALJ Barnes did not rule on Peoples/PTWP's Motion, instead allowing the parties the opportunity to provide a written response. After the filing of responses, ALJ Barnes denied Peoples/PTWP's request to hold this proceeding in abeyance and set a procedural schedule by Order dated February 13, 2013.

Also discussed at the Second Prehearing Conference was the necessity of a protective order, but the parties were unable to agree on the terms. Following months of negotiations that failed to result in a stipulated protective order, on April 3, 2013,

² *Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies*, Docket No. I-2012-2320323 (Order entered December 11, 2012) at 4.

Peoples/PTWP filed a Motion for Protective Order and Proposed Order. Following the filing of answers to the Motion for Protective Order by interested parties, ALJ Barnes issued a Protective Order on May 2, 2013, substantially similar to the one proposed by Peoples/PTWP. Given this more than three-month delay of the commencement of discovery, the procedural schedule was modified at the request of the parties to extend the time for discovery. Extensive discovery was subsequently exchanged.

Following discovery, the OSBA served on the parties and ALJ Barnes, OSBA Statement No. 1 (the Direct Testimony and Exhibits of Robert D. Knecht), OSBA Statement No. 2 (the Rebuttal Testimony of Robert D. Knecht), and OSBA Statement No. 3 (the Surrebuttal Testimony of Robert D. Knecht) on August 8, 2013, October 17, 2013, and November 26, 2013, respectively.

Prior to the scheduled evidentiary hearings and with the consent of the ALJ, the parties agreed to waive rejoinder testimony and cross-examination of witnesses and to admit previously served testimony by stipulation. A hearing was held on December 10, 2013, at which time OSBA Statement No. 1, OSBA Statement No. 2, and OSBA Statement No. 3, as well as the other parties' testimony and exhibits were entered into the record. It was also agreed to at the hearing that the record would remain open to permit Peoples to submit confirmation of the closing of its acquisition of Equitable.

Subsequent to the hearing, the parties engaged in settlement negotiations. It was agreed to by the parties that the procedural schedule should again be modified to allow for additional time for settlement talks. ALJ Barnes granted the parties' request to extend the due date for briefs by two weeks. The procedural schedule was amended by order

dated January 23, 2014, to have Main Briefs filed on February 11, 2014, and Reply Briefs on February 28, 2014.

Also on January 23, 2014, Peoples/PTWP filed an unopposed letter motion to enter into the record Peoples/PTWP Statement No. 1-Supp and request that the record thereafter be closed. This supplemental testimony confirmed the consummation of the acquisition of Equitable on December 17, 2013, pursuant to Commission approval at Docket No. A-2013-2353647. Equitable was acquired by Peoples' parent company, PNG Companies LLC, and was then merged with Peoples with the surviving legal entity being Peoples Natural Gas Company – Equitable Division.³ Although the testimony admitted into the record by the former entity (Equitable Gas Company LLC) was not withdrawn or stricken from the record, it was not adopted by the surviving legal entity (Peoples Natural Gas Company – Equitable Division).

The procedural schedule was amended a third time at the request of the parties, by order dated February 7, 2014, to allow for an additional two weeks for settlement discussions. The order directed Main Briefs to be filed on February 25, 2014 and Reply Briefs on March 12, 2014.

Despite good faith settlement negotiations, the parties were unable to reach a unanimous settlement of this proceeding.

The OSBA submitted a Main Brief and Reply Brief in this proceeding on February 25, 2014, and March 12, 2014, respectively.

ALJ Barnes issued a Recommended Decision (“RD”) on June 24, 2014.

The OSBA submits these exceptions in response to the RD.

³ Peoples/PTWP Statement No. 1-Supp. at 2.

II. EXCEPTIONS

Exception No. 1:

The ALJ erred by recommending that gas-on-gas rate discounting end no later than December 31, 2018, rather than December 31, 2016 (RD at 30-31).

The ALJ correctly concludes that gas-on-gas rate discounting is unduly discriminatory in that it benefits a select group of customers fortunate to be located in an overlapping service territory and is financially burdensome to other captive customers. The ALJ further correctly recommends that the Commission take action to end gas-on-gas rate discounting through a reasonable phase-out plan that allows for an adequate transition period to address concerns about possible economic disruptions for customers that currently enjoy the discriminatory discounts. However, the ALJ erred in recommending that ratepayer funded gas-on-gas rate discounts be abolished no later than December 31, 2018. In light of the RD's correct conclusion that gas-on-gas rate discounting is unduly discriminatory, such discounting should be ended as soon as is practicable and not be permitted to continue for another four years at the expense of captive ratepayers.

The OSBA respectfully requests that the Commission direct that gas-on-gas rate discounting be abolished no later than December 31, 2016. As OSBA witness Robert D. Knecht testified and as argued in the OSBA's Main Brief, December 31, 2016 is the appropriate time for such discounting to cease.⁴

⁴ OSBA Statement No. 1 at 7-8; OSBA Main Brief at 17-20.

First, as a practical matter, based on a review of the contract termination dates for most flex rate agreements, the vast majority have end dates prior to December 31, 2016.⁵ Thus, the number of contracts affected by the OSBA's proposed December 31, 2016 end date for allowability of discounts is relatively small.⁶

Second, NGDCs and flex rate customers should not be rewarded for imprudently entering into unusually long-term flex rate agreements without including a boilerplate contract provision to protect themselves against a change in regulatory law or policy.⁷ NGDCs and flex rate customers have been aware for many years that the statutory advocates oppose gas-on-gas discounting. To the extent that sophisticated entities like NGDCs and flex rate customers have accepted the risk of a change in regulatory policy, they presumably did so with their eyes open.⁸ The OSBA also has concerns about NGDCs and flex rate customers "gaming the system" by entering into longer-term contracts when it became clear that the Commission was revisiting its policy.⁹

Third, just as NGDCs and flex rate customers should not be rewarded for entering into unusually long flex rate agreements, captive ratepayers should not be punished by them, especially since these ratepayers are not a party to the agreements. NGDCs and flex rate customers entered into a mutually beneficial arrangement at the expense of a third party that was not represented in the negotiations, despite being forced to bear the

⁵ OSBA Statement No. 1 at 7.

⁶ OSBA Statement No. 2 at 4-5.

⁷ OSBA Statement No. 1 at 8.

⁸ OSBA Statement No. 3 at 4.

⁹ *Id.*

costs.¹⁰ Fairness dictates that regular rate customers, who have been paying excessive rates for years, not be required to continue to pay these higher rates for four additional years just because an agreement exists to which they did not consent and were not a party.

Fourth, implementing a sunset date with respect to the allowability of flex rate agreements does not conflict with any previous settlement or Commission decision in prior base rates cases. The Commission's previous acceptance of gas-on-gas discounts when determining an NGDC's revenue requirement has been generally based on test year considerations and not a detailed evaluation of the discounting over the entire duration of the contract.¹¹ Thus, longer term gas-on-gas contracts have generally not been evaluated and approved for anything more than the test year used in an NGDC's last base rates case. Moreover, no evidence has been adduced that any future test years in base rates proceedings involving gas-on-gas rate discounts extended beyond December 2016.

Finally, the OSBA's proposed end date of December 31, 2016, is a full four years past when this proceeding was initiated and will be more than two years after the time a Commission decision is anticipated in this Investigation, leaving more than adequate time for making necessary transitions from flex rates to regular tariff rates.¹²

¹⁰ *Id.* at 6.

¹¹ OSBA Statement No. 3 at 5.

¹² OSBA Statement No. 1 at 8.

Exception No. 2:

The ALJ erred by recommending a collaborative task force or working group to address discontinuing or modifying gas-on-gas competition (RD at 31-32, 36-37).

The history of gas-on-gas competition in Western Pennsylvania has created problems that are two-fold. The first is discriminatory rate discounting. Abolishing such discounting is the immediate need that should be implemented as soon as is practicable. The second issue is the duplicative investments in overlapping service territories that have resulted from gas-on-gas competition. Addressing this issue is a longer-term goal.

The ALJ erred in recommending that a task force or working group be created if the Commission determines either that (1) gas-on-gas competition should be entirely eliminated, *i.e.*, not only ending rate discounting, but also ending the ability of NGDCs to compete with one another for customers in overlapping service territories on their regular tariff rates, or (2) that gas-on-gas competition should be modified consistent with Peoples' proposal. This collaborative would be charged with negotiating and drafting the methodology for discontinuing or modifying gas-on-gas competition, including discussion of the division of territory and/or assigning customers to specific NGDCs as well as the issue of load predictability and customers switching in the future.

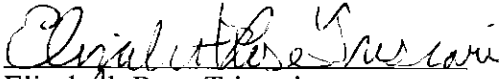
Given the diametric opposite positions of parties to this Investigation, the OSBA is concerned that a collaborative process would be unworkable and a potential waste of time and resources. Alternatively, the OSBA recommends that the Commission issue a clear statement of its intent with respect to gas-on-gas competition followed by a generic

(non-collaborative) proceeding to address implementation of the Commission's new policy.

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission issue a statement of policy or order in accordance with the OSBA's recommendations.

Respectfully submitted,


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