



July 14, 2014

VIA E-FILE

**David P. Zambito**

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
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**

**EXCEPTION 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 Exception of Peoples Natural Gas Company LLC (including its Equitable Division) and Peoples TWP LLC in the above-referenced proceeding. Copies of the Exception 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. Also, a copy has been e-mailed to the Commission's Office of Special Assistants.

If you have any questions regarding this filing, please direct them to me. 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

Rosemary Chiavetta

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cc: Honorable Robert F. Powelson, Chairman  
Honorable John F. Coleman, Vice Chairman  
Honorable James H. Cawley, Commissioner  
Honorable Pamela A. Witmer, Commissioner  
Honorable Gladys M. Brown, Commissioner  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)  
Per Certificate of Service

**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 Exception 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).

**VIA E-MAIL AND FIRST CLASS MAIL:**

Honorable Elizabeth H. Barnes  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2 West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Allison C. Kaster, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building, 2 West  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Tanya J. McCloskey, Esquire  
Darryl Lawrence, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923

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

Theodore J. Gallagher, Esquire  
NiSource Corporate Services Company  
121 Champion Way, Suite 100  
Canonsburg, PA 15317  
Counsel for *Columbia Gas of Pennsylvania, Inc.*

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

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

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

Thomas J. Sniscak, Esquire  
William E. Lehman, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778  
Counsel for *The Pennsylvania State University*

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

Bruce V. Miller, Esquire  
Cullen and Dykman LLP  
Long Island  
100 Quentin Roosevelt Boulevard  
Garden City, NY 11530-4850  
Counsel for *National Fuel Gas Distribution Corporation*

Amy W. Neufeld, Esquire  
PECO Energy Company  
500 North Third Street  
Suite 800  
Harrisburg, PA 17101

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

Michael S. Swerling, Esquire  
Exelon Business Services Company  
2301 Market Street/S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
Counsel for *Exelon Business Services Company*

Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
Thomas Long Niesen & Kennard  
212 Locust Street, Suite 600  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
Counsel for *Equitable Gas Company, LLC*

**VIA E-MAIL ONLY**

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

**CONSULTANTS – VIA E-MAIL ONLY**

Brian Kalcic, Consultant  
Excel Consulting  
222 S. Meramec Avenue, Suite 720-T  
St. Louis, MO 63105

Robert D. Knecht, Consultant  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140

Pamela C. Polacek, Esquire  
Charis Mincavage, Esquire  
Teresa K. Schmittberger, Esquire  
McNees Wallace & Nurick  
100 Pine Street, 7<sup>th</sup> Floor  
PO Box 1166  
Harrisburg, PA 17108  
Counsel for *Industrial Energy Consumers of Pennsylvania*

Kevin J. Moody, Esquire  
Pennsylvania Independent Oil & Gas  
Association  
212 Locust Street  
Suite 300  
Harrisburg, PA 17101-1510  
Counsel for *Pennsylvania Independent Oil & Gas Association*

Tishekia Williams, Esquire  
Duquesne Light Company  
411 Seventh Avenue  
16th Floor  
Pittsburgh, PA 15219  
Counsel for *Duquesne Light Company*

Benjamin L. Shechtman, Esquire  
Stevens & Lee  
620 Freedom Business Center  
Suite 200  
King of Prussia, PA 19406  
Counsel for *Duquesne Light Company*

Glen A. Watkins, Executive VP/Consultant  
Technical Associates, Inc.  
9030 Stony Point Parkway, Suite 580  
Richmond, VA 23235

Diane Meyer Burgraff, Consultant  
19 Westwind Drive  
Lemoyne, PA 17043

James Crist  
Lumen Group, Inc.  
4226 Yarmouth Drive, Suite 101  
Allison Park, PA 15101

Date: July 14, 2014



David P. Zambito, Esquire  
Counsel for *Peoples Natural Gas Company LLC* and  
*Peoples TWP LLC*

**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
	:	
	:	

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

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William H. Roberts II, Esquire (ID No. 54724) Peoples Natural Gas Company LLC 375 North Shore Drive, Suite 600 Pittsburgh, PA 15212 Telephone: (412) 208-6527 Facsimile: (412) 208-6575 E-mail: William.H.RobertsII@peoples-gas.com	David P. Zambito, Esquire (ID No. 80017) Cozen O’Connor 305 North Front Street, Suite 400 Harrisburg, PA 17101-1236 Telephone: (717) 703-5892 Facsimile: (215) 989-4216 E-mail: dzambito@cozen.com
---	--

Jennifer L. Petrisek, Esq. (ID No. 83411)  
Peoples TWP LLC  
375 North Shore Drive, Suite 600  
Pittsburgh, PA 15212  
Telephone: (412) 208-6834  
Facsimile: (412) 208-6580  
E-mail: jennifer.petrisek@peoples-gas.com

Date: July 14, 2014

*Counsel for Peoples Natural Gas Company LLC  
(Including its Equitable Division) and  
Peoples TWP LLC*

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## I. INTRODUCTION

On June 24, 2014, the Pennsylvania Public Utility Commission (“Commission”) issued the Recommended Decision (the “Recommended Decision” or “R.D.”) of the Honorable Administrative Law Judge Elizabeth H. Barnes in the above-captioned matter. Exceptions to the Recommended Decision are required to be filed by July 14, 2014. Peoples Natural Gas Company (including its Equitable Division) (“Peoples”) and Peoples TWP LLC (“Peoples TWP”) hereby file the instant Exception in accordance with the Commission’s instructions.

Peoples and Peoples TWP support the Recommended Decision insofar as it recommends that the Commission issue an order or statement of policy adopting the proposal of Peoples and Peoples TWP to modify competition between natural gas distribution companies (singularly “NGDC” or collectively “NGDCs”) with overlapping services territories (“Gas-on-Gas Competition”), a copy of which proposal (as reflected on pages 3-4 of Peoples/Peoples TWP’s Reply Brief) is attached hereto as **Appendix A** (the “Peoples Proposal”). Peoples and Peoples TWP nevertheless except to the Recommended Decision solely on the basis that its primary recommendation is that the Commission issue a statement of policy or order for the purpose of amending or phasing out Gas-on-Gas Competition completely by December 31, 2018. R.D., 39, Ordering ¶ 1. For the reasons more-fully explained in the Main Brief and Reply Brief of Peoples and Peoples TWP and in this Exception, the complete elimination of Gas-on-Gas Competition by a date certain presents both pragmatic and legal problems that make the primary recommendation of the Recommended Decision unworkable and contrary to the public interest. The Peoples Proposal, however, presents a real solution by which the benefits of competition will be preserved for gas-on-gas discount rate customers while the economic interests of captive customers will be protected.

## II. SUMMARY OF EXCEPTION

While the Recommended Decision correctly notes the inequities associated with Gas-on-Gas Competition on a philosophical level, it fails to appreciate the pragmatic and legal problems associated with the complete elimination of Gas-on-Gas Competition by December 31, 2018. The elimination of Gas-on-Gas Competition would deprive gas-on-gas discount rate customers of the benefits of competition, negate existing gas-on-gas discount agreements prior to the expiration of their terms, result in extensive and contentious litigation between competing NGDCs, and require recovery of stranded costs from ratepayers.

Gas-on-Gas Competition has been in existence in its current form for over three decades and should not be entirely eliminated as proposed by the Recommended Decision. It should be allowed to continue in a modified form because of its benefits to customers. Moreover, the scope of Gas-on-Gas Competition has been dramatically decreased of a result of the merger of Equitable Gas Company, LLC (“Equitable”) into Peoples.

The Peoples Proposal, which the Recommended Decision supports in the alternative and which a majority of the parties (including the three public advocates and the NGDCs involved in Gas-on-Gas Competition) either support or do not oppose, presents the only reasonable recommendation that would preserve the benefits of competition for gas-on-gas discount customers (such as competitive prices and higher quality of service). It also ensures that captive ratepayers are not being held responsible for rate recovery of excessive Discount Adjustments and that NGDCs recover a return on and of their investment.<sup>1</sup> *See* Peoples Reply Brief, 1-14.

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<sup>1</sup> As explained by the Recommended Decision: “Revenue shortfalls result from Flex Rate NGDCs providing service at a rate to individual nonresidential customers (also known as flex customers) that is discounted relative to the full tariff rate. The revenue shortfall that results is commonly referred to as a ‘Discount Adjustment.’ Customers who are not provided discounted rates make up for the revenue shortfall. They are ‘captive customers.’” R.D. at pp. 2-3.

The Peoples Proposal, in essence, provides for the creation of a reasonable 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 of the NGDCs competing for the customer's load. All existing gas-on-gas discount agreements would be permitted to run their terms. The NDGCs would be allowed rate recovery for Discount Adjustments for existing agreements as well new/renewal agreements; provided that the NGDC can demonstrate that the discounts were prudently awarded and are reasonable. *See* R.D., 31-36; Peoples Reply Brief, 1-14. The Peoples Proposal, as the only alternative that presents a workable solution and avoids unnecessary legal controversy, should have been the primary recommendation of the Recommended Decision.

**III. EXCEPTION: THE RECOMMENDED DECISION'S PRIMARY RECOMMENDATION FAILS TO APPRECIATE THE PRACTICAL AND LEGAL PROBLEMS ASSOCIATED WITH THE COMPLETE ELIMINATION OF GAS-ON-GAS COMPETITION BY DECEMBER 31, 2018 AND, THEREFORE, IS NOT IN THE PUBLIC INTEREST. R.D., 23-31, 36-37, 39; ORDERING ¶¶ 1, 3.**

The issues surrounding Gas-on-Gas Competition are undeniably complex and the unraveling of over three decades of engrained practices and expectations will not be without its challenges. Nevertheless, the Commission should not shy away from correcting the course of Gas-on-Gas Competition in order to further the public interest.

As stated by Peoples/Peoples TWP witness Joseph A. Gregorini, Vice President for Rates and Regulatory Affairs:

[G]iven the overlapping nature of service territories in western Pennsylvania, gas-on-gas competition is unavoidable and is here to stay. We live in an era of customer choice, and it seems unrealistic to think that policymakers will deny a customer the opportunity to receive service from the customer's distributor of choice when the distributor is authorized to provide service. However, we also 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.

Peoples/Peoples TWP St. No. 1, 15:9-19. The Commission should, through this proceeding, attempt to preserve the good aspects of Gas-on-Gas Competition while mitigating the bad.

At the time of the initiation of this generic investigation, Gas-on-Gas Competition was a much more substantial issue for the Commission. As a result of the Commission-approved merger of Equitable into Peoples which was consummated on December 17, 2013, only three NGDCs (Peoples, Peoples TWP, and Columbia Gas of Pennsylvania, Inc. (“Columbia”)) now engage in Gas-on-Gas Competition and such competition is limited to commercial and industrial customers.<sup>2</sup> Peoples St. No. 1-Supp., 2:1-4; OCA St. No. 1, 6:6-9. The merger has reduced the number of customers currently involved in gas-on-gas discounting from approximately 401 to 74 customers. *See* OSBA St. No. 1, 5 (Table OSBA-1); Peoples/Peoples TWP St. No. 1-S, 2:19-22. The Commission’s task now is to figure out how to deal appropriately with the limited competition that remains or may develop. Complete elimination of competition, as proposed in the primary recommendation of the Recommended Decision, is not the correct solution; instead, the adoption of a modified form of competition, as presented in the Peoples Proposal, would further the public interest.

**A. Complete Elimination of Gas-on-Gas Competition Would Deprive NGDCs of Their Investments and Create Stranded Costs.**

In recommending the complete elimination of Gas-on-Gas Competition and that overlapping service territories be divided between NGDCs, the Recommended Decision fails to assign appropriate weight to the fact that NGDCs have made substantial investments in

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<sup>2</sup> *See Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company LLC, Docket No. A-2013-2353647 et al.* (Order entered Nov. 14, 2013).

developing their systems in reliance upon Commission policy which has not only permitted but, at times, also encouraged competition. *See The Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 554 A.2d 585 (Pa. Cmwlt. 1988)(affirming Commission decision that Gas-on-Gas Competition spurs efficiencies); *see also* Peoples/Peoples TWP St. No. 1, 4:16-5:3; *see generally* Columbia St. No. 1R, 5:11-21; Equitable St. No. 1, 4:14-5:2. The involuntary creation of specific and exclusive service areas in Western Pennsylvania for each NGDC would deprive the affected NGDCs of their investments unless they are permitted to recover stranded costs from their remaining customer base. The recovery of stranded costs from the remaining ratepayers would, in turn, place an additional and unnecessary financial burden upon such ratepayers. *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.

In the event of a division of overlapping service territories, the Commission cannot simply direct the affected NGDCs to absorb the stranded costs associated with their lost investments without rate recovery. Such an action by the Commission would be an unconstitutional regulatory taking. U.S. Const., Amends. 5, 14; *see Pa. Coal Co. v. Mahon*, 260 U.S. 393 (1922)(explaining that property can be taken by government regulation and compensation is due). Indeed, a public utility company is entitled to a fair opportunity to earn a fair return on and of its investment. Rates which do not meet this standard are confiscatory and unconstitutional. *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks and Imp. Co. v. Pub. Serv. Comm'n of W.V.*, 262 U.S. 679 (1923); *see also Pa. Pub. Util. Comm'n v. Pa. Gas and Water Co. – Water Div.*, 424 A.2d 1213 (Pa. 1980).

The Recommended Decision fails to address the issue of stranded costs other than to suggest that a “task force/working group be created to collaborate and discuss the means by which service territories and large load customers would be divided among the NGDCs with

overlapping territories.” R.D., 31. Knowing that this significant and perhaps insurmountable issue exists, Peoples and Peoples TWP respectfully submit that Commission should not even head down the path of a division of service territories. Instead, the Commission should adopt the Peoples Proposal.<sup>3</sup>

**B. Complete Elimination of Gas-on-Gas Competition Would Deprive Customers of the Benefits of Competition.**

The Recommended Decision goes too far in recommending the complete elimination of Gas-on-Gas Competition. As with other forms of competition which are promoted by the Commission (such as electric and natural gas choice), Gas-on-Gas Competition does produce certain non-rate benefits for customers – such as incentives to maintain and improve service quality, customer-friendly tariffed terms and conditions of service, and access to more-reliable or lower-cost gas supplies. *See* Peoples/Peoples TWP Reply Brief, 5. Moreover, the elimination of Gas-on-Gas Competition in its entirety would have an adverse impact upon customers who have made business planning decisions and investments based upon the availability of competitive natural gas prices. *See* IECPA St. No. 1, 6:4-13.

The Commission’s challenge in this proceeding is to find a workable solution that preserves the benefits of competition while protecting the interests of captive ratepayers and utility shareholders. The appropriate solution is not to end competition completely. It is to

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<sup>3</sup> 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 or to a potential customer associated with new development. A discount could not be offered to an existing customer of a competitor NGDC unless such customer was formerly serviced at that service location by the offering NGDC. The practical effect of limiting discounts to potential customers who are developing new natural gas load, and to 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. The Proposal would essentially prohibit the “poaching” of one NGDC’s existing customers by another NGDC. Gas-on-Gas Competition would be limited to development of new gas load and protection of existing load. *See* Peoples/Peoples TWP’s Reply Brief, 10-11.

address the problems with the current form of competition. – which would be accomplished by the Commission’s adoption of the Peoples Proposal.<sup>4</sup>

**C. Complete Elimination of Gas-on-Gas Competition Could Harm Captive Customers.**

If Gas-on-Gas Competition were to be eliminated in its entirety as proposed in the primary recommendation of the Recommended Decision, there is a substantial risk that the Commission-regulated NGDC with the higher cost of service could lose a sizeable amount of large-volume load – which could adversely impact the captive customers of such NGDC. The captive customers of the higher-cost NGDC could be saddled with higher rates as a result of the loss of significant load. *See* IECPA St. No. 1, 6:15-21, 7:5-17.

Even if service territories are divided, the Recommended Decision provides no guidance on how such division can occur in a fair and workable manner. There will undoubtedly be winners and losers in the process. The suggestion that these complicated issues can be addressed through a task force or working group underestimates the complexities and unintended consequences of regulatory manipulation of economic markets. As with the merger of Equitable into Peoples, mergers, acquisitions, and voluntary service territory abandonments will likely solve the problems associated with Gas-on-Gas Competition (such as duplicative facilities) at some point in the future. The Commission should exercise patience and restraint, and should have confidence in the free market by allowing Gas-on-Gas Competition to continue in a modified form as suggested by the Peoples Proposal.

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<sup>4</sup> The Peoples Proposal would achieve the dual goals of preserving the benefits of competition while protecting the economic interests of captive ratepayers. Gas-on-gas discount customers could 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. The focus of competition would shift to other factors, such as service quality, tariffed terms and conditions of service, and access to more-reliable or lower-cost gas supplies. Such a form of competition is in the public interest. *See* Peoples/Peoples TWP Reply Brief, 5.

**D. Complete Elimination of Gas-on-Gas Competition by a Date Certain Would Require Commission Modification of Existing Contractual Relations.**

The Recommended Decision notes that the Commission has the authority to modify or rescind existing contracts under Section 508 of the Public Utility Code, 66 Pa. C.S. § 508 (“Power of commission to vary, reform and revise contracts”). R.D., 33. While this may be true, the Commission should be very reluctant to tamper with existing contractual arrangements. The Recommended Decision fails to acknowledge the practical difficulties that modification of such contracts could have on the business plans of the affected customers and NGDCs.

Customers of NGDCs have made business planning decisions and developed long-term budgets 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; Peoples/Peoples TWP Reply Brief, 8-9.

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 (including the need to file base rate proceedings, with all of the attendant rate case expense, in order to reconcile the elimination of Discount Adjustments). See IECPA Main Brief, 21-22; Columbia Main Brief, 6-7; Peoples/Peoples TWP Main Brief, 27-28; Peoples/Peoples Reply Brief, 8-9. 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.<sup>5</sup>

The modification or rescission of existing gas-on-gas discount agreements could 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 terminated by the arbitrary date of December 31, 2018.<sup>6</sup> If the Commission determines that Gas-on-Gas Competition should end completely (which it should not), existing contracts should be permitted to run their term.

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<sup>5</sup> The Recommended Decision fails to address whether and how NGDCs would be permitted to recover Discount Adjustments for contracts that are prematurely terminated as of the December 31, 2018 end date for Gas-on-Gas Competition. Denial of full recovery of an NGDC’s revenue requirement would be improper and potentially unlawful. *See Peoples/Peoples TWP St. No. 1-R, 9:17-21; OSBA St. No. 2, 11:3-12; IECPA St. No. 1-R, 10:17-11:12; Columbia St. No. 1R, 6:10-15; see also Hope, Bluefield Waterworks, and Pa. Gas & Water, supra* (regarding constitutional right of public utility to have an opportunity to earn a fair return on and of its investment).

<sup>6</sup> The Peoples Proposal addresses the concern of rate recovery of Discount Adjustments 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/Peoples TWP Reply Brief, 7-8.*

**E. Complete Elimination of Gas-on-Gas Competition Would Likely Result in Contentious Litigation between NGDCs Regarding Division of Service Territories.**

NGDCs have made substantial investments in developing their systems in reliance upon the existence of Gas-on-Gas Competition. *See* Peoples/Peoples TWP St. No. 1, 4:16-5:3; *see generally* Columbia St. No. 1R, 5:11-21; Equitable St. No. 1, 4:14-5:2. The Recommended Decision’s proposal to divide service territories between competing NGDCs and to do so through a task force or working group process is simply unrealistic.<sup>7</sup>

Each of the NGDCs that are currently engaged in Gas-on-Gas Competition is a for-profit business and the management of each has a fiduciary duty to the company’s shareholders to attempt to earn a reasonable return on its investments while, at the same time, has a statutory responsibility to ratepayers to provide adequate, safe, efficient and reliable service at just and reasonable rates. *See* 66 Pa. C.S. §§ 1301, 1501. There will inevitably be winners and losers in the division of any service territory and it unreasonable to expect that the NGDCs will agree to voluntarily forego their property rights and revenue streams (which benefit both shareholders and ratepayers) on a voluntary basis through a collaborative process. The more-likely outcome of the Recommended Decision’s primary recommendation is contentious litigation involving the NGDCs, customer groups, the public advocates, and the Commission.

If adopted, the Recommended Decision’s primary recommendation would likely usher in a new era of “gas wars” in western Pennsylvania – as NGDCs (and their customers) attempt to maximize their competitive position in order to improve or at least maintain their *status quo ante* rights. In contrast, all competing NGDCs (as well as all three public advocates) have stated that the modification of Gas-on-Gas Competition consistent with the Peoples Proposal is an

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<sup>7</sup> Even Office of Consumer Advocate witness Glenn A. Watkins has acknowledged that “the 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.

acceptable outcome. It preserves competition for the benefit of gas-on-gas discount customers while protecting the economic interests of captive customers. The Commission should choose a path of acceptable compromise (*i.e.*, competition with reasonable parameters as presented in the Peoples Proposal) as opposed to a path of certain controversy and conflict (*i.e.*, no competition and the division of service territories).

Given the willingness of a majority of the other active parties to this proceeding to accept the Peoples Proposal as an acceptable alternative (including Columbia, National Fuel Gas Distribution Corporation, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation & Enforcement), the Commission's choice should be clear.<sup>8</sup> *See* Columbia Main Brief, 9-10; NFGD Reply Brief, 3-5; OCA Reply Brief, 18-20; OSBA Reply Brief, 11-12; I&E Reply Brief, 17-18. The alternative recommendation of the Recommended Decision should be adopted.

#### **IV. CONCLUSION**

The Recommended Decision's primary recommendation that Gas-on-Gas Competition be completely eliminated by December 31, 2018 is simply unworkable and would present unnecessary legal complications. If adopted by the Commission, it would deprive customers of the benefits of competition, negate existing gas-on-gas discount agreements, result in extensive and contentious litigation between competing NGDCs and between other interested parties, and require rate recovery of stranded costs. Accordingly, it should be summarily rejected.

Peoples and Peoples TWP have presented the only reasonable proposal that would preserve the benefits of Gas-on-Gas Competition for large customers (such as lower prices, and non-price benefits such as improved service quality, the availability of different tariffed terms

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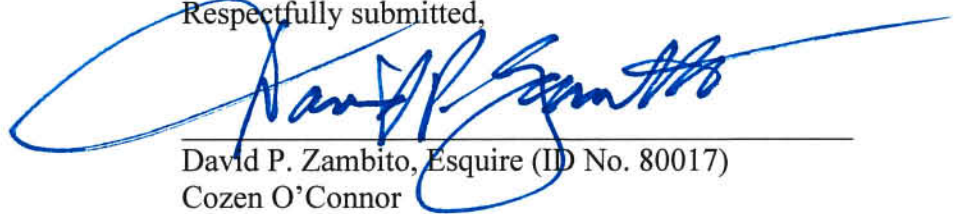
<sup>8</sup> The only active parties to not yet indicate support for the Peoples Proposal, IECPA and The Pennsylvania State University, are clearly attempting to maintain the *status quo* and their current levels of gas-on-gas discounts.

and conditions of service, and more favorable access to gas supplies – which non-price benefits can also flow through to non-competitive customers) – while ensuring that captive ratepayers are not being held responsible for excessive Discount Adjustments and that NGDCs recover a fair 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 NDGCs 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.

**V. REQUEST FOR RELIEF**

WHEREFORE, Peoples Natural Gas Company LLC (including its Equitable Division) and Peoples TWP LLC respectfully request that the Pennsylvania Public Utility Commission reject the primary recommendation of the Recommended Decision to terminate Gas-on-Gas Competition by December 31, 2018 and, instead, adopt the alternative recommendation to issue an order or statement of policy which implements the Peoples Proposal following a collaborative process to consider and address any remaining issues arising out of the Peoples Proposal.

Respectfully submitted,



David P. Zambito, Esquire (ID No. 80017)  
Cozen O'Connor  
305 North Front Street, Suite 400  
Harrisburg, PA 17101-1236  
Telephone: (717) 703-5892  
Facsimile: (215) 989-4216  
E-mail: dzambito@cozen.com

William H. Roberts II, Esquire (ID No. 54724)  
Peoples Natural Gas Company LLC  
375 North Shore Drive, Suite 600  
Pittsburgh, PA 15212  
Telephone: (412) 208-6527  
Facsimile: (412) 208-6575  
E-mail: William.H.RobertsII@peoples-gas.com

Jennifer L. Petrisek, Esquire (ID No. 83411)  
Peoples TWP LLC  
375 North Shore Drive, Suite 600  
Pittsburgh, PA 15212  
Telephone: (412) 208-6834  
Facsimile: (412) 208-6580  
E-mail: jennifer.petrisek@peoples-gas.com

Dated: July 14, 2014

Counsel for *Peoples Natural Gas Company LLC*  
(Including its *Equitable Division*) and  
*Peoples TWP LLC*

# **APPENDIX A**

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.