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July 14, 2014

**VIA ELECTRONIC FILING**

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

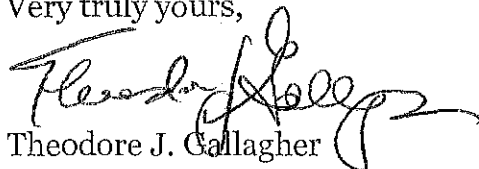
**Generic Investigation Regarding "Gas-On-Gas" Competition Between  
Jurisdictional Natural Gas Distribution Companies;  
Docket No. 1-2012-2320323**

Dear Secretary Chiavetta:

Please find the original of Columbia Gas of Pennsylvania, Inc.'s Exceptions to the Recommended Decision in the referenced matter. Copies have been served in accordance with the Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Theodore J. Gallagher

/kak

Enclosure

cc: Honorable Elizabeth H. Barnes (w/enc.)  
Office of Special Assistants (w/enc. via: electronic mail only)  
Certificate of Service (w/enc.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition for Generic Investigation or	:	
Rulemaking Regarding "Gas-On-Gas" Competition	:	P-2011-2277868
Between Jurisdictional Natural Gas Distribution	:	
Companies	:	
	:	
Generic Investigation Regarding Gas-On-Gas	:	
Competition Between Jurisdictional Natural	:	I-2012-2320323
Gas Distribution Companies	:	

**EXCEPTIONS OF  
COLUMBIA GAS OF PENNSYLVANIA, INC.**

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*Counsel for  
Columbia Gas of Pennsylvania, Inc.*

Date: July 14, 2014

Columbia Gas of Pennsylvania, Inc. (“Columbia”), by and through its counsel, pursuant to 52 Pa. Code § 5.533, hereby submits its Exceptions to the Recommended Decision (“RD”) issued in this matter under a Secretarial Letter dated June 34, 2014.

## **I. BACKGROUND**

This matter arises from a circumstance that is unique to western Pennsylvania, whereby customers who are located in service territories that are served by more than one Natural Gas Distribution Company (“NGDC”) may negotiate with competing NGDCs for a rate that is discounted below the regular applicable tariff rate. This rate flexing by NGDCs solely to meet a competitive threat from another NGDC is commonly referred to as “gas-on-gas competition.” The Commission currently permits an NGDC to recover the revenue shortfall associated with gas-on-gas competition from its remaining customers. This matter was initiated as a result of settlements in various base rate proceedings, as discussed below.

At the core, these proceedings involve matters of policy regarding gas-on-gas competition. Thus, as one might expect, there is little dispute as to the relevant facts. Office of Small Business Advocate (“OSBA”) witness Knecht provides a good summary of what is meant by “gas-on-gas competition.” As Mr. Knecht explains:

For historical reasons, certain geographical areas in western Pennsylvania lie within the service territories of more than one [NGDC]. For many years, the Commission has permitted NGDCs (and predecessor entities) to discount or “flex” regular tariff rates to customers in these areas in response to lower price offers from another NGDC, and to recover expected revenue shortfalls associated with these customers from other ratepayers in base rates proceedings. This practice is often referred to as “gas-on-gas competition.”

(OSBA Statement No. 1 at p. 1) This practice has become a bone of contention in various NGDC base rate cases, as evidenced by settlements in different companies’ cases

whereby the parties agreed to initiate a generic proceeding to address the issue of rate flexing solely as a result of competition from other NGDCs. (See e.g., Columbia Statement No. 1R at pp. 2-3; Peoples/PTWP Statement No. 1 at pp. 5-6)

On or about December 8, 2011, Peoples Natural Gas (“Peoples”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the OSBA jointly filed a Petition for Generic Investigation or Rulemaking Regarding “Gas on Gas Competition” Between Jurisdictional Natural Gas Distribution Companies (“Gas on Gas Joint Petition”). The Gas on Gas Joint Petition was designated as Case No. P-2011-2277868.

The Gas on Gas Joint Petition was filed pursuant to an approved settlement of Peoples’ base rate proceeding at Docket No. R-2010-2201702, whereby Peoples, I&E, OCA, and OSBA agreed to address “gas-on-gas competition” issues by requesting that the Commission review the effect of distribution rate competition among NGDCs on a generic basis for all NGDCs, as more fully described in paragraphs 4 through 6 of the Gas on Gas Joint Petition.

As noted in paragraph 8c. of the Gas on Gas Joint Petition, in Columbia’s then most recent base rate proceeding at Docket No. R-2010-2215623, a Joint Petition for Partial Settlement also addressed the issue of gas-on-gas competition, and included a similar provision to the Peoples rate case settlement. Specifically, the Columbia partial settlement provided, in relevant part:

Columbia agrees to join with [I&E], OCA and/or OSBA in a request that the Commission initiate a generic investigation or rulemaking to address whether flex discounts solely as a result of competition from other NGDCs should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate.

The Commission approved the Joint Petition for Partial Settlement in Columbia's Docket No. R-2010-2215623 by Order entered October 14, 2011. Accordingly, on March 19, 2012, Columbia filed a Petition to Intervene in the Gas on Gas Joint Petition.

On July 25, 2012, the Commission issued a Secretarial Letter in response to the Gas on Gas Joint Petition, opening a generic investigation at Docket No. I-2012-2320323, and assigning the matter to the Office of Administrative Law judge for disposition and resolution. At that time, the Commission invited other interested parties to intervene.

On August 9, 2012, the Commission issued a Notice of Initial Prehearing Conference to be held on August 31, 2012, and advising that Administrative Law Judge Elizabeth H. Barnes would be presiding. On August 23, 2012, ALJ Barnes issued a Prehearing Conference Order.

ALJ Barnes convened the noticed Prehearing Conference on August 31, 2012. At the Prehearing Conference, ALJ Barnes granted motions to intervene that had been filed by Columbia, The Pennsylvania State University, National Fuel Gas Distribution Corporation, The Industrial Energy Consumers of Pennsylvania, PECO Energy Company, UGI Distribution Companies, and Equitable Gas Company, LLC. ALJ Barnes also directed parties and intervenors to file formal comments regarding the scope of the issues to be addressed in the generic proceeding as referenced in the Commission's Secretarial Letter of July 25, 2012.

On October 1, 2012, several parties submitted comments regarding the scope of the issues to be addressed in the generic proceeding, with NGDCs maintaining that the proceeding should have a narrow focus as addressed in the July 25, 2012 Secretarial Letter regarding the flexing of distribution rates and the treatment of flexed revenues for

ratemaking purposes in future ratemaking proceedings, while the statutory parties advocated for a broad proceeding to include all of the issues addressed in the Gas on Gas Joint Petition. On December 11, 2012, ALJ Barnes issued an Order indicating that generic proceeding would be broad in scope, as advocated by the statutory parties.

This matter proceeded through discovery, and then the submission of written direct, rebuttal, and surrebuttal testimony by various parties. The written testimony was admitted into the record at an evidentiary hearing that took place on December 10, 2012. Subsequently, Main Briefs were filed on February 25<sup>1</sup>, 2014 and Reply Briefs were filed on March 12, 2014.

The scope of gas-on-gas discounting has been impacted by the recent acquisition of Equitable Gas Company, LLC (“Equitable”) by Peoples. On November 14, 2013, under Docket No. A-2013-2353647, the Commission approved the acquisition of Equitable by Peoples. (Peoples/PTWP Statement No. 1-S at p. 2) The sales of Equitable to Peoples closed on December 17, 2013, at which time Equitable was merged into Peoples with Peoples being the surviving legal entity. (Peoples/PTWP Statement No. 1-Supp.) This has been a major step in reducing gas-on-gas competition, since the combination of Peoples and Equitable has reduced the number of discounted gas-on-gas customers from 401 to 74 customers. (Columbia Statement No. 1-SR at p. 4; Peoples/PTWP Statement No. 1-S at p. 2)

On June 24, 2014, the Commission issued the RD in this matter. The RD concludes with three recommendations, as follows:

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<sup>1</sup> While the RD does not list Columbia among the parties that filed Main Briefs (RD at p. 8), Columbia did file a Main Brief on February 25, 2014.

1. That the Commission shall issue a statement of policy or order for the purpose of amending and phasing out by December 31, 2018, Gas-on-Gas Competition among Natural Gas Distribution Companies operating in Pennsylvania.

2. That alternatively, the Commission shall issue an order or statement of policy adopting the Proposal attached to Peoples' Main Brief, Appendices A and B and attached to this Recommended Decision as Attachment A.

3. That the Commission shall appoint a working group including stakeholders and representatives from the Commission's Bureau of Technical Utility Services and Law Bureau to address the methodology for phasing out and dividing service territories or modifying Gas on Gas Competition going forward.

(RD at 39). As discussed below, Columbia submits that the Commission should reject recommendations 1 and 3, and adopt recommendation 2.

## II. EXCEPTIONS

**Exception No. 1:** The RD erred in recommending that "The Commission shall issue a an order or statement of policy for the purpose of amending and phasing out by December 31, 2018, Gas-on-Gas Competition among Natural Gas Distribution Companies operating in Pennsylvania". (RD at 39)

**Exception No. 2:** The RD erred in recommending "That the Commission shall appoint a working group including stakeholders and representatives from the Commission's Bureau of Technical Utility Services and Law Bureau to address the methodology for phasing out and dividing service territories[.]" (RD at 39)

## III. ARGUMENT

### **Exception No. 1**

**If the Commission Determines that Gas-on-Gas Discounting is to be Discontinued, the RD Should Be Revised to Conclude that Current Contracts Shall be Honored Through Their Contract Terms.**

In Ordering Paragraph No. 1, the RD recommends the gas-on-gas competition be amended and phased out by December 31, 2018. (RD at 39) This recommendation

should be rejected. If this Commission decides to abolish or amend gas-on-gas rate discounting, existing gas-on-gas flex contracts should be permitted to run for their full terms. As Columbia, IECPA, and Peoples/PTWP explained in testimony, flex rate customers have made operating decisions based upon current contracts with their NGDC. (Columbia Statement No. 1R at p. 4; IECPA Statement No. 1 at p. 12; Peoples/PTWP Statement No. 1 at p. 19) By the same token, NGDCs have entered into these agreements with the understanding that, if the discounting was justified to meet competition, the resulting shortfall would be recoverable. Accordingly, equity would dictate that such customers be permitted to realize the benefit of their agreements and NGDCs should be permitted to recover the associated shortfall.

Moreover, depriving flex customers of the full benefit of their bargains may not just be unfair, in the absence of a way to compensate such customers for the lost value of their contracts, a Commission-imposed sunset date could be unlawful. The RD addresses the problem associated with ending gas-on-gas competition before the full term of current contracts expire by pointing out that the “modification or rescission of existing contracts may require compliance, however, with the requirements of Section 508 of the Pennsylvania Public Utility Code[.]”<sup>2</sup> While rescission or modification of contracts under Section 508 is available to the Commission, it should not be assumed that ending contracts by December 31, 2018, under that authority will be easily achieved. Rather, this will almost assuredly involve lengthy and expensive litigation. The Commission has employed Section 508 sparingly, and correctly so. Ultimately, this would not be Columbia’s fight but, rather, it may be an issue for an aggrieved customer or customer group to take up. However, Columbia raises the issue here for the

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<sup>2</sup> 66 Pa.C.S. § 508.

Commission's consideration, since the prospect of protracted litigation over such an issue may not be in the interest of the Commission or the parties to this proceeding.

**Exception No. 2**

**The Recommendation that Service Territories Should be Divided Among NGDCs Should Be Rejected.**

In Ordering Paragraph 3, the RD recommends that "a working group including stakeholders and representatives from the Commission's Bureau of Technical Utility Services and Law Bureau to address the methodology for phasing out and dividing service territories." (RD at 39) This recommendation should be rejected as the record evidence in this proceeding has not evaluated the potential costs and impacts of this proposal.

Division of service areas may not adequately take into account all relevant factors, such as the proximity of customers to a particular NGDC's facilities, and each NGDC's relative costs to serve such customers. Moreover, such divvying of territory may create stranded costs that will, of necessity, be borne by ratepayers in a particular NGDC's remaining service territory. It is possible that the rate impact could exceed the impact of covering the revenue shortfall associated with the current practice of gas-on-gas rate discounting. (Columbia Statement 1R, 5:15-21) However, there has been no evidence provided in this matter regarding the potential rate impact of such costs. The Commission should not proceed to implement the recommendation to divide service territories without record evidence that would shed light on whether such a move is in the public interest. A division of service territories under the auspices of a working group would invite a fight over the choicest portions of overlapping service territories that is sure to be contentious, complicated, and costly. (Columbia Statement 1R, 5:21-

22) Peoples/Peoples TWP Witness Gregorini noted that the establishment of exclusive service territories “would be a complex process that would require the transfer and abandonment of existing facilities and resolution of related legal and regulatory issues such as regulatory takings and the recovery of transferred or abandoned facility costs.” (Peoples/Peoples TWP Statement No. 1-R, 9:10-13). As suggested by Columbia Witness Krajovic, this may be a situation where the cure is worse than the disease. (Columbia Statement 1R, 5:14-15)

#### **IV. CONCLUSION and RECOMMENDATION**

As Columbia noted in testimony, it is not recommending one way or the other whether the Commission should change the status-quo regarding gas-on-gas competition. (Columbia Statement No. 1R at 7) However, if the Commission is to make changes to the current paradigm for Pennsylvania’s gas-on-gas competition situation, given the pitfalls associated with Ordering Paragraphs 1 and 3 of the RD discussed above, the recommendations in those paragraphs should be rejected. Rather, Columbia submits that Ordering Paragraph 2 of the RD, which adopts a proposal by Peoples/Peoples TWP to continue gas-on-gas competition under modified rules, is the most practical approach that has been suggested in this matter. Specifically, Peoples/PTWP suggested that gas-on-gas competition continue with NGDCs competing on their full margin, cost-based rates. (Peoples/PTWP Statement No. 1 at 15) As noted by Peoples/PTWP, its recommendation preserves the benefits of gas-on-gas competition while eliminating the associated revenue shortfall. (Peoples/PTWP Statement No. 1 at 15) The recommendation does so in a manner that is much simpler to implement, and does not suffer from the same potential legal pitfalls as the other parties’ recommendations in the case and Ordering Paragraphs 1 and 3 of the RD. While

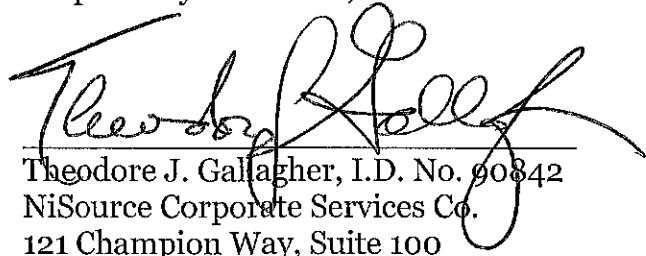
Peoples/PTWP initially suggested that the Commission establish a separate, generic proceeding to consider whether all NGDCs should be required to establish cost-based rates for all rate classes using a standard and similar cost allocation methodology (Peoples/PTWP Statement No. 1 at 18), that suggestion met with opposition from several parties, including Columbia. (Columbia Statement No. 1R at 8) In surrebuttal, Peoples/PTWP amended its recommendation whereby cost-based rates would be set in the individual rate cases of NGDCs that plan to engage in gas-on-gas competition, with the NGDC seeking Commission certification that its rates are cost based. Once competing NDGC have had their rates so certified, there would not be a need for discounting, and they would compete based upon cost-based, full margin rates. (Peoples/PTWP Statement No. 1-S at 6-7) This appears to be a reasonable suggestion, so long as the Commission were to adopt Peoples/PTWP's further suggestion regarding a fair and simultaneous transition to a level competitive playing field, i.e., that current discounts should be permitted to be extended until such time as the remaining competing NGDCs have each had an opportunity in a base subsequent base rate case to have their rates certified as cost-based. (Peoples/PTWP Statement No. 1-S at 9).

Peoples/Peoples TWP has further suggested that once the Commission certifies that an NGDC's rates are cost-base, it should be permitted to flex down to its competitor's lowest cost-based full margin rate in order to retain load. (Peoples/PTWP Statement No. 1-S at 7) Again, Columbia submits that if the Commission is to change the current landscape of gas-on-gas competition, Peoples/PTWP has suggested a workable solution.

If the Commission were to adopt Peoples/PTWP's recommendations in this matter, Columbia suggests that there should be some clarification that "cost-based, full

margin rate” encompasses all elements of charges, since there may be much more to customer costs than an NGDC’s commodity based rate. The deciding factor on who wins and who loses among NGDCs can hinge on things that totally unrelated to the "cost of service base rates," such as monthly customer service charges, balancing service costs, applicable surcharges, or riders.

Respectfully submitted,



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Date: July 14, 2014

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## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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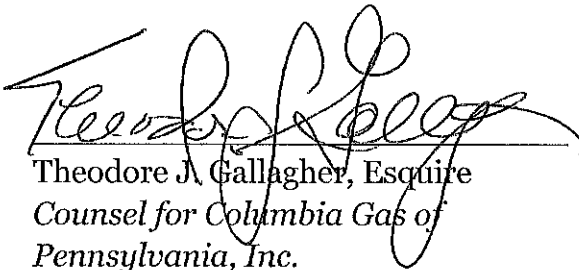
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