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July 24, 2014

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
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

**REPLY EXCEPTIONS OF THE PENNSYLVANIA STATE UNIVERSITY**

Dear Secretary Chiavetta:

Enclosed is the Reply Exceptions of The Pennsylvania State University in the above-referenced matter. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please feel free to contact the undersigned at 717-236-1300 with any questions.

Very truly yours,

Thomas J. Sniscak  
William E. Lehman

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Enclosures

cc: Honorable Elizabeth Barnes, Administrative Law Judge, Pa. Public Utility Commission  
Per Certificate of Service

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

I hereby certify that I have this day served a true copy of the foregoing document 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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Thomas J. Sniscak  
William E. Lehman

Dated: July 24, 2014

**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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**REPLY EXCEPTIONS OF  
THE PENNSYLVANIA STATE UNIVERSITY**

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DATED: JULY 24, 2014

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Pursuant to 52 Pa. Code § 5.535, The Pennsylvania State University (PSU) hereby replies to the Exceptions of the Office of Small Business Advocate (OSBA) and the Exceptions of the Industrial Energy Consumers of Pennsylvania (IECPA) to the June 18, 2014 Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes in the above-captioned matter.

## **I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS**

As argued at length in the Exceptions to the Recommended Decision filed by PSU, Peoples, Columbia and IECPA, the ALJ erred in recommending the elimination of gas-on-gas competition and the abrogation of existing gas-on-gas flex contracts. In recommending the abrogation of existing contracts, the ALJ erred because: (1) existing gas-on-gas flex contract customers have not been provided notice and an opportunity to be heard; (2) Section 508 of the Public Utility Code and due process of law require evidentiary hearings and findings with respect to each contract in question before modification or invalidation; (3) new rates for existing gas-on-gas flex customers cannot lawfully be established outside of a rate case; and (4) businesses considering locating or expanding operations in Pennsylvania will be less likely to do so if they cannot rely on negotiated utility contracts.

OSBA's Exception No. 1 invites the Commission to compound the ALJ's error by eliminating gas-on-gas competition no later than December 31, 2016, two years earlier than the December 31, 2018 date recommended by the ALJ. None of the five arguments OSBA offers in support of its exception withstands scrutiny, and the exception should be denied.

IECPA's Exception No. 2 argues that the ALJ's recommendations should be rejected because (a) other forms of flex discounting (bypass, load growth incentives, economic development) are permitted by the Commission and (b) gas-on-gas flex discounting is no different from those other forms. While IECPA's other exceptions are sound, Exception No. 2 is

not well-founded because gas-on-gas discounting is in fact different from other forms of flex discounting.

## II. REPLY EXCEPTIONS

### A. Reply To OSBA Exception No. 1: Existing Gas-On-Gas Flex Contracts Should Not Be Abrogated In 2016.

OSBA first argues that the purported “vast majority” of existing gas-on-gas flex contracts have end dates prior to December 31, 2016, and that, therefore, moving the ALJ’s recommended termination date up two years will affect a “relatively small” number of contracts.<sup>1</sup> In effect, OSBA is arguing that it is permissible for the Commission to deprive some flex contract holders of their contractual rights without due process as long as it does not do so with respect to the purported “vast majority” of contract holders. This is obviously wrong.

Due process and the Public Utility Code prohibit both the abrogation of those contracts absent a Commission determination based on an evidentiary hearing<sup>2</sup> and the setting of those contract holders’ gas rates outside of a rate proceeding.<sup>3</sup> OSBA’s own witness admitted that at least twenty-three (23) gas-on-gas contracts extend beyond December 31, 2016.<sup>4</sup> These customers’ constitutional and statutory rights do not depend on whether *other* customers’ rights are violated.

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<sup>1</sup> OSBA Exceptions at 6. The assertion that the “vast majority” of gas-on-gas contracts expire before December 31, 2016 is unsupported. It is based solely on an assertion by OSBA witness Mr. Knecht, which he admitted is based upon incomplete data. *See* OSBA Statement No. 1 at 7 (basing conclusion on review of termination dates for “most” – not all – flex rate contracts). Mr. Knecht subsequently admitted in his surrebuttal testimony that at least 23 gas-on-gas contracts extend beyond December 31, 2016. *See* OSBA Statement No. 3 at 5.

<sup>2</sup> 66 Pa. C.S.A. § 508; *see* PSU Exceptions at 5-7.

<sup>3</sup> *See* 66 Pa. C.S.A. § 1301 *et seq.*; PSU Exceptions at 7-9.

<sup>4</sup> *See* OSBA Statement No. 3 at 5 (at least 4 Columbia, 10 Peoples, and 9 Equitable existing contracts extend beyond December 31, 2016).

Moreover, if the Commission terminates *any* existing contracts in this proceeding, *no* customer will be able to rely on utility contracts in Pennsylvania. Even if “only” twenty-three (23) existing contracts are terminated, the message to businesses seeking to relocate or expand facilities in Pennsylvania will be the same: negotiated utility contracts are not worth the paper they are printed on in Pennsylvania.

OSBA next argues that termination of existing contracts as a result of this proceeding is somehow justified because the parties to gas-on-gas flex contracts should have known that such termination was possible and drafted protections into their contracts.<sup>5</sup> This argument also fails. The fact that some flex rate customers may “have been aware for many years that the statutory advocates oppose gas-on-gas discounting”<sup>6</sup> is irrelevant. As argued in PSU’s Exceptions, the due process guarantees of the Pennsylvania and federal constitutions, the evidentiary requirements of Section 508, and the ratemaking provisions of Chapter 13 of the Public Utility Code preclude the abrogation of existing contracts in this proceeding.<sup>7</sup> The parties to those contracts entered into them with the expectation that the Commission would follow the law and implement any change in gas-on-gas competition policy in a manner consistent with their existing contract rights, due process and the Public Utility Code. The public advocates’ hostility to gas-on-gas competition and OSBA’s evident disregard for the rule of law do not render that expectation unreasonable.

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<sup>5</sup> OSBA Exceptions at 6.

<sup>6</sup> OSBA Exceptions at 6.

<sup>7</sup> PSU Exceptions at 5-9, 16-18.

OSBA's third argument – that “fairness” dictates the termination of existing gas-on-gas flex contracts on December 31, 2016<sup>8</sup> - is wholly unfounded. OSBA's assertions – that NGDCs and flex customers have entered into discount contracts “at the expense” of non-flex ratepayers, and that “regular rate customers ... have been paying excessive rates for years ... because [flex] agreement[s] exist[.]” – are not based on any rate analysis but rather on an unsupported sentence or two in Mr. Knecht's surrebuttal testimony.<sup>9</sup> Contrary to Mr. Knecht's assumption, the record shows that all NGDC customers benefit from gas-on-gas flex contracts and that elimination of gas-on-gas competition would most likely *increase* the financial burden on non-flex customers.<sup>10</sup> OSBA's unsupported contentions about “fairness” and “excessive rates” merely underscore the fact that, as argued in PSU's Exceptions, the rate adjustments demanded by the opponents of gas-on-gas competition in this proceeding can be properly evaluated only in the context of individual rate cases.<sup>11</sup>

OSBA's fourth argument – that the Commission's acceptance of gas-on-gas discounts when determining NGDCs' revenue requirements generally has been based on test year considerations and not a “detailed evaluation of the discounting over the entire duration of the contract”<sup>12</sup> – is nothing more than an attempt to circumvent the ratemaking procedures of Chapter 13 of the Public Utility Code. If OSBA believes multi-year gas-on-gas discount

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<sup>8</sup> OSBA Exceptions at 6-7.

<sup>9</sup> OSBA Exceptions at 6-7; *see* OSBA Statement No. 3 at 6 (cited in OSBA Exceptions at 7 n.10).

<sup>10</sup> PSU Exceptions at 11-13.

<sup>11</sup> PSU Exceptions at 7-9 (NGDC rates cannot be set pursuant to a generic proceeding outside a rate case); *see also id.* at 16-18 (rates must be moved to true cost of service before elimination of gas-on-gas competition).

<sup>12</sup> OSBA Exceptions at 7.

contracts result in unjust or unreasonable rates, they may challenge those rates based on the evidentiary record compiled in a Chapter 13 complaint proceeding or rate case. They may not do so in this proceeding.<sup>13</sup>

OSBA's final argument – that terminating existing contracts on December 31, 2016 provides “more than adequate time for making necessary transitions from flex rates to regular tariff rates”<sup>14</sup> – must also be rejected. OSBA obviously is not a flex customer and does not represent the interests of flex customers and it stands to reason that OSBA may not speak for these largely unrepresented customers whose situation and due process are further compounded by OSBA's attempt to set rates outside of a rate case and without notice. As PSU argued in its Exceptions, the “transition period” afforded by the Recommended Decision would do nothing to mitigate the adverse effects of abrogating existing contracts on both individual customers and on the economy of western Pennsylvania.<sup>15</sup> The shorter transition period urged by OSBA would do even less.

**B. Reply To IECPA Exception No. 2: Gas-On-Gas Competition Differs From Other Forms Of Rate Discounting.**

All forms of flex discounting produce economic benefits and can be used to further important public policy goals. However, contrary to IECPA Exception No. 2, gas-on-gas flex discounting is fundamentally different from the other forms in at least three respects. First, unlike bypass and dual fuel flex arrangements, gas-on-gas discounting does not avoid loss of load entirely because the customer is retained by one of the systems. Second, bypass and

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<sup>13</sup> PSU Exceptions at 7-9.

<sup>14</sup> OSBA Exceptions at 7.

<sup>15</sup> PSU Exceptions at 14-16.

alternative fuel flex arrangements can be used to avoid the construction of duplicative facilities, while gas-on-gas competition is possible only where duplicative facilities already exist. Third, unlike economic development flex arrangements, which may be utilized throughout an NGDC's service territory, gas-on-gas flex arrangements are available only where service is available from more than one NGDC.

Each of these differences is due to fact that gas-on-gas competition depends on the existence of competing distribution systems in overlapping NGDC service territories. The overlapping service territories were originally created more than a century ago, when the predecessors of the flex rate NGDCs were incorporated pursuant to the Pennsylvania Natural Gas Companies Act of 1885. The availability of gas-on-gas flex discounting is thus entirely the result of this historical accident. In contrast, the availability of other forms of flex discounting is, by definition, the result of current economic conditions. Thus, gas-on-gas and other forms of flex are different. Sound reasons identified in the briefs of PSU, IEPCA, Peoples and Columbia and their exceptions support the continuation of gas-on-gas flex which is the only form of flex before the Commission in this policy generic proceeding.

### **III. CONCLUSION**

For all of the foregoing reasons, and for the reasons stated in PSU's Exceptions, OSBA Exception No. 1 and IECPA Exception No. 2 should be denied, and PSU's Exceptions should be granted.

Respectfully submitted,



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