



July 24, 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**

**REPLIES OF PEOPLES NATURAL GAS COMPANY LLC (INCLUDING ITS  
EQUITABLE DIVISION) AND PEOPLES TWP LLC TO EXCEPTIONS OF OTHER  
PARTIES**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Replies of Peoples Natural Gas Company LLC (including its Equitable Division) and Peoples TWP LLC to Exceptions of Other Parties in the above-referenced proceeding. Copies of the Replies to Exceptions 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  
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and *Peoples TWP LLC*

DPZ/kmg  
Enclosure

Rosemary Chiavetta

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cc: Honorable Robert F. Powelson, Chairman  
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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 of the Replies of Peoples Natural Gas Company LLC and Peoples TWP LLC to Exceptions of Other Parties, 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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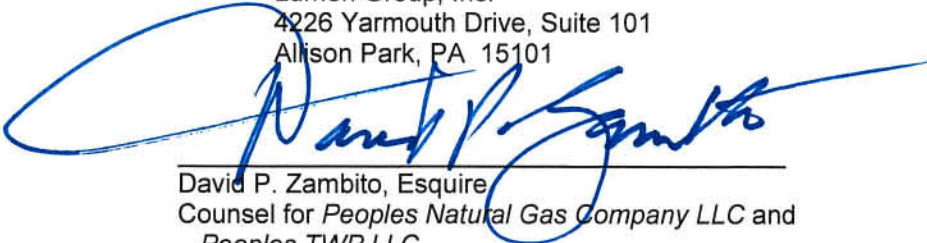
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies	:	Docket No. P-2011-2277868
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	:	
Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies	:	Docket No. I-2012-2320323
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**REPLIES OF  
PEOPLES NATURAL GAS COMPANY LLC  
(INCLUDING ITS EQUITABLE DIVISION) AND  
PEOPLES TWP LLC TO EXCEPTIONS  
OF OTHER PARTIES**

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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 (“Presiding Officer”) in the above-captioned matter. Exceptions to the Recommended Decision were timely filed on July 14, 2014 by Peoples Natural Gas Company (including its Equitable Division) (“Peoples”) and Peoples TWP LLC (“Peoples TWP”), the Office of Small Business Advocate (“OSBA”), Columbia Gas of Pennsylvania, Inc. (“Columbia”), the Industrial Energy Consumers of Pennsylvania (“IECPA”), and The Pennsylvania State University (“PSU”). Peoples and Peoples TWP hereby file Replies to the Exceptions of OSBA, IECPA, and PSU.

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) was attached as Appendix A to Peoples/Peoples TWP’s Exception in this proceeding (the “Peoples Proposal”). The Peoples Proposal 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 non-competitive customers will be protected.

## **II. SUMMARY OF PEOPLES/PEOPLES TWP’S REPLIES TO EXCEPTIONS**

There are two extreme positions reflected in the Exceptions filed in this proceeding. On the one extreme, OSBA argues that Gas-on-Gas Competition should be ended two years sooner

than recommended by the Presiding Officer, without regard for existing gas-on-gas discount agreements, and that there should be no collaborative task force or working group to facilitate the transition. On the other extreme, IECPA and PSU argue that the *status quo* of Gas-on-Gas Competition should continue without modification. Both positions should be summarily rejected. The position of OSBA fails to recognize the benefits of Gas-on-Gas Competition and underplays the importance of the Commission's honoring of existing contracts. The position of IECPA and PSU fails to give any weight to the arguments of advocates on behalf of non-competitive ratepayers that neither the benefits nor the costs of rate discounting are fairly distributed under the current form of Gas-on-Gas Competition.

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 customers (such as competitive prices and higher quality of service). It also minimizes the ratemaking issues related to the recovery of Discount Adjustments and continues to provide NGDCs a reasonable opportunity to recover a return on and of their investment.<sup>1</sup> See Peoples Reply Brief, 1-14.

The Peoples Proposal, in essence, continues competition while providing 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. Competing NGDCs would be required to obtain certification that their rates are cost-based. All existing gas-on-gas discount agreements would be permitted

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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., 2-3.

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. PEOPLES/PEOPLES TWP'S REPLIES TO EXCEPTIONS

#### A. Gas-on-Gas Competition Should be Modified, not Eliminated, and the OSBA Proposed End Date of December 31, 2016 is Unreasonable. (Reply to OSBA Exception No. 1)

Despite a recommendation that Gas-on-Gas Competition be completely eliminated by December 31, 2018, OSBA continues to adhere strictly to its litigation position in this generic investigation proceeding, advocating for an absolute end date for Gas-on-Gas Competition of December 31, 2016. OSBA Exceptions, 5-7. The OSBA's position should be rejected for two primary reasons.

First, Gas-on-Gas Competition should not be eliminated. It should be permitted to continue in a modified form as more fully set forth in the Exception of Peoples and Peoples TWP. *See* Peoples/Peoples TWP Exception, 3-11. The complete elimination of Gas-on-Gas Competition would present the following problems:

- The involuntary creation of specific and exclusive service territories would deprive NGDCs of their investments unless they are permitted to recover stranded costs from their remaining customer base, creating a financial burden on the remaining customer base. Peoples/Peoples TWP Exception, 4-6.

- Gas-on-gas competitive customers would be deprived of the benefits of competition, including 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. There would also be an adverse impact upon customers who have made business planning decisions and investments based upon the availability of competitive natural gas prices. Peoples/Peoples TWP Exception, 6-7.
- Non-competitive customers of the NGDC could suffer as a result of higher rates associated with the loss of load by the NGDC. Peoples/Peoples TWP Exception, 7.
- The modification or rescission of existing gas-on-gas discount agreements 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). Peoples/Peoples TWP Exception, 8-9.
- Contentious litigation is likely to erupt if NGDCs are required to give up portions of their service territories and the associated property rights and revenue streams (which benefit both shareholders and ratepayers). Peoples/Peoples TWP Exception, 10-11.

OSBA fails to set forth any reasonable proposal on how these significant problems associated with the complete elimination of Gas-on-Gas Competition can be addressed.

The second reason that OSBA's Exception No. 1 must be rejected is that Gas-on-Gas Competition, a practice that has been in effect for over three decades, cannot be phased out over the course of approximately two years in a reasonable and fair manner. Even if the Commission were to decide to eliminate Gas-on-Gas Competition completely (which it should not), the OSBA timeframe is unrealistic. NGDCs, as well as customers, have made substantial

investments 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*, 552 A.2d 585 (Pa. Cmwlth. 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; IECPA St. No. 1, 6:4-13. It will certainly require more than two years to unwind competitive markets that have developed over the course of decades, particularly with the likelihood that contentious litigation will result from any attempt to divide service territories and abrogate contracts.<sup>2</sup> A reasonable transition period would be required to avoid “possible economic disruptions,” to “enable businesses to prepare for the coming changes through budgeting and operational forecasting and decision making,” and to “enable businesses to adjust to the changing regulatory climate.” *Cf.* R.D., 30.

**B. Regardless of the Commission’s Findings in this Investigation, Further Due Process is Required. (Reply to OSBA Exception No. 2)**

OSBA criticizes the Recommended Decision’s recommendation that a task force or working group be created if the Commission determines either (a) Gas-on-Gas Competition should be ended completely or (b) the Peoples Proposal should be adopted. *See* R.D., Ordering ¶ 3; OSBA Exceptions, 8-9. OSBA’s criticism ignores the fact that the instant proceeding is merely a generic investigation. Any subsequent Commission final action that may affect property interests requires further due process. *See* Peoples/Peoples TWP Main Brief, 12-15 (regarding scope and standard of review in a Commission generic proceeding).

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<sup>2</sup> Peoples and Peoples TWP reject the OSBA’s notion that NGDC’s were put on notice of a change of Commission policy because of the public advocates’ opposition to Gas-on-Gas Competition. *See* OSBA Exceptions, 6. The petitioning parties to this generic investigation proceeding did not agree to advocate for a change of Commission policy. They simply agreed to petition the Commission to examine the practice of Gas-on-Gas Competition.

As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental fairness. *Popowsky v. Pa. Pub. Util. Comm'n*, 805 A.2d 637 (Pa. Cmwlth. 2002). Due process is required in administrative proceedings, particularly when the administrative action is adjudicative and involves substantial property rights. See *ARRIPA v. Pa. Pub. Util. Comm'n*, 792 A.2d 636 (Pa. Cmwlth. 2002) (citing *Randolph v. Pa. Blue Shield*, 717 A.2d 508 (Pa. 1998)); *Conestoga Nat'l Bank v. Patterson*, 275 A.2d 6 (Pa. 1971). Due process requires notice and an opportunity to be heard. See *ARRIPA*; *Gross v. State Bd. of Psychology*, 825 A.2d 748 (Pa. Cmwlth. 2003); *Gruff v. Pa. Dep't of State*, 913 A.2d 1008 (Pa. Cmwlth. 2006). In this proceeding involving Gas-on-Gas Competition, the only notice was via the July 25, 2012 Secretarial Letter to Commission-jurisdictional natural gas distribution companies and the petitioning parties informing them that a generic investigation (not an adjudication or rulemaking) would be commenced. As such, any subsequent Commission action, whether it be a rulemaking, policymaking or order, requires that subsequent notice and opportunity to be heard be afforded to parties whose property interests may be affected (including those persons who chose not to participate in the generic investigation).

The Recommended Decision's proposal to convene a task force or working group to address the details of either the complete elimination of Gas-on-Gas Competition or the modification of Gas-on-Gas Competition in accordance with the Peoples Proposal is completely reasonable. Specific facts and issues are likely to arise as the Commission moves forward along either path, and it is better to address those issues in a collaborative manner rather than through litigation.

C. **IECPA and PSU Fail to Acknowledge the Inequities of Maintaining the Status Quo of Gas-on-Gas Competition. (Reply to IECPA Exception Nos. 1, 2, 3 & 4 and PSU Exception Nos. 1, 2, 3, 4, 5 & 6)**

Throughout their Exceptions, IECPA and PSU rehash their arguments in support of maintaining the *status quo* of Gas-on-Gas Competition. See IECPA Exceptions, 1-23; PSU Exceptions, 1-20. They raise several legitimate concerns regarding the Recommended Decision's primary recommendation to eliminate Gas-on-Gas Competition completely (such as the abrogation of existing contracts, harm to non-competitive customers as the result of lost load, no mandate to move rates to true cost of service, and the practical difficulties associated with the involuntary division of service territories). Indeed, Peoples and Peoples TWP have expressed similar concerns throughout this proceeding and in their Exception. See Peoples/Peoples TWP Exception, 3-11.

IECPA and PSU nevertheless continue to refuse to acknowledge the fundamental problem associated with Gas-on-Gas Competition that has led to the current generic investigation; namely, non-competitive customers are required to absorb Discount Adjustments created by charging competitive rates that, ostensibly, are substantially below cost. See R.D., 30 (“I find the evidence in the current Investigation supports a finding that gas-on-gas rate discounting appears to be discriminatorily beneficial to a select group of large industrial customers fortunate enough to be located in an overlapping service territory and is financially burdensome to other captive customers.”); OCA St. No. 1-R, 1:17-5:31; OCA St. 1-S, 1:16-3:2; OSBA St. No. 2, 5:21-8:13; OSBA St. No. 3, 1:14-3:12, 7:1-9:13; I&E St. No. 1-R, 6:6-8:20; I&E St. No. 1-SR, 5:18-7:15, 9:1-12:9. As explained by Peoples/Peoples TWP witness Joseph A. Gregorini, Vice President for Rates and Regulatory Affairs: “[W]e [Peoples/Peoples TWP] 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. If the impact of Gas-on-Gas Competition in its current form upon non-competitive ratepayers is simply brushed over in this generic investigation, as IECPA and PSU are encouraging the Commission to do, then this investigation will have accomplished little or nothing to address the significant ratemaking issues that gas-on-gas competition creates in individual NGDC rate cases, which is what initially led to this generic investigation.

If the Commission decides to take up this issue, then the Commission’s challenge in the current proceeding is to find a workable solution that, to the extent possible, addresses the concerns raised on both sides of the debate. Peoples and Peoples TWP have presented such a solution in the Peoples Proposal. The benefits of the Peoples Proposal include, but are not limited to, the following:

- Gas-on-Gas Competition will be permitted to continue in a modified form;
- Gas-on-gas discount customers will continue to benefit from low prices because service would be available to a gas-on-gas competitive customer at the lowest tariffed distribution rate of any of the NGDCs that is competing for its business, regardless of which NGDC ultimately serves the customer;
- Gas-on-gas discount customers would benefit from other competitive factors unrelated to distribution costs, such as service quality, tariffed terms and conditions of service, and access to more-reliable or lower-cost gas supplies;
- Non-competitive customers would benefit from the creation of a reasonable floor on the level of discount that may be awarded by an NGDC to a gas-on-gas discount

- customer (*i.e.* the lowest tariffed distribution rates of a competitive NGDC), limiting non-competitive customers' rate responsibility for Discount Adjustments;
- NGDCs will still be afforded the opportunity to earn a fair return on and of their investment in providing service to the public;
  - Existing gas-on-gas discount agreements will be honored, avoiding the need for the Commission to exercise its powers under Section 508 of the Public Utility Code, 66 Pa. C.S. § 508, and protecting gas-on-gas competitive customers who have made business planning decisions based on their projected energy costs;
  - Contentious litigation regarding the division of NGDC service territories and the abrogation of contracts will be avoided;
  - The unnecessary duplication of facilities will be mitigated by limiting gas-on-gas discounts to an existing or former customer of the NGDC or to a potential customer associated with new development and by prohibiting a gas-on-gas discount to a customer of a competitor NGDC unless such customer was formerly served at that service location by the offering NGDC;
  - The justification for a gas-on-gas discount will be documented, as NGDCs will be required to maintain relevant records;
  - Excessively long gas-on-gas discount agreements will be avoided, as the terms of gas-on-gas discount agreements will be limited to five years (with the exception of contracts in which the discounted rate is reexamined and reset no-less-frequently than every five years);
  - NGDCs will be required to move rates to true cost of service consistent with Commission policy and Pennsylvania appellate case law; and,

- Other forms of discounting (such as discounting for pipeline bypass, alternative fuel, and economic development), which do not pit NGDC versus NGDC, will be preserved.

Peoples and Peoples TWP have explained the Peoples Proposal and the benefits of it in greater detail in their Reply Brief. *See Peoples/Peoples TWP Reply Brief, 4-15.*

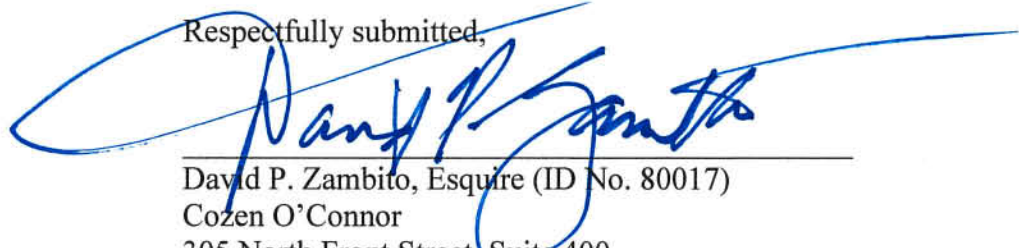
#### **IV. CONCLUSION**

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 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 non-competitive 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,



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