



COMMONWEALTH OF PENNSYLVANIA

August 2, 2017

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
Harrisburg, PA 17105-3265

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

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

Dear Secretary Chiavetta:

I am delivering today for filing the Comments of the Office of Small Business Advocate ("OSBA") to the May 4, 2017 Opinion and Order, entered in the above-docketed proceedings.

If you have any questions, please feel free to contact me directly.

Sincerely,

Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID #306921

Enclosures:

**Cc: Mr. Robert D. Knecht
Mr. Brian Kalcic**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition for Generic Investigation or Rulemaking Regarding “Gas-On-Gas” Competition Between Jurisdictional Natural Gas Distribution Companies	:	
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**COMMENTS OF THE OFFICE
OF SMALL BUSINESS ADVOCATE**

I. INTRODUCTION

On May 4, 2017, the Pennsylvania Public Utility Commission (“Commission”) adopted an Opinion and Order (“Order”) in the matter of an investigation into the unusual Pennsylvania regulatory practice known as “gas-on-gas competition.” In certain geographical areas of western Pennsylvania, the service territories of some natural gas distribution companies (“NGDCs”) overlap, and gas customers have a choice as to which NGDC will provide distribution service. At present, the Commission permits these NGDCs to offer below-tariff “flex” rates to these customers for no reason other than the customer may be able to take gas distribution service from a different NGDC. The Commission also permits the NGDCs to recover the shortfall in rates from other ratepayers.

The Order generally permits NGDCs to continue this practice, but it limits the injury to other ratepayers by setting a price floor for gas-on-gas flex rates, at the lowest applicable tariff rate among the NGDCs who could lawfully provide gas distribution service to the customer.

The Commission further determined that gas-on-gas competition should be implemented with tariff provisions that are uniform among the NGDCs. The Commission directed that the NGDCs file comments with respect to these tariff provisions, and included five specific questions to be addressed. The Commission also invited other interested parties to comment.

In response to the Commission's invitation, the OSBA offers the following comments, which address the issues raised by the Commission as well as other related issues the OSBA deems relevant.

II. COMMENTS

In providing these comments, the OSBA takes note that the Commission determined that gas-on-gas flex rates are conceptually comparable to flex rates that apply in situations of alternative fuel competition and bypass to pipelines. Notably, the Commission concluded:

Accordingly, in terms of the availability of flexible rates, there should not be a distinction between customers located in proximity to a pipeline supplier, customers with the capability of utilizing more than one fuel source, and customers located in overlapping NGDC service territories. These flexible rate mechanisms are intended to preserve an NGDC's load for the benefit of all of the NGDC's customers. As discussed, *infra*, if they are properly designed and administered, gas-on-gas flex rate mechanisms do not result in either an unreasonable preference for customers receiving flex rates or subject other ratepayers to unreasonable prejudice or disadvantage. (Order at 51-52)

This language implies that customers eligible for gas-on-gas flex rates should be treated in a manner comparable to those customers who have alternative fuel and bypass opportunities, as long as the price floor restriction is observed.

The OSBA supports the Commission's effort to reduce the impact of gas-on-gas rate discounts on other ratepayers. Moreover, the OSBA agrees that there is value in establishing a uniform price floor to discourage customers from jumping back and forth between NGDCs as relative rates shift, and to discourage NGDCs from making wasteful duplicative investments to serve those customers (particularly if recovery of the costs of that rate base are socialized among all ratepayers).

Commission Question 1: Which customer classes should be offered gas-on-gas flex rates?

In light of the Commission's logic, gas-on-gas flex rates should presumably be available to any customer who would also be eligible for flex rates for alternative fuel and bypass situations. Nevertheless, the OSBA observes that problems could arise if each NGDC has different eligibility rules for flex rates. For example, if a customer is ineligible for flex rates at its incumbent NGDC, that customer may switch to an alternative NGDC at which it is eligible, simply to achieve the lower tariff rate, even if such switching involves inefficient duplication of facilities and causes all parties to incur unnecessary transactions costs.

The OSBA respectfully submits that such problems can be simply avoided if all customers are eligible for all negotiable discounts, if they can demonstrate that they have a credible competitive alternative. Of course, the NGDC should have no obligation to offer a discount if the customer does not, in the NGDC's view, have a credible competitive threat.

Commission Question 2: Should uniform minimum consumption thresholds be established?

Please see OSBA comments regarding Commission Question 1.

Commission Question 3: Should new customers locating in overlapping service areas be offered gas-on-gas flex rates or should these rates be limited to existing customers being served under gas-on-gas flex rate contracts?

Under the Commission's logic regarding the comparability of gas-on-gas and alternative fuel/bypass conditions, the OSBA concludes that new customers, or new loads at existing customers, should be subject to the gas-on-gas provisions to the same extent flex rates apply to new customers who have alternative fuel or bypass opportunities. As OSBA is not aware of any rules limiting availability of flex rates to existing customers, the OSBA respectfully submits that the Commission's logic implies that new customers should be eligible.

This question does open the issue of how contributions-in-aid-of-construction ("CIAC") should be determined for new customers eligible for gas-on-gas flex rates. This issue is complicated by the fact that one utility may be setting the rates for a particular customer based on another utility's tariff rates. The OSBA recommends that the Commission ensure that, if any new customer is the beneficiary of below-tariff flex rates (be it gas-on-gas or other reason), the maximum investment made by the NGDC that is rolled into rate base is justified based on the actual flex rate revenues that will be provided by the new customer at the discounted rates, and not based on the official tariff rate.

Commission Question 4: What should be the criteria and associated documentation for customers to demonstrate that they are capable of receiving service from another NGDC?

In the OSBA's view, the documentation should address two issues: the physical infrastructure for providing service and the willingness of the competing NGDC to do so.

For the former, it should be incumbent upon the customer to specify the infrastructure that will be used to provide distribution service and to demonstrate that this infrastructure has sufficient capacity to meet the customer's needs.

For the latter, the customer should provide a written offer of service from the competing NGDC that includes an explanation of how any necessary costs to interconnect will be shared between the customer and the NGDC. For the reasons discussed below in response to OSBA Question 1, none of these incremental costs should be includable in rate base if they apply to existing customers.

Commission Question 5: Should there be a limit on the duration of contracts between gas-on-gas flex rate customers and NGDCs?

As long as the price floor is set at the current value for the lowest tariff rate rather than a historical value at the time the contract is entered into, the OSBA sees no need for any constraints on contract duration. If, however, the Commission allows contract rates to remain fixed even if the floor price increases, the OSBA recommends that contracts be limited to a maximum duration of one year.

OSBA Question 1: Should NGDCs be allowed to recover incremental capital costs associated with providing distribution service to a gas-on-gas customer currently served by a different NGDC?

The OSBA respectfully submits that the answer to this question is no, because the alternative would be inconsistent with the Commission's logic regarding bypass competition, and it could result in inefficient duplication of facilities to the detriment of other ratepayers.

In the case of bypass, the flex rate offered by the "defending" NGDC will necessarily reflect both the cost of gas delivery from the "competing" pipeline *plus* the cost of attaching the customer to that pipeline. In light of the Commission's logic regarding the comparability of gas-on-gas and bypass competition, a similar situation should obtain for gas-on-gas

bypass, namely that the “defending” NGDC’s gas-on-gas flex rate should reflect the “competing” NGDC’s cost (*i.e.*, the tariffed rate) plus the incremental cost of attaching the customer. By not allowing a competing NGDC to roll new investment for that customer into its rate base, the new investment cost would generally be borne by the customer, consistent with bypass example. Thus, the OSBA’s recommended approach maintains the comparability of gas-on-gas and pipeline bypass situations.

Moreover, if the competing NGDC can “socialize” the cost of the incremental capital by rolling it into rate base, the defending NGDC will need to set gas-on-gas flex rates at the competing NGDC’s tariff rate exclusive of the attachment cost. In effect, the other ratepayers will necessarily absorb the incremental costs of the duplicative additions through the socialization of rate base costs. Thus, allowing an NGDC to make a rate base investment in order to lure a new customer should not be permitted, and any such cost should be borne only by either the NGDC or by the customer.

OSBA Question 2: Should gas-on-gas flex rate contracts be based on minimum tariff rates in place at the time the contract is entered into, or should they be based on tariff rates in effect at the time utility bills are issued?

This question is an effort to address the issue illustrated by the following example: Suppose in January 2019 NGDC “A” negotiates gas-on-gas flex rates with Customer “B” based on the then-current tariff rates of NGDC “C,” but then NGDC “C” is permitted to increase its rates in July 2019. Beginning in July 2019, will Customer B be required to pay the NGDC “C”’s January rates (as negotiated in the contract) or NGDC “C”’s July rates?

In the OSBA’s view, the Commission’s price floor for gas-on-gas flex rates should be the current minimum tariff rate, not the minimum tariff rate in effect at the time of the contract signing. As regular service customers have no opportunity to lock in favorable gas

distribution rates, gas-on-gas flex rate customers should not be similarly entitled. Thus, contracts between the NGDC and a gas-on-gas flex rate customer should specify that the minimum tariff rate will be current minimum tariff rate for which the customer is eligible.

III. CONCLUSION

The OSBA respectfully requests that the Commission consider its comments above when determining new gas-on-gas flex tariff provisions.

Respectfully submitted,



Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: August 2, 2017

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (unless other noted below) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Honorable Elizabeth H. Barnes
Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
ebarnes@pa.gov
(E-mail and Hand Delivery)

William H. Roberts, Esquire
Peoples Natural Gas Company, LLC
375 North Shore Drive - #600
Pittsburgh, PA 15212
william.h.roberts@peoples-gas.com

Dawn Lindner, Esquire
Jennifer L. Petrisek, Esquire
Peoples TWP, LLC
205 N. Main Street
Butler, PA 16001
dawn.lindner@peoples-gas.com
jennifer.petrisek@peoples-gas.com

Donna M. J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street - #205
Harrisburg, PA 17101
dclark@energypa.org
(E-mail Only)

Theodore J. Gallagher, Esquire
NiSource Corporate Services Company
121 Champion Way - #100
Canonsburg, PA 15317
tjgallagher@nisource.com

Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101
tniesen@tntlawfirm.com
cet3@tntlawfirm.com

Maureen Geary Krowicki, Esquire
National Fuel Gas Distribution Corp.
P. O. Box 2081
1100 State Street
Erie, PA 16512
KrowickiM@natfuel.com

Darryl A. Lawrence, Esquire
Aron J. Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
dlawrence@paoca.org
abeatty@paoca.org
(E-mail and Hand Delivery)

Allison C. Kaster, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
akaster@pa.gov
(E-mail and Hand Delivery)

David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street - #400
Harrisburg, PA 17101-1236
dzambito@cozen.com

Mark C. Morrow, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
morrowm@ugicorp.com

Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Hawke McKeon & Sniscak, LLP
100 North 10th Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
welchman@hmslegal.com


Pamela C. Polacek, Esquire
McNees Wallace and Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108
ppolacek@mwn.com

Michael S. Swerling, Esquire
PECO Energy Company
2301 Market Street - S23-1
Philadelphia, PA 19101-8699
michael.swerling@exeloncorp.com

Kevin J. Moody, Esquire
Pennsylvania Independent Oil & Gas Assoc.
212 Locust Street - #300
Harrisburg, PA 17101-1510
kevin@pioga.org

Benjamin L. Shechtman, Esquire
Stevens & Lee
620 Freedom Business Center - #200
King of Prussia, PA 19406
bls@stevenslee.com

Date: August 2, 2017


Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921