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December 8, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

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

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Dear Secretary Chiavetta:

Please accept for filing the enclosed original and three copies of the Petition for Generic Investigation or Rulemaking Regarding "Gas-On-Gas Competition" Between Jurisdictional Natural Gas Distribution Companies. The Petition is a joint filing of the Bureau of Investigation and Enforcement, Office of Consumer Advocate, Office of Small Business Advocate, Peoples TWP LLC, and Peoples Natural Gas Company LLC.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

Counsel for Peoples
Natural Gas Company LLC

cc: Allison Kastor, Esq.
Shaun A. Sparks, Esq.
Steven C. Gray, Esq.
Jay W. Dawson, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition Requesting that the Pennsylvania :
Public Utility Commission Institute a Generic :
Investigation or Rulemaking Concerning “Gas : Docket No. P-2011-_____
on Gas Competition” Between Natural Gas :
Distribution Companies :

**PETITION FOR GENERIC INVESTIGATION OR RULEMAKING
REGARDING “GAS-ON-GAS COMPETITION” BETWEEN JURISDICTIONAL
NATURAL GAS DISTRIBUTION COMPANIES**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bureau of Investigation and Enforcement (“BI&E”), Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), Peoples TWP LLC (“Peoples TWP”), and Peoples Natural Gas Company (“Peoples”) (together, “Joint Petitioners”) hereby jointly file this Petition to request that the Pennsylvania Public Utility Commission (“Commission”) institute an investigation or rulemaking, pursuant to Sections 5.41 and 5.43 of the Commission’s regulations, 52 Pa. Code §§ 5.41 and 5.43, to address distribution base rate discounting among natural gas distribution companies (“NGDCs”) with overlapping service territories, often referred to as “gas-on-gas competition.” In support thereof, the Joint Petitioners state as follows:

I. BACKGROUND

1. Various NGDCs in the Commonwealth have overlapping non-exclusive service territories, particularly in western Pennsylvania. In general, the overlapping service territories predate economic regulation of utilities and represent grandfathered rights to provide service.

2. The Commission has permitted NGDCs with overlapping service territories to offer distribution service to end users at rates below an incumbent NGDC's approved maximum tariff rates to compete with lower distribution rate offers from other NGDCs.

3. NGDCs have argued that it is necessary to flex distribution rates to meet lower rate offers from other NGDCs in order to avoid the loss of all revenues that would occur if the customer were to migrate to another NGDC. The Commission has also permitted NGDCs to reflect the lower level of revenue related to this flexing of distribution rates in determining the revenue requirement in base rate proceedings.

4. In Peoples' recent base rate proceeding at Docket No. R-2010-2201702, the Office of Trial Staff ("OTS," now BI&E) and OCA argued that Peoples should be presumed to be recovering full tariff rates from customers whose distribution rates have been flexed to meet lower rates from another NGDC. OTS contended that this practice should be discouraged by requiring Peoples' shareholders to absorb the effect of reducing rates to meet NGDC competition. The OCA recommended that the cost of the discounts (i.e., the discount itself) provided to commercial customers should be recovered within the commercial class, and that discounts provided to industrial customers be absorbed by Peoples. OSBA agreed that flexing of distribution rates to meet competition from other NGDCs was uneconomic and inequitable. In that regard, OSBA pointed out that although there is a benefit to those business customers that receive the discounts, the cost of paying for those discounts is a burden to business customers that do not have the good fortune of being located where service from another NGDC is an option. In addition, OSBA argued that the effect of flexing to meet lower rates from other NGDCs should be absorbed solely by the rate classes that contain customers that receive flexed rates, pending the result of a generic investigation by the Commission.

5. Peoples argued in the base rate proceeding that it could not eliminate flex rates unilaterally without losing its customers to other NGDCs that would be permitted to continue offering flex rates; that loss of such customers would result in higher fixed cost charges to all other customers, thereby resulting in higher rates; and that Peoples is entitled to the reasonable opportunity to recover all of its costs, which opportunity would be denied if Peoples were forced to absorb the difference between tariff rates and the flexed rates received from serving customers who otherwise would obtain lower rates from another NGDC.

6. The Joint Petitioners agreed to address the “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 affected NGDCs.

II. A GENERIC INVESTIGATION OR RULEMAKING IS PROPER AND IN THE PUBLIC INTEREST

7. Various NGDCs, the statutory parties, and other interested parties cannot resolve issues related to “gas on gas competition” in the NGDCs’ individual base rate proceedings, because each proceeding can address the distribution rates for only one NGDC. A Commission decision in a base rate case to force one NGDC to end “gas-on-gas competition” could result in lost revenues for that NGDC, and higher rates for its remaining customers, if other NGDCs are permitted to continue engaging in such “competition.” Therefore, the aforementioned parties have agreed that “gas-on-gas competition” should be uniformly resolved through a generic investigation or rulemaking.

8. In several recent NGDC proceedings, the statutory parties and the NGDCs have agreed that “gas-on-gas competition” issues should be uniformly resolved on a state-wide basis through a generic investigation or rulemaking.

a. The Settlement of Peoples' base rate proceeding at Docket No. R-2010-2201702 provides as follows:

OTS, OCA, OSBA, and Peoples agree to request, by separate filing made within 60 days of the Commission's approval of this Settlement, that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address whether NGDC to NGDC competition should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other parties reserve the right to challenge the necessity for any such investigation or rulemaking. The Joint Petitioners acknowledge and agree that the terms and conditions of this Settlement are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking, and that the Joint Petitioners will continue to fully support the remaining terms and conditions of this Settlement notwithstanding whether the Commission commences the requested generic investigation or rulemaking.

The Settlement was approved by Order of the Commission entered June 9, 2011.

b. In Equitable Gas Company's 2008 base rate proceeding at Docket No. R-2008-2029325, the Settlement provides as follows:

Equitable agrees to join with the OCA in petitioning the Commission to open a generic investigation concerning gas-on-gas competition in western Pennsylvania

This Settlement was approved by Order entered February 26, 2009.

c. In Columbia Gas of Pennsylvania, Inc.'s base rate proceeding at Docket No. R-2010-2215623, the Joint Petition for Partial Settlement provides as follows:

Columbia agrees to join with OTS, 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. Other Parties reserve the right to challenge the necessity for any such investigation or rulemaking. The terms and conditions of this Settlement proposal are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking.

The Joint Petition for Partial Settlement was approved by Order entered October 14, 2011.

d. In the Application proceeding at Docket No. A-2010-2210326, involving the acquisition of T. W. Phillips Gas and Oil Co. by LDC Holdings II LLC, an indirect subsidiary of SteelRiver Infrastructure Fund North America LP, the Settlement provides as follows:

T. W. Phillips agrees to join with OTS, OCA, and OSBA, in a request to be made by separate filing, that the Commission (a) initiate within six months of such request a generic investigation or rulemaking to address whether Natural Gas Distribution Company (“NGDC”) to NGDC competition should be permitted to continue and, if permitted to continue, under what circumstances it will be considered appropriate, and (b) proceed expeditiously to conclude such investigation or rulemaking. Other Signatory Parties and any other party not a signatory to the Settlement reserve the right to challenge the necessity for any such investigation or rulemaking. The Signatory Parties acknowledge and agree that the terms and conditions of this Settlement are in no way conditioned upon the Commission commencing the requested generic investigation or rulemaking, and that the Signatory Parties will continue to support fully the remaining terms and conditions of this Settlement notwithstanding whether the Commission commences the requested generic investigation or rulemaking.

This Settlement was approved by Order of the Commission entered May 23, 2011.

9. As demonstrated by the settlements discussed above, the NGDCs and the signatory parties have agreed that issues related to NGDCs’ flexing of distribution rates to meet lower rates from other NGDCs and the treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings should be resolved through a generic investigation or rulemaking.

10. The Commission previously has granted petitions requesting a generic investigation to uniformly resolve issues of concern to public utilities and their customers.¹ However, the Joint Petitioners recognize that the Commission previously declined to undertake a generic investigation into competition between NGDCs with overlapping service territories, concluding that the issues are better addressed in individual rate proceedings. *Petition of the Office of Trial Staff for the Commencement of an Investigation of Competitive Practices Between Natural Gas Distribution Companies*, Docket No. P-00052160, 2005 Pa. PUC LEXIS 50 at *15 (October 6, 2005) (“*Petition of OTS*”). However, separately resolving NDGC competition issues in the NDGCs’ next individual base rate proceedings could lead to inequitable results.

11. In reaching its conclusion in *Petition of OTS*, the Commission cited to its prior decisions in purchased gas cost (“PGC”) cases to decline requests for a generic investigation of discounted or waived retainage fees: *Pa. Pub. Util. Comm’n v. Equitable*, Docket No. R-00050272 (September 28, 2005) (“*Equitable*”) and *Pa. Pub. Util. Comm’n v. The Peoples Natural Gas d/b/a Dominion Peoples*, Docket No. R-00050267 (September 9, 2005) (“*Dominion Peoples*”). In both Orders, the Commission held that a generic proceeding would only serve to delay for months, if not years, the possible impacts of discounted or waived retainage fees on non-shopping customers’ gas costs. Nevertheless, the Commission went on to conclude in *Equitable* and *Dominion Peoples* that in these NGDCs’ next PGC proceedings, any discounts incurred in order to compete with a jurisdictional NGDC would not be allowed to be recovered

¹ See, e.g., *Investigation of Issuance of Local Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers*, Docket Nos. P-00981404, *et al.*, 1998 Pa. PUC LEXIS 80 (Sept. 2, 1998) (granting the petition of Bell Atlantic-PA, Inc. requesting a generic proceeding to investigate issuance of “local” telephone numbers to internet service providers by competitive local exchange carriers); see also *Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development of Intrastate Access Charges*, Docket No. P-830452 *et al.*, 1985 Pa. PUC LEXIS 74, 69 P.U.R. 4th 69 (Aug. 8, 1995).

from other customers. Therefore, the Commission effectively decided the issue of waived retainage in “gas-on-gas competition” in a generic manner. See *Equitable*, at p. 42-44; *Dominion Peoples*, at p. 32-34. Furthermore, when OTS raised the retainage fee issue in all of the PGC proceedings in the following year, the Commission’s conclusion in *Equitable* and *Dominion Peoples* was uniformly applied.

12. Unlike the annual PGC proceedings, separately resolving NGDC base rate discounting issues in the NDGCs’ individual base rate proceedings raises more complicated issues, primarily because base rate proceedings are not conducted annually for each NGDC. Unlike the standard adopted in *Equitable* and *Dominion Peoples* that was uniformly applied to all NGDCs in their next PGC proceedings, resolving NGDC base rate discounting issues in separate, individual base rate proceedings could result in disparate regulatory treatment of the various NGDCs which could continue for several years. If the Commission were to agree with the statutory parties and decide that “gas-on-gas competition” should be eliminated, the first NGDC to which the revised policy applied would be at a disadvantage relative to other NGDCs, in terms of its ability to offer discounted base rates. That first NGDC would then claim that its rates should reflect the expectation that it would lose all of its customers who were currently receiving flex rates related to “gas-on-gas competition,” and that the resulting lost revenues should be recovered from the remaining customers. Therefore, even if this first NGDC had the lowest overall tariff distribution rates, it could lose customers to the other NGDCs that retained the ability to offer discounted rates. In effect, the customers at the NGDC which first files a base rate proceeding in which “gas-on-gas competition” is eliminated would be unfairly made responsible for the disparate regulatory treatment of the NGDCs. While the discrepancies among the various NGDC tariffs would eventually be addressed through base rate proceedings, the

entire process could extend for years. The Joint Petitioners respectfully submit that such an extended period of disparate regulatory treatment of the NGDCs is not reasonable, fair, or in the public interest.

13. As evidenced from the settlements discussed above, there is significant interest in the uniform and timely resolution of issues related to competition among NGDCs, flexing of distribution rates to meet such competition, and treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings. The Joint Petitioners submit that the most effective and non-discriminatory method to resolve these important issues is for the Commission to initiate a generic investigation or rulemaking.

III. CONCLUSION

14. In accordance with the Settlement of Peoples' base rate case, the Joint Petitioners request that the Commission initiate a generic investigation or rulemaking with regard to competition among NGDCs, flexing of distribution rates to meet such competition, and treatment of flexed revenues for ratemaking purposes in future ratemaking proceedings. All interested parties should be permitted to participate.

WHEREFORE, the Bureau of Investigation and Enforcement, Office of Consumer Advocate, Office of Small Business Advocate, Peoples TWP LLC, and Peoples Natural Gas Company LLC request that the Commission institute a generic investigation or rulemaking concerning competition among natural gas distribution companies to determine the appropriateness and conditions of future competition.

Date: 12/8/11

Respectfully submitted,



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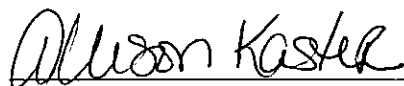
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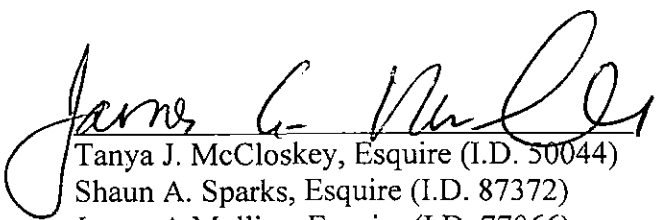


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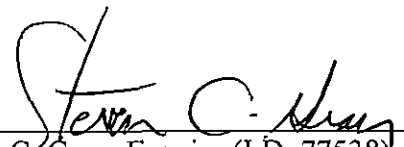
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VERIFICATION

I, Joseph Gregorini, Vice President, Rates and Regulatory Affairs, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 12/8/11

Joseph Gregorini