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May 31, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

In re: Docket No. M-2012-2293611
Implementation of Act 11 of 2012

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Equitable Gas Company, LLC are its Comments to the Public Utility Commission's Tentative Implementation Order entered May 11, 2012 in the above matter.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

cc: ra-Act11@pa.gov (w/encl.)
David Screven, Esquire (by email w/encl.)
Louise Fink Smith, Esquire (by email w/encl.)
Erin Laudenslager (by email w/encl.)
John M. Quinn (by email w/encl.)
David W. Gray, Esquire (by email w/encl.)

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**Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 11 of 2012

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Docket No. M-2012-2293611

**COMMENTS OF EQUITABLE GAS COMPANY, LLC
TO TENTATIVE IMPLEMENTATION ORDER ENTERED MAY 11, 2012**

AND NOW, comes Equitable Gas Company, LLC (“Equitable” or “Company”), by its attorneys, and submits the following Comments in accordance with the Tentative Implementation Order entered in the above captioned proceeding by the Public Utility Commission (“Commission”) on May 11, 2012 (“Order”):

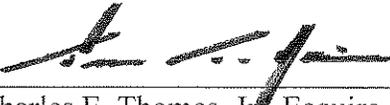
1. On May 11, 2012, the Commission entered its Order, proposing procedures, guidelines and a model tariff for implementation of Act 11 of 2012 (“Act”) and inviting interested parties to submit written comments to the same within 20 days of the entry date of the Order.

2. Equitable is pleased to have the opportunity to submit comments to the proposed procedures, guidelines and model tariff. Equitable’s Comments are presented in the Appendix A attached hereto and are submitted without prejudice to any position Equitable might take in any subsequent proceeding(s) involving these or any other matters.¹

¹ Equitable also joins in the Comments being submitted by the Energy Association of Pennsylvania to the extent that the Association’s Comments are not inconsistent with Equitable’s Comments as expressed herein.

WHEREFORE Equitable Gas Company, LLC submits the attached Comments in accordance with the Public Utility Commission's Tentative Implementation Order entered May 11, 2012.

Respectfully submitted,

By 

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Date: May 31, 2012

APPENDIX A

Comments of Equitable Gas Company, LLC to Tentative Implementation Order Entered May 11, 2012 Docket No. M-2012-2293611

Section 1350 – Scope of Subchapter

Interpreting the new subchapter B, the Order states that section 1350 allows certain utility types, including natural gas distribution companies, with distribution and collection systems to recover the costs related to the repair and improvement of “eligible property” outside of a rate case. As is more fully set forth below, the Commission should rely on the express language of the Act, including the definition of “eligible property,” and recognize in its Final Implementation Order that the scope of new subchapter B provides an additional mechanism to recover the costs related to the repair, improvement and replacement of all systems owned by a utility from which service is provided, including all distribution, gathering and transmission property. Not only does the express language of the Act support this interpretation, such an interpretation is consistent with the Act’s overall purpose of replacing aging utility infrastructure.

Section 1351 -- Definitions

Section 1351 defines a “distribution system” as “[a] system owned or operated by a utility” and explains that the term includes a natural gas distribution company. Eligible property is defined as “[p]roperty that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure” under new subchapter B. For a natural gas distribution company, “eligible property shall include,” *inter alia*, “piping,” “[g]as service lines” and “[o]ther related capitalized costs.”

Equitable is a natural gas distribution company that owns and operates “system(s),” including a distribution system from which it provides retail natural gas distribution service and a gathering system from which it provides both a natural gas gathering service to natural gas producers and a retail natural gas distribution service to a number of distribution service end use customers. Equitable also owns and operates transmission facilities.

Equitable believes that, properly interpreted, “eligible property” includes not only utility property functionalized as distribution but also utility property functionalized as gathering or transmission. Equitable’s interpretation is consistent with the foregoing definitions of “eligible property” and “distribution system” presented in Section 1351 which, by their terms, *include all* “system” property owned or operated by a utility. Equitable’s interpretation is also consistent with the broad list of “eligible property” identified by the General Assembly in Subsection 1351(2), which provides that “eligible property” for a natural gas distribution company “shall include” a number of items, including “[p]iping.” “Piping,” whether functionalized as transmission, distribution or gathering, is “eligible property” under Section 1351(2).

Thus, the Commission’s final order should explain that “eligible property” includes all piping and related facilities of a natural gas distribution company regardless of functionality as distribution, gathering and/or transmission. This interpretation is supported by the plain language of the Act and it otherwise furthers the goal of the Act to aid in the replacement of aging infrastructure. The model tariff also should be modified consistent with the foregoing as further addressed in the comments below. The model tariff, as presently drafted, only lists distribution accounts as included for recovery under the Act.²

Section 1352 – Long-Term Infrastructure Improvement Plan

Section 1352 requires a utility to submit a long-term infrastructure improvement plan (“LTIIIP”) in order to be eligible to recover costs under section 1353 and provides that the LTIIIP “shall include,” *inter alia*, “[i]dentification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.” The Order departs, however, from the express language of section 1352 and states that the LTIIIP would “necessarily include a review of *all* distribution plant, including its inventory, age, functionalities, reliability and performance.”³ Equitable views the foregoing sentence as too broad and contrary to the Act. In Equitable’s view, the LTIIIP required under the Act would include a review of only the “eligible plant” to be replaced under the surcharge mechanism.⁴

In addition to the foregoing, the Commission should also address the meaning of “long-term” in its Final Implementation Order. Although section 1352 requires a utility to submit a “long-term” infrastructure improvement plan, neither the Act nor the Order provides the

² Equitable is not suggesting through its comments that all property that is “eligible property” under the Act should be considered “distribution” for other purposes, including pipeline safety or other standards. Gathering “pipe,” for example, would retain its functionality as gathering and would continue to be evaluated as gathering pipe for pipeline safety purposes, by the Commission’s Gas Safety Division and in the Company’s Distribution Integrity Management Program (DIMP) Plan.

³ The Order, at page 8, states as follows:

“The long-term plan *must* include the types and age of eligible property. *See* 66 Pa. C.S. § 1352(a)(1). In the Commission’s view, this necessarily includes a review of *all* distribution plant, including its inventory, age, functionalities, reliability and performance. The long-term plan must also include a schedule for the planned repair and replacement of eligible property. *See* 66 Pa. C.S. § 1352(a)(2). This schedule must be long-term and forward-looking, based on a utility’s analysis of equipment failures, their nature, causes, locations, analysis of reliability performance indicators, and forecasts of future reliability concerns. For EDCs, we expect this analysis to include consideration of reliability metrics such as SAIDI, SAIFI and CAIDI. For NGDCs, we expect this analysis to include consideration of and consistency with the Distribution Integrity Management Program (DIMP) plans filed pursuant to Federal natural gas pipeline standards.” (footnotes omitted) (emphasis added).

⁴ Given the information included with the LTIIIP pursuant to section 1352, Equitable believes that it would be appropriate for the Commission to recognize in its Final Implementation Order and in the rules and regulations to be promulgated pursuant to new section 315 that a utility’s LTIIIP, previously submitted by the utility and reviewed by the Commission in satisfaction of the requirements of section 1352, is “sufficient documentation” to establish a *prima facie* case in support of the fully projected future test year rate base claims presented by the utility in a section 1308 general rate proceeding.

necessary guidance as to the definition of “long-term.” In Equitable’s view, a plan of five years, at most, would be sufficiently “long-term” to satisfy the requirements of section 1352. A five year plan also would be consistent with section 1352(b)(1) which provides for “periodic review” of the LTIP “at least once every five years” pursuant to regulations to be promulgated by the Commission.

Irrespective of how “long-term” is defined, it is important for the Commission to recognize in its Final Implementation Order that a utility retains discretion as part of its LTIP to address changes in circumstances and to address safety or other matters as they arise. Flexibility, in other words, should be recognized as part of the LTIP. Such flexibility is likely to become more of a focus the further one gets from the initial approval of the LTIP. In any event, utility management appropriately must retain the ability to exercise discretion and judgment without strict adherence to a previously submitted LTIP.⁵

Subsection (b) of section 1352 addresses “periodic review” as mentioned above. The Order makes no mention of the regulations to be promulgated pursuant to section 1352(b). In addition to addressing periodic review, those regulations “may authorize a utility to revise, update or resubmit a plan as appropriate.” Again, the recognition of flexibility is important and the regulations, in Equitable’s view, should recognize the discretion of utility management to depart from a submitted plan to address safety or other matters as they arise.

The Order further acknowledges consideration of the LTIP as proprietary and confidential. Equitable believes that the information in the LTIP likely will be proprietary and confidential and it agrees with the Commission that a utility should be permitted to submit the LTIP on a proprietary and confidential basis. In addition, the Commission should make it clear in its Final Implementation Order that the LTIP will not lose its proprietary and confidential status through passage of time and that the Commission will continue to maintain the proprietary and confidential nature of the LTIPs on file with it until the utility acknowledges in writing that the LTIP may be made public.⁶

As a final matter, Equitable points out that section 1352 contemplates that the submission and approval of the LTIP is to be a matter between the utility and the Commission. No allowance is made under section 1352 for the utility’s LTIP to be distributed for public comment or for the section 1352 submission to become a contested proceeding assigned to an administrative law judge. Equitable believes that the Commission should confirm this point in its Final Implementation Order. The Commission should also identify a reasonable time - Equitable suggests no more than 90 days - for the Commission to complete its review of a utility’s LTIP after which the LTIP would be deemed approved for the purpose of section 1352.

⁵ It is a longstanding principle of Pennsylvania law that the company is to manage its affairs to the fullest extent, free from Commission interference absent compelling evidence of an abuse of discretion that violates the public interest. See *Metropolitan Edison Company v. Pa. P.U.C.*, 62 Pa. Cmwlth. 460, 437 A. 2d. 76 (1981); *Berner v. Pa. P.U.C.*, 382 Pa. 622, 116 A.2d 738 (1955); *Bell Telephone Co. of Pennsylvania v. Driscoll*, 343 Pa. 109, 21 A. 2d 912 (1941); *Northern Pennsylvania Power Co. v. Pa. P.U.C.*, 333 Pa. 265, 5 A.2d 133 (1939); *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 114 A. 649 (1921).

⁶ Equitable believes that proprietary and confidential protections should extend to all filings under new subchapter B, including the utility’s annual optimization plan submissions pursuant to section 1356.

Section 1353 – Distribution System Improvement Charge

Section 1353 provides statutory authority for the creation of a “distribution system improvement charge to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” Equitable’s comment in regard to section 1353 and the discussion in the Order is, as it was in regard to section 1351, that “eligible property” be recognized to include all systems owned or operated by utilities, including distribution, gathering and transmission piping and facilities. The model tariff should be revised to include, at a minimum, those FERC accounts related to gathering and transmission facilities⁷ or the Commission could recognize in its Final Implementation Order that utilities have discretion to expand the list of FERC accounts presented in the model tariff.⁸ In the alternative, the Commission should consider removing the FERC accounts from the model tariff as the means to identify “eligible property” for the purpose of the Act. The use of FERC accounts to identify and, ultimately, limit “eligible property” is not part of the Act. Equitable believes that the use of FERC accounts as presently proposed in the model tariff unreasonably limits the application of the Act.

Section 1357 – Computation of Charge

Section 1357 addresses the computation of the distribution system improvement charge (“DSIC”). Significant in regard to the computation of the charge is subsection (b)(2), which provides that the cost of equity shall be the equity return rate approved in the utility’s “most recent fully litigated base rate proceeding” for which a final order was entered not more than two years prior to the effective date of the DSIC. The Order states that a fully litigated base rate case is one in which all revenue requirement issues were addressed and adjudicated by the Commission in a final order and that, as such, a full or partial settlement would not qualify. The Order, however, invites comments on whether a stipulated cost of equity from a settled rate case, agreed to or unopposed by all parties, can be used consistent with section 1357(b)(2).⁹

The use of a partially litigated case that includes a litigated conclusion as to the cost of equity or a stipulated cost of equity would satisfy the requirements of section 1357(b)(2). A stipulated cost of equity, approved by the Commission in a base rate context, would reflect the considered view of the parties to that proceeding concerning the cost rate appropriate for purposes of the Act. The use of a stipulated return for purposes of the Act or a litigated conclusion as to the cost of equity where the parties have been able to come to a settled conclusion as to other issues, moreover, would be consistent with Commission regulations that

⁷ By way of example, the FERC Accounts in the model tariff, at a minimum, should include as eligible property those FERC Accounts identified in Schedule No. 205 of the Annual Reports filed by natural gas distribution companies with the Commission.

⁸ The Order, pages 11 and 12, invites parties to comment on the model tariff.

⁹ Order, pages 14 and 15.

encourage parties to resolve proceedings through settlement¹⁰ and without litigation, thus, conserving and efficiently using the resources of all involved.

In the absence of a timely, litigated equity return component, section 1357(b)(3) provides that the equity return rate used in a utility's DSIC calculation "shall be the equity return rate calculated by the commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the commission." The Order explains, generally, that "the Commission uses a variety of barometer groups and cost of equity models to develop an appropriate range of reasonableness for the equity cost rates for each industry group that is reflective of current market and industry conditions and is consistent with the analysis used by the Commission to determine the cost of equity in litigated rate cases."¹¹

The equity return component is a critical input in the effective implementation of the Act. The return component must be high enough to attract the capital necessary for the significant pipeline replacement and other projects facing the natural gas industry. In Equitable's view, the historic return calculated by the Commission's Staff and published in its Quarterly Reports is below market and inadequate for natural gas distribution companies to attract the capital needed for their facilities replacement projects. Equitable believes that the Commission should adopt an approach that produces a market based equity return component and that doing so would further the purposes of the Act.

Equitable agrees with the Commission's discussion of the exclusion of accumulated deferred income taxes and other limited items from the DSIC computation.¹² Inclusion of these items would unnecessarily complicate the computation. Equitable also agrees with the Commission's approach to account for revenue seasonality by allowing the quarterly calculation to be based on one-fourth of projected annual revenues. This reasonable interpretation is important for natural gas distribution companies, such as Equitable, with a significant winter heating component to its annual revenue level.

As a final matter, Equitable disagrees with the Commission's proposed exclusion of removal costs from surcharge recovery.¹³ The removal costs of infrastructure being replaced are typically capitalized and included in the total project cost; thus, removal costs, at a minimum, should be considered "[o]ther related capital costs" and, therefore, "eligible property" for surcharge recovery.¹⁴ Equitable believes that the Final Implementation Order should acknowledge that recovery of capitalized removal costs is allowed through the surcharge.

¹⁰ See 52 Pa. Code § 5.231.

¹¹ Order, page 15.

¹² Order, page 16.

¹³ Order, page 16.

¹⁴ Section 1351 includes "other capitalized costs" within the definition of "eligible property."

Section 1358 – Customer Protections

Section 1358 addresses customer protections. Subsection 1358(d)(1) provides that a DSIC approved by the Commission shall provide that “the distribution system improvement charge shall be applied equally to all customer classes as a percentage of each customer’s billed revenue, consistently with subsection (a).” The Order tentatively states that “the statutory language does not permit a utility to have variances in its DSIC rates based on customer class, whether that difference is based on the calculation of the DSIC percentage or on the underlying DSIC-eligible property.”¹⁵ The Order invites further comment on this interpretation.¹⁶

Equitable believes that the utility must have flexibility to forego the application of the charge to customers on a case by case basis. A utility, for example, should be able to allow a customer to by-pass the charge for competitive or economic development reasons. The Act does not preclude a utility from doing so. There is no language in the Act requiring that the DSIC charge be non-by-passable. In Equitable’s view, the requirements of section 1358(d)(1) would be met by applying the charge equally to all customer classes as a percentage of each customer’s billed revenue while allowing the utility to retain the ability to determine how to recover the identified dollars of revenue within the customer class.¹⁷

Model Tariff

Section 1 – General Description, subsection A – Purpose provides, in part, that the costs of extending facilities to serve new customers are not recoverable through the DSIC. Equitable believes, however, that, at a minimum, upgrading a line due for replacement in order to serve new customers would be appropriately considered as “eligible property” under the Act and that the model tariff should be revised to allow DSIC treatment for such projects.

¹⁵ Order, page 18.

¹⁶ Order, pages 18 and 19.

¹⁷ The final allocation of plant among customer classes remains a cost of service issue for determination in the utility’s base rate proceeding.