October 1, 2018

VIA eFILING

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

Re: Petition of Peoples Natural Gas Company LLC for Approval of Its Energy Efficiency and Conservation Plan
Docket No. M-2017-2640306

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding is the **Initial Brief of Duquesne Light Company** (the "Initial Brief").

Copies of the Initial Brief are being served upon the persons and in the manner set forth on the enclosed Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Anthony C. DeCusatis

C:
Per Certificate of Service (w/encls.)
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PEOPLES NATURAL GAS COMPANY LLC FOR APPROVAL OF ITS ENERGY EFFICIENCY AND CONSERVATION PLAN

Docket No. M-2017-2640306

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the Initial Brief of Duquesne Light Company have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54:

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BEFORE THE
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GAS COMPANY LLC FOR APPROVAL : OF ITS ENERGY EFFICIENCY AND
CONSERVATION PLAN :

INITIAL BRIEF OF
DUQUESNE LIGHT COMPANY

Before Administrative Law Judge
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Dated: October 1, 2018
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I. INTRODUCTION

This proceeding was initiated by the Petition of Peoples Natural Gas Company LLC for Approval of Its Energy Efficiency and Conservation Plan filed on December 27, 2017 (“Petition”). Duquesne Light Company (“Duquesne Light,” “DLC” or the “Company”) is a customer of Peoples Natural Gas Company LLC (“Peoples”) and has intervened in this case to protect its interests and those of its electric distribution customers.¹

As explained hereafter, Peoples has failed to carry the burden of proof imposed by the Pennsylvania Public Utility Code to demonstrate that it would be just, reasonable and lawful to increase the rates of Peoples’ gas distribution customers to fund a proposed combined heat and power (“CHP”) program that is unprecedented in size and scope; disregards controlling legal authority providing that gas utility-sponsored CHP programs be considered as part of base rate cases; and, as demonstrated by substantial record evidence, is neither prudent nor cost-effective. Accordingly, Peoples’ deeply flawed CHP program – including the rate increase that is an integral part of that program – should not be approved in this case, which is a position shared by other parties in this case.²

II. OVERVIEW

The Petition asks the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to approve a non-statutory (i.e., “voluntary”) energy efficiency and conservation plan (“EE&C Plan”) and, thereby, authorize Peoples to spend – and recover from its customers – up to $42.5 million. However, of that total, only approximately $25 million would be used for four programs

¹ Order Granting Petition To Intervene Consistent With The June 14, 2018 Order Of The Commission And Directing A Further Prehearing Conference, Docket No. M-2017-2640306 (June 15, 2018)

² OCA Statement No. 1-SUPP-SR, p. 13, lines 20-21 (“[F]or purposes of designing an effective strategy to implement an energy efficiency and conservation plan, I believe Peoples’ proposed CHP program is unacceptable and should not be authorized.”)
that actually fit the definition of “energy efficiency and conservation” (“EE&C”).\(^3\) Significantly, Peoples also requests approval to use the rest of its budget – $17.5 million (over 41%) – to fund a program that would *increase* gas sales and usage by subsidizing natural gas-fueled CHP projects in Peoples’ service territory.\(^4\) In fact, Peoples’ proposed CHP program would increase Peoples’ gas sales by more than 3.3 times as much as the true EE&C measures in its plan would reduce gas usage over the life of those measures.\(^5\) Thus, the CHP and EE&C measures as a whole result in a substantial increase in gas usage and gas sales.\(^6\)

Because CHP subsidies increase the use of natural gas, the Commission has refused to regard them as either EE&C measures\(^7\) or “demand side management” plans\(^8\) for natural gas distribution companies (“NGDCs”). Peoples itself identified its proposed CHP program as a “business development” initiative and, as such, its Vice-President for Business Development “forecasted” that its “CHP initiatives” will “deliver over $30 MM in annual revenue” to Peoples.\(^9\)

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\(^3\) Duquesne Light has not taken issue with the four programs that are actually designed to promote energy efficiency and conservation by furnishing Peoples’ customers the opportunity to reduce their gas usage.

\(^4\) See Peoples Exhibit No. 12, p. 12 (proposing a CHP program budget cap of $17.5 million).


\(^6\) Id.

\(^7\) See *Pa. P.U.C. v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2015-2518438 (Oct. 14, 2016), slip op. at 28-29 (“*UGI Utilities*”) (Stating that “CHP programs are more akin to market development projects” for NGDCs.)

\(^8\) *Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan for FY 2016*, Docket No. P-2014-2459362 (Tentative Order entered Aug. 4, 2016), slip. op. at 75-76 (“*Petition of PGW*”) (Rejecting Philadelphia Gas Works’ (“PGW”) proposed Efficient Fuel-Switching Program because it would increase gas usage, not reduce it, and, therefore, did not meet the definition of a demand side management plan.)

\(^9\) DLC Stipulated Exhibit No. 1 (Resume of Peoples’ Vice President for Business Development, Jeffrey S. Nehr). Mr. Nehr’s forecast is clearly a sensitive issue for Peoples. Peoples made a concerted, but unsuccessful, effort to exclude the resume Mr. Nehr presented in sworn testimony in another PUC proceeding less than a month earlier and substitute a sanitized version that did not mention Peoples’ “forecast” of “30 MM in annual revenues.” See Tr. 175-177.
Importantly, the Petition is inherently a rate filing because Peoples’ request to recover from customers the costs of its EE&C Plan drives its entire proposal. Specifically, the Petition asks the Commission to approve tariff supplements to establish a new Section 1307\textsuperscript{10} automatic adjustment clause for two of Peoples’ divisions.\textsuperscript{11} The new rate would surcharge Peoples’ gas distribution customers to recover Peoples’ EE&C Plan expenditures, including payments to subsidize gas-fired CHP projects. Nonetheless, Peoples opposes providing customers any offsetting credit to recognize the substantial revenue enhancement Peoples expects to achieve from its CHP initiative. Peoples bears the burden of proving that all elements of its proposal are just, reasonable and lawful\textsuperscript{12} and, as an essential part of its burden, it must prove that the CHP program it is asking customers to fund is prudent and cost-effective.\textsuperscript{13}

Although the Petition proposes to create a new Section 1307 adjustment mechanism to increase rates, it did not furnish notice to customers that their gas bills would be higher if its Petition is granted, nor was any notice published in the Pennsylvania Bulletin. It did not serve a copy of the Petition on the electric distribution companies (“EDCs”) in whose service areas subsidized CHP projects would be located, despite assurances that it would “coordinate” with those companies. Notice to customers is essential to satisfy fundamental due process requirements.\textsuperscript{14} It is also the principal means of assuring that a complete record is created with

\textsuperscript{10} 66 Pa.C.S. § 1307(a). Hereafter, all reference to a “Section” will be to a section of the Pennsylvania Public Utility Code unless stated, or the context indicates, otherwise.

\textsuperscript{11} See Petition ¶¶ 19-20 and accompanying Exhibit No. 2 (proposed tariff riders).


\textsuperscript{13} See Metropolitan Edison Co. v. Pa. P.U.C., 437 A.2d 76, 81 (Pa. Cmwlth. 1981) (A utility is not entitled to recover costs from customers unless it can demonstrate that those costs were prudently incurred.)

\textsuperscript{14} Barasch v. Pa. P.U.C., 546 A.2d 1296, 1308 (1987) (“Milesburg”). In Milesburg, the utility was seeking approval to recover costs through a pre-existing surcharge mechanism. Here, Peoples is also asking to establish an entirely new Section 1307 rate adjustment mechanism.
the input of affected stakeholders and interested parties.\textsuperscript{15} Because notice was not provided in this case, the validity of any order purporting to approve Peoples’ Petition – in whole or in part – has been jeopardized.\textsuperscript{16}

In its Petition\textsuperscript{17} and elsewhere, Peoples portrayed the CHP component of its plan as a replica of the CHP programs the Commission approved for UGI Utilities, Inc. – Gas Division (‘‘UGI Utilities’’)\textsuperscript{18} and UGI Penn Natural Gas, Inc. (‘‘UGI PNG’’).\textsuperscript{19} That is not the case; the differences between Peoples’ proposed CHP program and those of the UGI affiliates are substantial and meaningful. Indeed, a comparison of those plans underscores the reasons why Peoples’ proposal should not be approved in this case.

- **Size.** The $17.5 million budget Peoples proposes is 16 times larger than the CHP program approved for UGI Utilities ($1.1 million\textsuperscript{20}) and 12.5 times larger than one approved for UGI PNG ($1.4 million).\textsuperscript{21} Notably, Peoples has not identified cost-effective CHP projects that could justify a budget of that unprecedented magnitude. Additionally, Peoples proposes a cap on individual incentive payments (50\% of the project cost up to $1,000,000) that is four times as large as those in the UGI Utilities and UGI PNG plans.

- **Procedural Posture.** The UGI Utilities and UGI PNG CHP plans were proposed in base rate cases and, therefore, the UGI affiliates assured customers received notice consistent with a Section 1308(d) proceeding. Additionally, because CHP

\textsuperscript{15} See Final Policy Statement on Combined Heat and Power, Docket No. M-2015-2518883 (May 23, 2018), p. 11 (‘‘CHP Policy Statement’’) (Emphasizing the need for broad-based input in proceedings “where all interested stakeholders have an opportunity to contribute.”)

\textsuperscript{16} See 2 Pa.C.S. § 504 (Requiring notice and opportunity to be heard for an adjudication before a Commonwealth agency to be valid.)

\textsuperscript{17} See Petition ¶¶ 28-29.

\textsuperscript{18} UGI Utilities, supra, at 28-29.


\textsuperscript{20} See UGI Utilities, p. 29 (stating that “the CHP program is targeted to [Rate Schedule] LFD customers) and p. 9 (providing that “Rate Schedule LFD customers shall be responsible for no more than $1.1 million in EE&C costs over the five-year EE&C Plan.”) Thus, the CHP program and the cost-responsibility of Rate Schedule LFD customers were coextensive at $1.1 million. Peoples’ suggestion that UGI Utilities’ CHP program budget was $3.6 million (Tr. 245) is not consistent with what appears in the Final Order. Moreover, even if UGI Utilities’ CHP budget were $3.6 million, Peoples’ proposed CHP program would still be almost five times larger.

programs increase an NGDC’s sales and revenues, the Commission has “rejected CHP programs in natural gas EE&C plans” outside of base rate cases.\textsuperscript{22} As the Chairman and Commissioner Sweet explained in their joint statement in \textit{UGI Utilities}, only in a base rate case will all affected parties have an “opportunity to evaluate any projected increased throughput and correspondingly negotiate settlement terms with this in mind.”\textsuperscript{23}

- **Use Of A New, Non-Standard, And Unsuitable Data Source.** DLC witness Thomas S. Crooks identified a host of defects in the cost-benefit analysis submitted with Peoples’ original CHP program and showed that it would not pass the PUC-approved Total Resource Cost ("TRC") test. In his second rebuttal, Peoples’ witness, Theodore M. Love, acknowledged those criticisms, declined to fix the problems in this original study, and presented a new study based on an entirely new data source (although no other witness questioned the validity of his original data set, which is the industry standard for CHP program design\textsuperscript{24}). The data source Mr. Love substituted is not intended for use in a CHP project-feasibility analysis,\textsuperscript{25} contains significant internal inconsistencies and obvious omissions,\textsuperscript{26} and is based on sample sizes too small to be reliable.\textsuperscript{27} These defects undermine Mr. Love’s analysis and highlight the unprecedented nature of Peoples’ proposal in this case.

- **Non-Compliance With The TRC Test That Applies Even To “Voluntary” EE&C Plans.** Peoples cannot justify departing from key elements of the PUC-approved TRC test simply by asserting that more liberal standards should apply to “voluntary” plans. The Commission set standards for “voluntary” EE&C plans in a 2009 Secretarial Letter\textsuperscript{28} providing that the requirements for Act 129-complaint EE&C plans should also apply to voluntary plans.\textsuperscript{29} In its Petition, Peoples offered assurances that its EE&C Plan was designed to comply with the

\textsuperscript{22} \textit{UGI Utilities}, supra, at 29. To the same effect, see the Motion of Vice Chairman Andrew G. Place (p. 1) in that case.

\textsuperscript{23} Joint Statement of Chairman Gladys M. Brown and Commissioner David W. Sweet (Sept. 1, 2016).

\textsuperscript{24} DLC Statement No. 2-SR, p. 4, lines 20-25. Moreover, the data source Mr. Love rejected is the same one he used (and supported) for CHP studies he presented for UGI Utilities and UGI PNG.

\textsuperscript{25} \textit{Id.} at pp. 8-9.

\textsuperscript{26} \textit{Id.} at pp. 9-13.

\textsuperscript{27} \textit{Id.} at 9, lines 4-7.


\textsuperscript{29} \textit{Voluntary Energy Efficiency and Conservation Program}, supra, p. 1. (“[T]he Total Resource Cost test as defined in Act 129 and applied by the Commission pursuant to any order at Docket No. M-2009-2108601 will also apply to all voluntary EE&C plans to determine whether each proposed EE&C Plan is cost-effective.”) The Commission also stated that “as the cost-effectiveness and verification of energy savings is prudent and essential for any such program, the evaluation, measurement and verification (EM&V) of energy savings are to be evaluated under the Technical Reference Manual established under Docket No. M-00051865.” \textit{Id.} at pp. 1-2.
Secretarial Letter. Nonetheless, Mr. Love’s new CHP cost study departs from the standard Peoples set for itself, in particular by adopting estimated useful lives for CHP projects exceeding the 15-year life required under the TRC test of Act 129. Peoples’ CHP program would be unlikely to pass the TRC test absent this substantial change made in its new CHP study.

Contrary to Peoples’ suggestion, the PUC’s policy to “encourage” CHP deployment did not override the well-established rules for evaluating, measuring and verifying costs and benefits that were developed under the EE&C provisions of Act 129. As explained above, the Commission concluded that Act 129’s TRC test should also apply to “voluntary” EE&C plans. An NGDC’s demonstration of cost-effectiveness for CHP projects and programs it seeks to subsidize should be no less robust than that required of any other non-statutory EE&C program pursuant to the PUC’s Secretarial Letter on “voluntary” EE&C plans, as Peoples previously acknowledged. However, Peoples failed to meet the standard it set for itself.

Additionally, Peoples’ attempt to portray the CHP Policy Statement as binding precedent is contrary to basic principles of administrative law. It is well-established that “[s]tatements of policy are not hard and fast standards that bind the Commission” and they “do not have the force and effect of law equivalent to that of a statute, an adjudication, or a duly promulgated regulation.” Pennsylvania’s appellate courts have long held that “[p]olicy cannot be made a substitute for evidence in a proceeding before [the Commission].” These principles are

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30 Petition ¶¶ 11-12 and n.8.
31 DLC Statement No. 2-SR, p. 16 (Explaining that “Act 129 defines the ‘Total Resource Cost Test’ as a standard that is met” based on an “effective life” not to exceed 15 years.).
32 Voluntary Energy Efficiency and Conservation Program, supra.
33 Petition ¶¶ 11-12 and n.8.
certainly applicable in interpreting the CHP Policy Statement, which, in its only substantive aspect, created reporting requirements and authorized information-gathering collaborations in order to undertake the future assessment of “new strategies, programs and other initiatives to promote the deployment of [CHP] and to reduce barriers to such deployment.”

Duquesne Light understands and appreciates the significance of the Commission’s interest “in considering ways to advance the development of CHP in Pennsylvania” expressed in the CHP Policy Statement. Duquesne Light took the initiative to make CHP a part of its own EE&C plan, which has been approved by the Commission and is already available to facilitate customers’ deployment of CHP in DLC’s service area. In fact, as DLC witness David Defide testified, the Company has actively assisted customers who were studying the installation of thirteen CHP projects. In short, the Company supports – and has demonstrated its support – for cost-effective CHP projects in its service territory.

III. PROCEDURAL HISTORY

As previously noted, the Petition was filed on December 27, 2017, but was not accompanied by any form of notice to customers, as Peoples has acknowledged. On January 16, 2018, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Answer to the Petition raising various issues with Peoples’ proposed EE&C Plan, including its proposed CHP program, and requesting that the Commission assign the case to the Office of Administrative Law Judge (“OALJ”) for evidentiary hearings. On January 19, 2018, the Office

38 DLC Statement No. 1-SR, p. 20, lines 9-17.
39 Tr. at 238 and 258.
40 Tr. 196, line 18 through 197, line 8.
of Consumer Advocate (“OCA”) filed a Notice of Intervention and an Answer and also requested that the Petition be assigned to the OALJ. On February 5, 2019, the Pennsylvania Independent Oil and Gas Association (“PIOGA”) filed an unopposed Petition to Intervene in which it asserted that its membership includes companies “engaged in designing, engineering and installing CHP projects” that could be affected by Peoples’ proposed CHP program.

A Prehearing Conference was held on January 26, 2018 at which a procedural schedule was approved. Pursuant to that schedule, Peoples agreed to serve direct testimony on January 31, 2018, and opposing parties would serve their direct testimony on April 5, 2018. Further dates were provided for rebuttal, surrebuttal and rejoinder testimony and evidentiary hearings.

On March 12, 2018, Duquesne Light filed a Petition to Intervene explaining, in relevant part, that it is a customer of Peoples and would be affected by the rate increases Peoples proposes. Duquesne Light agreed to accept the previously-approved procedural schedule. Consistent with that commitment, even though its Petition to Intervene had not yet been decided, on April 5, 2018, Duquesne Light served on the parties written statements of direct testimony of its witnesses David Defide and Mr. Crooks. As previously noted, Mr. Crooks identified numerous errors and deficiencies in Peoples’ CHP cost-benefit analysis and explained that if those flaws were corrected, Peoples’ CHP program would not pass the TRC test.

On March 29, 2018, Peoples filed an answer to Duquesne Light’s Petition stating it did not object to Duquesne Light intervening to represent its interests “as a customer,” but DLC should be precluded from raising any issues relating to other ways that Peoples’ proposed EE&C Plan could affect the interests of Duquesne Light and its electric distribution customers.

41 The also OCA opposed Peoples’ request for “expedited” treatment because there is no statutory or other deadline on the implementation of Peoples’ EE&C Plan.
Administrative Law Judge Buckley (“ALJ”) scheduled oral argument, which was held on April 9, 2018. At oral argument, Peoples changed its position and contended that Duquesne Light should not be allowed to participate in this case in any capacity, notwithstanding its status as a customer of Peoples. On April 23, 2018, the ALJ issued an Initial Decision denying Duquesne Light’s Petition to Intervene. On April 30, 2018, Duquesne Light filed a Petition for Interlocutory Review.

Peoples, the OCA, the OSBA proceeded to submit direct, rebuttal, surrebuttal and rejoinder testimony in accordance with the then-existing procedural schedule. The parties agreed to waive cross-examination, and their respective statements and exhibits were admitted into the record by stipulation.

On June 14, 2018, the Commission entered its Opinion and Order granting interlocutory review and agreeing to answer two of the five material questions raised by Duquesne Light and declining to answer three other questions. On June 15, 2018, the ALJ issued an Order granting

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42 See Order Granting Petition to Intervene, supra, at 1.
43 On May 10, 2018, the Company filed its Brief in support of interlocutory review. Also on May 10, 2018, the OCA and OSBA filed Briefs supporting interlocutory review, while Peoples filed a Brief opposing interlocutory review.
44 PIOGA did not submit testimony.
45 Although Peoples had been alerted to the errors in its CHP cost study by the Mr. Crooks’ direct testimony served on April 5, 2018, Peoples did not address those errors (which it eventually acknowledged) and moved its now admittedly erroneous original CHP cost analysis into the record.
46 The two questions the Commission addressed and answered in the affirmative are as follows:

1. Does DLC, as a Peoples’ customer, have standing to intervene to address issues pertaining to the quality of the data, validity of the assumptions and accuracy of the analyses Peoples used to apply the TRC tests, where resolution of those issues will determine the prudence and reasonableness of the costs (principally subsidy payments) Peoples asks to recover through a Section 1307 surcharge imposed on gas customers?

2. Recognizing that CHP and some non-CHP measures in Peoples’ EEC program will interconnect with DLC’s distribution system, does DLC have standing to intervene to address whether those measures will: (a) impact the operation and safety of DLC’s distribution system; and (b) increase costs to furnish electric distribution service?
Duquesne Light’s Petition to Intervene and convening a further Prehearing Conference for June 22, 2018.\(^{47}\) A second Prehearing Conference was held on June 22, 2018, at which a revised procedural schedule was adopted that would allow Duquesne Light to submit direct testimony, providing dates for the submission of rebuttal and surrebuttal testimony, and scheduling dates for evidentiary hearings. In accordance with that schedule, Duquesne Light Company submitted the direct testimony of Mr. Defide (DLC Statement No. 1) and Mr. Crooks (DLC Statement No. 2) on July 9, 2018. On August 6, 2018, Peoples served the Second Rebuttal Testimony of its witnesses, Lynda W. Petrichevich (Peoples Statement No. 1-R2) and Mr. Love (Peoples Statement No. 2-R2). On August 13, 2018, Peoples served various errata to the CHP portion of its EE&C Plan. There was also an approximately one week delay in Peoples’ service of exhibits that were to accompany Mr. Love’s testimony.\(^{48}\)

Because Peoples submitted an entirely new CHP program cost-benefit analysis coupled with substantive revisions to its CHP program in its second rebuttal, the OCA, OSBA and Duquesne Light requested an extension of the procedural schedule to respond. At the parties’ request, the ALJ convened an on-the-record conference on August 15, 2018, at which the procedural schedule was revised to extend the date for submission of surrebuttal testimony until September 5, 2018, to provide for the submission of rejoinder outlines and reschedule the evidentiary hearings to September 13 and 14, 2018.

On September 5, 2018, Duquesne Light submitted the Surrebuttal Testimony of Mr. Defide (DLC Statement No. 1-SR) and Mr. Crooks (DLC Statement No. 2-SR); the OCA submitted the Supplemental Surrebuttal Testimony of Geoffrey C. Crandall (OCA Statement No.

\(^{47}\) Order Granting Petition to Intervene, supra.

\(^{48}\) See Tr. 154, lines 10-18.
1-SUPP-SR) and the OSBA submitted the Second Surrebuttal Testimony of Robert D. Knecht (OCA Statement No. 1-SS). On September 11, 2018, Peoples submitted Prepared Second Rejoinder Testimony of Ms. Petrichevich (Peoples Statement No. 1-REJ2) and the Prepared Rejoinder Testimony of Mr. Love (Peoples Statement No. 2-REJ). As part of her Second Rejoinder Testimony, Ms. Petrichevich offered further revisions to Peoples’ CHP plan, which were summarized in Peoples Exhibit No. 20.

An evidentiary hearing was held on September 13, 2018, at which witnesses for Peoples, the OCA and Duquesne Light were presented and cross-examined. The parties waived cross-examination of OSBA witness Robert Knecht. At the evidentiary hearing, the prepared testimony and exhibits of the parties that had not been previously admitted were entered into the evidentiary record.

IV. SUMMARY OF ARGUMENT

Only three natural gas distribution utilities – two NGDC subsidiaries of a common parent (UGI Corporation) and a city natural gas distribution system (PGW) – have proposed CHP programs. The Commission rejected PGW’s entire $2.3 million proposal because it was presented in a “stand-alone” EE&C plan. Subsequently, the Commission approved rate case settlements that included CHP programs for UGI Utilities (2016) and its affiliate, UGI PNG (2017). In both cases, the CHP programs were presented in conjunction with base rate filings.

In UGI Utilities, the Commission, echoing findings it made in PGW’s case, held that gas utility-sponsored CHP programs are qualitatively different from EE&C plans because they “result in higher natural gas usage” and, therefore, are “more akin to market development

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49 Petition of PGW, supra, at 80 (“PGW’s proposed Efficient Fuel-Switching program is in effect a load growth program . . . and, as such, is not properly included within this voluntary energy efficiency and conservation plan proposal . . .”)
projects.” The contemporaneous joint statement of two commissioners affirmed that UGI Utilities’ CHP plan was being approved only because, unlike PGW’s, it was presented in a base rate case and, therefore, the additional revenues it would produce could be assessed in conjunction with all of the elements of the company’s filing to determine just and reasonable rates. The $1.4 million (over five years) CHP program subsequently proposed by UGI PNG in its general base rate case conformed to the criteria the PUC identified in *UGI Utilities*. 

In this case, Peoples is asking the Commission to validate a CHP program that is dramatically and fundamentally different from the two CHP programs that were included in the comprehensive base rate settlements the Commission previously approved.

**Peoples’ CHP Program Is Significantly Larger.** The five-year budgets for the UGI Utilities and UGI PNG CHP programs were $1.1 million and $1.4 million, respectively. Those budgets were sized as “pilot” programs, which is entirely appropriate given the serious concerns the Commission expressed about asking customers to pay the costs of what are fundamentally “market development” initiatives. Peoples’ proposed CHP program ($17.5 million) is substantially larger than any such program previously approved.\(^{51}\) Indeed, its size is totally unprecedented.

**No Basis For Determining Just and Reasonable Rates.** UGI Utilities and UGI PNG proposed their CHP programs in general base rate cases. Peoples is proposing a “stand-alone” CHP program. Approval of a “stand-alone” NGDC-proposed CHP program is unprecedented. Outside a base rate case, the substantial revenue enhancement Peoples envisions from its CHP

\(^{50}\) *UGI Utilities, supra,* at 29.

\(^{51}\) The practical consequences of the dramatic increase in the size of Peoples plan is that, unlike earlier approved CHP plans, Peoples’ proposal would have a material impact on the rates of the customers in the classes Peoples is asking to pay the cost of CHP subsidies.
program ($30 million in annual revenue according to its Vice-President for Business Development) cannot be considered as part of the larger process of determining “just and reasonable” rates. Moreover, Peoples strenuously opposes using any part of the income effect of the new, incremental revenues its CHP program is expected to generate to reduce customers’ existing rates or even to offset the new costs it is asking customers to bear. Given those deficiencies, neither the ALJ nor the Commission has a valid basis for finding that the Section 1307 adjustment clause Peoples proposes “shall provide a just and reasonable return on the rate base of such public utility,” which is a condition precedent for approving any new Section 1307 rate.  

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The Analysis Peoples Relies Upon To Support The Cost-Effectiveness Of Its Proposed CHP Program Is Far Outside The Parameters Of The Analyses Used In UGI Utilities and UGI PNG. Mr. Love was unable to remedy the errors and deficiencies DLC witness Crooks identified in the cost-benefit analysis he initially presented to support Peoples’ proposed CHP program. In fact, he did not even try. Instead, conceding that the defects in Peoples’ direct-case analysis were fatal, Mr. Love presented an entirely new study and made major changes to the CHP program in Peoples’ rebuttal case. However, Peoples’ revised program and new cost analysis are even more seriously flawed than Mr. Love’s initial attempt.  

Peoples employed a new, unsuitable and unreliable CHP data source that is much different from

5252 66 Pa.C.S. § 1307(a).

53 As OCA witness Geoffrey Crandall explained (OCA Statement No. 1-SUPP-SR, p. 4):

The energy efficiency part of Peoples’ revised EE&C Plan would save 0.46% less natural gas than Peoples’ original EE&C Plan. The load building part of Peoples’ revised EE&C Plan would increase Peoples’ natural gas sales to CHP customers by 19.26% more than Peoples’ original EEC Plan. Peoples’ revised EE&C Plan exacerbates all of the concerns that I raised in my Direct, Rebuttal and Surrebuttal Testimony regarding the inclusion of CHP as part of Peoples’ original EE&C Plan. (Emphasis added.)
the one used for the UGI Utilities and UGI PNG cost-benefit analyses. In addition, Peoples departed from the TRC test by employing estimated useful lives for CHP projects well in excess of the 15-year measure life embodied in Act 129’s TRC test, which the Commission determined should also apply even to “voluntary” EE&C plans. Both of those changes were made *sua sponte* by Peoples and not in response to any party’s direct testimony. In fact, no party disagreed with Peoples’ original data source or its use of 15-year useful lives.54

**Peoples Has Not Carried Its Burden To Prove That The Rates It Proposes To Recover The Costs Of Its Proposed CHP Plan Are Just, Reasonable And Lawful.** Peoples bears the burden of proving every element necessary to establish that its proposal in this case, including its proposed rate increase is just, reasonable and lawful.55 This burden includes the necessity to show by a preponderance of substantial evidence that all of the elements of due process required to impose a rate increase have been observed, including furnishing adequate notice to its customers; that Peoples’ existing rates will still be “just and reasonable” after its revenues and income are augmented by the load-building CHP initiative it is asking the Commission to approve and customers to pay for; and that its proposed CHP plan is cost-effective (and, therefore, a prudent expenditure of funds) because, absent that showing, Peoples has no right to recover the costs of CHP subsidies from customers.56 Peoples has failed to carry any part of that burden.

For all the foregoing reasons, Peoples’ proposed CHP program should not be approved.

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54 See DLC Statement No. 2-SR, p. 5, lines 3-4.

55 See 66 Pa.C.S. §§ 315(a) and 332(a).

56 See Metropolitan Edison Co. v. Pa. P.U.C., supra.
V. ARGUMENT

A. Peoples’ Petition Is Fundamentally A Rate Increase Request, And Peoples’ Has Not Carried Its Burden Of Proving The Justness And Reasonableness Of Its Proposed Rates Nor Has It Satisfied Basic Due Process Requirements For Lawfully Obtaining Rate Relief In This Case

The $42.5 million rate increase ($17.5 million of which is to be dedicated to CHP subsidies) Peoples proposes is a central component of its Petition. Only a subset of Peoples’ customers would receive rebates or incentives under the proposed EE&C Plan, and an even smaller subset of Peoples’ large customers would receive incentives under the CHP program. (Notably, the CHP program is the only specifically-delineated measure Peoples has proposed for its largest gas-consuming customers.) Thus, the principal impact the Petition (if granted) would have on Peoples’ gas distribution customers is to impose a surcharge on virtually the entire customer base to pay for Peoples’ EE&C Plan. Significantly, however, Peoples’ proposal in its entirely – the true EE&C measures and the proposed CHP program – would result in an overall increase in gas usage and, therefore, increased gas sales and increased revenue for Peoples, as OCA witness Crandall described:

Peoples’ revised CHP program would increase Peoples’ gas sales by over 3.3 times as much as the rest of its proposed EE&C plan would reduce gas sales over the life of the measures. Peoples forecasts that the lifetime effect of Peoples’ entire revised EE&C portfolio, not including CHP, is to save 10,414,548 MMBtu . . . In contrast, Peoples forecasts that the lifetime effect of Peoples CHP

57 Had a rate request of this magnitude been filed by Peoples under Section 1308(d), it would likely constitute a “general rate increase” and, therefore, be subject to the customer notice requirements for such a rate request. See 52 Pa. Code § 53.45.

58 Peoples has not provided any specific information about possible CHP projects it believes could receive incentives under its proposed CHP program. Even assuming that all of the “potential” projects referenced in its high level – but unsubstantiated – estimate came to fruition and were eligible for an incentive under Peoples CHP program, they would represent only about 10% of Peoples’ rate LGS customers eligible for its CHP program (under Peoples’ proposal not all LGS customers would be eligible). DLC Statement No. 1-SR, pp. 7-8.

59 DLC Statement No. 1-SR, pp. 6-7.
program is to increase gas consumption by Peoples’ customers participating in the CHP programs by 34,610,567 MMBtus.\textsuperscript{60}

Moreover, there is a significant lack of symmetry in the risks and rewards under Peoples’ proposed CHP program.\textsuperscript{61} Peoples is asking CHP program-eligible customers to bear the costs of its CHP program ($17.5 million) while opposing any reduction to its existing rates (or even an offset to the costs it is asking customers to bear) to recognize the increased revenue and income it will realize from the incremental gas sales its CHP initiatives will produce, which is substantial based on the forecast by Peoples’ Vice President for Business Development.\textsuperscript{62} In short, customers would bear the costs and Peoples would reap the benefits, at least until its next base rate case. And Peoples has not furnished any projection of when that next base rate is likely to occur.

Although Peoples has tried to minimize the burden of proof it must carry in this case by initially positing that only a “reasonableness/public interest” standard should apply,\textsuperscript{63} there is no merit in that argument. Neither the Commission’s CHP Policy Statement nor any valid legal authority diminishes the burden of proof Peoples must satisfy in this case with respect to each element of its proposal, including its request to increase customers’ rates to pay for its proposed CHP program. Even if an ill-defined “reasonable/public interest” standard were assumed – contrary to law – to be the applicable standard, Peoples has not met it. There is no valid basis to

\begin{itemize}
\item \textsuperscript{60} OCA Statement No. 1-SUPP-SR, p. 4, lines 13-19 (emphasis in original).
\item \textsuperscript{61} See DLC Statement No. 1-SR, pp. 2-3 (Explaining that Peoples would experience “upside-only rewards associated with incenting CHP through its proposed CHP program” because “any new CHP would yield Peoples increased sales, and Peoples would bear no share of CHP incentive costs.”)
\item \textsuperscript{62} See DLC Stipulated Exhibit No. 1.
\item \textsuperscript{63} See Initial Decision Denying Intervention, supra, p. 10 (Repeating Peoples’ argument that “[t]he focus of this proceeding is a reasonableness/public interest analysis of Peoples’ EECP [Energy Efficiency and Conservation Plan]”) and p. 13 (Accepting Peoples’ contention that “the nature of this proceeding” is a “reasonableness/public interest based evaluation of Peoples’ EECP.”)
\end{itemize}
conclude that a proposal advanced without adequate due process notice, in a manner that preludes examining the justness and reasonableness of rates notwithstanding substantial revenue increases, and a demonstrably non-cost-effective CHP subsidy program that would be funded by customer money could be deemed either reasonable or in the public interest.

Additionally, Peoples has not just proposed a $42.5 million rate increase, it has proposed an entirely new rate mechanism under Section 1307 to automatically adjust its rates to recover all of the costs of its EE&C Plan on a fully-reconcilable, dollar-for-dollar basis. Under its proposed Section 1307 rate adjustment mechanism, Peoples would be insulated from any shortfall in recovery of the costs of a program it is under no statutory obligation to implement – including the costs of a program that will augment Peoples’ bottom line. Consequently, Peoples has the burden to prove: (1) that it is just, reasonable and lawful to recover the costs of its proposed EE&C Plan as it has proposed, including its CHP program; (2) that it has met the requirements imposed by Section 1307(a) to recover those costs under an automatic adjustment clause; and (3) that it has satisfied the requirements necessary for the entry of a valid order increasing the rates of its distribution customers, including meeting minimum due process standards of notice and opportunity to be heard.64

1. Peoples’ Burden Of Proof

Section 315(a) imposes the burden of proof on a utility that proposes to increase its rates:

**Reasonableness of rates.** – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

Interpreting and applying Section 315(a), the Commonwealth Court has held:

64 See 2 Pa.C.S. § 504.
Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet to meet this burden is substantial.\textsuperscript{65}

No similar burden is imposed on parties opposing a proposed rate increase.\textsuperscript{66} While the burden of going forward with the evidence may shift to parties opposing a proposed rate increase to present a reasonable basis to question the utility’s claims, that shift occurs only after the utility has made a \textit{prima facie} case. The burden of proof, however, remains with the party seeking affirmative relief.\textsuperscript{67} Moreover, the moving party (i.e., the utility proposing a rate increase) must meet its burden of proof as to each element of its case, and it must do so by a preponderance of substantial evidence.\textsuperscript{68} Furthermore, whenever a party proposes a rule or order, even if not deemed to be an increase in rates, the proponent of that rule or order bears the burden of proof.\textsuperscript{69}

Peoples acknowledges that its EE&C Plan is a “voluntary” plan (i.e., neither mandated nor authorized by Act 129). The fact that its plan is “voluntary” does not, however, diminish the burden of proof that applies to the rate increase and all of its allied components Peoples has asked the Commission to approve in this case. Consequently, that burden applies to every element of Peoples' proposal, including the prudence and reasonableness of its proposed CHP plan. Indeed, the Public Utility Code expressly imposes this burden. As discussed previously


\textsuperscript{66} Berner v. Pa. P.U.C., 116 A.2d 738, 744 (Pa. 1955)(Appellant/intervenors did not have the burden to prove that proposed plant additions were unnecessary, excessive or too costly; the utility had the burden to prove the reasonable necessity and reasonable cost of the additions.) See also Burleson v. Pa. P.U.C., 443 A.2d 1373 (Pa. Cmwlth. 1982), aff’d, 461 A.2d 1234 (1983).

\textsuperscript{67} See, e.g., Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge, Docket Nos. P-2012-2338282 et al. (Order entered May 22, 2014), pp. 7-8.


\textsuperscript{69} 66 Pa.C.S. § 332(a).
(see Sections I and III, supra) and as more fully explained in Section IV. B, infra, Peoples has not carried its burden of proof to demonstrate the prudence and cost-effectiveness of its proposed CHP program based on the unprecedented and deeply flawed analysis of its CHP program’s costs and benefits it presented in this case. Indeed, Peoples had to depart significantly from the cost-benefit analyses employed by UGI Utilities and UGI PNG to try to show that its CHP program is cost-effective. As demonstrated by DLC witness Crooks, Peoples failed in that attempt.

2. **Peoples Cannot Satisfy The Basic Requirements Of Section 1307 To Establish An Automatic Adjustment Mechanism To Recover The Costs Of Its Proposed CHP Program**

This is not a base rate case. It was Peoples’ choice to propose its EE&C Plan (including its CHP program) outside of a base rate case. Additionally, it is undisputed that Peoples has not presented any supporting data to show that its existing rates are “just and reasonable” or that its proposed rates, after implementing its proposed cost recovery mechanism, would meet the just and reasonable standard. This is a significant and meaningful omission in a case where Peoples: (1) is seeking approval to implement a Section 1307 automatic adjustment clause to recover all of its EE&C Plan costs, including CHP subsidy payments, on a fully-reconcilable, dollar-for-dollar basis; and (2) unlike other scenarios where Section 1307 rate mechanisms are proposed, Peoples’ CHP program will increase its revenues (substantially, according to Peoples’ Vice President) and, therefore, its net income. However, there is no record evidence to support a finding that, if Peoples’ requested relief were granted, Peoples’ resulting rates will be just and reasonable in light of the revenue enhancement effect of its proposed CHP program. And, as

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70 DLC Statement No. 2-SR.
71 66 Pa.C.S. § 1301 (Setting forth the fundamental requirement that all utility rates must satisfy.)
previously explained, Peoples has rejected any suggestion that the increased revenues its CHP program will generate could offset the costs of the program it is asking customers to bear.

The absence of record evidence on this important issue makes it impossible for Peoples to satisfy the basic requirement Section 1307(a) imposes for the Commission to approve a proposed automatic adjustment clause:

**(a) General rule.** – Any public utility, except common carriers and those natural gas distributors with gross intrastate annual operating revenues in excess of $40,000,000 with respect to the gas costs of such natural gas distributors, may establish a sliding scale of rates or such other method for the automatic adjustment of the rates of the public utility *as shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return.* A tariff showing the scale of rates under such arrangement shall first be filed with the commission, and such tariff, and each rate set out therein, approved by it. The commission may revoke its approval at any time and fix other rates for any such public utility if, after notice and hearing, the commission finds the existing rates unjust or unreasonable.

The operative provision of Section 1307(a), identified above, establishes an important condition precedent: the Commission must determine that the implementation of the automatic adjustment clause will provide no more than a “just and reasonable return on the rate base of such utility.” Approved applications of Section 1307 have involved discrete expenses or other costs that a utility must bear and, frequently, are outside of a utility’s control, such as changes in fuel and purchased power expense, state taxes or purchased water costs. The specific item identified for recovery in each instance is a cost that has no attendant or follow-on effect that

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73 52 Pa. Code §§ 54.93 and 69.53.

74 *See Popowsky v. Pa. P.U.C.*, 13 A.3d 583, 591 (Pa. Cmwlth 2010) (Section 1307(a) adjustment mechanism authorized to reflect changes in purchased water expenses attributable to changes in rates of municipality from which a water utility purchased water in bulk.)
would add incremental revenues. As a consequence, where Section 1307 adjustment clauses have been approved in the past, the costs allowed to be recovered were the only element impacting the utility’s overall revenue requirement. And, because the amount allowed to be recovered was exactly offset by a corresponding cost, there was no net effect on the utility’s return produced by its existing base rates. In other words, implementing the Section 1307 clause could not enhance the utility’s return. That, however, would not be the case here.

There is no dispute that the CHP projects Peoples proposes to subsidize will increase its revenues. There is also no dispute that the Section 1307 clause Peoples proposes will not recognize any part of those incremental revenues to offset the costs Peoples seeks to recover to fund its CHP program. And, because this is not a base rate case, there is no opportunity to recognize the impact of revenue enhancements generated by the CHP program in setting Peoples’ base rates. Finally, Peoples has not presented any evidence that allowing it to increase its rates to recover the costs of its CHP program while retaining the income effect of enhanced revenues the program will generate will result in no more than a “just and reasonable return” on its “rate base,” as Section 1307 requires. Therefore, there is no valid basis for the ALJ or the Commission to make a finding that is essential to approval of Peoples’ request to establish a Section 1307 clause to recover the costs of its CHP program.

The Commission did not explicitly cite the condition precedent embedded in Section 1307 in denying PGW’s “stand-alone” CHP program and approving (with conditions) the programs UGI Utilities and UGI PNG proposed in their base rate cases. However, the

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75 Even the distribution system improvement charge ("DSIC"), which is specifically authorized by statute (66 Pa. C.S. §§ 1350 et seq.), restricts “eligible” property to the repair or replacement of existing property and precludes recovering costs of any property that could increase revenues by enabling a utility to serve new customers. See Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Supplemental Implementation Order entered Sept. 21, 2016), Appendix A (Model Tariff, Section 1.A)).
Commission’s rationale tracks and affirms the legal analysis outlined above, which precludes the approval of Peoples’ proposed Section 1307 rate in this case. Where a proposed CHP program will augment a gas utility’s revenues and net income, there must be a solid evidentiary basis for finding that Section 1307’s fundamental requirement – the new rates will produce not more than a just and reasonable return on the utility’s rate base – has been satisfied. As the Commission has previously held, that kind of finding can properly be made only in a base rate proceeding where all elements of an NGDC’s revenues (and revenue enhancements) and revenue requirement can be thoroughly examined.

3. Because The Essential Elements Of Due Process – Notice And Opportunity To Be Heard – Have Not Been Furnished In This Case, The Commission Cannot Lawfully Grant Peoples The Relief It Requests

Reasonable notice and an opportunity to be heard are fundamental elements of a valid adjudication by the Commission, as specifically provided by Pennsylvania’s administrative procedure law:

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.76

Notice to interested and potentially-affected parties is the first and most essential condition for a valid adjudication to occur.77 Furthermore, notice must be “reasonably calculated to inform interested parties of the pending action.”78

76 66 Pa.C.S. § 504. The Commission is a Commonwealth agency, and this proceeding meets the definition of an adjudication. 66 Pa.C.S. §102.

77 Pa. Coal Mining Ass’n v. Pa. Ins. Dept., 370 A.2d 685, 692 (Pa. 1977) (“Notice is the most basic requirement of due process [citations omitted].”)

78 Id. at p. 693.
As noted previously, Peoples’ proposal is equivalent to a $42.5 million rate increase request and, if it had been filed as part of a Section 1308(d) general rate increase – as it should have been – there would be no question that Peoples would be obligated to furnish customer notice in the form mandated by the Commission’s regulations, which entails either separate postcard notices or bill inserts, news releases and posting of notices in the utility’s offices. It is undisputed that no such notice was provided to Peoples’ customers of the filing of the Petition, of Peoples’ request to establish a new Section 1307 adjustment clause to automatically adjust customers’ rates, or of Peoples’ request to increase customers’ rates to recover the $42.5 million cost of its EE&C Plan, including $17.5 million for its CHP program. Neither was any form of notice published in the Pennsylvania Bulletin. Astonishingly, Peoples’ witness Petrichevich seems to believe that customers are not entitled to notice until after the Commission has approved Peoples’ EE&C Plan: “To inform customers of a plan that is not approved, it makes no sense.”

Peoples cannot evade the requirement for customer notice simply because its rate request was filed under Section 1307. The Commonwealth Court in Milesburg held that customer notice is just as essential where a rate request was made under Section 1307 as under Section 1308:

In our view, due process requires that, before the PUC may issue a declaration approving the legality of the terms and conditions of a contract for a utility’s purchase of power from a QF that includes payments for capacity, the utility’s customers must be provided with notice of the proceedings and an opportunity to be heard to challenge the proposed action.

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80 Tr. at 197, lines 4-5.
81 Milesburg, supra, at 1306.
In *Milesburg*, an electric utility (West Penn Power Company) sought a PUC determination that it could recover from its customers the payments it would make to a “qualifying facility” for the capacity that facility would provide to meet West Penn’s customer load. West Penn already had in place a Commission-approved Section 1307 rate adjustment to recover the costs it incurred for fuel and purchased power and, therefore, unlike this case, West Penn was not asking to approve an entirely new Section 1307 rate adjustment clause. Additionally, West Penn served a copy of its filing on “the active parties to its most recent base rate proceeding.” The Commonwealth Court, nonetheless, held that substantial customer interests were potentially affected and, therefore, customer notice was essential for the Commission’s adjudication to be valid under Pennsylvania’s administrative agency law.

The nature of the customer notice that should have been provided in this case was also clearly defined by the Commonwealth Court in *Milesburg*, where the Court held:

In order to guarantee fulfillment of the requirements of due process in this case, the commission should require West Penn to provide notice to its customers in a manner consistent with that prescribed in 52 Pa. Code § 53.45(a), allowing for bill inserts in lieu of mailed or hand delivered individual notices.

While the Commission’s Opinion and Order granting interlocutory review of the Initial Decision that denied the Company’s intervention declined to address notice requirements, it clearly stated that notice was an issue to be considered in the further proceedings in this case, and

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82 The generator had been certified as a “qualified facility” under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and, under Section 210 of PURPA, West Penn was legally required to purchase the energy and capacity of the qualifying facility at West Penn’s “avoided cost.” *Milesburg, supra*, at 1298-1300.

83 *Id.* at p. 1301.

84 *Id.* at p. 1305 (“Because the commission’s action was adjudicatory in nature and involved substantial property rights of West Penn’s customers, those customers must be afforded due process . . . ”)

85 *Milesburg, supra*, at 1308.
it appears that the ALJ does not disagree with the Commission’s assessment.\textsuperscript{86} The Commission never said that Peoples had satisfied the applicable notice requirements or that those notice requirements should be waived. For all the reasons set forth above, it is clear that proper customer notice needed for a valid adjudication was not provided in this case. Peoples’ Petition should, therefore, be dismissed on this basis alone. Because any CHP program Peoples might subsequently propose should be submitted as part of a base rate case (as this Commission has previously determined) that filing would, therefore, have to satisfy the notice requirements for a general rate increase. If Peoples follows that approved approach, it can avoid the fatal procedural defects in this case.

Based on its questioning at the evidentiary hearing,\textsuperscript{87} Peoples appears to believe that it was relieved of any obligation to provide bill-insert notices to its customers because it was not specifically directed to do so by the Secretary’s Bureau. That argument is wrong for several reasons. At the outset, it is disingenuous for Peoples to blame the Secretary for not specifically directing it to furnish notice of a rate increase when the title of its Petition did not indicate Peoples was seeking approval of a new Section 1307 adjustment clause. Moreover, the Petition did not ask the Secretary for direction on the notice that would be proper under the circumstances. Consequently, Peoples’ reliance on the Secretary’s silence is not justified. Moreover, even if silence were some indication that the Secretary had considered the issue, the Commission’s regulations do not permit employees’ statements made under such conditions to bind the Commission.\textsuperscript{88} In any event, the absence of a specific directive from the Secretary,

\textsuperscript{86} Opinion and Order Granting Interlocutory Review, p. 7; Tr. 123, line 18 through 124, line 7.

\textsuperscript{87} Tr. at 207-208. Notably, OCA witness Crandall strongly affirmed that the public interest required notice by bill insert of a proposal to implement a new rate ride like the one Peoples is proposing in this case Tr. at 316, lines 8-21, and 317, lines 6-7.

\textsuperscript{88} 52 Pa. Code § 1.96.
which Peoples purports to rely upon, cannot countermand the holding of the Commonwealth Court in *Milesburg* and the mandate of Section 504 of Pennsylvania’s administrative agency law requiring adequate notice for an adjudication to be valid.

It is equally unavailing for Peoples to claim that because its EE&C Plan was filed pursuant to a settlement of a PUC proceeding for approval of its merger with Equitable Gas Company LLC more than four years ago, no further notice was required when it filed its Petition. 89 Notably, Peoples admits that the only notice provided of the filing of the Joint Application for approval of the Peoples/Equitable merger was publication in local newspapers and the *Pennsylvania Bulletin*; 90 individual bill insert notice to customers of that filing was not provided. Moreover, the term of the merger settlement pertaining to a possible “demand side management” filing was not part of the Joint Application itself (it was a condition added to gain approval of the merger). Therefore, even if customers had been made aware of the merger filing, that knowledge would not provide notice of what might happen more than four years later. And, they would certainly not have been aware that Peoples would file a CHP program that does not even meet the definition of “demand side management.” Additionally, given on-going turnover, there will be a material group of customers who would not have resided in Peoples’ (or the former Equitable’s) service territory when the Joint Application was filed. In short, the newspaper and *Pennsylvania Bulletin* publication of the filing of the Joint Application for approval of the Peoples/Equitable merger cannot satisfy the requirement for notice of the substantial rate increase proposed in this case. As the Commonwealth Court has stated, notice must be “reasonably calculated to inform interested parties of the pending action.” 91

89 *See* Petition ¶¶ 2-9 and n.1.

90 *See* Replies of Peoples Natural Gas Company LLC to Exception of Other Parties (May 29, 2018), p. 9 n.6.

Peoples has also suggested that it should be absolved from giving customers bill insert notice of a $42.5 million rate increase ($17.5 million of which relates to its CHP program) because the Commission has not specifically required EDCs to do the same when they file mandatory EE&C plans under Act 129.\textsuperscript{92} However, the Implementation Order\textsuperscript{93} Peoples cited as authority for its contention does not say EDCs are exempted from providing adequate notice. All it says is that the Commission will publish notice of EE&C filings in the Pennsylvania Bulletin and post the EE&C plans on its website.\textsuperscript{94} Of course, that is a moot point since, in this case, notice of filing of the Petition was not published in the Pennsylvania Bulletin, nor was it posted to the Commission’s website.\textsuperscript{95} Additionally, even if Peoples’ interpretation of the Implementation Order were given any credence – and it should not – Peoples tries to sidestep the fact that mandatory EE&C plans are just that – mandatory. They are filed under Act 129 because the amendments to the Public Utility Code made by Act 129 both mandate the filing of EDCs’ EE&C plans and expressly authorize Section 1307 adjustment clauses to recover the costs of those plans.\textsuperscript{96} Obviously, that is quite different from a voluntary plan filed by an NGDC that does not have an approved Section 1307 rate to recover the costs of its EE&C plan (let alone the costs of a CHP program the Commission considers a “marketing” initiative) and is seeking approval to establish such a rate for the first time in this case.

\textsuperscript{92} Replies of Peoples Natural Gas Company LLC to Exceptions of Other Parties (May 29, 2018), p. 9.
\textsuperscript{94} Id.
\textsuperscript{95} The PUC posts the EE&C plans of all EDCs at a specific, central location: http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_eec_program.aspx
\textsuperscript{96} 66 Pa.C.S. § 2806.1(k)(1) (“An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section.”)
In summary, there is no valid basis for exempting Peoples from the notice requirements that Pennsylvania law and minimum standards of due process impose for any adjudication by this Commission to be valid.

4. **Peoples’ Efforts To Minimize The Bill Impacts Of Its Proposal Are Unsubstantiated And Unavailing**

Peoples has tried to minimize the significance of the bill impacts of its proposed CHP program on CHP participants and non-participants. Peoples has asserted that CHP program participants “will probably see higher gas bills” but “they will still benefit from lower overall energy bills, including electric bills.”

While establishing the validity of that assertion is central to determining whether Peoples’ CHP program would actually produce the benefits for CHP program participants Peoples has assumed, Peoples did not provide any quantitative analysis to support its claims. When pressed on cross-examination, Mr. Love had to admit that he did not do any calculation of gas or electric bill impacts to even try to substantiate the premise that underlies Peoples’ CHP program.

Similarly, Peoples has relied heavily on the alleged benefits its CHP program will provide to non-participants in the CHP program because “fixed costs for the natural gas distribution customer can be spread over a large base.” However, Peoples ignores two important countervailing factors. First, gas customers would not realize the alleged benefit until Peoples files a base rate case; under Peoples proposal in this case, it pockets the increased income from enhanced sales until its base rate case. And, Peoples has not offered any projection of when its next base rate case is likely to be filed.

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97 DLC Cross-Ex. Exhibit No. 2; Tr. 220, lines 8-14.
98 Tr. at 220, line 15 through 221, line 7.
Second, Peoples chose to ignore the fact that the “benefit” to gas distribution customers has a corresponding detriment to electric distribution customers.\textsuperscript{100} The reduction in electric distribution charges that occurs when a CHP customer reduces its electricity purchases from external sources is not accompanied by a reduction in an EDC’s distribution costs, which are largely fixed and do not vary with electric usage (as the Commission has itself determined).\textsuperscript{101} The EDC bears those costs until its next base rate case, at which time the short-fall in revenue from electric distribution charges not paid by customers with CHP will be borne by the rest of the EDC’s customers. Peoples cannot claim that the increase in gas sales generated by CHP deployment is a “benefit” and, at the same time, ignore the detriment to an EDC’s electric distribution customers that have to pay higher electric distribution rates to cover the shortfall caused CHP-induced lower electricity sales levels.\textsuperscript{102}

Finally, all of Peoples’ customers eligible to participate in the CHP program will be surcharged under the proposed Section 1307 rate mechanism to pay for the subsidies Peoples will dole out to fund its load-growth initiative. By Peoples’ own calculation, this surcharge begins at $696.90 per month in the first year of the CHP program and ramps up to over $900 per month for CHP-eligible customers.\textsuperscript{103} This is real money to the customers that would bear the brunt of these bill increases without prior notice and without so much as a public input hearing to express their concerns.

\textsuperscript{100} DLC Statement No. 1-SR, pp. 3-4.
\textsuperscript{102} DLC Statement No. 1-SR, pp. 3-4 and 10-11.
\textsuperscript{103} DLC Cross-Exam. Exhibit No. 2.
B. Peoples Has Not Satisfied Its Burden Of Proof To Establish That Its Proposed CHP Program Is Prudent And Cost-Effective

The evolution of Peoples’ position in this case is instructive because it demonstrates that, by the time it served its Second Rebuttal Testimony on August 6, 2018 – more than seven months after filing its Petition – Peoples itself had concluded that its proposed CHP program could not meet the criteria that properly apply in assessing the costs and benefits of such a program. For that reason, Peoples presented a “revised” – in reality, an entirely new – cost-benefit analysis to support a CHP program to which Peoples also made major, substantive revisions. However, Peoples’ “revised” analysis relies upon a new, untested, non-standard and demonstrably unreliable data source and, contrary to the standard it set for itself in its Petition, Peoples went far outside the bounds of the TRC test that applies to both statutory and “voluntary” EE&C plans in Pennsylvania.

When Peoples initiated this case, it assured the Commission that all of the components of its proposed EE&C Plan, including its proposed CHP program, would adhere to the same evaluation, measurement and verification standards employed in EE&C plans that the Commission had previously approved. Peoples also cited and relied upon the Commission’s Secretarial Letter on “voluntary” EE&C plans, which states that such plans should follow the same TRC test set forth in Act 129 and employed for EE&C plans filed under that law:

While the provisions of Act 129 are not directly applicable to voluntary EE&C plans, certain elements of the Act 129 EE&C Program are instructional and applicable to any prudent and cost-effective EE&C program. To begin with, the Commission will

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104 For example, Peoples’ originally-filed CHP program was based on three categories of CHP projects. Its “revised” program added five new categories and removed one that had previously been proposed (because Peoples now admits that the category it removed was not cost-effective under any set of assumptions – just as Mr. Crooks had stated). Peoples Statement No. 2-R2, pp. 13-14.

105 Petition ¶¶ 11-13 and n.8.

106 Voluntary Energy Efficiency and Conservation Program, supra.
adopt the Act 129 definition of an energy efficiency and conservation measure and apply it to all voluntary EE&C plan filings. Furthermore, as the cost effectiveness and verification of energy savings is prudent and essential for any such program, the evaluation, verification and measurement (EM&V) of energy savings are to be evaluated using the Technical Reference Manual established under Docket No. M-00051865. In addition, the Total Resource Cost test as defined in Act 129 and applied by this Commission pursuant to any order at Docket No. M-2009-2108601 will also apply to all voluntary EE&C plans to determine whether each proposed EE&C plan is cost effective.107

Peoples at least tried to follow the standard it set for itself with the CHP cost analysis it filed along with its Petition.108 However, Peoples’ first CHP program fell short because it contained a number of errors, as DLC witness Crooks explained in his Direct Testimony.109 Significantly, the errors Mr. Crooks identified were not “judgment calls” that could be attributed to different experts examining the same issues from different perspectives.110 Rather, these errors were objectively verifiable mistakes, such as choosing the wrong figures from a table or using values for a CHP project of given size or type for a project of a different size or type.111 To cite some of the more significant errors in Mr. Love’s analysis:

- Using the “electrical efficiency” value for a 3,300 kW CHP facility (40.4%) for a much smaller 350 kW CHP facility (electrical efficiency between 27% and 34.5%), which significantly understated gas costs for 350 kW projects.112

107 Id. at pp. 1-2.
108 PNG Exhibit No. 1 (attached to the Petition).
109 DLC Statement No. 2.
110 Mr. Crooks also identified significant conceptual flaws in Mr. Love’s analysis (see DLC Statement No. 2, pp. 16-18). However, Mr. Crooks’ recalculation of Mr. Love’s cost-benefit analysis was based solely on clearly identifiable numeral mistakes. Reasonable adjustments to correct Mr. Love’s conceptual errors would drive the costs even further above benefits for Peoples’ original CHP program.
111 See DLC Statement No. 2, pp. 7-14.
112 DLC Statement No. 2, pp. 7-8.
• Using the efficiency value for a 7,000 kW CHP facility (28.9%) for a 3,500 kW CHP facility (23.95%).\textsuperscript{113}

• Using installed cost (expressed in dollars per kW) for a “Type-4” 3,300 kW CHP unit ($1,801/kW) for a much smaller and operationally different CHP unit of 350 kW (approximately $2,900/kW).\textsuperscript{114} As a result of this mistake, the total installed cost of the 350 CHP unit ($992,950) was significantly understated by Mr. Love as $630,350.\textsuperscript{115}

• Using an understated ($3,220,500 per unit) cost for 3,000 kW CHP units (the figure actually derivable from the data source is $5,403,000).\textsuperscript{116}

• Using the installed cost for a “Type-2 7,510 kW gas turbine” CHP unit ($2,080/kW) for the different and smaller “Type-1 3,510 kW gas turbine” that Mr. Love purported to analyze ($3,281/kW).\textsuperscript{117} This error understated the installed cost of a 3,500 CHP unit by more than $4 million.\textsuperscript{118}

Correcting the errors identified in Mr. Love’s analysis, the costs of Peoples’ CHP program materially exceeded its benefits,\textsuperscript{119} and the benefit-cost ratio for Peoples’ entire CHP program fell from 1.59 to 0.91 (a ratio of less than 1.0 does not pass the TRC test). Even more telling, for two of the total of three categories of CHP projects in Peoples’ original CHP

\textsuperscript{113} DLC Statement No. 2, p. 8. In addition to using data for a CHP facility twice as large as the category Peoples was analyzing, the value its witness, Mr. Love, chose was also for the wrong type of facility. \textit{Id.}

\textsuperscript{114} DLC Statement No. 2, pp. 12-13.

\textsuperscript{115} \textit{Id.}

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} \textit{Id.} at pp. 13-14.

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} DLC Statement No. 2, p. 16, Table 6.
program, the benefit-cost ratios declined from 1.36 to 0.69 (350 kW CHP units) and from 1.41 to 0.59 (3,500 kW).\textsuperscript{120}

Thus, a reasonable analysis of the costs and benefits of Peoples’ original CHP program confirmed that the program was not cost-effective and should not be approved. And, Peoples agreed. In fact, Mr. Love acquiesced to most of the major errors Mr. Crooks identified in his original cost-benefit analysis. To illustrate:

**Q. ARE MR. CROOKS’ RECOMMENDED ELECTRICAL EFFICIENCIES REASONABLE?**

A. Yes, Mr. Crooks provides appropriate cites for typical CHP efficiencies as listed in the EPA CHP Catalog.\textsuperscript{121}

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**Q. WHAT CRITICISMS DOES MR. CROOKS HAVE OF THE CHP INSTALLED COST ASSUMPTIONS?**

A. Mr. Crooks indicates that the installed costs used in the original CHP analysis were understated, since they were based on the costs from the EPA CHP Catalog for larger CHP units. He is correct.\textsuperscript{122}

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**Q. WHAT CRITICISMS DOES MR. CROOKS HAVE OF THE CHP OPERATIONS AND MAINTENANCE (“O&M”) COST ASSUMPTIONS?**

A. . . . Mr. Crooks also asserted that some of the O&M costs used in the original CHP analysis were understated, since they were based on the O&M costs from the EPA CHP Catalog for larger CHP sizes. This point is valid . . .\textsuperscript{123}

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\textsuperscript{120} Id.

\textsuperscript{121} Peoples Statement No. 2-R2, p. 19, lines 17-20.

\textsuperscript{122} Id. at p. 21, lines 1-5.

\textsuperscript{123} Id. at p. 21, lines 10-11 and 16-18.
Peoples filed its original CHP cost analysis with its Petition in December 2017. Also, Peoples knew about the principal errors in its original analysis since April 5, 2018 – when Duquesne Light first served Mr. Crooks’ Direct Testimony in an effort to comply with the original procedural schedule. Therefore, it was reasonable to assume that Peoples would have corrected its original study (or at least acknowledged Mr. Love’s errors) long before it filed its Second Rebuttal Testimony in August 2018. It did not. Instead, it did nothing until August 6, 2018, which was well after Duquesne Light was allowed to intervene and only after Mr. Crooks’ Direct Testimony was “officially” served on July 9, 2018. In short, Peoples was prepared to “sandbag” the parties, the ALJ and the Commission by allowing the record to close (in June 2018)\textsuperscript{124} containing its now admittedly-erroneous original CHP cost study. Peoples’ actions also cast new light on its concerted effort to bar Duquesne Light from participating in this case. Absent DLC’s intervention, this case would have proceeded to decision without a fully developed record, without evidentiary hearings, and on the basis of a CHP study Peoples eventually conceded was wrong – something it should have known as early as April 5, 2018.

Peoples’ actions speak louder than words. Peoples did not acknowledge the errors in its original study until forced to do so because – as is now obvious – correcting those errors drives the benefit-cost ratio of its original CHP program below 1.0 – decidedly not a cost-effective program. Peoples’ actions also show the hollowness in its claims that it filed an entirely new CHP cost analysis, using an entirely new and different data source, to allegedly reflect “more recent assumptions regarding costs” and “updated CHP project information.”\textsuperscript{125} Indeed, Mr. Love’s attempt to justify discarding an approved, industry-standard data source led him to

\textsuperscript{124} See Order issued June 12, 2018 (revising the original procedural schedule).

\textsuperscript{125} Peoples Statement No. 2-RS, p. 12, line 17 through p. 13, line 6.
attribute to Mr. Crooks a criticism Mr. Crooks did not make. Specifically, Mr. Love testified:

“This updated source provides more recent assumptions regarding costs, a main critique of witness Crooks . . .” 126 One will search Mr. Crooks’ Direct Testimony in vain to find any such “critique;” it is simply not there. 127 In fact, neither Mr. Crooks nor any other witness questioned the propriety of the data source Mr. Love originally used. 128

Mr. Love’s erroneous and misleading attribution is an excuse – one of several – made to justify using a new and unsuitable data source because the industry-standard source he employed in his original study does not support the cost-effectiveness of Peoples’ CHP program. In like fashion, Mr. Love rejected his earlier approach of using fifteen-year maximum useful lives as set forth in Act 129’s TRC test and, instead, proposed much longer lives for CHP projects – which inflates their benefits. In short, Peoples reneged on its promise to abide by the requirements set forth in the Commission’s Secretarial Letter on voluntary EE&C plans. 131

The foregoing changes do not exhaust the list of significant revisions Peoples made unilaterally and not in response to any party’s direct testimony. In his Second Rebuttal Testimony, Mr. Love made wholesale changes in the “proxy” CHP units he selected to perform his cost analysis – adding five and deleting one from the list of proxy units he analyzed in his

126 DLC Statement No. 2-RS, p. 13, lines 2-3.

127 Id. at p. 4, line 25 through p. 5, line 3: “In my direct testimony, I detailed a number of errors made by Mr. Love by selecting the wrong table values from the EPA CHP Catalog and how he compounded those errors in his calculations that used the errant values, but I never suggested that the EPA CHP Catalog was not the correct data source” (emphasis added).

128 DLC Statement No. 2-SR, p. 5, lines 11-12 (“[N]either I nor any other witness had objected to Mr. Love’s choice of the EPA CHP Catalog as the source of CHP unit data . . .”).

129 Peoples Statement No. 2-RS, p. 13, lines 7-10.

130 See Petition ¶¶ 11-13 and 28.

131 As previously explained, the Secretarial Letter (pp. 1-2) provides that voluntary EE&C plans should adhere to the “Total Resource Cost test as defined in Act 129,” and the TRC specifically provides for maximum fifteen-year measure lives. See DLC Statement No. 2-SR, pp. 16-17.
original study. Mr. Love claimed that this substitution was done “to more closely align with the potential CHP projects identified by Peoples.” On cross-examination, however, Mr. Love was forced to admit that he had the list of “CHP projects identified by Peoples” even before he submitted his direct testimony in January 2018. The alleged explanation in Mr. Love’s Second Rebuttal has been revealed as a pretext for cherry-picking new units that might appear to be more cost-effective without regard to how they “align” with the projects Peoples identified. This is also borne out by the fact that the new array of proxy units Mr. Love selected in his Second Rebuttal Testimony are significantly different from those in the list of projects allegedly identified by Peoples.

1. **Peoples Used A Non-Standard And Erroneous Data Source**

A CHP cost analysis begins with a data source that provides CHP unit characterizations (e.g., installed costs, electrical efficiency, operating and maintenance expenses and equipment performance characterizations). In his original CHP cost analysis, Mr. Love used project characterizations from the 2015 *Environmental Protection Agency and Combined Heat and Power Partnership’s Catalog of CHP Technologies* (“EPA CHP Catalog”). The EPA CHP Catalog is the product of a CHP industry collaborative that was facilitated by the EPA and was prepared specifically to support CHP development and the planning of CHP programs with a deep, extensive and well-documented database. For that reason, it is regarded as the industry standard for use in CHP cost studies, such as the one Peoples presented to support its proposed

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133 Id.
134 Tr. 218, lines 5-14.
135 Peoples Statement No. 2-R2, p. 14 (compare Tables TML 2R-3 and TML 2R-4).
136 See DLC Statement No. 2-SR, p. 4, lines 21-25.
137 Id.
CHP program in this case. In fact, as previously noted, Mr. Love used the EPA CHP Catalog for the CHP cost analyses he performed for PGW, UGI Utilities and UGI PNG.

Belatedly reacting to the significant errors Mr. Crooks identified in his original CHP cost analysis, Mr. Love elected not to try to correct those flaws. Instead, he offered an entirely new analysis that relies upon a different and decidedly inferior data source. Specifically, Mr. Love discarded the EPA CHP Catalog – which no witness had questioned and Mr. Love used in the past – and, in its place, substituted data from the *U.S. Energy Information Administration, Distributed Generation and Combined Heat & Power System Characteristics and Cost in the Buildings Sector* ("EIA Data"), which was released in 2017. While Mr. Love claimed that his motive for this wholesale substitution was to use “updated” information, the facts do not support his averment.

The EIA Data, while published in 2017, are from 2015. The EPA CHP Catalog provides 2014 data – only one year different, and the 2017 edition of the EPA CHP Catalog, published after the EIA Data were released, continues to rely upon its extensive 2014 data base. Additionally, the U.S. Department of Energy in its *Uniform Methods Project* ("DOE UMP Protocol") published in August 2017 – i.e., also after the issuance of EIA Data – chose not to adopt the EIA Data and expressly relies upon EPA CHP Catalog’s data. The choices made by EPA and DOE are entirely appropriate because the EIA Data are not suitable for

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138 *Id.* at p. 4, lines 20-21.
139 *Id.* at p. 7.
140 *Id.* at p. 8.
141 *Id.*
143 *Id.* at p. 4, lines 20-21.
evaluating CHP projects or programs. Notably, in his Second Rebuttal Testimony, Mr. Love purported to adopt the DOE UMP Protocol – in an effort to address the serious concerns raised by Mr. Defide – at the same time he ignored the DOE UMP Protocol by rejecting the data it employs.

The EPA CHP Catalog data are extensive and, significantly, are based on a study that is specifically focused on CHP. Indeed, the EPA CHP Catalog is the work of a CHP industry collaborative. The EIA Data are different. The EIA report from which Mr. Love extracted CHP data was not focused on CHP. To the contrary, CHP was only one part of a study that covered the entire range of distributed generation, including residential solar, wind, fuel cells and commercial solar photovoltaic systems, in addition to CHP projects. Because of the broad subject matter the EIA study tried to address, the EIA Data lack the depth and detail that are essential for sound CHP program planning. In some critical areas, the EIA Data are supported by a sample size of only one CHP unit, which is not statistically significant by any measure. Additionally, the EIA Data do not include data for key inputs, such as certain project costs. In contrast, the EPA CHP Catalog contains costs and efficiencies from a deep CHP data base that has been vetted by both the EPA and the Combined Heat and Power Partnership, and the DOE UMP Protocol expressly relies upon the EPA CHP Catalog – not the EIA Data – for source data.

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144 *Id.*
145 Peoples Statement No. 2-R2, p. 16.
146 *Id.*
147 *Id.* at pp. 8-9.
148 *Id.* at p. 9, lines 2-4.
149 Id. at p. 9, lines 4-5.
150 *Id.* at p. 9, lines 6-7
used to evaluate CHP project costs. For those reasons, there is no credible dispute that the EPA CHP Catalog data are the industry standard for CHP project development and CHP program planning.

Although the EIA Data should be rejected out of hand for the reasons set forth above, Mr. Crooks nonetheless did a detailed analysis of the EIA Data to identify and quantify specific flaws that make those data wholly unsuitable for use in a CHP cost analysis. Those flaws, which are summarized below, resulted in an approximately $43 million understatement (on a present value basis) of the costs of the CHP projects Mr. Love tried to analyze.

Incorrect Efficiency Values. The EIA Data state incorrect efficiency data for two of the five CHP units that collectively comprise 67% of the forecasted CHP capacity analyzed in Mr. Love’s revised study. These errors overstate the efficiency and cost-effectiveness of these units.

Mismatched Costs And Efficiencies. Detailed examination of the equipment specifications used in the EIA Data show that those data mismatch unit costs and efficiencies by attributing the greater efficiency of higher-cost units to lower-cost units that have lower electrical efficiency. This error overstates the cost-effectiveness of these units.

Exclusion Of Essential Construction Costs. The EIA Data (unlike the EPA CHP Catalog) understate the installed cost of CHP units by excluding essential construction costs such

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151 Id. at p. 9, lines 8-12.
152 Id. at p. 4, line 21.
153 Id. at pp. 9-14.
154 Id. at p. 13.
155 Id. at pp. 9-10.
156 Id.
157 Id. at p. 11.
as pre-construction development expenditures, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, project management, insurance, infrastructure (gas and electric) interconnection costs and property taxes during construction. The capital costs for the CHP projects in Peoples’ revised study, based on the EIA Data, are between 68% and 72% of those in the EPA CHP Catalog, which is simply not credible for only a one-year difference between the two data sets. CHP technology costs do not change that dramatically in such a short period of time. As Mr. Crooks explained, nothing has happened in internal combustion engine design or the laws of thermodynamics that could possibly justify a one-year reduction in costs of the magnitude Mr. Love has proffered.

**Omission Of Operating And Maintenance Costs.** The EIA Data omit critical elements of operation and maintenance costs that are essential for a complete analysis. These omissions also understate costs and overstate cost-effectiveness for the projects in Peoples’ revised CHP program.

**Omission Of Critical Pollution-Control (Selective Catalytic Reduction) Costs.** The EIA Data do not properly account for critical on-going costs to operate selective catalytic reduction pollution-control equipment for engines above 1,000 kW and for one category of CHP in Peoples’ program below that capacity. This omission understates the operating costs of the projects Mr. Love analyzed by as much as $32 million.

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158 *Id.* at pp. 11-12.
159 *Id.* at p. 14.
160 *Tr.* at 293, lines 16-20 (with transcript corrections).
161 *Id.* at p. 11.
162 *Id.* at p. 12.
163 *Id.*
As previously noted, the omissions and data errors Mr. Crooks identified in the EIA Data understate Peoples’ CHP program costs by at least $43 million on a present value basis.\textsuperscript{164} Correcting these flaws and other critical errors in Peoples’ revised CHP cost analysis, which are explained hereafter, produces a benefit-cost ratio of only 0.81 – which is clearly not cost-effective.\textsuperscript{165}

2. \textbf{Peoples Improperly Extended CHP Useful Lives In Its Revised CHP Cost Analysis}

The estimated useful life of EE&C measures (also referred to as “measure life”) is used to quantify the streams of costs and revenues over the life-cycle of a given project.\textsuperscript{166} Consistent with representations Peoples made in its Petition that it would adhere to the Commission’s Secretarial Letter on voluntary EE&C plans, Mr. Love used a measure life of 15 years in his original CHP cost analysis.\textsuperscript{167} No party disputed Mr. Love’s use of 15-year measure lives. Nonetheless, in his revised cost analysis he extended the measure lives of all the CHP projects he analyzed – from 15 years to 20 years for most projects and from 15 years to 17 years for the rest.\textsuperscript{168} This one change inflated the present value benefits of Peoples’ CHP program by $37.5 million.\textsuperscript{169}

Mr. Love tried to justify this unilateral change by arguing that the 15-year measure life – which he concedes is a requirement imposed by the TRC test under Act 129 – should not apply

\begin{itemize}
\item \textsuperscript{164} \textit{Id.}
\item \textsuperscript{165} \textit{Id.} at p. 29, Table 11.
\item \textsuperscript{166} \textit{Id.} at p. 15.
\item \textsuperscript{167} Peoples Statement No. 2-R2, p. 13, lines 7-10 (Conceding that 15-year measure lives were used in Peoples’ original CHP cost analysis).
\item \textsuperscript{168} DLC Statement No. 2-SR, p. 15.
\item \textsuperscript{169} \textit{Id.} (Table 5)
\end{itemize}
to NGDC CHP programs because they are not subject to Act 129.\textsuperscript{170} He also claimed that a 15-year measure life is “conservative” and that the measure lives he employed are consistent with those allegedly permitted by the “Mass Save program in Massachusetts.”\textsuperscript{171}

Mr. Love’s contention that the 15-year measure life required by Act 129’s TRC test can be disregarded because Peoples is not subject to Act 129 ignores the Commission’s Secretarial Letter, which makes Act 129’s TRC test (and its associated requirement to use a maximum 15-year measure life) applicable to “voluntary” EE&C plans like Peoples.\textsuperscript{172} He also ignores Peoples’ representations in the Petition that its EE&C Plan would conform to the requirements of the Secretarial Letter (and, by extension, to all of Act 129’s requirements). Thus, Mr. Love’s contention that he is free to ignore the 15-year measure life requirement is not only wrong, it is a contravention of Peoples’ own prior representations.

Additionally, Mr. Love extended the estimated useful lives of his proxy CHP units without considering whether those extended lives could be achieved if the units operated at the very high 93% capacity factor he imputed for them.\textsuperscript{173} In other words, he changed one input to his calculation (increased measure lives) without considering how that change could impact other parts of his analysis. Mr. Love simply assumed – without any support or analysis – that the proxy units he selected could operate at the same very high 93% capacity factor over their entire estimated life regardless of whether that life is 15 years or a life substantially longer than 15

\textsuperscript{170} Peoples Statement No. 2-R2, p. 13.

\textsuperscript{171} Id. Also, while Mr. Love purports to rely on the “Mass Save program” for his proposed measure lives, his claim could not be authenticated. The Mass Save Guide to Submitting CHP Applications for Incentives in Massachusetts does not provide any references for its CHP system measure lives. DLC Statement No. 2-SR, p. 16 and n.3.

\textsuperscript{172} Voluntary Energy Efficiency and Conservation Program, supra.

\textsuperscript{173} A high capacity factor (hours of operation in a period divided by total hours in the period) is needed to support cost-effectiveness. Lower capacity factors erode the cost-effectiveness of a CHP unit. Therefore, to bolster cost-effectiveness, Mr. Love imputed a capacity factor higher than that assumed in the EPA CHP Catalog. Tr. 301, line 10.
years. As Mr. Crooks explained, that assumption is not only unexamined, it is unsupported by available data and the design and operating characteristics of existing CHP units.

To achieve the high capacity factors Mr. Love assumed over useful lives as long as 20 years would necessitate building redundancy into the CHP facility, such as adding a second unit to be held in reserve. Mr. Love took what he liked (the positive impact on his cost-effectiveness calculation of assuming longer measure lives) while ignoring the parts he did not like (either reducing the capacity factors over the extended measure lives or increasing the capital cost and operating expenses to reflect the redundancy needed to maintain the very high capacity factor he imputed over the entirety of the longer estimated lives he assumed). This is another example of Mr. Love selectively substituting data to achieve a predetermined result, and it underscores the fundamental factual and conceptual flaws in his new analysis.

Peoples also tries to justify its use of longer measure lives by suggesting its change of position is justified by the CHP Policy Statement. However, the Commission stated that “not all mechanisms for promoting CHP are administered under the Act 129 EE&C program” and that it was willing to consider “reasonable cost-effectiveness screens that have a different maximum measure life for CHP under those mechanisms.” At the outset, and as the context makes clear, the Commission was not necessarily talking about increasing measure lives to assess cost-effectiveness for a CHP subsidy program. There are different “mechanisms for promoting CHP” other than direct subsidies, and it should not be automatically assumed – as Peoples assumed – that the Commission was directing its comments to CHP subsidy programs (or, indeed, a subsidy program of the unprecedented magnitude Peoples proposes).

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174 Tr. 301, lines 10-21.
175 CHP Policy Statement, pp. 10-11 (emphasis added).
Moreover, while the Commission has expressed its willingness to consider the reasonableness of longer measures lives, this is certainly not the proper venue for doing so, given that Peoples interjected this entirely new proposal into its cost analysis at the eleventh hour in an effort to drive a hasty approval without the kind of thoughtful deliberation and detailed examination that the Commission signaled in the CHP Policy Statement is necessary and appropriate. The perils of such a rush to judgment are highlighted by the issue discussed above; Mr. Love failed to consider the impact on all of the elements of his cost analysis of using longer measure lives, which has skewed his study to show cost-effectiveness that a properly conducted analysis of the data would not support.

Mr. Love’s sudden reversal of position on the use of 15-year measure lives – in derogation of his original CHP study, the Secretarial Letter on voluntary EE&C plans, Act 129’s TRC test and Peoples’ representations in its Petition – is further evidence that, absent such extraordinary and unprecedented departures from accepted practice, Peoples’ CHP program cannot pass a reasonable application of the TRC test.

3. Other Major Issues With Peoples’ CHP Cost Analysis

Mr. Crooks identified several other major issues with Peoples’ CHP cost analysis that would improperly depress costs and inflate benefits of the projects in Peoples’ CHP program. These are significant and complex issues that can have a major impact on the cost-effectiveness of CHP programs. Even if these issues cannot be resolved definitively in this case (and they need not be, because the many other defects in Peoples’ CHP program preclude its approval), they highlight the important questions that should be addressed before a CHP program of the unprecedented size Peoples proposes is allowed to go into effect.

Electric Delivery Costs Are Shifted, They Are Not Permanently “Avoided” As Mr. Love Erroneously Assumed. Peoples’ cost-benefit analysis treats electric transmission and
distribution ("T&D") costs that CHP owners do not pay as a benefit of CHP.\textsuperscript{176} However, while the CHP-owning customer avoids paying an EDC’s charges for T&D, the EDC does not avoid any T&D costs when a customer installs CHP.\textsuperscript{177} As the Commission itself has found, T&D costs are “fixed” and “do not vary . . . in proportion to a customer’s daily or monthly levels of consumption.”\textsuperscript{178} Consequently, the T&D costs not paid by a CHP-owning electric distribution customer do not go away. They are shifted to other non-CHP-owning distribution customers.\textsuperscript{179} Mr. Love treated those “avoided” T&D charges as a permanent “benefit” when, in fact, any “benefit” disappears when the affected EDC files a base rate case and all of its customers’ rates are reset to recover the costs that CHP-owning customers no longer pay.\textsuperscript{180} (Of course, in the interim before a base rate case, the EDC bears the out-of-pocket cost of the “benefit.”\textsuperscript{181}) Properly accounting for the costs that are shifted, not eliminated as Mr. Love erroneously assumed, shows that Mr. Love’s CHP analysis overstates benefits by approximately $9.7 million.\textsuperscript{182}

**Improper Accounting Of CHP Fuel Costs.** Mr. Love treated the fuel costs paid by CHP owners as a reduction to the “benefits” side of the ledger and, therefore, measured the benefit reduction by the resource value of the natural gas used to fuel a CHP project.\textsuperscript{183} In so doing, he calculated the “benefit” reduction based on the variation in costs a gas utility

\textsuperscript{176} Id. at p. 17.
\textsuperscript{177} Id. at p. 18.
\textsuperscript{178} Fixed Utility Distribution Rates Policy Statement, supra, p. 16. See also DLC Statement No. 1-SR, p. 3.
\textsuperscript{179} Id. at pp. 18-19.
\textsuperscript{180} Id. at p. 19.
\textsuperscript{181} Id. at p. 20.
\textsuperscript{182} Id. at p. 20 (Table 6).
\textsuperscript{183} Id. at pp. 21-22.
experiences when a customer increases or decreases its consumption of gas commodity.\textsuperscript{184} As a consequence, he ignored the totality of the costs that a gas customer incurs when it increases its gas usage to fuel a CHP project. Those costs include not just the gas commodity, but the cost of delivering that gas to the customer’s meter at a gas utility’s applicable distribution rates.\textsuperscript{185} When pressed on this point, Mr. Love conceded – as he had to – that a customer’s gas bill consists of “the amount the customer pays to the utility for gas delivery as well as what they paid their supplier for gas supply.”\textsuperscript{186} Based on Mr. Crooks’ reasonable estimate, this error understates the cost of fuel for Peoples’ CHP program by approximately $44 million.\textsuperscript{187}

**Improper Application Of The DOE UMP Protocol Results In Misstatement Of Net Primary Energy Savings.** The DOE UMP Protocol provides a comprehensive and well-accepted method for estimating the energy impacts from CHP projects at the customer side of the meter. Mr. Love purported to follow the DOE UMP Protocol in his CHP analysis.\textsuperscript{188} The applicable terms of the DOE UMP Protocol require net primary energy savings for CHP system to account for the “lack of fuel consumption” of the resources that will be displaced by CHP projects. Simply stated, if some of the generating sources for which CHP would be a substitute are not fuel consumers (renewables, large-scale hydro or nuclear power), then it is improper to calculate the net primary energy savings for a CHP project as if, for example, it displaced another fuel-using resource.\textsuperscript{189} However, Mr. Love did not properly account for this effect; he assumed 100\% of the generation that CHP projects would offset are gas-fired, when only about

\begin{itemize}
  \item \textsuperscript{184} Id. at p. 22.
  \item \textsuperscript{185} Id.
  \item \textsuperscript{186} Tr. at 221, lines 8-17.
  \item \textsuperscript{187} Id. at p. 24 and Table 9.
  \item \textsuperscript{188} Id. at p. 24.
  \item \textsuperscript{189} Id. at pp. 25-26.
\end{itemize}
16.7% of delivered energy in the applicable region is from natural-gas fired generation. This error overstates the benefits of CHP in Peoples’ service territory. 190

**Mr. Love Failed To Properly Account For “Parasitic” Loads.** A portion of the electricity generated by a CHP project is used to safely and effectively operate the CHP unit itself, which is referred to as “parasitic” load. 191 This includes electricity used to run the generator’s fan and pump motors and the heating, ventilation, air-conditioning and lighting dedicated to the CHP generator. 192 Mr. Love’s revised CHP cost-analysis does not account for parasitic loads. Correcting for this deficiency in the study reduces the present value benefits of Peoples’ CHP program by $5.3 million. 193

4. **Correcting The Errors In Peoples’ Revised CHP Cost Analysis Shows That Peoples’ CHP Program Cannot Pass The TRC Test**

Correcting just those errors in Peoples’ CHP cost analysis that Mr. Crooks was able to identify during the relatively short interval between Peoples’ submission of its new CHP cost analysis and the date for submission of Surrebuttal Testimony, the present value of the costs of Peoples’ CHP program exceed the present value of its benefits by $57.6 million. The benefit-cost ratio of Peoples’ CHP program is not 1.87 as shown by Mr. Love’s seriously flawed CHP cost analysis, but merely 0.81 194 – well below the ratio for cost-effectiveness.

**C. Peoples’ CHP Program Suffers From Serious Structural Deficiencies**

Peoples’ CHP program also suffers from serious structural deficiencies in at least three major areas.

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190 *Id.* at p. 27.
191 *Id.* at pp. 27-28.
192 *Id.*
193 *Id.* at p. 28, lines 7-8.
194 *Id.* at p. 29.
1. **CHP Is The Only Specific Measure Being Offered To Large Customers Under Peoples’ EE&C Plan.**

In its original plan, Peoples did not offer any EE&C measures for large customers. Its only specific offering for that class of customers was its CHP program, which would increase those customers’ gas usage, not reduce it. Duquesne Light pointed out this anomalous aspect of Peoples’ proposal: a plan purportedly designed to promote EE&C that offers only the opportunity for subsidies to increase gas usage for a small subset of its largest gas-consuming customers. The rest of the customers who may meet the eligibility criteria for the CHP program but whose operating characteristics and patterns of thermal and electricity usage do not make CHP an option, have no measures to help promote efficiency and conservation in gas usage. In short, Peoples’ CHP program divides the class of customers potentially eligible for CHP into winners (those who benefit from CHP subsidies) and losers (those who pay for CHP subsidies but are not offered any non-CHP measures to help them achieve greater gas-use efficiency). In this respect, Peoples’ EE&C Plan is far different from EE&C plans of EDCs (including DLC’s), which offer a variety of true energy efficiency options to larger customers.¹⁹⁵ Mr. Defide provided a summary of some of the more significant energy-saving options Duquesne Light offers, including lighting upgrades, manufacturing process improvements, and more efficient motors and compressors, which would actually reduce electricity consumption.¹⁹⁶

In an effort to appear to respond to DLC’s criticism, Peoples’ witness Petrichevich said that Peoples would offer “to include efficiency evaluations to its LGS and MGS customers who request them” and “make the CEP [Commercial Equipment Program] program offering available

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¹⁹⁵ *Id.* at p. 6

¹⁹⁶ *Tr.* at 261, lines 5-13.
to these customers where appropriate.” However, a review of the revised EE&C Plan reveals that it does not contain the “offerings” to LGS customers that Ms. Petrichevich alluded to. Rather, the revised plan offers only one specific measure LGS customers may be eligible for – the CHP program. In addition, while claiming that non-CHP options might be furnished as a custom measure, Peoples did not provide a budget estimate for any large customer conservation programs; did not include any large-customer conservation programs in its calculations of cost and benefits; and did not provide any cost-estimate for a plan to make large customers aware of any true conservation measures – only outreach for CHP is discussed. Thus, there is no estimate of the costs of any non-CHP measures that could be used to assess their reasonableness and cost-effectiveness for large customers. Consequently, even if Peoples’ assertion that non-CHP measures may be made available for large customers were accepted at face value, there is no factual basis for the ALJ or the Commission to evaluate whether it is prudent, just and reasonable to ask customers to pay for those measures, as Mr. Defide explained. In lieu of providing a sound quantitative cost basis for the “custom” non-CHP measures Peoples claims it may offer, it reserved to itself the discretion to simply expend funds for those measures and then recover its costs, after-the-fact, through the reconciliation mechanism in its proposed Section 1307 rider. That is hardly a formula for assuring just and reasonable rates.

In short, viewed in its entirety, Peoples’ EE&C Plan falls far short of best practices for EE&C plans. While agreeing that energy efficiency measures should be offered to large

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197 Peoples Statement No. 1-R2, p. 5.
198 Id.
199 Id. at pp.6-7.
200 Id. at 7.
201 Id.
customers, the only specific measure Peoples is promoting for the largest gas-consuming customers on its system is a program designed to increase their gas usage.

2. Inadequate Evaluation, Measurement And Verification

Although Peoples acquiesced – at the eleventh hour, in Ms. Petrichevich’s Second Rejoinder Testimony\(^{202}\) – to certain improvements in evaluation, measurement and verification processes, those changes were minimal, fall short of best practices for EE&C plans and are inadequate for a CHP program of the size Peoples is proposing.\(^{203}\)

The DOE UMP Protocol is considered the gold standard for evaluation, measurement and verification for CHP programs, as Mr. Love affirmed.\(^{204}\) Notwithstanding Mr. Love’s approving statements, the fact remains that Peoples’ revised CHP program does not contain an affirmative commitment to adhere to the DOE UMP Protocol for CHP project review.\(^{205}\)

Additionally, the DOE UMP Protocol is expressly limited to projects no larger than 5 MW.\(^{206}\) Peoples’ revised CHP program, however, now includes much larger projects (i.e., up to 9.95 MW). Yet, neither Peoples’ CHP program documents nor the testimony of Peoples’ witness Love explains why it would be appropriate to expand the DOE UMP Protocol beyond its stated scope. Similarly, neither the Peoples’ CHP program documents nor Mr. Love explained how the DOE UMP Protocol criteria would be tailored and adapted to such large projects.\(^{207}\) In short, for the largest and most complex CHP projects in Peoples’ portfolio, Peoples is giving

\(^{202}\) Peoples Statement No. 1-REJ2; Peoples Exhibit No. 20.


\(^{204}\) Id. at p. 17.

\(^{205}\) See Id. at 17, lines 18-22.

\(^{206}\) Id. at 18 n.5 (Quoting the DOE UMP Protocol (p. 2): “This protocol is not intended for CHP systems larger than 5 MW.”).

\(^{207}\) Id. at p. 18.
itself unbounded discretion to determine the applicable evaluation, measurement and verification standards and, as a result, accruing to itself unbounded discretion to determine the cost-effectiveness of those projects. Peoples’ proposed CHP program should not be approved with these important questions unanswered.

The deficiencies noted above are compounded by the liberal threshold Peoples set for itself before an independent evaluator reviews a CHP project. Peoples proposes that the independent evaluator would review only those projects for which Peoples provides an incentive greater than $500,000.\footnote{Peoples Exhibit No. 20 (Section 4(b)).} Significantly, in his Second Rebuttal Testimony, Mr. Love did not indicate that there would be any dollar threshold on the projects that would be subject to review by the independent evaluator.\footnote{Peoples Statement No. 2-R2, p. 27, lines 14-19 (“A third-party evaluator will be used to verify project assumptions, and evaluate completed projects utilizing best practices as established in the CHP Evaluation Protocols.”)} Nonetheless, in her Second Rejoinder Testimony, Ms. Petrichevich countermanded Mr. Love’s proposal and set a $500,000 threshold that must be crossed before an independent evaluation reviews a project.\footnote{See Peoples Exhibit No. 20.} That threshold is too high. In fact, there is no valid reason to impose any threshold.

Renowned regulatory economist Alfred Kahn said that “all regulation is incentive regulation.”\footnote{See Popowsky, Irwin “Incentive Ratemaking” (Presentation to KEEA/Pennsylvania Bar Institute Energy Efficiency Conference, Harrisburg, Oct. 1, 2013) https://www.slideserve.com/lilli/incentive-ratemaking} Dr. Kahn’s statement captures the economic reality that any form of regulation must take into account the incentives that drive the behavior being regulated. Thus, it is not necessary to impugn the motives of Peoples to note that the most carefully crafted protocol for evaluation, measurement and verification can fall short of its intended purpose if its implementation is left to the sole discretion of an entity with strong incentives to find CHP
projects cost-effective. In this regard, an NGDC sponsoring CHP is in a much different position from an EDC offering incentives for CHP deployment in its service territory.

When an EDC evaluates a CHP project it knows that, if the project is deemed cost-effective and comes to fruition, that unit’s future operation will not augment the EDC’s bottom line. Rather it will cause a diminution in sales and revenues that erodes earnings until the EDC’s base rates can be reset to make up the shortfall.\(^{212}\) The best possible outcome – which is unlikely to occur even under the most favorable circumstances – is to break-even. However, the incentives line up much differently for an NGDC sponsoring a CHP program that, as the Commission has determined, is a “load-building” program. An NGDC increases sales, revenues, and net income from the expansion of CHP its service territory. If an NGDC is able use customers’ money to subsidize CHP projects and has structured its CHP program (as Peoples proposes to do) to avoid sharing the benefit of increased revenues with customers between base rate cases, it has only an upside from the deployment of gas-fired CHP, whether or not a CHP project is cost-effective. Where all the incentives are aligned to foster a finding that CHP projects are cost-effective and should be promoted (and that is certainly the case with the program Peoples is proposing), there is no reasonable basis for exempting any projects from a careful independent evaluation properly designed for each project’s size and complexity. Moreover, the number of projects likely to be evaluated each year will not be great, and asking an independent evaluator to review them should not be a burden – certainly not when weighed against the costs that customers are being asked to bear to fund the incentives Peoples will be distributing.

\(^{212}\) \textit{See} 66 Pa.C.S. § 2806.1(k)(2) and (3) (Decreased revenues from implementing Act 129 measures only recoverable in base rates.)
Peoples’ CHP program also lacks any meaningful enforcement mechanism such as penalties (or non-recovery from customers of incentive payments) if Peoples does not comply with the terms of its plan.\textsuperscript{213} Even aside from the issue of penalties, Peoples has opposed other reasonable means of assessing its performance and assuring compliance with its commitments. Thus, Peoples has resisted recommendations from the OSBA as well as from Duquesne Light to implement a stakeholder coordination process to review and assure adequate evaluation, measurement and verification.\textsuperscript{214} That is not an unreasonable request, and it is difficult to discern why Peoples would oppose it.

Peoples’ proposed CHP program should not be approved with the serious evaluation, measurement and verification deficiencies it now contains.

3. **Peoples’ CHP Program Does Not Provide For Adequate Coordination With EDCs’ Existing EE&C Plans**

It needs to be emphasized that customers in Peoples’ service territory do not lack access to incentives for cost-effective CHP. Opportunities already exist through the previously-approved EE&C plans of the EDCs that provide electric distribution service in Peoples’ service territory.\textsuperscript{215} It is more appropriate at this juncture to encourage customers to take advantage of already approved EE&C measures to encourage CHP deployment than embark on an entirely new approach of the size and scale of Peoples’ proposed CHP program – and do so even before the CHP Policy Statement’s information-gathering and policy formation tools have been given a fair opportunity to yield guidance on next steps.\textsuperscript{216} Given all of that, Duquesne Light recommended increased coordination between NGDCs and EDCs with overlapping service

\begin{footnotesize}
\textsuperscript{213} DLC Statement No 1-SR, p. 18.
\textsuperscript{214} Id.
\textsuperscript{215} Id. at p. 21.
\textsuperscript{216} Id.
\end{footnotesize}
territories. Clearly “coordination” in this context would not appear to be an onerous condition –
certainly not in view of the $17.5 million customer-funded price tag on Peoples’ proposed CHP
program. Nonetheless, Peoples, inexplicably, objected forcefully to that recommendation.217
However, and contrary to Peoples’ untenable position, coordination would benefit all parties and,
especially, the customers of the NGDCs and EDCs involved, as DLC witness Defide explained:

Coordination with EDCs’ EE&C programs should provide (and the Commission, by appropriate monitoring, could assure) complete transparency in the process of evaluating CHP projects. This could include making CHP project records accessible to Peoples and the jurisdictional EDCs in its service territory. CHP project customer meetings could be attended jointly by the applicable EDC and Peoples for projects in Peoples’ service territory. Independent verification, already required by Act 129, could be shared with Peoples, as well as the associated costs of this EM&V [evaluation measurement and verification]. This mature and effective behavior, with the intermediation of the Commission as the Commission deems appropriate, would encourage customer participation and, ultimately, would provide a more expeditious process for identifying and developing cost-effective CHP programs.218

The absence of meaningful coordination measures, and Peoples’ refusal to acknowledge the appropriateness of any form of Commission-monitored coordination, is yet another defect in Peoples’ CHP program. Peoples’ CHP program should not be approved with that obvious deficiency.

D. The CHP Program Proposed By Peoples Is Outside The Parameters Of Existing Authority, And Approving Such A Program In This Case Would Set The Wrong Precedent

As the ALJ correctly discerned, this case is unprecedented – the “first through the gate.”

It is a “voluntary” EE&C Plan containing a “stand-alone” CHP program that is much larger than

217 Id. See also Peoples Statement No. 2-R2, p. 31
218 DLC Statement No. 1-SR, p. 21, lines 7-18.
any CHP program ever proposed by an NGDC.\footnote{Tr. at 125, lines 4-12 and 271, lines 4-19.} As such, the CHP program Peoples has proposed is far outside the parameters of existing authority for CHP initiatives undertaken by NGDCs:

- Peoples’ proposed CHP program is an order of magnitude larger than any NGDC CHP program ever approved (or even proposed). With a budget cap of $17.5 million it is 16 times larger than the program approved for UGI Utilities ($1.1 million over five years) and 12.5 times larger than the program approved for UGI PNG ($1.4 million over five years).\footnote{See Section I.D., supra.}

- Peoples has proposed a “stand-alone” CHP program. The Commission has clearly stated that such programs should be proposed as part of an NGDC’s base rate case.\footnote{Id.} Furthermore, a “stand-alone” proposal cannot satisfy the requirements imposed by Section 1307(a) to establish an automatic adjustment clause to recover CHP program costs.\footnote{See Section IV.A.3, supra.}

- Peoples’ revised CHP cost analysis relies upon a non-standard, unreliable and demonstrably improper data source for CHP project characterization, which results in an overstatement of benefits and understatement of costs.\footnote{See Section IV.B.1, supra.}

- Peoples’ revised CHP cost analysis contravenes the Commission’s Secretarial Letter on voluntary EE&C plans, which is the standard Peoples held itself to in its Petition. Most significantly, Peoples’ revised CHP cost analysis departs from the
approved TRC test embodied in the Secretarial Letter by employing measure lives longer than 15 years.\textsuperscript{224} 

- Peoples has tried to leverage the Commission’s statements in the CHP Policy Statement encouraging CHP deployment to evade the cost-effectiveness criteria that the Commission has determined should apply to voluntary as well as statutory EE&C plans.\textsuperscript{225} Approving Peoples’ flawed CHP proposal would improperly lend credibility to Peoples’ efforts to interpret the CHP Policy Statement as overriding objective and well-established cost-benefit criteria for assessing CHP projects that should be eligible for customer-funded incentive payments.

Because Peoples’ proposed CHP program is so far outside the parameters of existing authority for NGDC-proposed CHP initiatives, approving Peoples’ proposal would necessarily set new state-wide precedent. And, it would be entirely the wrong precedent. There are sound legal and prudential reasons to follow existing authority, as explained throughout this brief. On the other hand, there is no valid legal or factual basis for creating an entirely new set of ground rules for NGDC-sponsored CHP subsidy programs at this time. Moreover, if the Commission were to grant Peoples’ request in this case, it would be authorizing a CHP program much larger than the “pilot” sized NGDC programs approved (in base rate cases only) thus far and would be doing so before the Commission has had any opportunity to consider the information being gathered in response to the CHP Final Policy Statement and generated by the CHP Working Group.\textsuperscript{226}

\textsuperscript{224} See Section IV.B.2, supra
\textsuperscript{225} See Section I.F. supra.
\textsuperscript{226} CHP Policy Statement, pp. 9-10 and 21.
Peoples’ CHP program is a seriously defective proposal that “is going too far, too much, too soon.” The Commission should not set new state-wide precedent for NGDC-sponsored CHP programs in this case. Peoples’ CHP proposal should be denied.

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227 Tr. at 230, lines 15-18.
VI. CONCLUSION

Peoples has not met its burden of proof to increase its rates to recover the costs of its proposed CHP program, which is unprecedented in size, improperly presented on a “stand-alone” basis, neither prudent nor cost-effective, and plagued with serious structural flaws and unanswered questions. Therefore, Peoples’ CHP program, including its proposed Section 1307 adjustment clause, which is an integral part of that program, should not be approved in this case.

Respectfully submitted,

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