



COMMONWEALTH OF PENNSYLVANIA

July 9, 2019

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission v. Peoples Natural Gas Company LLC /
Docket No. R-2018-3006818**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

A handwritten signature in blue ink that reads "Erin K. Fure".

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
: **Docket No. R-2018-3006818**
v. :
: **Peoples Natural Gas Company LLC** :

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Date: July 9, 2019

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I. CONCISE STATEMENT OF THE CASE

On January 28, 2019 Peoples Natural Gas Company LLC (“Peoples Natural” or the “Company”) filed both Retail Tariff Gas—PA P.U.C. No. 47 and Supplier Tariff Gas--PA P.U.C. No. S-3 to become effective March 29, 2019. Peoples Natural’s tariff filings seek approval of rates and rate changes which would increase total annual operating revenues of the Company by \$94.9 million per year.

The OSBA filed a Notice of Appearance and Complaint on February 7, 2019.

By Order entered February 28, 2019, the proposed Retail Tariff Gas—PA P.U.C. No. 47 and Supplier Tariff Gas--PA P.U.C. No. S-3 were suspended by operation of law until October 29, 2019. The Pennsylvania Public Utility Commission (“Commission”) ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Retail Tariff Gas—PA P.U.C. No. 47 and Supplier Tariff Gas--PA P.U.C. No. S-3.

On March 14, 2019, a prehearing conference was held before Deputy Chief Administrative Law Judge (“ALJ”) Joel H. Cheskis.

The following parties are the known, active parties involved in this proceeding: the OSBA; the Office of Consumer Advocate (“OCA”); the Commission’s Bureau of Investigation and Enforcement (“I&E”); the Community Action Association of Pennsylvania (“CAAP”); the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”); the Natural Gas Supplier Parties (“NGS Parties”) and The Retail Energy Supply Association (“RESA”) (collectively, “NGS/RESA”); Duquesne Light Company (“Duquesne Light”); the Utility Workers Union of America, Local 612 (“UWUA”); the Pennsylvania Independent Oil and Gas Association (“PIOGA”); Snyder Brothers, Inc., VEC Energy LLC, and Snyder Armclar Gas Co., LP (collectively “SBI”); Equitrans, L.P. (“Equitrans”); Baker Gas, Inc. (“Baker Gas”);

Marco Drilling, Inc., (“Marco”); MDS Energy Development, LLC (“MDS Energy”); Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC (collectively, “Direct Energy”); and the Peoples Industrial Intervenors (“PII”).

On April 29, 2019, the OSBA submitted the direct testimony of Brian Kalcic.

On May 28, 2019, the OSBA submitted the rebuttal testimony of Mr. Kalcic.

On June 12, 2019, the OSBA submitted the surrebuttal testimony of Mr. Kalcic.

Evidentiary hearings were held before Deputy Chief ALJ Cheskis on June 20 and 25, 2019.

Prior to the evidentiary hearings, the parties notified the ALJ that they had reached a settlement in principle of the revenue requirement, but that other additional issues continued to be negotiated by the parties. As a result of the progress made in negotiations, the pre-served testimony of multiple witnesses was admitted via stipulation with cross-examination having been waived.

The testimony of OSBA Witness Kalcic was moved into the record at the June 20th evidentiary hearing.

Negotiations continued among the parties, resulting in the settlement in principle of all issues except for the Company’s proposed modifications to its Main Line Extension Policy.

In this proceeding, the Company proposed a tariff change to modify its Main Line Extension Policy by allowing 150 feet of main line per residential applicant without the need for an economic analysis in normal situations.¹ Such proposal is a departure from the Company’s current practice of conducting an economic analysis when a customer requests the Company to

¹ Peoples Statement No. 2 at 38.

extend facilities to a new point of delivery within its service territory.² The OSBA opposes the Company's proposed modification, and, for the reasons articulated herein, requests that Deputy Chief ALJ Cheskis and the Commission reject the Company's proposed modification to its Main Line Extension Policy.

The OSBA submits this main brief pursuant to the procedural schedule as set forth in the Deputy Chief ALJ Cheskis's June 27, 2019, Briefing Order.

² Peoples Statement No. 2, at 36.

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

III. SUMMARY OF ARGUMENT

The OSBA opposes the Company's proposal to change its tariff to allow 150 feet of main line extension per residential applicant without the need for an economic analysis in normal situations. The Company's proposal is unreasonable in that its adoption would lead to shifting a portion of the actual cost of extending service from residential applicants to general ratepayers, by reducing the applicants' otherwise applicable contributions in aid of construction ("CIAC").³ Such proposal, if adopted, would have the effect of creating a subsidy paid by general ratepayers for residential applicants, which creates an unreasonable preference for residential applicants, results in an unreasonable prejudice to other ratepayers, and violates cost causation principles.⁴ Additionally, the Company's current Main Line Extension Policy is reasonable and appropriate. Therefore, the Company's proposed modification to its Main Line Extension Policy should be rejected as unreasonable and discriminatory.

³ OSBA Statement No. 1, at 16-17.

⁴ OSBA Statement No. 1-S, at 7.

IV. ARGUMENT

A. The Company's Proposal Violates Cost Causation Principles

Currently, when a customer requests the Company to extend its facilities for service, the Company uses an economic analysis which compares the net present value of the customer's projected future revenue to the cost the Company would incur to add that customer.⁵ If projected revenues are greater than projected costs, the Company will extend facilities without cost to the customer.⁶ If projected costs are higher than projected revenues, the Company would require the customer to pay a CIAC to make the analysis whole.⁷ Subject to the Company's discretion, the customer could alternatively take service under Pilot Rider MLX, Mainline Extension Service, which permits customers to pay a higher delivery rate in lieu of providing a CIAC.⁸ The Company currently does not offer any mains footage allowance to customers to connect to its natural gas system.⁹

In this proceeding, the Company proposed a tariff change to modify its Main Line Extension Policy by allowing 150 feet of main line per residential applicant without the need for an economic analysis in normal situations.¹⁰ Additionally, for extension projects greater than 150 feet per customer, the Company would determine the required customer contribution by subtracting 150 feet per customer from the actual average foot per customer associated with the

⁵ Peoples Statement No. 2, at 36.

⁶ *Id.*

⁷ *Id.*

⁸ Peoples Statement No. 2, at 36-37.

⁹ Peoples Statement No. 2, at 38.

¹⁰ *Id.* Peoples' Witness Joseph Gregorini explains in his direct testimony how abnormal situations will be handled: "At the discretion of the Company, certain projects, which contain abnormal underground conditions, such as crossing a stream or state highway, or visible ledge, or rock that will affect excavation or excessive permitting fees would not be eligible for the 150 foot allotment."

specific mainline extension project and then multiplying that difference by the actual cost per foot associated with the extension project to determine the customer contribution required for each customer within the project area.¹¹

The intent of the Company's proposal is to make it is easier for residential applicants to acquire natural gas service by reducing the overall level of the CIAC that would otherwise be required of residential customers under Peoples Natural's existing main extension policy.¹² However, the Company's proposal to reduce the required level of residential CIACs going forward undermines the purpose of a CIAC, which is to offset that part of the cost of an extension that is not otherwise supported by an applicant's expected revenue stream over a forty year period.¹³

The OSBA opposes the Company's proposed modifications to its Main Line Extension Policy because the proposal would shift a portion of the cost of residential main extensions from residential applicants to general ratepayers, compared to Peoples Natural's existing extension policy.¹⁴ Adoption of the proposed modification would not lower the Company's cost of extending service to residential applicants, it merely would excuse the residential applicant from paying a portion of that cost.

¹¹ Peoples Statement No. 2, at 39.

¹² OSBA Statement No. 1 at 16.

¹³ OSBA Statement No. 1 at 14.

¹⁴ OSBA Statement No. 1, at 16-17.

Cost causation is a basic tenant in utility law ratemaking.¹⁵ The Commonwealth Court of Pennsylvania unambiguously decided that the cost of service should be the “polestar” criterion for rate-setting. *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007). It is fundamentally unfair to force a customer to pay for a cost which that customer did not cause or from which that customer does not receive a benefit. Section 1304 of Pennsylvania Public Utility Code prohibits public utilities from making or granting an unreasonable preference in ratemaking to any person or subjecting any person or corporation to any unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1304. To require general ratepayers to pay a portion of residential applicants’ main line extension projects is discriminatory, gives an unreasonable preference to the residential applicants, and subjects general ratepayers to an unreasonable disadvantage in violation of 66 Pa. C.S. § 1304. Imposing costs caused by specific residential main line extensions on general ratepayers is discriminatory ratemaking and violates 66 Pa. C.S. § 1304; therefore, the Company’s proposal to modify its Main Line Extension Policy should be denied.

B. The Company’s Proposal Impermissibly Creates a Cross-Class Subsidy

The Company’s proposal also violates the principles of eliminating cross-class subsidization. *Lloyd*, 904 A.2d at 1019-1021. The Company’s proposal creates a subsidy for residential applicants seeking main line extensions by general ratepayers. The Company’s

¹⁵ Recently, in its Proposed Policy Statement Order, at Docket No. M-2015-2518883, the Commission proposed guidelines for specific issues that the Commission will consider in reviewing the rates and proposed rate structures filed by fixed utilities. Specifically, the Commission proposed the following language for Section 69.3302: “In determining just and reasonable distribution rates...the Commission will consider, among other relevant factors: (1) How rates align revenues with cost causation principles as to both fixed and variable costs.” Proposed Policy Statement Order, entered May 23, 2018, at 27, Annex A. Although the final decision on this docket is still pending, the Proposed Policy Statement Order illustrates the Commission’s recognition of the vital role cost causation plays in utility ratemaking and demonstrates the Commission’s preference for cost causation to be considered when evaluating the reasonableness of rates.

proposed 150-foot allowance is not equivalent to the current allowance of \$5,906.20 for the purposes of determining a CIAC.¹⁶ Peoples Natural's 2018 extension cost was \$45.16 per foot, which, when multiplied by 150 feet, would result in a cost-allowance per project of \$6,774.00.¹⁷ In actuality, the current \$5,906.20 allowable investment amount is equivalent to 131 feet, not 150 feet.¹⁸ The difference between the two allowance figures equates to a reduction in a residential applicant's otherwise required CIAC of \$868.00 at Company proposed rates; under the Company's proposal this \$868.00 will be paid by general ratepayers.¹⁹ The Company's proposal to have general ratepayers pay a portion of the cost of main line extensions for residential applicants should be rejected because it creates a cross-class subsidization.

C. The Company's Current Main Line Extension Policy is Reasonable and Appropriate

The Company argues that its proposed modification aims to remove a major barrier for residential customers to receive or convert to natural gas, i.e. paying a CIAC.²⁰ However, it is incorrect to view a CIAC as an arbitrary barrier to the provision of natural gas service. Rather, the role of a CIAC is to prevent the Company from going forward with an *uneconomic* extension project, i.e., an extension project that, absent a CIAC, would not generate sufficient revenues to recover the cost of extending natural gas service to a new customer.²¹

¹⁶ OSBA Statement No. 1-S, at 7.

¹⁷ OSBA Statement No. 1, at 16; OSBA Statement No. 1-S, at 7.

¹⁸ OSBA Statement No. 1-S, at 7. Per OSBA Witness Kalcic's surrebuttal testimony: "The current \$5,906.20 allowable investment amount is equivalent to an allowance of approximately (\$5,906.20 divided by Peoples' 2018 extension cost of \$45.16 per foot equals) 131 feet, nor 150 feet."

¹⁹ OSBA Statement No. 1-S, at 7.

²⁰ Peoples Statement No. 2, at 37.

²¹ OSBA Statement No. 1, at 14.

In light of the economic role that the CIAC is intended to serve, the Company's current Main Line Extension Policy is both reasonable and appropriate. The economic analysis used by the Company under its current Main Line Extension Policy gives an applicant credit for forty years of net revenue contributions for purposes of determining the customer's allowable investment amount.²² Forty years should be more than sufficient time for a customer to pay back the initial service extension costs incurred by the Company without requiring a CIAC.²³ Furthermore, the Company has failed to provide any valid economic argument in support of its proposal to effectively extend a residential applicant's payback period beyond the forty-year time horizon used under the Company's current Main Line Extension Policy.²⁴ Lacking such economic support, the Company's proposal should be rejected.

²² OSBA Statement No. 1, at 17.

²³ *Id.*

²⁴ *Id.*

V. PROPOSED FINDINGS OF FACT

1. On January 28, 2019 Peoples Natural filed both Retail Tariff Gas—PA P.U.C. No. 47 and Supplier Tariff Gas--PA P.U.C. No. S-3 to become effective March 29, 2019.
2. Under Peoples Natural's current Main Line Extension Policy, when a customer requests the Company to extend its facilities for service, the Company uses an economic analysis which compares the net present value of the customer's projected future revenue to the cost the Company would incur to add that customer. (Peoples Statement No. 2, at 36).
3. Under Peoples Natural's current Main Line Extension Policy, if projected revenues are greater than projected costs, the Company will extend facilities without cost to the customer but if projected costs are higher than projected revenues, the Company would require the customer to pay a CIAC to make the analysis whole. (Peoples Statement No. 2, at 36).
4. Under Peoples Natural's current Main Line Extension Policy, subject to the Company's discretion, the customer requesting an extension could also take service under Pilot Rider MLX, Mainline Extension Service, which permits customers to pay a higher delivery rate in lieu of providing a CIAC. (Peoples Statement No. 2, at 36-37).
5. Under its current Main Line Extension Policy, Peoples Natural does not offer any mains footage allowance to customers to connect to its natural gas system. (Peoples Statement No. 2, at 38).
6. Peoples Natural's current Main Line Extension Policy is just and reasonable. (OSBA Statement No. 1, at 14, 16-17).

7. In this proceeding, Peoples Natural proposed a tariff change to modify its Main Line Extension Policy by allowing 150 feet of main line per residential applicant without the need for an economic analysis in normal situations. (Peoples Statement No. 2 at 38).

8. Peoples Natural's proposed changes to its Main Line Extension Policy would result in shifting a portion of the actual cost of extending service from residential applicants to general ratepayers, reducing the residential applicants' otherwise applicable CIACs. (OSBA Statement No. 1, at 16-17).

9. Peoples Natural's proposed changes to its Main Line Extension Policy would have the effect of creating a subsidy paid by general ratepayers for residential applicants, which creates an unreasonable preference for residential applicants, results in an unreasonable prejudice to other ratepayers, and violates cost causation principles. (OSBA Statement No. 1-S, at 7).

10. Peoples Natural's proposed changes to its Main Line Extension Policy would result in cross-class subsidization because it would have the effect of general ratepayers subsidizing residential applicants seeking main line extensions. (OSBA Statement No. 1-S, at 7).

VI. PROPOSED CONCLUSIONS OF LAW

1. Peoples Natural is a “public utility,” a “natural gas distribution company” as those terms are defined, respectively, in Sections 102, and 2202 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2202, and, therefore, is subject to regulation by the Commission. (Joint Petition for Approval of Settlement Stipulation, at 3, ¶1).
2. Section 1301 of the Public Utility Code, 66 Pa. C.S. §1301, requires every rate made, demanded or received by any public utility, to be just and reasonable, and in conformity with regulations or orders of the Pennsylvania Public Utility Commission.
3. Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304, provides that no public utility shall, as to rates, make or grant an unreasonable preference to any person, corporation, or municipal corporation.
4. Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304, provides that no public utility shall, as to rates, subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.
5. The polestar of ratemaking is the cost of providing service. *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007).
6. Under *Lloyd*, 904 A.2d at 1019-1021 (Pa. Cmwlth. 2006), a principle of ratemaking is eliminating cross-class subsidization.
7. Peoples Natural’s current Main Line Extension Policy is reasonable, appropriate, and conforms to the requirements set forth in Section 1301 of the Public Utility Code. 66 Pa. C.S. § 1301.

8. Peoples Natural's proposed changes to its Main Line Extension Policy would result in unreasonable and unjust rates in violation of Section 1301 of the Public Utility Code. 66 Pa. C.S. § 1301.

9. Peoples Natural's proposed changes to its Main Line Extension Policy would result in an unreasonable preference to residential applicants requesting main line extensions in violation of Section 1304 of the Public Utility Code. 66 Pa. C.S. § 1304.

10. Peoples Natural's proposed changes to its Main Line Extension Policy would subject all general ratepayers who are not residential applicants requesting main line extensions to an unreasonable prejudice or disadvantage in violation of Section 1304 of the Public Utility Code. 66 Pa. C.S. § 1304.

11. Peoples Natural's proposed changes to its Main Line Extension Policy violate cost of service and cross-class subsidization principles by shifting a portion of the cost of providing residential main line extensions to general ratepayers. *Lloyd* 904 A.2d at 1019-1021 (Pa. Cmwlth. 2006).

VII. PROPOSED ORDERING PARAGRAPHS

1. In that Peoples Natural's proposed tariff changes to modify its Main Line Extension Policy would result in unjust and unreasonable rates that would violate cost of service and cross-class subsidization principles, and would create an unreasonable preference for residential applicants to the unreasonable disadvantage of general ratepayers, Peoples Natural's proposed changes to its Main Line Extension Policy are denied.

VIII. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission reject the Company's proposed tariff changes that would modify its Main Line Extension Policy.

Respectfully submitted,



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Dated: July 9, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
: **Docket No. R-2018-3006818**
: **v.** :
: **Peoples Natural Gas Company LLC** :

CERTIFICATE OF SERVICE

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

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