



COMMONWEALTH OF PENNSYLVANIA



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July 22, 2019

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:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.D. Moore".

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cc: Honorable Joel Cheskis
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v. : Docket No. R-2018-3006818
Peoples Natural Gas Company LLC :

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of July 2019.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2018-3006818
v.	:	C-2019-3007711
	:	C-2019-3007698
Peoples Natural Gas Company, LLC	:	C-2019-3007752
	:	C-2019-3007635
	:	C-2019-3007959
	:	C-2019-3007904
	:	C-2019-3008506

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I. INTRODUCTION

As detailed in the Main Brief of the Office of Consumer Advocate (OCA), Peoples Natural Gas Company, LLC (Peoples or the Company) is a natural gas distribution company (NGDC) headquartered in Pittsburgh, Pennsylvania. On January 28, 2019, Peoples filed Retail Tariff Gas – PA PUC No. 47 with the Pennsylvania Public Utility Commission (Commission) to become effective on March 29, 2019. In its initial filing, Peoples proposed, *inter alia*, a modification to the Company’s current main line extension policy (Extension Policy) which would provide potential residential customers an allowance of 150 feet of mains extension per customer without charge to the new customer in order to encourage more residential customers to connect to the Company’s system. On July 9, 2019, the OCA and Peoples filed Main Briefs in support of the proposed Extension Policy, and the Office of Small Business Advocate (OSBA) filed a Main Brief in opposition to the proposed Extension Policy. For the reasons set forth herein, the OCA submits that the modification to Peoples’ Extension Policy as originally proposed in the Company’s initial filing is in the public interest and should be approved.

A. Procedural History.

The procedural history of this proceeding is set forth in the OCA’s Main Brief. See OCA Main Brief at 5-7. On July 9, 2019, the OCA and Peoples filed Main Briefs in support of the proposed Extension Policy, and the OSBA filed a Main Brief in opposition to the proposed Extension Policy. The OCA now files this Reply Brief to respond to arguments put forth by the OSBA in its Main Brief.

B. Burden of Proof.

As detailed in the OCA’s Main Brief, Peoples must affirmatively establish the justness and reasonableness of every component of its requested rate increase. See OCA Main Brief at 7-8; see

also Lower Frederick Twp. v. Pa. PUC, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted); Brockway Glass v. Pa. PUC, 437 A.2d 1067 (Pa. Commw. 1981); Burleson v. Pa. PUC, 461 A.2d 1234 (1983). In this Reply Brief, and in the OCA's Main Brief, the OCA demonstrates why Peoples has successfully met its burden in establishing the justness and reasonableness of the proposed change to the Company's Extension Policy.

II. SUMMARY OF REPLY ARGUMENT

In its Main Brief, the OSBA argues that the proposed Extension Policy creates a cross-class subsidy because the proposed Extension Policy impermissibly shifts the costs of mains extensions from residential applicants to general ratepayers. The OSBA's subsidization argument, however, is based on speculation, not fact.

For purposes of its argument, the OSBA assumed that every residential applicant to take service under the modified Extension Policy that required the full 150 feet of main extension would use exactly 86.9 Mcf of natural gas per year. While some residential applicants may fit the OSBA's paradigm, the reality of natural gas mains extensions is that some applicants may require extensions that are less than 150 feet and some applicants may require extensions that are greater than 150 feet. Additionally, not every customer will consume exactly 86.9 Mcf of natural gas per year. In reality, natural gas usage varies among customers, with some requiring more than 86.9 Mcf per year and others requiring less than 86.9 Mcf per year. Simply put, the OSBA has not provided sufficient evidence to support its assumption that every residential applicant to take service under the proposed Extension Policy will require 150 feet of main and will consume 86.9 Mcf of natural gas per year. Without implicitly accepting OSBA's premise to its argument, for which the record provides no support, the argument that cost-shifting will occur is unsupported and should be dismissed.

Further, the OSBA claims that the proposed Extension Policy violates cost-causation principles and results in discriminatory ratemaking by requiring general ratepayers to pay for a portion of the residential applicants' main line extension. The OSBA's argument that the Company's proposed modification to the Extension Policy results in discriminatory ratemaking is misplaced.

Under Section 1304 of the Public Utility Code (Code), discriminatory ratemaking requires that a certain class receive an advantage at the expense of another class. In this case, the OSBA has failed to provide sufficient evidence to demonstrate that residential applicants will receive an unreasonable advantage under the Extension Policy at the expense of general ratepayers. Moreover, the costs associated with residential applicants taking service under the proposed Extension Policy have not yet been incurred, and thus, OSBA can only speculate at this time as to how the implementation of the Extension Policy may affect the future cost allocation to general service ratepayers. Accordingly, the OSBA cannot show, based on the record of this case, that the modified Extension Policy will violate cost-causation principles and will result in discriminatory ratemaking.

As detailed below and in the OCA's Main Brief, Peoples has met its burden of proof by demonstrating that the proposed Extension Policy is just, reasonable, and in the public interest.

III. REPLY ARGUMENT

In its Main Brief, the OSBA argues that the proposed Extension Policy creates a cross-class subsidy because the proposed Extension Policy impermissibly shifts the costs of mains extensions from residential applicants to general ratepayers. OSBA Main Brief at 6-8. Further, the OSBA claims that the proposed Extension Policy violates cost-causation principles and results in discriminatory ratemaking by requiring general ratepayers to pay for a portion of the residential

applicants' main line extension. OSBA Main Brief at 8. The OSBA's arguments, however, are unpersuasive.

First, the OSBA's argument that an impermissible shifting of costs will occur is inconsistent with the evidence in this matter. On the record of this case, the OSBA has failed to provide sufficient evidence to show that the proposed Extension Policy will create a revenue deficiency that requires a shifting of costs from residential applicants to general ratepayers.

Second, the OSBA's argument that the Company's proposed modification to the Extension Policy results in discriminatory ratemaking in violation of 66 Pa. C.S. Section 1304 is misplaced. To prove a claim of discriminatory ratemaking requires sufficient evidence to show that a certain class will receive an advantage at the expense of another class. In this case, the OSBA has failed to provide sufficient evidence to demonstrate that residential applicants will receive an advantage under the Extension Policy at the expense of general ratepayers. The OSBA's arguments are unpersuasive, and the OCA submits that the Company has met its burden to demonstrate that the proposed Extension Policy is just, reasonable, and in the public interest.

A. The OSBA's Argument That An Impermissible Shifting Of Costs Will Occur Is Inconsistent With The Record Evidence In This Matter.

In its Main Brief, the OSBA argues that the proposed modification to the Company's Extension Policy would shift a portion of the cost to extend mains to residential applicants from the residential applicants to the Company's general ratepayers. OSBA Main Brief at 7. The OSBA claims that the Company's current allowable investment amount of \$5,906.20 for a residential applicant equals a main extension of 131 feet, not 150 feet. OSBA Main Brief at 9. An extension of 150 feet, in contrast, would cost \$6,774.00. OSBA Main Brief at 9. The OSBA then argues that the difference of 19 feet of main, or \$868, would, under the current mains extension policy, be required as a contribution-in-aid-of-construction (CIAC). Since the modified Extension Policy

would include the first 150 feet with no CIAC, the OSBA argues that this \$868 would be shifted from residential applicants to general ratepayers under the proposed Extension Policy. OSBA Main Brief at 9.

While the arithmetic may be sound, OSBA's argument relies on a false assumption. To arrive at the conclusion that Peoples' current allowable investment amount for a residential applicant is \$5,906.20, the OSBA assumes as fact that the residential applicant in question will use exactly the residential class average usage of 86.9 Mcf per year. OSBA St. 1 at 16; OSBA St. 1-S at 7. The OSBA cannot, however, definitively state that every residential applicant to take service under the proposed Extension Program will consume exactly 86.9 Mcf per year. The reality of natural gas consumption is that some residential applicants may consume more than and some may consume less than 86.9 Mcf per year. In fact, the OSBA even recognizes the 86.9 Mcf assumption as an "average" figure used as merely an example. See OSBA St. 1 at 16; OSBA St. 1-S at 7, fn. 2.

Similarly, the OSBA assumed that all residential applicants to take service under the proposed Extension Policy will require an extension greater than 131 feet to arrive at its conclusion that a shifting of costs will occur.¹ As with usage, the reality of natural gas mains extensions is that some residential applicants may require extensions shorter than 131 feet and some may require extensions greater than 131 feet. The Company took this into consideration when developing the proposed modification to the Extension Policy. As Peoples' witness Joseph Gregorini explained:

Peoples calculated the miles of road and housing units in its service territory and found that there was an average of 128 feet of road per every housing unit. Since Peoples is also pursuing the program to expand gas service into rural areas, the

¹ Under the OSBA's 86.9 Mcf hypothetical, the OSBA fails to consider main extensions that are shorter than 131 feet and also customers whose usage is higher than the residential class average of 86.9 Mcf. Under the OSBA's hypothetical, only a main extension between 131 feet and 150 feet for a residential customer using 86.9 Mcf per year, or less, could potentially create a revenue shortfall and then that shortfall could potentially be allocated to general service customers in a future base rate case.

Company also calculated the miles of road and housing units for the Company's rural area outside of Allegheny County and found that there was an average of 180 feet of road per every housing unit in the more rural areas of the Company's service territory. By offering a 150 foot allowance to each applicant, the Company is providing an allowance equivalent to the average distance of extending its main from one housing unit to the next within its service territory.

Peoples St. 2 at 40.

Moreover, as explained in the OCA's Main Brief, the OSBA's analysis ignores those residential applicants whose projected revenues exceed the projected cost to extend mains and thus would create a positive contribution to revenues. See OCA Main Brief at 12. The Company's historical analysis demonstrates that when these customers are considered alongside those residential applicants who would qualify for the 150 foot Extension Policy, "the average 'allowable' project cost per residential customer under [the] 150 foot rule would have been only \$3,064." Peoples St. 2-R at 3-4; see OCA Main Brief at 12. The \$3,064 average allowable project cost per residential customer is significantly less than the OSBA's assumed allowable investment amount of \$5,906, which demonstrates that no shifting of costs would have occurred if the modified Extension Policy were already in effect.

In order to conclude that a shifting of costs will occur, the OSBA has effectively confined its analysis to a very specific subset of residential applicants that does not, in fact, exist at this point in time. While some applicants may fit the OSBA's paradigm, the residential applicants to take service under the modified Extension Policy will not require uniform extensions of main and will not have static levels of usage. Moreover, when viewed in a microcosm as the OSBA proposes, one could argue that various subsidies continually occur within utility systems. See OCA Main Brief at 13. New customers taking service in locations where mains extensions have not been an issue could be said to have been subsidized by all the existing customers that have contributed to the existing system for years. Likewise, Peoples indicated, "[t]he Company does

not decline to replace lines or require contributions from existing customers that have above average road lengths in front of their homes.” Peoples Main Brief at 16. In this proceeding, the OSBA has failed to provide sufficient evidence to demonstrate that residential customers who choose to take service under the Extension Policy will be unreasonably subsidized by the Company’s existing customers.

B. The OSBA’s Argument That The Company’s Proposed Change To The Extension Policy Is Discriminatory Ratemaking In Violation Of 66 Pa. C.S. Section 1304 Is Misplaced.

The OSBA cites to 66 Pa. C.S. Section 1304 and Lloyd v. Pa. P.U.C., 904 A.2d 1010, 1020 (Pa. Commw. 2006) and argues that the modified Extension Policy is discriminatory because the Extension Policy favors residential applicants over general ratepayers. OSBA Main Brief at 8. According to the OSBA, the Extension Policy violates cost-causation principles by imposing costs attributable to the residential applicants on general ratepayers. OSBA Main Brief at 8.

The OSBA’s discrimination arguments are misplaced. Section 1304 of the Code provides, in relevant part, that:

No public utility shall, as to rates, make or grant any *unreasonable* preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304 (emphasis added). As the text of Section 1304 clearly indicates, preferences or advantages provided to a particular class are not *per se* discriminatory. The preference or advantage must be *unreasonable*. See id.

As explained by the Commonwealth Court of Pennsylvania:

Before a rate can be declared unduly preferential and therefore unlawful, it is essential that there be not only an advantage to one, but a resulting injury to another. Such an injury may arise from collection from one more than a reasonable rate to him in order to make up for inadequate rates charged to another, or because of a

lower rate to one of two patrons who are competitors in business. There must be an advantage to one at the expense of the other.

Phila. Elec. Co. v. Pa. PUC, 470 A.2d 654, 657 (Pa. Commw. Ct. 1984) (citing Alpha Portland Cement Co. v. Public Service Comm'n, 84 Pa. Super. 225 (1925)).²

Here, the OSBA has failed to provide sufficient evidence to demonstrate that residential applicants under the Extension Policy would receive an advantage at the expense of general ratepayers. As explained in Subsection A. above, the OSBA's argument that a shifting of costs will occur is premised on an incomplete set of facts. Not every residential applicant will require a mains extension greater than 131 feet, and not every residential applicant will use 86.9 Mcf of natural gas per year. In fact, should a residential applicant require an extension of less than 131 feet and ultimately use more than 86.9 Mcf per year, the Company's general ratepayers stand to receive a benefit—not an injury—because the Company will incur fewer costs in connecting the residential applicant to the system, and the residential applicant will be contributing more to the incremental cost of connecting to the system and to the costs of the existing system. See OCA Main Brief at 13.

Even if a shifting of costs does, in fact, occur, the Company has demonstrated that such a preference or advantage is reasonable under these circumstances and thus not discriminatory under Section 1304 for several reasons. First, as Company witness Joseph Gregorini explained in Direct Testimony, “[o]ne of the more significant barriers for residential customers to receive or convert to natural gas is the CIAC” as a whole. Peoples St. 2 at 37. The proposed Extension Policy is

² See also Bldg. Owners & Managers Ass'n v. Pa. P.U.C., 79 Pa. Commw. 598, 605, 470 A.2d 1092, 1095-96 (1984) (“[W]e reiterate that mere variation in rates among classes of customers does not violate the Public Utility Code. The requirement is merely that rates of one class of service shall not be unreasonably prejudicial or disadvantageous to a patron in any other class of service.”); Mill v. Pa. P.U.C., 67 Pa. Commw. 597, 601, 447 A.2d 1100, 1102 (1982) (“It is true that Section 1303 prohibits a public utility from demanding or receiving a rate less than that established in the applicable tariff, but Section 1304 modifies that prohibition by providing that a utility shall not grant any *unreasonable* preference or advantage to any person. The clear implication from this language is that a person may be given a rate preference so long as it is not unreasonable[.]” (emphasis in original)).

designed to reduce this barrier and expand the benefit of low-cost natural gas to areas of the Commonwealth that are currently unserved and underserved by natural gas. Peoples Main Brief at 13-14.

Second, the proposed Extension Policy is easier for potential customers to understand. Peoples Main Brief at 14-15; Peoples St. 2 at 38. As the Company explained, the current Extension Policy requires an economic test that can be difficult to understand and may result in neighbors receiving different footage allowances of main. Peoples Main Brief at 14; see Peoples St. 2 at 38. These similarly situated customers, as a result, may be left confused as to why different mains allowances were provided. Peoples Main Brief at 14. The proposed Extension Policy simplifies the mains extension process by removing the economic test and instituting a straightforward mains extension allowance of 150 feet. Peoples Main Brief at 14-15. As the Company indicated, “[u]questionably, a person can better understand a standard allowance of 150 feet of main line per residential customer, rather than a footage allowance that can vary significantly among seemingly similarly-situated customers.” Peoples Main Brief at 15.

Third, the proposed Extension Policy is in line with the main line extension policies of other NGDCs within the Commonwealth. See Peoples Main Brief at 15; OCA Main Brief at 14-15. Columbia Gas of Pennsylvania, for example, currently offers an allowance of 150 feet of main line per customer. Peoples Main Brief at 15; OCA Main Brief at 15. Additionally, NGDCs in neighboring jurisdictions also offer similar allowances of main line. Peoples Main Brief at 15; Peoples St. 2 at 39. Allowing Peoples to offer an allowance of 150 feet of main line per residential customer would allow Peoples’ Extension Policy to be consistent with the main line extension policies of other NGDCs.

Fourth, as a matter of public policy, expanding the availability of low-cost natural gas to areas within the Commonwealth that are currently unserved and underserved is in the public interest. OCA St. 2-R at 2; see OCA Main Brief at 14. Residential applicants within these areas stand to benefit from the price competitiveness and availability of natural gas service. OCA Main Brief at 14. As OCA witness Glenn Watkins explained in Direct Testimony:

During the last few years, there have been several applications made by Pennsylvania NGDCs to promote the availability of gas to unserved and underserved areas. These applications and cases have involved various mechanisms to promote this objective wherein various mains extension riders and rates have been established in order to enable new customers more options, with lower upfront costs, in connecting to NGDCs' distribution systems and thereby having natural gas made available for their various energy needs.

OCA St. 2-R at 2.

Finally, the OSBA's reliance on Lloyd v. Pa. P.U.C., 904 A.2d 1010, 1020 (Pa. Commw. 2006) is premature and inapplicable to the facts of this proceeding. The issue in Lloyd was whether the distribution and transmission rate increases approved by the Commission for commercial and industrial customers, viewed on a total bill basis, were unreasonable. See Lloyd, 904 A.2d at 1015-21. The Commonwealth Court held that the Commission must consider the proposed increases to distribution and transmission rates separately as to the impacts on each class. Observing the principle of gradualism as to the particular rate increase to a class is acceptable, providing that the rate is viewed separately for each unbundled component and not simply looked at on a total bill basis. Id. The issue here is not an unreasonable increase to a particular class as to cost of service because such an allocation has not yet been made.

The Company's proposed Extension Policy does not specify how costs related to the Extension Policy will be allocated in future rate cases. See Peoples St. 2 at 40. Instead, the Company merely indicated that the "cost of all facilities installed will be included in rate base in


future proceedings and revenues will be reflected for the new customers added in future proceedings.” Peoples St. 2 at 40. Unlike Lloyd, the costs associated with the modified Extension Policy proposed in this proceeding are to be allocated in future proceedings. The OSBA will have the opportunity to review any potential subsidies or cost-shifting and recommend cost allocations accordingly in the Company’s next base rate case. At that time, the OSBA may review the residential mains extensions that have been completed on a customer-by-customer basis, analyze the cost and revenues associated with each residential mains extension project, and determine whether a particular class has subsidized the residential applicants.

The Company has provided substantial evidence in this matter to demonstrate that the proposed Extension Policy will provide a benefit to customers seeking to obtain access to low-cost natural gas service in unserved and underserved areas within the Commonwealth without negatively affecting the Company’s current customers. The OSBA’s arguments to the contrary lack merit and are inconsistent with the record evidence in this proceeding.

IV. CONCLUSION

The OSBA's arguments that Peoples' proposed Extension Policy will create an unreasonable, discriminatory shifting of costs from residential applicants to general ratepayers are unpersuasive and should be rejected. In this proceeding, Peoples has met its burden of proof by demonstrating that the Extension Policy will provide residential customers with an enhanced opportunity to benefit from low-cost natural gas service in unserved and underserved areas within the Commonwealth without negatively affecting the Company's current customers.

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