

September 30, 2009

VIA ELECTRONIC FILING (E-FILING)

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pa. PUC v. The Peoples Natural Gas Company d/b/a, Dominion Peoples
Docket No. M-2009-2086651**

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding, please find the comments of the Pennsylvania Utility Law Project. These comments are submitted pursuant to the Commission Opinion and Order in this proceeding entered September 10, 2009.

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

Very truly yours,

/s/ Julie George

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Enclosures
cc: Cert. of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania PUC v.
The Peoples Natural Gas Company d/b/a,
Dominion Peoples**

Docket No. M-2009-2086651

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing Comments upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Pennsylvania Utility Law Project
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Dated: September 30, 2009

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Pa. Public Utility Commission, Law
Bureau Prosecutory Staff v. The
Peoples Natural Gas Company, d/b/a/
Dominion Peoples**

Docket No. M-2009-2086651

COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT

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Dated: September 30, 2009

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments in support of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) approval of the revised Settlement Agreement between the Law Bureau’s Prosecutory Staff (“Law Bureau”) and the Peoples Natural Gas Company, d/b/a/ Dominion Peoples (“Dominion”).¹

These comments specifically focus on the Commission’s revision and approval of the Settlement Agreement’s Paragraph 31A, which directs Dominion, in lieu of a civil penalty, to pay \$5,000 into its Low Income Usage Reduction Program (“LIURP”) as an increment above the Commission-Approved 2009 LIURP budget. Because Paragraph 31A is in the public interest, PULP supports its inclusion in this settlement agreement. PULP also supports continuation by the Commission of approving the payment of settlement proceeds into public utility company LIURPs and other Universal Service programs.

PULP respectfully submits these comments pursuant to the Commission’s Opinion and Order entered on September 10, 2009.² PULP, is part of the Pennsylvania Legal Aid Network, a nonprofit network of legal service providers representing the interests of low income Pennsylvanians. In particular, PULP is the specialized project providing statewide representation, advice, and support in energy and utility matters related to low income, residential utility consumers. PULP thanks the Commission for this opportunity to be heard on this issue.

¹ Ordering paragraph number 4 of the Commission’s Opinion and Order entered September 10, 2009 states, “That, subsequent to the Commission’s review of the comments filed in this proceeding, an Opinion and Order will be issued.” PULP does not wish to delay the entry of a Final Order in this proceeding and only submits these comments to support the Settlement Agreement and the Commission’s practice of directing settlement proceeds into Universal Service programs.

² *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. M-2009-2086651, (Order entered September 10, 2009).

II. BACKGROUND

This proceeding involves allegations of multiple violations of the Code of Federal Regulations and the rules and regulations of the Commission relative to natural gas pipeline safety. The specific incidents that are the subject of the Settlement Agreement occurred on May 2, 2007, June 8, 2007, and June 21, 2007. An informal investigation was conducted pursuant to Subsection 331(a) of the Public Utility Code, 66 Pa. C.S. § 331(a), and Section 3.113 of the Commission's Rules of Practice and Procedure, 52 Pa. Code §3.113. Commission Staff and counsel for Dominion conducted settlement negotiations that resulted in the Agreement filed on April 24, 2009.³ The Settlement required Dominion to pay \$5,000 to contractors who participate in the Low Income Usage Reduction Program (LIURP), where the company will provide documentation that the money was spent on winterization of homes where the owners meet income eligibility requirements and the utility does not claim or include any portion of this civil settlement amount in any future rate proceeding. Prior to issuing an order on the proposed Settlement Agreement, Vice-Chairman Tyrone J. Christy moved that paragraph describing the \$5,000 LIURP contribution be changed to specify that the Settlement funds be an increment to the Commission-approved 2009 LIURP budget.⁴

On September 10, 2009, the Commission entered an Opinion and Order modifying the Settlement Agreement in part. The Commission directed \$5,000 as an increment to the Commission-approved 2009 LIURP budget of \$610,000 establishing a revised 2009 LIURP

³ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. M-2009-2086651, (Settlement Agreement filed April 24, 2009).

⁴ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. M-2009-2086651, (Motion of Vice-Chairman Tyrone J. Christy, May 14, 2009).

budget of \$615,000.⁵ The Commission again opened up the Settlement Agreement to public comment.⁶

III. COMMENTS

PULP supports and endorses revised Paragraph 31A of the Settlement Agreement, and PULP supports and endorses the Commission's ongoing practice of approving settlement agreements in which, in lieu of a civil penalty, public utility companies agree to pay money into their LIURP or other Universal Service programs, where the payment is above and beyond the Commission-approved annual LIURP budget and where the payment is not recovered from ratepayers but is paid by shareholders. PULP's support is based on the fact that these payments are in the public interest, solidly grounded on both legal and public policy foundations.

A. Legal Basis for PULP Support

It is the longstanding policy of the Commission to encourage settlement agreements between parties on grounds of administrative efficiency.⁷ A precondition of this policy is that the Commission has clear legal authority to both review and approve settlement agreements, formally and informally.⁸ Prior to approving a settlement agreement, however, the Commission must review it to ensure it is in the public interest.⁹ As part of this process, it is appropriate for the Commission to direct the payment of settlement proceeds into a public utility company's Universal Service programs. There is solid precedent supporting the Commission's decision,

⁵ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. M-2009-2086651, (Order entered September 10, 2009) at 5.

⁶ *Id* at 7.

⁷ 52 Pa. Code § 5.231(a).

⁸ 66 Pa.C.S. §§ 501, 504-506, 1301, and 1501; 52 Pa. Code §§ 5.232 and 3.113.

⁹ *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768, (Order entered January 7, 2004).

where the Commission deems it to be in the public interest, to amend a settlement agreement so as to direct the payment of settlement proceeds into a public utility company's Universal Service program.

In 2005, following allegedly improper terminations by Penelec, the Commission modified a settlement agreement between Penelec and the Law Bureau, changing the \$250,000 civil penalty to be paid into the Commonwealth's General Fund into a \$250,000 contribution into Penelec's Customer Assistance Program ("CAP").¹⁰ After a comment period, the PUC went on to recognize the difference between civil penalties and contributions to Universal Service programs and subsequently modified the settlement to direct \$250,000 to the Dollar Energy Fund and \$100,000 to Penelec's CAP. The basis for this modification was the Commission's determination that the "Settlement Agreement would better serve the public interest if the proposed \$250,000 civil penalty to be imposed on Penelec would be instead contributed to the Dollar Energy Fund and, if an additional \$100,000 were contributed to Penelec's CAP."¹¹ The Commission similarly modified a settlement agreement with National Fuel Gas Distribution Corporation ("NFG") in 2008, following an explosion in Clearfield County, Pennsylvania. The original agreement reached between the Commission's Prosecutory Staff and NFG required NFG to pay a \$50,000 civil penalty and to fund an addition \$30,000 of safety related activities.¹² The Commission increased the penalty to \$100,000 and the safety fund to \$50,000. It was additionally specified that the \$100,000 be directed to NFG's Neighbor for Neighbor Heat Fund

¹⁰ *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania*, Docket No. M-00051906, (Order entered December 21, 2005).

¹¹ *Id.* at 17.

¹² *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-2013013, (Order entered March 14, 2008).

instead of to the General Fund.¹³ Further, following a system billing error in 2008 by Pike County Light & Power Company (“PCL&P”), the company and Prosecutory Staff negotiated a settlement agreement including a \$35,000 civil penalty. The PUC decided the public interest would be served by directing the \$35,000 to the Neighbor Fund of PCL&P.¹⁴ UGI Utilities was investigated by the Commission following a 2008 gas explosion in Lancaster County, Pennsylvania. The original settlement agreement between staff and the company included a \$40,000 civil penalty that was later modified by the PUC to direct the money into UGI’s Operation Share Hardship Fund.¹⁵ Finally, and most recently, in July 2009, following an explosion in Allegheny County, the Commission modified a Settlement Agreement with Equitable Gas Company, calling for a \$5,000 civil penalty and a \$45,000 civil settlement to an Order directing \$25,000 to Equitable’s Hardship Repair Fund and \$25,000 Equitable’s Hardship Fund.¹⁶ Each of these proceedings serves as precedent for the current action.

The Commission recently adopted a Policy Statement which established standards for determining whether a fine for a violation is appropriate as well as if a proposed settlement is in the public interest, and this Policy Statement continues to provide flexibility to the Commission and parties in crafting settlement agreements.¹⁷ This flexibility further supports the Commission’s ability and authority to modify settlement agreements so they are in the public interest, including directing settlement proceeds into public utility company Universal Service

¹³ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-201301, (Order entered May 21, 2008).

¹⁴ *Pa. PUC v. Pike County Light & Power Company*, Docket No. M-00061973 (Order entered September 15, 2008).

¹⁵ *Pa. PUC v. UGI, Utilities, Inc.*, Docket No. M-2008-2036549, (Order entered November 6, 2008).

¹⁶ *Pa. PUC v. Equitable Gas Company*, Docket No. C-20065790, (Order entered July 6, 2009)

¹⁷ *The Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* became final on December 22, 2007, upon publication in the Pennsylvania Bulletin. See 37 Pa.B. 6755 (December 22, 2007).

programs. The Policy Statement. In promulgating the Policy Statement codified at 52 Pa. Code §69.1201, the Commission stated,

Commission precedent may be considered in both litigated and settled cases; however, parties in settled cases will have flexibility in determining whether and how this factor should be applied within the specific facts of the case in order to develop innovative solutions and to reach an equitable agreement.¹⁸

Therefore, given the long history of case law and the Policy Statement, the Commission has clear precedent for directing settlement amounts towards specific Universal Service programs and away from the Commonwealth's General Fund. Therefore, PULP supports the Commission's decision in this case to direct payment of funds into Dominion's LIURP.

B. Public Interest Basis for PULP Support

The settlement agreement at issue in this proceeding, directing payment of funds into the company's LIURP, is in the public interest because LIURP cost effectively reduces energy consumption among low income families; because it reduces the overall cost of service for residential ratepayers now and into the future; because it has a beneficial economic effect in the Commonwealth; and because it improves the health and well being of low income families. Therefore, the Commission is correct to direct payment of the settlement proceeds to this purpose.

1. *LIURP cost effectively reduces energy consumption.* LIURP has been shown by numerous reports and studies to cost effectively reduce energy consumption among low income households. Most recently, a recent long term study by the Consumer Services information Project of Penn State University showed that "LIURP is successful in both reducing energy

¹⁸ 37 Pa.B. 6755, 6758 (December 22, 2007).

consumption and heating energy arrearages in treated homes.”¹⁹ Penn State’s report showed that Pennsylvania gas heating customers receiving LIURP treatment achieved an average 21.4% reduction in energy consumption.²⁰ Dominion’s own Universal Service and Energy Conservation Programs evaluation supports the Penn State study, concurring that LIURP effectively reduces energy consumption in treated homes, by an average 25% in Dominion’s service territory.²¹ Moreover, LIURP reduces energy consumption in a cost effective manner, meaning that the money spent on the program is a smart investment, not just a means to reduce energy consumption.²²

This cost effective reduction in energy consumption is in line with Federal and state policy directives to reduce energy consumption. The Federal government recognizes the importance of reducing energy consumption and has passed legislation supporting energy conservation. The Department of Energy’s Weatherization Assistance Program²³ and the Department of Health and Human Services’ Low Income Home Energy Assistance Program²⁴ are both excellent examples of the Federal government’s commitment to energy conservation, as both of these programs, year after year, weatherize low income households in much the same way that LIURP does. Additionally, the American Recovery and Reinvestment Act of 2009 includes sizeable appropriations for weatherization and conservation activities as a means of

¹⁹ John Shingler, *Long Term Study of Pennsylvania’s Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services information Project of Penn State University, January 2009, at p. 47.

²⁰ *Id* at p. 28.

²¹ Melanie K. Popovich, *Dominion Peoples Universal Service Program Impact Evaluation: An Independent Analysis of Universal Service Programs*, November 30, 2004, at p. 67.

²² John Shingler, *Long Term Study of Pennsylvania’s Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services information Project of Penn State University, January 2009, at p. 47.

²³ See, 42 U.S.C. §6861 et seq.; 42 U.S.C. §7101 et seq.; 10 C.F.R. §440.1 et seq.

²⁴ See, 46 U.S.C. §2601 et seq.; 45 C.F.R. §96.80 et seq.;

spurring economic activity and reducing energy consumption.²⁵ Pennsylvania also recognizes the value of energy conservation and reducing the cost of energy for Pennsylvania citizens and has recently enacted sweeping pieces of legislation designed to foster alternative energy and energy conservation: the Alternative Energy Portfolio Standards Act of 2004,²⁶ the Alternative Energy Investment Act of 2008,²⁷ and Act 129 of 2008.²⁸

Because the LIURP program cost effectively reduces energy consumption among low income families, the program is directly in line with and advances the goals of Federal and state policy. Directing funds to this program as part of the settlement agreement is therefore in the public interest.

2. *LIURP reduces energy costs for other residential ratepayers.* The energy usage reductions LIURP creates lead to direct savings in energy expenditures for LIURP participants. The Commission's *2007 Report on Universal Service Programs and Collections Performance* states that LIURP households saved 15.5% on their average energy bills.²⁹ This yields a significant monetary benefit to the LIURP participant of an average \$373 annual savings per household.³⁰ This monetary savings makes sense – reduced energy consumption leads to lower bills.

The impact of these monetary savings are important because they go beyond low income LIURP participants to benefit all Pennsylvania ratepayers. Other residential ratepayers benefit from the reduced energy consumption of low income households because other residential

²⁵ See, P.L. 111-5 § 407, enacted on 2/17/200.

²⁶ 73 P.S. §1648.1 et seq.

²⁷ Pa. H. Bill No. 1, Printer's No. 86 (enacted July 9, 2008).

²⁸ Pa. H. Bill No. 2200, Printer's No. 4526 (enacted Oct. 15, 2008).

²⁹ Bureau of Consumer Services, *2008 Report on Universal Service Programs and Collections Performance*, at p.

36.

³⁰ *Id.*

customers pay for the universal service programs that serve low income families. Reducing energy consumption and utility bills of low income households results in lower universal service fees that other residential customers must pay. Additionally, LIURP participants tend to have lower arrearage levels after LIHEAP treatment,³¹ which means that fewer uncollectible dollars must be accounted for in the rates of residential ratepayers. Overall, then, LIURP reduces the costs for both low income and non-low income residential ratepayers.

These cost savings to other residential ratepayers are an important benefit that correlate with the public policy of the Commonwealth. In 2004, the General Assembly enacted Chapter 14. Among the purposes behind Chapter 14 was the goal of reducing costs of service for residential ratepayers while simultaneously ensuring service remained available to all customers on reasonable terms and conditions.³² Directing settlement agreement funds into LIURP meets this goal because doing this will support a program that reduces costs for other residential ratepayers while ensuring more reliable service for low income LIURP households.

Because the LIURP program reduces costs for other ratepayers, the program is in line with Federal and state policy directives. Directing funds to this program as part of the settlement agreement is therefore in the public interest.

3. *LIURP has a beneficial economic effect for Pennsylvania.* Weatherization programs, like LIURP, have been shown to produce substantial economic benefits in the communities in which they exist. Much of the economic impact from weatherization programs like LIURP is the creation of good, stable jobs; these jobs have good wages, which circulate back

³¹ Over half of gas LIURP participants reduced their arrearage after LIURP treatment. See John Shingler, *Long Term Study of Pennsylvania's Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services information Project of Penn State University, January 2009, at pp. 41-42.

³² 66 Pa.C.S. § 1402(3).

into the local economy and further stimulate local economic activity and development.³³ Some studies have found that “investments in low income energy efficiency would produce an economic impact that is more than 23 times the original investment.”³⁴ Pennsylvania’s own Department of Community and Economic Development (“DCED”) recognizes the power of weatherization funding to stimulate job creation and the local economy. In its recent plan submitted to the Department of Energy outlining its plans to use stimulus funds provided through the American Recovery and Reinvestment Act of 2009, DCED claims that it will put 940 Pennsylvanians to work through the investment of Federal funds into local weatherization activities.³⁵

Because investments into weatherization programs like LIURP have positive economic benefits for ratepayers and local economies, benefits which are clearly in the public interest, the Commission should approve this settlement agreement and those in the future which require contributions by the company into its LIURP.

4. *LIURP can improve the health and welfare of low income families.* Households that receive LIURP treatment reduce their expenditures for energy and can redirect that unspent money to other life-essential necessities, thereby improving the welfare of the entire household. It is well substantiated that low income families often face a dilemma in determining where to spend their limited resources in the face of high energy bills.³⁶ Because of limited income and

³³ Jerry Oppenheim and Theo MacGregor, *Energy Efficiency Equals Economic Development*, June 2008 Report for Entergy, at p. 33. Retrieved from <http://www.democracyandregulation.com/> on June 23, 2009.

³⁴ *Id.* at 33.

³⁵ Dept. of Community and Economic Development, *Pennsylvania ARRA Weatherization State Plan for Program Years 2009-2012*, at p. 1. Retrieved from <http://www.newpa.com/strengthen-your-community/redeveloping-your-community/housing/weatherization/index.aspx> on June 23, 2009.

³⁶ See Deborah A. Frank, Nicole B. Neault, Anne Skalicky, John T. Cook, Jacqueline D. Wilson, Suzette Levenson, Alan F. Meyers, Timothy Heeren, Diana B. Cutts, Patrick H. Casey, Maureen M. Black and Carol Berkowitz, *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, *Pediatrics* 2006;118:1293-1302. Retrieved from

nonexistent savings, low income families must choose between paying for utility service and paying for other life essential necessities, such as food, medicine, and/or clothing. “Convergent evidence suggests that the periodic stress of home heating and cooling costs may adversely impact the health and nutritional status of children and other vulnerable populations.”³⁷ That is, because low income households often have insufficient money to pay for all their basic needs, they will cut back on food and medicine, thereby imperiling the safety of household members, often the very young and the very old, just so they can pay to keep the heat on.

As noted earlier in these comments, participation in LIURP can produce significant energy usage reductions for a household, and these reductions can yield energy savings worth up to \$373 for the household.³⁸ These savings can be used by the household to mitigate the heat-or-eat dilemma. LIURP households, because of the money saved from energy usage reductions, have additional resources with which to purchase clothing, nutritious food, and medicine. As a result, household members will have improved health and well being.

LIURP can help improve the health and welfare of low income families by freeing up money from energy expenditures so it can be used to purchase other life essential necessities. This results in improved health for the family, a clear public policy benefit. Because LIURP can improve family health and well being, directing funds to be paid into LIURP is in the public interest.

CONCLUSION

<http://www.childrenshealthwatch.org/page/PublicationsTopic/#Site> on June 23, 2009. See also *Fuel for Our Future. Impacts of Energy Insecurity on Children’s Health, Nutrition, and Learning*. Children’s Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf on 4/3/08.

³⁷ See *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, at pp. 1294-1295.

³⁸ See footnotes 29, supra.

LIURP is an excellent program that provides a service which benefits participating low income households, which yields benefits for other ratepayers, and which generates economic and societal benefits beyond the program itself. These benefits are in the public interest and align with sound public policy. As such, the Commission has the legal authority to approve a settlement agreement that directs the payment of share holder funds into the company's LIURP above and beyond the Commission-approved budget for that LIURP. PULP endorses this practice in this proceeding and in other proceedings in the future.

PULP thanks the Commission for this opportunity to submit these comments on this matter of importance to low income families throughout Pennsylvania.

Respectfully submitted,

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