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August 10, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room (2nd Floor)
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Docket No. R-2010-2155608; Office of
Consumer Advocate, Docket No. C-2010-2163637; Office of Small Business
Advocate v. Peoples Natural Gas Company, LLC, Docket No. C-2010-2164664

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the original and nine (9) copies of the
Exceptions of Dominion Retail, Inc. A copy of this document has been served in accordance
with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

NJK:tlt

attachments

cc: Administrative Law Judge David A. Salapa (via hand delivery)
Per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2010-2155608
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Office of Consumer Advocate	:	C-2010-2163637
	:	
Office of Small Business Advocate	:	C-2010-2164664
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v.	:	
	:	
Peoples Natural Gas Company, LLC	:	

**EXCEPTIONS OF
DOMINION RETAIL, INC.**

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Dated: August 10, 2010

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I. STATEMENT OF THE CASE

Peoples Natural Gas Company (“PNG” or “Peoples”) commenced this, its 2010 § 1307(f) rate case, on April 1, 2010 with the submission of Supplement No. 119 to its Tariff Gas - PA PUC No. 43 to the Pennsylvania Public Utility Commission (“Commission”). Testimony and exhibits comprising Peoples’ direct case were filed contemporaneously. On April 12, 2010, Dominion Retail, Inc. (“Dominion Retail”) filed a Petition to Intervene which was granted by Order of Administrative Law Judge (“ALJ”) Salapa dated April 29, 2010.

The various parties in this proceeding submitted testimony, including the Office of Small Business Advocate (“OSBA”), the Office of Trial Staff (“OTS”) and the Office of Consumer Advocate (“OCA”). Dominion Retail presented its Statement Nos. 1 (Direct) and 2 (Surrebuttal), along with several exhibits. Thereafter, an evidentiary hearing was held on June 9, 2010.

Subsequent to the hearings, various of the parties entered into a Settlement Agreement, which was filed with the Commission on June 23, 2010. Dominion Retail is a participant in the settlement, but *expressly* did not join in the resolution of issues relating to lost and unaccounted for gas or the transportation retainage factors.

Main Briefs (“MB”) and Reply Briefs (“RB”) were submitted by the Parties on the disputed issues. Dominion Retail expressed its belief that the dramatic increases in lost and unaccounted for factors for transportation customers particularly, and customers generally, were not demonstrated by Peoples to be “just and reasonable” and, therefore, the proposed increase in retainage should be disallowed.

By cover letter dated July 21, 2010, the Recommended Decision (“RD”) of Administrative Law Judge David Salapa (“ALJ”) was released to which these exceptions are respectfully submitted.

II. BURDEN OF PROOF AND LEGAL STANDARD FOR RECOVERY

It should not be a point of debate that Peoples has the burden of proof in this proceeding to demonstrate that its proposed rates are just and reasonable.¹ Peoples’ view diverges markedly, however, where it claims that:

No party in this case has presented any evidence demonstrating that Peoples’ unique system should have lower UFG levels. The only claims have been that UFG levels on Peoples’ system have increased and, therefore, they must be unreasonable.²

Dominion Retail disagrees. Peoples must *itself* demonstrate the justness and reasonableness of the proposed rates before any other party is required to show otherwise. Peoples did not do so.³

Section 1318 assists in defining ratemaking considerations peculiar to the recovery of gas costs, but does not supplant the “just and reasonable” standard of §1301,⁴ which is overarching.⁵ Similarly, the Commission’s “Natural Gas Transportation Service Terms and Objectives” state:

The natural gas utility may retain a *reasonable* allowance of customer-owned natural gas for gas which is lost or unaccounted for in its operations.⁶

¹ 66 Pa.C.S. §§ 315(a) and 332(a); DR MB at 2.

² PNG MB at 11 (fn. 21) (Emphasis in original).

³ Peoples also takes the position that Dominion Retail should have set forth its position on the record regarding Peoples’ failure to meet its *prima facie* burden. PNG RB at 2-4. This is also an incorrect view of the law. Since Peoples failed to meet its initial burden, the burden of proof never shifted to Dominion Retail.

⁴ 66 Pa.C.S. § 1301.

⁵ The four § 1318 gas purchase-related findings are required, but not exclusive (“the commission shall make specific findings which shall include, but are not limited to ...”).

⁶ 52 Pa. Code § 60.2 (12) (emphasis added).

Peoples' lost and unaccounted for gas ("LUFG") problem relates to management's operation of the gas system itself and raises issues of prudence and efficiency. A cost is not recoverable simply because it is incurred; to be "just and reasonable" it must be shown to be necessary and prudent.⁷

Dominion Retail acknowledges that this Commission, in the past, has not made an adjustment to lost and unaccounted-for volumes. Commission Orders on the subject of lost and unaccounted-for allowances have rejected the establishment of a maximum level for allowance. For example, in Equitable Gas Company's 1987 Purchase Gas Proceeding,⁸ while the ALJ recommended adoption of a 5% limit, the Commission rejected the proposal as "reasonable," but not "appropriate for Equitable" given its local production. Instead, the Commission found a 6.74% LUFG rate for Equitable "to be reasonable in *this proceeding*."⁹ However, the Commission warned that LUFG is a case specific finding and that a finding in one year "should not necessarily be extended" to the next.¹⁰

The Commission also previously declined to accept a "rebuttable presumption," when proposed in Peoples' 2009 1307(f) case,¹¹ on the grounds that it was entered late in the proceeding.¹² Further, the Commission decided that, in consideration of the ALJ's description of Peoples' system, including extensive gathering and storage, that there was "ample evidence upon which to base the conclusion that Peoples' LUFG/CU rates are, *at present*, reasonable."¹³

The Commission has also taken the position that a natural gas distribution company's LUFG percentage should be judged on a system-wide basis and declined to impose a cap on a

⁷ See discussion, *infra*.

⁸ *Pa. P.U.C. v. Equitable Gas Co.*, 65 PA PUC 27 (1987).

⁹ *Id.* at 42 (emphasis in original).

¹⁰ *Id.* at 42-43.

¹¹ *Pa. P.U.C. v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. R-2009-2088069 (Order entered September 24, 2009).

¹² *Id.* at 11.

¹³ *Id.* (emphasis in original).

particular portion of the system.”¹⁴ On the “prudence standard,” the Commission found persuasive, PPL’s specific progress in identifying 666 leaks and in repairing them. It noted that all seven transmission line leaks had been repaired and there were now none outstanding. Notably, also, PPL was abandoning and replacing an extensive length of older pipelines that “are perceived as being likely contributors to LAUF gas.”¹⁵ In other words, PPL has not only studied the problem, but was able to convince the Commission that it was taking serious steps, including undertaking substantial capital improvements, to fix it.

Here, Dominion Retail does not propose a cap, a benchmark or a rebuttable presumption or any other ratemaking adjustment in this proceeding. Rather, Dominion Retail asserts that Peoples has not met its burden of proof to demonstrate that it has taken prudent, proactive measures to control, not just study, lost and unaccounted-for gas.¹⁶

III. GAS LOSSES CONTINUE TO CLIMB ON PNG’S SYSTEM

Gas losses continue to dramatically escalate on Peoples’ system without restraint. As Mr. Kalcic of the OSBA described, the system lost and unaccounted-for factor (inclusive of company use) has *grown by a factor of 42% over the last three years*:

2006	5.26%
2007	6.29%
2008	6.25%
2009	7.45% ¹⁷

OTS believes it is higher. Mr. Kubas testified that the current system and company use LUFG is a staggering 8.27%, having escalated by 18% over the last two years as follows:¹⁸

¹⁴ *Pa. P.U.C. v. PPL Gas Utilities Corp.*, Docket No. R-2008-2039634 (Order entered November 14, 2008), at 3.

¹⁵ *PPL Gas Utilities Corp.* (Order entered November 14, 2008), at 19.

¹⁶ Peoples incorrectly argues that Dominion Retail is proposing an “adjustment” for which it bears the burden of proof. PNG RB at 2-4. This is incorrect. Dominion Retail asserts that the rate increase proposed by Peoples has not been shown to be just and reasonable and should be disallowed.

¹⁷ OSBA St. 1 at 3.

¹⁸ OTS St. 1 at 2 and 7, and OTS Ex. 1.

2006	N/A
2007	7.01%
2008	7.36%
2009	8.27% ¹⁹

There is also substantial spread in the three year average LUFG factors calculated by the statutory parties ranging from the OSBA's figure of 6.66%²⁰ and the OTS' 7.54%²¹ to the OCA's astronomical 8.2%.²² This level of losses and unaccounted for volumes is alarming and, as Mr. Kalcic noted, "continues unabated."²³

PNG, for its part, never presented a calculation of the LUFG level²⁴ or took a position on these conflicting calculations, although the wide divergence of the advocates are *all* based upon Peoples-supplied discovery answers.²⁵ The OSBA witness forthrightly recognized the differences and found no errors in either the OSBA or OTS calculations. He concluded that the "data supplied by the Company is incorrect and/or incomplete..."²⁶ Peoples never responded to this challenge. Without explanation, the parties and this Commission are left to wonder why and argue about recovery of a cost which is not forthrightly acknowledged by the party with the burden of proof who seeks to recover it.²⁷

¹⁹ OTS St. 1 at 6-7 and Ex. 1, Sch. 1.

²⁰ OSBA St. 1 at 6.

²¹ OTS St. 1 at 8.

²² OCA St. 1 at 9-10. The OCA did not present a calculation for each year.

²³ OSBA St. 1 at 5.

²⁴ Peoples did, as required in a prior settlement, produce a component LUFG rate study,²⁴ but it never did so on a total company basis.

²⁵ The OTS cites to "[t]he Company's response to OTS-2" (OTS St. 1 at 2; See also, OTS Ex. 1, Sch. 2) and the OSBA to "Peoples Exhibit 20 and Peoples' response to OSBA-I-1." (OSBA St. 1 at 3). The OCA cites PNG's answer to "OCA-I-27 and Peoples Exhibit No. 20." OCA St. 1 at 10.

²⁶ OSBA St. 2 at 2.

²⁷ Instead, Peoples simply adopted the OTS' calculation to raise the transportation retainage factor in settlement. See discussion *infra*.

Peoples' LUFG is not a new problem. "Retainage issues have been a subject in Section 1307(f) proceedings on the Peoples system for many years."²⁸ In every §1307(f) proceeding of the last four, PNG has promised that it will diligently investigate and remedy the causes of LUFG. Yet, despite numerous exhortations to Peoples that it get its LUFG problem under control, the results have actually been back sliding -- a 40% increase in losses in the last 3 years and 20% in just the last twelve months.²⁹

In Peoples' 2007 1307(f) case,³⁰ then Vice Chairman Cawley set forth his concerns in a statement:

I remain concerned about the apparent increases in retainage factors which include many components, including company use and lost and unaccounted for volumes that can include natural gas leakage. This can have negative consequences to our environment, safety, and the cost of service for sales and transportation customers. *I therefore ask the parties in the next §1307(f) proceeding to fully address the causes and steps taken to mitigate these significant retainage factors.*³¹

The following year (2008), the Commission again approved a settlement,³² and Chairman Cawley, again, expressed substantial concern over the ever escalating level of LUFG:

The Office of Trial Staff (OTS) testified that lost and unaccounted for gas (LUFG) and company use gas for the last 3 years was 7.0% in 2005, 7.5% in 2006 and 8.5% in 2007, producing a 3-year average rate of 7.7%. *This trend of ever increasing losses is very concerning.* The Office of Consumer Advocate's testimony is instructive on this issue regarding Ohio's benchmark of 5% LUFG as being deemed "excessive." If such high factors persist, this Commission may need to examine similar standards to protect rate payers.

²⁸ DR St. 2 at 18. While Peoples argues that Dominion Retail was a prior settling party and now seeks to repudiate those settlement terms while benefiting from them (PNG RB at 4-6), this is not accurate. Dominion was not a party to the sales case which is the main settlement upon which Peoples relies (see discussion, *infra*). While Dominion Retail did participate in 2007, 2008 and 2009 1307(f) cases, these settlements, as noted elsewhere in the Exceptions, did not endorse further increases in the LUFG rate or provide Peoples with a free pass to do so. Simply because Dominion Retail agreed to past settlements did not oblige it to settle on the issue this year and it declined to do so.

²⁹ Dominion Retail's Briefs and these Exceptions have consistently used the OSBA's numbers, although they are the lowest among the advocates and despite Peoples' own evidentiary failure to address the quantification of LUFG.

³⁰ *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-00072109.

³¹ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-00072109, Statement of Vice Chairman Cawley at Public Meeting of September 13, 2007 (emphasis added).

³² *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2008-2022206, Order entered August 22, 2008.

* * * *

The settlement in this case provides for improved monitoring of LUFG levels on PNG's gathering systems. *More is expected. PNG must make concrete and measurable improvements, not just monitor and measure ever increasing LUFG levels.*³³

This has been a continuing dynamic -- studying without an effective result. PNG's 2008 settlement required the company to "immediately initiate steps to begin monitoring unaccounted for gas ("UFG") levels on its gathering system." PNG agreed to "quantify UFG levels *as soon as possible* once an initial detailed operational review of its gathering system is conducted" and "provide available gathering system UFG data and report related findings in its 2009 1307(f) proceeding."³⁴ In the 2009 1307(f) case, Peoples agreed to report, in its next (2010) 1307(f) filing, on the progress of its LUFG mitigation measures.³⁵ The Commission affirmed last year's LUFG levels, but in a carefully guarded way: "Peoples' LUFG/CU rates are, *at present*, reasonable."³⁶

The LUFG issue has been raised in other contexts as well. In the recent PUC audit, PNG took the same, "we are studying it" approach, acknowledging that it had no real response to high LUFG levels, since "the Company must first know what the primary causes of its UFG are."³⁷ The auditors also critically noted that PNG has established no objectives to determine appropriate LUFG levels and recommended they be developed.

³³ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2008-2022206, Statement of Chairman Cawley at Public Meeting of August 21, 2008 (emphasis added).

³⁴ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2008-2022206, Recommended Decision at 5 (emphasis added).

³⁵ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Order entered September 24, 2009 at 15. See critique of Exhibit 21 *infra*.

³⁶ *Id.* at 11 (emphasis added). The Commission further stated that: "We emphasize that our determination here is also based upon Peoples' commitments in the Joint Settlement and Appendix B to the Joint Settlement regarding monitoring and mitigation measures as well as the three-year average methodology adopted in this proceeding." *Id.*

³⁷ DR CX Ex. 1 at 40.

The LUFG gas levels were raised yet again in the recent settlement in which Peoples was sold by Dominion to a subsidiary of the SteelRiver Infrastructure Fund.³⁸ And, again, the outcome was to study. This time new management promised to study old management and examine additional measures.³⁹ This further study is to be presented “no later than the filing of PNGC's 2011 1307(f) proceeding.” This sales case settlement, however, provides no safe harbor from Commission action in the interim, as it expressly notes that PNG’s “obligations” to control LUFG that may be ordered by the Commission are not affected by this term.⁴⁰

IV. EXCEPTIONS

A. **Exception No. 1 - The Recommended Decision Incorrectly Concludes That Peoples Has Met its Burden of Justifying Another LUFG Increase, Because It Operates Gathering and Storage Facilities (Pages 46-48)**

1. **“Perhaps Unique” Is no Justification For Automatically Collecting A Continuously Escalating LUFG From Customers**

Peoples’ *prima facie* justification of the proposed flow through of a 20% increase in the LUFG factor consisted of two pages of testimony⁴¹ and a five and one-half page exhibit (Exhibit 21). The only reference to the reasonableness of Peoples’ higher LUFG rates was the following rebuttal testimony: “...my position continues to be, as it was last in last year’s 1307(f) case, that Peoples UFG level is reasonable...”⁴² In other words, PNG argues that, because last year’s level of 6.25% was found reasonable, so too is this year’s 7.45%.⁴³

³⁸ *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples, currently owned by Dominion Resources, Inc., to Peoples Hope Gas Companies, LLC, and to Approve the Resulting Change in Control of The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, Order entered November 19, 2009.

³⁹ *Id.* at 26 (citing Settlement ¶ 66).

⁴⁰ *Id.*

⁴¹ PNG St. 3 at 15-17.

⁴² PNG St. 5 at 4.

⁴³ OSBA’s figures. The OTS calculates this year’s LUFG at 8.27%.

The Recommended Decision finds that Peoples has met its burden of proof because it operates a local gas gathering system, which is used to increase the purchase of local gas for system supply purposes. Since these purchases inure to the benefit of its system supply customers and gas producers, the losses are acceptable.⁴⁴ Stated another way, Peoples' high LUGF factor is an incidental casualty of Peoples' pursuit of its least cost purchasing operation. "Given Peoples' extensive gathering and storage facilities necessitated by its large purchase of local gas, its LUGF levels are reasonable."⁴⁵

This is speculative. There has been no demonstration in the record of this case that UFG levels are reasonable given the type of system operated. The only record reference which compares Peoples' system with that of any other gas company is contained in rebuttal where the witness states that Peoples' system "is *perhaps* unique in Pennsylvania."⁴⁶ This vague comparison is not helpful.⁴⁷ First, there is no support provided for the comparison, as "perhaps unique" lacks any specificity or objective analysis.

Moreover, there is no discussion of the degree to which such "uniqueness" would affect Peoples' operations or the degree to which LUGF levels might reasonably be higher. Peoples never sets forth what a reasonable range would be, or what the drivers are, or why its LUGF level should not be directly compared to other Western Pennsylvania gas companies, such as

⁴⁴ R.D. at 46-47.

⁴⁵ *Id.* at 48 (citing PNG St. 5 at 4).

⁴⁶ PNG St. No. 5 at 4 (line 14) (emphasis added). Before the ALJ, Peoples cited to its Statement No. 3 at 13 and, without page citation, to its Statement No. 4, claiming that it is "unlike many other local gas distribution companies," because its facilities include gathering, transmission and storage assets. PNG MB at 11. These record citations are inapposite. In Statement No. 3 at 13, the witness only refers to "the unique characteristics of discrete parts of our *gathering* system" in comparison to other parts of *Peoples'* gathering system. PNG St. 3 at 13 (lines 2-6)(emphasis added). Dominion Retail finds no reference to comparisons between Peoples and other gas distribution companies in any part of Statement No. 4. Nor should the Commission and the Parties be required to read through the entirety of Statement No. 4 searching for a reference to the point that Peoples intended to make in its Main Brief.

⁴⁷ DR MB at 6.

T.W. Phillips, which just reported out a three year LUFG of 4.6%⁴⁸ as compared to Peoples' three year average of somewhere between 6.7% (OSBA) and 8.2% (OCA).

Thirdly, there is no record support for the proposition that the lower cost of Pennsylvania gas is equal to or greater than the company's high LUFG. Peoples nowhere produces a calculation to show that the cost of its higher LUFG is offset by the lower cost of Pennsylvania gas. Lost volumes are now 3.6 *billion* cubic feet per year according to Mr. Kalcic.⁴⁹ The Commission auditors "estimated the annual cost reductions were the company's UFG equal to the NGD panel average at approximately \$13.2 million annually."⁵⁰ Since Peoples has not supported its cost savings claim, the notion cannot be used to support the higher LUFG. Nor, even if it were true, can such a proposition be used to raise transportation retainage rate, since these customers do not consume system supply.

Instead, Peoples relies upon generalities, asserting, without proof, that it is "perhaps unique,"⁵¹ and, therefore, any level of LUFG should be recovered. This is wrong. Peoples must justify its *own rates* not by comparison to others, but *in comparison to its own experience* and the increasingly massive volumes of gas now lost and unaccounted for.

No one has compared Peoples to other NGDs. OSBA and Dominion Retail are comparing Peoples *to itself*. The LUFG rate on Peoples own system has increased by 20% over the most recent twelve month period and by 40% over the last thirty-six without any explanation. Peoples has neither acknowledged⁵² nor attempted to disprove the parties' various calculations of LUFG. The system LUFG and company use figures were not disclosed in either Peoples'

⁴⁸ *Pa. P.U.C. v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2009-2145441, Recommended Decision dated May 11, 2010 at 25; and *Id.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010; See DR MB at 6.

⁴⁹ OSBA St. 1 at 5.

⁵⁰ DR CX Ex. 1 at 43.

⁵¹ PNG St. 5 at 4.

⁵² Except to adopt the higher OTS number for transportation retainage.

original filing or in the supporting testimony.⁵³ Nor did Peoples attempt to reconcile the statutory advocates' conflicting calculations.

That being said, PNG's LUFG levels *are* high comparatively speaking. Commission auditors found that Peoples' lost and accounted for gas level is "three quarters to 3.8 times higher than the panel [composed of other PA NGDs]" and among the highest of the Pennsylvania NGDs, including those operating in the gas fields of Western Pennsylvania.⁵⁴

The retainage rates set two months ago by the Commission on the TW Phillips system, another gas distribution company with substantial local gas supplies. The recent historic LUFG rate experienced by TW Phillips has been 5.39% (2004) to 4.29% (2009) and is now 5.35% (2009).⁵⁵ In the settlement reached in that proceeding, the parties agreed that "the three year average of 4.6% is reasonable and does not warrant an adjustment," but that that rate should be "explained" and remedied in the next case.⁵⁶ At these, comparatively modest levels, the Chairman commented: "While I reluctantly will approve this settlement, I will likely not accept the status quo in the company's next Section 1307(f) case."⁵⁷

2. Peoples' Exhibit 21 Is Not Adequate To Establish Either Prospective or Retroactive Prudence

No where does PNG explain why management did not undertake preventative measures previously in the normal course of business. A gathering system leak survey was not commenced until last year,⁵⁸ despite the fact that the gathering system LUFG factor shot up 42%

⁵³ PNG Ex. 20 addresses LUFG alone and does not recite a total company figure even for this element, as it is broken down into sub-categories. Company use is not identified at all.

⁵⁴ DR CX Ex. 1 at 39. The "panel" companies used for comparison purposes are Columbia, Equitable, National Fuel, PPL, T.W. Phillips, UGI Penn, and UGI Utilities. Data was derived from PUC annual reports. DR CX Ex. 1 at 40.

⁵⁵ *T.W. Phillips Gas and Oil Co.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010.

⁵⁶ *T.W. Phillips Gas and Oil Co.*, Recommended Decision dated May 11, 2010, at 25.

⁵⁷ *T.W. Phillips Gas and Oil Co.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010.

⁵⁸ PNG St. 3 at 16-17.

in the last three years, from 5.2% to 7.0%.⁵⁹ Peoples is just now commencing gathering system right-of-way maintenance.⁶⁰ Peoples nowhere explains why these measures were not ongoing in the normal course of business and, therefore, with a consistency of effort, the current LUGF factor avoided or, at least, mitigated.

As pointed out in Dominion Retail's Main Brief, the update of activity set forth in PNG Exhibit 21 contains very few updated references, and no analysis of the company's results or effectiveness in controlling the escalating LUGF factor.⁶¹ While Peoples' direct case expressed the belief that the "best way to detail our mitigation actions was provide a status update on the forward-looking measures list" presented last year (Appendix "B" from the 2009 Settlement), the list was not updated in any substantial way. This year's "forward-looking list" still contains a clear orientation to 2009, and not 2010, as the point of reference.⁶² Many passages, particularly the reference to quantification of gathering system leaks as being implemented "earlier this year (2009)" are, clearly, not current. Nor is there any updated report of the tasks that were scheduled to be completed in 2009.⁶³

Further, a comparison of the 2009 Section 1307(f) Appendix "B" document⁶⁴ with Peoples' 2010 Exhibit 21 shows a number of unexplained setbacks, including the following:

⁵⁹ PNG Ex. 20.

⁶⁰ PNG St. 3 at 17 ("Peoples will also include ROW maintenance on an ongoing basis for all of its gathering system.").

⁶¹ DR MB at 12-13.

⁶² References to 2009 as being the current year are replete throughout Peoples' Exhibit 21, including the following: "During 2009, Peoples plans on taking the following steps..." (p. 1); "Modems will be selected, purchased and installed by September 30, 2009." (p. 2); "This also will be completed by September 30, 2009." (p. 2); "We expect to replace a similar number of meters during 2009 and 2010," (p. 3); "In 2009, Peoples will initiate a review ..." (p. 4); "Peoples will conduct a field review in 2009 ..." (p. 4); "Earlier this year (2009), Peoples Gas Operations Department implemented ..." (p. 5); and "To be completed by June 30, 2009." (p. 6). There is no aspect of PNG Ex. 21 that was clearly updated for the purposes of this proceeding.

⁶³ In this case, other than the "leak survey" reported in testimony (PNG St. 1 at 16-17), there are no new actions reported by Peoples or assessment of prior actions.

⁶⁴ Provided as an unmarked attachment to OSBA St. 3.

- Update in storage measurement equipment has been delayed at the Wall Station from September 30, 2009 to “the fall of 2010.” (PNG Ex. 21 at 1).
- The Rager Station remote reading program is “not operational because additional programming is required” (PNG Ex. 21 at 2) which were to have been working by September 30, 2009, but will not now be operational until “the third quarter of 2010.” (*Id.*).
- Assessment of temperature correcting meters was originally targeted for completion by December 2010, but now is simply “ongoing.” (PNG Ex. 21 at 4).

These variances were not addressed in Peoples’ testimony.

The situation is even more obtuse in the gathering system, which represents, by far, the highest system LUFG.⁶⁵ While Peoples describes its gathering line leak survey plan as a new initiative begun last year,⁶⁶ the 2009 Appendix “B” already included a commitment to quantify leaks on the gathering system which was “targeted for completion by June 30, 2009.”⁶⁷ Thus, Peoples description of its “leak survey” as being a new “voluntary initiative”⁶⁸ is contrary to the examination of gathering leaks that was previously required under Appendix “B” of last year’s 1307(f) case and which should have been completed by now. Peoples’ rebuttal notes that that Peoples began “an initiative last year” to accelerate and complete a leak survey of the gathering system and expressed the expectation that by year end 2010, all lines will be surveyed. Once surveyed, “repair or replacement of these lines will be prioritized...”⁶⁹

The Commission’s 2009 Order makes it clear that only “Peoples LUFG/CU rates are, *at present*, reasonable.”⁷⁰ More than last year’s explanations are necessary to raise the LUFG factor by 20% and lock it into the three year transportation retainage calculation. Moreover, last year’s settlement approval was granted only “based upon Peoples’ commitments in the Joint

⁶⁵ PNG Ex. 20.

⁶⁶ PNG MB at 15. See also, PIOGA MB at 2 with no record citation (“an accelerated effort...”).

⁶⁷ PNG Ex. 21 at 6 and original 2009 Appendix “B” at 5 (provided as an unmarked attachment to OSBA St. No. 3).

⁶⁸ PNG MB at 15.

⁶⁹ PNG St. 3 at 17.

⁷⁰ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Order entered September 24, 2009 at 11 (emphasis added).

Settlement and Appendix B...”⁷¹ Failing to demonstrate it met last year’s commitments is further reason that this year’s proposed increase should be denied.

B. Exception No. 2 - The Recommended Decision Incorrectly Concludes That Compliance With Prior Commission Orders Justifies Peoples Increasing the Retainage Rates (Page 48)

But principally, PNG argues that the Commission and its customers should simply accept the higher rate and patiently await the next study since, to not increase the LUFG rate “would be premature and potentially penalize Peoples in the interim while its comprehensive plan to address UFG is underway.”⁷²

In other words, Peoples is asking that the current 7.45% factor⁷³ be flowed through because, to paraphrase, “we said we would present a study next year.” Certainly, more is needed to justify a 20% increase in the LUFG factor. While Peoples repeatedly points to “obligations” and “commitments” that require it to “strive” to deal with LUFG levels, these terms do not, on their face, require any effort beyond what a prudent management would undertake.

Frankly, the promises made by Peoples to the Commission are vague and amorphous. The 2009 § 1307(f) settlement, besides agreeing to calculate the losses on a component basis (i.e., gathering, storage and distribution), simply states that Peoples will report on the progress of its LUFG mitigation measures “as described in [its] direct testimony.” Appendix “B,” a part of the 2009 settlement, is a “summary of the mitigation measures and approximate completion dates” that PNG had already offered.⁷⁴ In other words, Peoples committed only to report this year on the progress of last year’s “mitigation measures” in a summary fashion to the Commission. (And has failed to do so in Exhibit 21, as previously addressed.)

⁷¹ *Id.*

⁷² PNG St. 5 at 5 and 6 (reiterated).

⁷³ Calculated at 8.28% by OTS. OTS St. 1 at 6-7.

⁷⁴ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Settlement at 8 (¶ D).

Nor does the “sales settlement” provide much comfort. Paragraph 66 of the sales case settlement merely consists of a recitation of the 2008 § 1307(f) settlement (another study) and simply notes that the new management will “conduct a review” and present a report to the statutory parties “no later than the filing of PNGC’s 2011 1307(f) proceeding.”⁷⁵ This study had already been agreed to in the 2009 § 1307(f) case, three months earlier, as Judge Meehan noted.⁷⁶

There are no specifics, no required content, no detail agreed to be given, except as follows:

[Peoples] will conduct a review of Dominion Peoples' prior efforts to reduce UFG and examine alternative additional measures to reduce UFG - including costs to implement such measures and potential cost savings that might be derived from implementing additional measures to reduce UFG.

PNGC will present a report to OSBA, OTS and OCA with regard to the results of such investigation no later than the filing of PNGC's 2011 1307(f) proceeding.⁷⁷

In other words, the much heralded 2011 1307(f) study will be as Peoples defines it. It is highly unlikely that any great revelation will be made or panacea discovered. The study is not required to “comprehensive.” It is just another document.

Nor will the new proposed 2010 settlement improve upon the efficacy of Peoples’ efforts. The settlement provides that “Peoples will initiate a check meter program to validate measurement accuracy at selected local gas custody transfer meter stations.”⁷⁸ Peoples Exhibit 21, however, concluded that the data collected by the three gathering systems check meters

⁷⁵ *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples, currently owned by Dominion Resources, Inc., to Peoples Hope Gas Companies, LLC, and to Approve the Resulting Change in Control of The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, Settlement at ¶66.

⁷⁶ *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples, currently owned by Dominion Resources, Inc., to Peoples Hope Gas Companies, LLC, and to Approve the Resulting Change in Control of The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, Interim Order Denying Joint Petition for Approval of Settlement dated October 16, 2009 at 22.

⁷⁷ *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples, currently owned by Dominion Resources, Inc., to Peoples Hope Gas Companies, LLC, and to Approve the Resulting Change in Control of The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, Order entered November 19, 2009, at 26 (citing Settlement ¶ 66).

⁷⁸ Settlement at 9 (Issue E).

previously installed in 2009 “did not provide much value.”⁷⁹ No where does Peoples explain why another attempt will provide any additional value.

As Mr. Kalcic noted, the company does not provide any estimate of the effect of its “mitigation program” only that it “expects” some, unidentified level of results.⁸⁰ Peoples offers no assurance on the record that next year will be any different:

Q. What assurances does [Dominion Retail] have[,] with almost a hundred thousand customers, that the Consumer Advocate has, that the Office of Small Business Advocate, that the Office of Trial Staff, any of us sitting here, have [that] the next study we’re going to get from Peoples Gas [2011 1307(f) case] is going to effectively deal [with] and arrest the increased level of lost and unaccounted for gas?

A. As we conducted our analysis on the gathering system, we reviewed that for the first time in recent history as to what those levels were on the gathering system. And what we saw was the levels on the gathering system, which range between five and six percent, were higher than other parts of our system. And based on that analysis, we’ve already taken one step. The step, as I mentioned in the beginning, to survey our entire gathering system. And more recently we’ve also begun a program to put check meters. Our plan is to put check meters on some of the measurement points on the gathering system in order to ascertain if there are any of the things we can find related to gathering unaccounted for.

Another measurement study next year does not provide relief for the customers, any more than the studies required in 2007, 2008 or 2009 did.

The Recommended Decision, nevertheless, adopts Peoples’ view that the continuing promise to study the causes of its escalating LUGF and report next year acts as a shield to protect Peoples from any debate this year over the causes and remedies of its high LUGF levels. “Since Peoples is complying with Commission orders to mitigate its LUGF levels, it should form the

⁷⁹ PNG Ex. 21 at 5 (“Peoples installed three check meters in the gathering system in 2009. After analysis of the data, it has been determined that because of the complexity of the gathering system and the multitude of interconnection points along with the difficulty in scheduling meter reads to match the producers’ schedule, this data did not provide much value.”)

⁸⁰ OSBA St. 1 at 5.

basis of a finding that Peoples is taking reasonable steps to mitigate its LUFG levels and therefore that its LUFG levels are reasonable.”⁸¹

The thrust of this argument is captured in Peoples Main Brief passage which states: “What is clear now is that Peoples should not be penalized for complying with the Commission’s orders in past 1307(f) cases and the sales case.”⁸² That is not an accurate description. These were settlement terms proposed by Peoples and adopted by the Commission. But more importantly, there is no term in either of these two settlements that authorizes Peoples to automatically raise LUFG or bars challenges to a 20% increase in the LUFG. Peoples has no free pass from being required to justify this year’s increase.

Peoples could have updated and detailed its efforts during the last twelve months, but did not do so. It had the perfect opportunity. A substantial portion of the Exhibit 21 tasks were to have been completed on or before year end 2009 and should have been reported to the Commission and parties in this case. For example, the internal audit review of local gas measurement is reported in Exhibit 21 as complete and the resulting “recommendations will be implemented by December 30, 2009.”⁸³ Additionally, the examination of gathering leaks was to have been “completed by June 30, 2009” and the process of prioritizing leak repairs commenced.⁸⁴ Yet, Peoples shared no new information.

PNG’s position is that it will not disclose anything about its studies or remediation plans in this case. When pressed for an explanation of why LUFG was escalating, Peoples simply refused, taking the position that the issue will not be discussed until 2011:

⁸¹ *Id.*

⁸² PNG MB at 16-17.

⁸³ PNG Ex. 21 at 5.

⁸⁴ PNG Ex. 21 at 6.

Q. What has Peoples done differently over this three year period that would cause an escalation of 30 percent or so in the lost and unaccounted for factor [on the gathering system]?

A. As I said, without knowing the underlying causes of unaccounted for as it relates to the gathering system, I don't know that it could be answered. You're asking for what the reasons are, and I'm saying that's part of what we're studying.

Q. Peoples Natural Gas is not willing at this point to venture a generalized statement about why this is happening? We just need to wait for the study?

A. You're asking me for the reasons for the change?

Q. I'm asking you for a generalized statement of what you or Dominion Peoples [sic] thinks the reason is without waiting for a study. There [has] got to be some inkling of what's going on here.

A. As I've stated, until we get the study and I study the issues, identify what some of the underlying causes are, it's really premature for me to speak to what those reasons are.⁸⁵

If there is to be a moratorium on the LUGF discussion, then so too should there be a moratorium on LUGF rate increases until Peoples provides plausible explanations and this Commission (and PNG's customers) get some meaningful answers *and* results, other than passively wait for yet another study:

Q. Now, as parties have in this case proposed adjustments to lost and unaccounted for and almost every party has, haven't they, in this case? In their testimony, proposed something, some way to deal with the escalation of the lost and unaccounted for. What has been your consistent response to that?

A. The company has made a commitment to review and approve unaccounted for levels, as mentioned in the management audit. We are in midstream of looking at that. It's our goal to identify ways to improve unaccounted for, but our position is that we need to complete that before we could speak to the end result.

Q. Now, is Dominion Peoples [sic], for its part, willing to freeze the lost and unaccounted for rate reflected in this tariff, just as we're being asked to freeze our discussion and defer it?

A. You're asking me if we are willing to freeze it?

Q. Yes.

A. In this 1307(f)?

⁸⁵ Tr. 117-118.

Q. Yes....

A. Well, I need to understand of what you're asking. Are you --what are you asking us to freeze? The unaccounted for levels on the system? They are what they are.⁸⁶

Simply because the increased LUFGE levels "are what they are" is not a justification for recovery. The attitude that LUFGE is a variable that is automatically flowed through is wrong. The Commission and Peoples customers deserve (and are legally entitled) to know why and what is being done before even more LUFGE increases are flowed through.

C. Exception No. 3 - The Recommended Decision Incorrectly Concludes That A Three Year Average Calculation Of Retainage Accurately Tracks LUFGE, Such That the Proposed Increase In Retainage Should Be Adopted (Page 51)

Largely based upon the LUFGE rates discussion, the Recommended Decision concludes that the increase in retainage rates is "not so high as to render them unreasonable under the circumstances."⁸⁷ The Recommended Decision finds that the OTS' calculation as adopted by Peoples of the retainage level appears reasonable and was not refuted by Dominion.⁸⁸ Finally, since Peoples adopted the OTS position "in order to find a settlement," it should be adopted consistent with Commission precedent supporting settlements.⁸⁹

Peoples is not "finding settlement." It is concealing the cost to the system customers and raising the rates to transport customers. For system supply customers, the cost of LUFGE is buried in the calculation of system supply costs and, as noted previously, Peoples has declined to break that cost out. As a result, Peoples could not propose an increase in transportation retainage (that would require quantification). Instead, when the statutory advocates did their own calculations, it simply accepted the higher of the two and "settled" on a rate increase for

⁸⁶ Tr. 115-116.

⁸⁷ R.D. at 50.

⁸⁸ R.D. at 51.

⁸⁹ *Id.*

transportation customers. Peoples, thus, conveniently avoids having to reveal its own calculation of the LUFG and is still able to raise transport rates.

Peoples, in Supplement No. 119, the original filing, proposed *no change* to transportation retainage LUFG levels. Mr. Gregorini testified that no change was “within the zone of reasonableness” and, therefore, appropriate.⁹⁰ Then, on rebuttal, it adopted the OTS’ recommendation that retainage should be increased by that office’s calculation of the average three years’ experience.⁹¹ On the witness stand, Mr. Gregorini stated that this too was within the “zone of reasonableness.”⁹² In any zone of reasonableness that might be available, the transportation customers should receive the benefit of that range. The retainage rate should not change.

There is no justification offered by Peoples for setting the settlement retainage factors based upon the OTS’ higher three year average (7.54%), rather the OSBA’s lower figure (6.66%), the latter of which would actually cause a *decrease in the current* transportation retainage factors. While the three year averaging concept has moderated the effect upon transportation customers, it is a two-edged sword, because even were Peoples’ system LUFG to decrease next year, the retainage rate will still rise. The three year average, as a matter of simple math, slows the rate of change both up (as it is now) and down (if that ever occurs).⁹³ It does not ultimately reduce the level of retainage that the transportation customer must pay.

The Commission should reject the “settlement” retainage increase to transportation customers. The proposed increase in transportation retainage rates contained in the non-

⁹⁰ Tr. 103 The witness also stated: “I thought the overall levels that are currently tariff[ed] are reasonably close to our existing levels that we calculated. They’re not meant to perfectly track.”

⁹¹ Using the OTS’ higher LUFG/company use figures, including 8.27% in the current year. OTS St. 1 at 7.

⁹² Tr. 104 (“It was modest increase. It was still within the range of reasonableness. The shrink [industry parlance for retainage] levels never exactly tracked the ongoing levels and with our mitigation that measures -- thought it was still within the range of reasonableness.”)

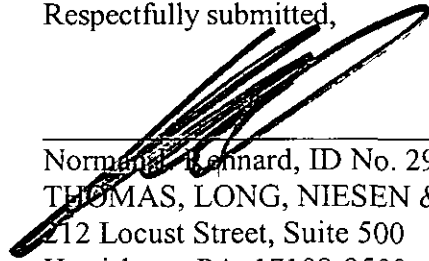
⁹³ Peoples refers to this year’s increase in retainage as increased only “slightly” by relying upon the three year average. PNG RB at 5-6.

unanimous settlement should be denied, so that Rate GT-T and Rate T retainage factors will remain at 7.3% and 5.2%, respectively. Moreover, the disallowance should be without recourse to any other customer class, since Peoples has failed to show the rate increase to be just and reasonable.

V. CONCLUSION

For the reasons discussed above, Dominion Retail respectfully requests that these Exceptions be granted.

Respectfully submitted,



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Dated: August 10, 2010

CERTIFICATE OF SERVICE

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