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June 23, 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 Main
Brief 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
Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF
DOMINION RETAIL, INC.**

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Dated: June 23, 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. This Brief is submitted consistent with the timetable established by ALJ Salapa in Prehearing Order # 2.

Dominion Retail believes that the dramatic increases in lost and unaccounted for factors for customers generally, and transportation customers specifically, are not “just and reasonable.”

II. ARGUMENT

The non-unanimous settlement agreement presented in this case proposes to raise the transportation retainage rate for small customers (Rate GS-T) from 7.3% to 7.8% and from 5.2%

to 5.6% for larger customers (Rate T). These are 6.8% and 7.7% increases in the current retainage factors, respectively.

The driver is a 20% increase in the company's lost gas and company use over just the last year, and a 40% increase over the last three.¹ The system rate, as calculated by the OSBA, now stands at 7.5% (3.5 Bcf),² which Dominion Retail believes is an all time company high. Dominion Retail opposes the LUFG increases that PNG has now allocated to the transportation classes in its rebuttal testimony and believes that PNG has not demonstrated on this record that it has a right to recover the higher lost and unaccounted for factor.

A. Legal Standards For Recovery of LUFG

All utility rates must be "just and reasonable."³ Of course, PNG bears the burden of justifying any proposed increase in rates.⁴ Section 1318 assists in defining ratemaking considerations peculiar to the recovery of gas costs, but does not supplant § 1301, which is overarching.⁵ This view is supported by the Commission's "Natural Gas Transportation Service Terms and Objectives" which 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

Dominion Retail is unable to find among the many pages of testimony on the topic of LUFG any expression of opinion that that the *proposed* increase in retainage rate is "just and reasonable."⁷

¹ A three year average flow through factor for transportation retainage mathematically slows the rate of change, but does not preclude the recovery of system LAUF to transportation customers.

² OTS places the figure higher at 8.27%. OTS St. 1 at 6-7.

³ 66 Pa.C.S. § 1301.

⁴ 66 Pa.C.S. § 315(a).

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 ..."). The LUFG problem relates more to management's operation of the gas system itself and raise issues of prudence and efficiency.

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

⁷ The only reference Dominion Retail can locate is at PNG St. 5 at 4. ("... my position continues to be, as it was last in last year's 1307(f) case, that Peoples UFG level is reasonable...").

A cost is not recoverable simply because it is incurred; to be “just and reasonable” it must be shown to be necessary and prudent.⁸

Dominion Retail acknowledges that this Commission, in the past, has not made an adjustment for lost and unaccounted-for volumes. Principally, Commission Orders on the subject of lost and unaccounted-for allowances have rejected the establishment of a maximum level for allowance. So, for example, in Equitable Gas Company’s 1987 Purchase Gas Proceeding, the Commission addressed proposals by the OCA and OTS to cap unaccounted-for volumes in the 7.5-7.9% range.⁹ Adopting the OTS’ suggestion of a 5% limit in the unaccounted-for gas included in Equitable’s purchase gas calculations, the ALJ recommended it to the Commission for adoption. The Commission rejected this proposal as “reasonable,” but not “appropriate for Equitable” given its local production. Instead, the Commission found a 6.74% LUG rate for Equitable “to be reasonable in *this proceeding*.”¹⁰ However, the Commission further warned that LUG is a case specific finding:

Our findings regarding an appropriate UFG rate should not necessarily be extended to ongoing investigation into the company’s previous UFG levels or to future investigations into the UFG level for other time periods.... The appropriate UFG level varies considerably among the various utilities and over time with respect to individual utilities.¹¹

The Commission has also taken the position that a natural gas distribution company’s UFG percentage “should be judged on a system-wide basis, not on a segment-by-segment basis.”¹² Thus, while one portion of PPL’s gas district (the “Northern Regions”) was a high of 8.9%, the system-wide average rate was 2.8%. As noted by the ALJ, a cap based on the observation that the LUG percentage in the north tier is greater than the average, “does not

⁸ See discussion, *infra*.

⁹ *Pa. P.U.C. v. Equitable Gas Co.*, 65 PA PUC 27 (1987).

¹⁰ *Id.* at 42 (emphasis in original).

¹¹ *Id.* at 42-43.

¹² *Pa. P.U.C. v. PPL Gas Utilities Corp.*, Docket No. R-2008-2039634 (Order entered November 14, 2008), at 3.

provide a basis for imposing the first cap on LAUF gas expense recovery upon PPL Gas.”¹³ On the issue of the “prudence standard,” the ALJ found persuasive, as did the Commission, 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.”¹⁴ In other words, PPL has studied the problem and was able to convince the Commission that it was taking serious steps, including capital improvements, to fix it.

The Commission previously declined to accept a “rebuttable presumption,” when proposed in Peoples’ 2009 1307(f) proceeding.¹⁵ The Commission denied the adjustment, on the grounds that it was entered late in the proceeding.¹⁶ 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.”¹⁷

Dominion Retail does not propose a cap, a benchmark or a rebuttable presumption or any other regulatory device in this proceeding. Rather, Dominion Retail asserts that Peoples has not met its burden of proof to demonstrate that it has taken proactive measures to reduce lost and unaccounted-for gas sufficient to justify the justness and reasonableness of a 20% increase in this years’ LUFG and a 40% increase over the last three years.

¹³ *PPL Gas Utilities Corp.* (Recommended Decision dated October 7, 2008), at 20.

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

¹⁵ *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).

¹⁶ *Id.* at 11.

¹⁷ *Id.* (emphasis in original).

B. PNG's LUFG Continues to Rise and Is Now 7.5%

Gas losses continue to climb on PNG's system --- by over 40% during the last three year period to a new company record high of 7.5%. As Mr. Kalcic of the OSBA described, based upon Company figures, 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% ¹⁸

Mr. Kubas of the OTS testified that the current system and company use LUFG is a staggering 8.27%.¹⁹ Dominion Retail employs the lower OSBA numbers for this Brief.

The LUFG rate was calculated for the first time in this proceeding and presented by Peoples.²⁰ The results show an escalation across all segments, particularly in the gathering sector.

<u>System</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Gathering	5.19%	6.33%	6.98%
Storage	2.42%	2.55%	2.80%
Distribution/Transmission	2.86%	1.82%	2.79%

Retainage on Peoples has not always been so high. "It was not that long ago that retainage levels were in the 3-4% range on the Peoples Gas system",²¹ which much lower, historic levels, Mr. Gregorini conceded.²² This level of losses and unaccounted for volumes is alarming and, as Mr. Kalcic noted, "continues unabated."²³

¹⁸ OSBA St. 1 at 3.

¹⁹ OTS St. 1 at 2 and 7, and OTS Ex. 1.

²⁰ PNG Ex. 20.

²¹ DR. St. 1 at 7.

²² Tr. 101-102.

²³ OSBA St. I at 5.

These are the escalations experienced on Peoples' own system compared to prior LUFG factors at other times also on Peoples' pipeline network. While Peoples, somewhat indecisively, claims to be "perhaps unique,"²⁴ Peoples must justify its own rates not by comparison to others, but in comparison to its own experience and the massive volumes of gas now lost and unaccounted for (now 3.6 billion cubic feet, according to Mr. Kalcic²⁵).

That being said, PNG's LUFG level is 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 gas companies]" and among the highest of the Pennsylvania NGDs, including those operating in the gas fields of Western Pennsylvania.²⁶

The retainage rates set last week by the Commission on the TW Phillips system, another gas distribution company with substantial local gas supplies, are 4.0% (large transport, comparable to Rate T) and 6.3% (small transport, comparable to Rate T).²⁷ The recent historic LUFG rate experienced by TW Phillips has been 5.39% (2004) to 4.29% (2009) and is 5.35% (2009).²⁸ 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.²⁹ 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."³⁰

²⁴ PNG St. 5 at 4.

²⁵ OSBA St. 1 at 5.

²⁶ 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.

²⁷ *Pa. P.U.C. v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2009-2145441 (Recommended Decision dated May 11, 2010), at 11.

²⁸ *T.W. Phillips Gas and Oil Co.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010.

²⁹ *T.W. Phillips Gas and Oil Co.* (Recommended Decision dated May 11, 2010), at 25.

³⁰ *T.W. Phillips Gas and Oil Co.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010.

C. PNG's Escalating Gas Losses Have A Direct Rate Impact Upon Customers

The escalating lost and unaccounted for gas have a direct impact on both system supply and transportation service customers, as OCA witness Mierzwa testified:

A portion of the gas delivered ... is lost or otherwise unaccounted for ("LUFG") before it reaches the NGDC's customers.... For sales customers, losses are recovered through PGC rates. For transportation customers, these losses are typically recovered through a retainage charge.³¹

The non-unanimous settlement agreement presented in this case raises the transportation retainage rate for small customers (Rate GS-T) from 7.3% to 7.8% and from 5.2% to 5.6% for larger customers (Rate T, who pay for temperature adjusted meters). In other words, of 1000 Mcf bought and delivered to Peoples by Dominion Retail for its Rate GS-T customers, it only receives credit for 922 Mcf at the customer's "burner tip." 78 Mcf of the gas Dominion Retail pays for and delivers to Peoples is lost and unaccounted-for.

For Rate GS-T customers the "loss tax" has gone from 5.3% to 7.8% in 4 years and, for Rate T, from 5.3% to 5.6%. Under last year's (2009) 1307(f) settlement, the Rate GS-T retainage rate was decreased from 7.5% to 7.3% and, for Rate T, was decreased from 5.4% to 5.2%, to reflect a rate adjustment that introduced a three year average, rather than a single year.³² 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). It does not ultimately reduce the level of retainage that the transportation customer must pay.

³¹ OCA St.1 at 9-10. In terms of the financial magnitude of the problem, the Commission auditors "estimated the annual cost reductions the Company would have achieved if its UFG had been equal to the panel average during 2003 to 2007 at approximately \$13.2 million annually." DR CX Ex. 1 at 43.

³² *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), at 15.

Nor are the impacts limited to simply the rate effects, as the Chairman recently noted:

Such high UFG levels [TW Phillip's three year average of 4.6%] cost consumers money in *higher gas costs, increase green house gas emissions, and endanger public safety. Given this triple threat, T.W Phillips must act decisively to improve its programs to produce positive results.*³³

3.6 billion cubic feet in LUGF on the Peoples' system is not a small volume to lose, mis-measure, vent or otherwise, not be able to account for.³⁴ Even more should be expected of PNG with a LUGF rate (7.45%) that is over 60% higher than the one referenced in the Chairman's statement.

D. We Have Been Here Before and Still There is No Relief

"Retainage issues have been a subject in Section 1307(f) proceedings on the Peoples system for many years."³⁵ Yet, despite numerous exhortations to Peoples that it get the LUGF 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.

In Peoples' 2007 1307(f) case³⁶ the transportation customers' retainage levels were set at 7.1% (Rate GS-T) and 5.1% (Rate T).³⁷ Vice Chairman Cawley set forth his concerns in a statement:

As part of this annual § 1307(f) filing and settlement, the parties agreed to establish class-based retainage percentages, to increase the Residential and Commercial customer retainage percentages to 7.1%, and to establish an industrial customer retainage factor of 5.1%.

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

³³ *T.W. Phillips Gas and Oil Co.*, Statement of Chairman Cawley at Public Meeting of June 16, 2010 (emphasis added).

³⁴ OSBA St. 1 at 5.

³⁵ DR St. 2 at 18.

³⁶ *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-00072109.

³⁷ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-00072109 (Recommended Decision dated August 7, 2007), at 19.

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.*³⁸

The following year (2008), the Commission again approved a settlement,³⁹ 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.

If OTS is correct in its estimates, both PGC and transportation customers are paying a *very substantial premium* for gas service. While a number of explanations are possible for this value, it is imperative, given the current magnitude of these retention allowances, that OTS and the statutory advocates provide a better record as to why these rates are just and reasonable in the next § 1307(f) proceeding.

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.*⁴⁰

And, in fact, Peoples did report in last year's 1307(f) case and promised to study the situation harder, with the result that LUFG escalated even more and the transportation customers are proposed under a non-unanimous settlement to experience further LUFG increases in magnitudes of 7% (Rate GT) and over 7.5% (Rate T).⁴¹

³⁸ *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).

³⁹ *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).

⁴⁰ *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).

⁴¹ The ruling in that case is discussed *supra*.

Indeed, in every year of the last four, PNG promises that it is diligently investigating and remedying the causes. Sometimes it makes the same promise several times in the same year. And, at no time does the rate of loss diminish. This has been a continuing dynamic.

PNG's 2008 settlement required the company to "immediately initiate steps to begin monitoring unaccounted for gas ("UFG") levels on its gathering system." PNG was required 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."⁴² In the 2009 1307(f) case, Peoples agreed to report, in its next (2010) 1307(f) filing, on the progress of its LUFUG mitigation measures.⁴³ The Commission affirmed last year's LUFUG levels, but in a carefully guarded way: "Peoples' LUFUG/CU rates are, *at present*, reasonable."⁴⁴

PNG took the same, "we are studying it" approach in the recent PUC audit. PNG's position before the auditors was that "the Company must first know what the primary causes of its UFG are. Dominion Peoples stated that to understand the sources of its UFG, the following programs have been utilized [consisting of measuring, leak surveys and accurate billing related measures]."⁴⁵ The auditors also critically noted that PNG has no objectives to determine appropriate LUFUG levels and recommended they be developed. PNG accepted the recommendations, as it had done in the previous 1307(f) cases.

⁴² *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2008-2022206 (Recommended Decision), at 5 (emphasis added).

⁴³ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069 (Order entered September 24, 2009), at 15.

⁴⁴ *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.*

⁴⁵ DR CX Ex. 1 at 40.

The LUGF gas levels were raised yet again in the recent settlement between PNG and the statutory parties in which Peoples was sold to a subsidiary of Steel River Infrastructure Fund.⁴⁶ And again, the outcome was to study. “[The new 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.”⁴⁷ This further study is to be presented “no later than the filing of PNGC’s 2011 1307(f) proceeding.” The settlement expressly noted that PNG’s “obligations” to control UFG that may be ordered by the Commission are not affected by this term.⁴⁸

E. Peoples Has Not Met Its Burden to Show That Increased Transportation Retainage Factors Are Just and Reasonable

1. Peoples’ Attempts To Prove That A 20% Increase In the LUGF Should Be Flowed Through Are Not Persuasive

In view of the proposed 1.2% higher LUGF rate, a 20% increase over the prior year’s rate,⁴⁹ it was incumbent upon Peoples to forthrightly and completely address the topic and explain its past, present and proposed future courses of action. This, Peoples did not do. Last year’s evidence and Commission findings may have been sufficient to demonstrate a 6.25% LUGF, but, on its own, cannot support a new LUGF rate of 7.45%.⁵⁰ Updates, additional information and further explanation is required, but was not presented here. There was no demonstration that the proposed increase is “just and reasonable” under the Public Utility Code

⁴⁶ *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).

⁴⁷ *Id.* at 26 (citing Settlement ¶ 66).

⁴⁸ *Id.*

⁴⁹ From 6.25% (2008) to 7.45% (2009). OSBA St. 1 at 3.

⁵⁰ The OTS LUGF/company use figure is even higher at 8.27%. OTS St. 1 at 7.

or a “reasonable allowance” under the Commission’s regulations. PNG’s approach to this case is encapsulated in the statement that “no party has challenged Peoples’ UFG level as being unreasonable,”⁵¹ apparently presuming that Peoples need not demonstrate, as a *prima facie* matter, that its proposed 7.45% rate is reasonable.

Peoples’ justification of the proposed LUFG/company use factor in its direct case consisted of two pages of testimony⁵² and a five and one-half page exhibit.⁵³ The testimony explained that because last year’s level of 6.25% was found reasonable, by implication, so too is this year’s 7.45%. The statement also noted 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...”⁵⁴

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,” it does not appear that the list was updated in any substantial way from last year. This year’s “forward-looking list” contains a clear orientation to 2009, and not 2010, as the point of reference.⁵⁵ 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

⁵¹ *Id.*

⁵² PNG St. 3 at 15-17.

⁵³ PNG Ex. 21.

⁵⁴ PNG St. 3 at 17.

⁵⁵ References to 2009 as being the current year are replete throughout Peoples’ Ex. 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.

were scheduled to be completed in 2009.⁵⁶ While this document may have been considered as part of a record that demonstrated the justness and reasonableness of a 6.25% LUFG, the Commission's 2009 Order makes it clear that only "Peoples LUFG/CU rates are, *at present*, reasonable."⁵⁷ 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.

In its rebuttal testimony, PNG offered a few additional facts, including the claim that it "should be afforded special consideration," since its system "is perhaps unique in Pennsylvania..."⁵⁸ However, even were this conclusory claim supported on the record of this case, that does not explain this year's 20% increase on *its own system*. These are not comparisons of Peoples with other distribution companies. They are the year-over-year increases on Peoples' system - unique or not.

But principally, PNG argues that the Commission and its customers should simply accept the higher rate and patiently await the 2011 1307(f) study since, to not flow through the current, ever expanding levels of LUFG, "would be premature and potentially penalize Peoples in the interim while its comprehensive plan to address UFG is underway."⁵⁹

2. Peoples Has Not Explained the Efforts Undertaken Historically To Control LUFG As Prudent

No where does PNG explain what measures management could have and should have undertaken previously in the normal course of business. The gathering system leak survey was not commenced until last year,⁶⁰ despite the fact that the gathering system LUFG factor shot up

⁵⁶ 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.

⁵⁷ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069 (Order entered September 24, 2009), at 11 (emphasis added).

⁵⁸ PNG St. 5 at 4.

⁵⁹ PNG St. 5 at 5 and 6 (reiterated).

⁶⁰ PNG St. 3 at 16-17.

42% in the last three years, from 5.2% to 7.0%.⁶¹ It is just now, in 2010, commencing right-of-way maintenance.⁶² Peoples no where explains why these measures were not ongoing in the normal course of business and, therefore, with a consistency of effort, the current LUFG factor avoided or, at least, mitigated.

PNG does not address what management was doing *before* the current spate of activity was forced upon it by the concerns of the company's customers, auditors and the Commission itself. Peoples' claim that settlement agreement approved in the Steel River acquisition matter last year "contemplated that Peoples would need time to implement the changes it determines are best to deal with UFG levels,"⁶³ acts as if the problem is new.

Peoples has failed to demonstrate by any evidence that currently deteriorated (and getting worse) level of LUFG on its system was unavoidable. When asked about studying "the causes," the answer is about "measuring" how much gas is lost -- not about how to arrest the escalation:

Q. How long has Peoples been studying the causes of lost and unaccounted for volumes on its system?

A. [Quantification] of unaccounted volumes is an ongoing analysis. It's always been done at Peoples. It's an annual calculation to review those levels, so it's nothing new in terms of trying to find ways and identify ways to improve unaccounted for. It's an ongoing effort.

Q. So you said something about quantification. I just want to be sure. Every year the company undertakes a calculation of lost and unaccounted for, correct?

A. It's actually calculated monthly.⁶⁴

⁶¹ PNG Ex. 20.

⁶² PNG St. 3 at 17 ("Peoples will also include ROW maintenance on an ongoing basis for all of its gathering system.").

⁶³ PNG St. 5 at 5.

⁶⁴ Tr. 112. The question on causes was asked again a few questions later and the same response was given about measurement. Tr. 112-113.

No where does PNG explain the past efforts of management to control the situation as they reviewed the monthly reports.

3. Peoples Has Refused To Describe the Current Status of Its Analysis

Nor is Peoples willing to share, even in generalized terms, what can be or should be done. The company simply takes the position that the issue should not be discussed until we have the promised study. 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.⁶⁵

In other words, the 2011 1307(f) study will be as Peoples defines it. There will likely be no great revelation or panacea. It may or may not be “comprehensive.”

Peoples attempted to dismiss Mr. Kalcic’s (OSBA) concerns over unchecked LUFG and *this year’s* 20% increase with the following passage:

As I explained in my Direct Testimony, and as described in Mr. Kubas’ Direct Testimony, Peoples has an obligation to review its UFG levels and to provide a report to the Commission regarding a plan to address UFG levels on or before its 2011 1307(f) proceeding. In last year’s 1307(f) proceeding, Peoples agreed to implement a variety of measures to effectuate reductions of its UFG. As I explained in my Direct Testimony, many of those measures have been completed, many of them are on schedule to be completed and additional measures have been undertaken beyond what we agreed to in last year’s settlement. All of those UFG

⁶⁵ *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).*

mitigation measures are designed to reach the goals that the Commission has urged Peoples to strive for.⁶⁶

The merger application settlement was negotiated when the UFG factor had appeared to have potentially moderated.⁶⁷ Now Peoples is asking that the current 7.45% factor⁶⁸ be flowed through because “we said we would present a study next year.” Certainly, more is need to justify a 20% increase in the LUFG factor.

The promise of the 2011 study did not preclude Peoples from discussing intervening events and giving the parties an update in this case. A substantial portion of the list reported in the 2009-derived Exhibit 21 were to have been completed on or before year end 2009 and, therefore, could have been (and should have been) reported to the Commission and parties in this case. For example, the internal audit review of local gas measurements is reported in Exhibit 21 as complete with the resulting “recommendations will be implemented by December 30, 2009.”⁶⁹ Additionally, the examination of gathering leaks was to have been “completed by June 30, 2009” and the process of prioritizing leak repairs commenced.⁷⁰ Certainly, Peoples must have some new information to share about why its gathering meters and pipelines in particular have experienced a runaway escalation. PNG’s position, however, is that it would not disclose anything on its studies or remediation plans in this case. The information clearly exists and the topic of the gathering system is the most pressing.

Yet, on this record, we have no understanding of what has caused the ballooning increases that Peoples is proposing to flow through or what should be done about it:

⁶⁶ PNG St. 5 at 3.

⁶⁷ The 2007 result reported in 2008 was 6.29% and the 2008 result reported in 2009, when the merger case settlement was negotiated, was 6.25%. OSBA St. 1 at 3.

⁶⁸ Calculated at 8.28% by OTS. OTS St. 1 at 6-7.

⁶⁹ PNG Ex. 21 at 5.

⁷⁰ 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 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.⁷¹

PNG points to its "mitigation efforts," but cannot (or is unwilling) to state why lost and unaccounted gas for continues to pour out of its system unchecked and in increasing amounts. 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.⁷²

4. Peoples Provides No Assurances That LUGF Will Not Continue To Rise

The only real fact on the record is that, whatever PNG's management is doing (or not doing), the results are ineffective and have not stemmed the costs of an increasingly leaky system. PNG has no right to force its customers to simply absorb the costs resulting from an inability to get control over the situation.

In fact, even after three years of settlements, we appear to still be in the "studying phase," not the "doing something phase:"

⁷¹ Tr. 117-118.

⁷² OSBA St. 1 at 5.

Q. What assurances does my client 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.

A study next year does not assure relief for the customers, any more than the study required in 2007 did. Nor will the settlement here improve upon the efficacy of Peoples' efforts. While the settlement provides that "Peoples will initiate a check meter program to validate measurement accuracy at selected local gas custody transfer meter stations."⁷³ Peoples Exhibit 21 concluded that the data collected by the three gathering systems check meters previously installed in 2009 "did not provide much value."⁷⁴ No where does Peoples explain why another attempt will provide any additional value.

5. A Moratorium Upon Discussions About LUFG Should Be Accompanied By A Moratorium Upon Increasing the LUFG Rate

If there is to be a moratorium on the LUFG debate, then so too should there be a moratorium on flowing through to customers an increase in that same cost until Peoples provides

⁷³ Settlement at 9 (Issue E).

⁷⁴ 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.")

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. All right. So we should freeze the discussion or wait the outcome of the next study. That's your position today?

A. We have a commitment and review approved by the commission in both the sale proceeding, when Peoples was recently sold [and] as a management audit to conduct that and make it available no later than next year's 1307(f).

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)?

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.

Q. Yes, freeze the rate recovery of those.

A. That's not our position.

Q. I understand that's not your position.

A. You're asking me to make that commitment now?

Q. Yes.

A. As stated in my testimony, for the reason I stated in my testimony, that's not our position.⁷⁵

“They are what they are” is not a response to the question.

⁷⁵ Tr. 115-116.

The attitude that LUFG is a variable that is automatically flowed through is wrong. We already know what “they are.” The Commission and Peoples customers deserve to know why and what is being done about it, before LUFG is flowed through. Until Peoples takes ownership of the problem and is held accountable, this game of “kick the can” seems to be capable of endlessly repeating.

6. Maintenance of the Current Retainage Factor Is Within the “Zone of Reasonableness”

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.⁷⁶ PNG then, on rebuttal, adopted the OTS’ recommendation that retainage should be increased by the average of three years’ experience.⁷⁷ On the witness stand, Mr. Gregorini stated that this too was within the “zone of reasonableness.”⁷⁸ 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.

⁷⁶ 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.”

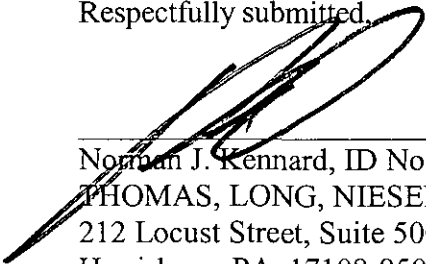
⁷⁷ Using the OTS’ higher LUFG/company use figures, including 8.27% in the current year. OTS St. 1 at 7.

⁷⁸ 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.”)

III. CONCLUSION

Dominion Retail requests that the Commission disallow the increase in transportation retainage rates proposed by Peoples in its rebuttal testimony and direct that no increase be permitted, as was Peoples' original position, so that Rate GT-T and Rate T retainage factors remain at 7.3% and 5.2%, respectively, without recourse to any other customer class of the difference.

Respectfully submitted,



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Dated: June 23, 2010

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APPENDIX A

DOMINION RETAIL, INC.

PROPOSED FINDINGS OF FACT
PROPOSED CONCLUSIONS OF LAW

DOMINION RETAIL, INC.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSED FINDINGS OF FACT

1. Peoples' current LUFG/company use rate is now 7.5% under the OSBA's calculation. OSBA St. 1 at 3.

2. Peoples' LUFG factor (inclusive of company use) has increased by 42% over the last three years: 2006, 5.26%; 2007, 6.29%; 2008, 6.25%; and 2009, 7.45%. OSBA St. 1 at 3.

3. Under OTS' calculation, Peoples LUFG/company use is currently 8.27%. OTS St. 1 at 2, 6-7, and OTS Ex. 1.

4. LUFG on the Peoples system has increased by 20% in just the last twelve months. OSBA St. 1 at 3. Volumes of gas volumes now lost and unaccounted for now equal 3.6 billion cubic feet (2009). OSBA St. 1 at 5.

5. The LUFG on Peoples' system "continues unabated." OSBA St. I at 5.

6. The gathering system LUFG rate was calculated for the first time in this proceeding and presented by Peoples. PNG Ex. 20. The results show an escalation across all segments, particularly in the gathering sector.

<u>System</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Gathering	5.19%	6.33%	6.98%
Storage	2.42%	2.55%	2.80%
Distribution/Trans	2.86%	1.82%	2.79%

7. Peoples claims to be "perhaps unique" (PNG St. 5 at 4), but must justify its own rates not by comparison to others, but in comparison to its own experience.

8. The Commission's 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 gas companies]" and

among the highest of the Pennsylvania NGDs, including those operating in the gas fields of Western Pennsylvania. DR CX Ex. 1 at 39. In terms of the financial magnitude of the problem, the Commission auditors “estimated the annual cost reductions the Company would have achieved if its UFG had been equal to the panel average during 2003 to 2007 at approximately \$13.2 million annually.” DR CX Ex. 1 at 43.

9. The escalating lost and unaccounted for gas have a direct impact on both system supply and transportation service customers, raising gas costs for system customers and the retainage rate for transportation customer. OCA St. 1 at 9-10.

10. Retainage on Peoples has not always been so high. “It was not that long ago that retainage levels were in the 3-4 range on the Peoples Gas system.” DR. St. 1 at 7 and Tr. 101-102.

11. The non-unanimous settlement agreement presented in this case proposes to raise the transportation retainage rate for small customers (Rate GS-T) from 7.3% to 7.8% and from 5.2% to 5.6% for larger customers (Rate T) based upon the most recent three year average. Settlement Petition at ¶ G; OTS St. 1 at 5-6. These are a 6.8% and a 7.7% increase in the current retainage factors, respectively.

12. While the three year averaging concept has moderated the effect upon transportation customers, but, as a matter of simple math, only slows the rate of change both up (as it is now) and down (if that ever occurs). It does not ultimately reduce the level of retainage that the transportation customer must pay.

13. Nor are the impacts of LUFGE limited to the rate effects, other effects also include increased green house gas emissions, and endangerment of public safety. *Pa. P.U.C. v. T.W.*

Phillips Gas and Oil Co., Docket No. R-2009-2145441, Statement of Chairman Cawley at Public Meeting of June 16, 2010 (emphasis added).

14. The retainage rates set last week by the Commission on the TW Phillips system, another gas distribution company with substantial local gas supplies, are 4.0% (large transport, comparable to Rate T) and 6.3% (small transport, comparable to Rate GS-T). *Pennsylvania Public Utility Commission v. T.W. Phillips Gas and Oil Co.*, Docket No. R-2009-2145441, Recommended Decision at 11.

15. In every §1307(f) proceeding of the last four, PNG as promises that it is diligently investigating and remedying the causes of LUGF. *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-00072109; *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, R-2008-2022206; *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069; and *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, R-2010-2155608.

16. The Commission affirmed last year's LUGF levels, but in a carefully guarded way: "Peoples' LUGF/CU rates are, *at present*, reasonable." *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Opinion and Order entered September 24, 2009 at 11 (Emphasis supplied). The Commission also 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.*

17. The Commission also stated in Peoples 2009 § 1307(f) order that 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.” *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Opinion and Order entered September 24, 2009 at 11.

18. In the recent Commission audit, the report recommended that PNG be required to: “Identify major sources of unaccounted for gas, implement programs to reduce the amount of unaccounted for gas in the system, and establish reduction goals.” DR CX Ex. 1. PNG conceded the recommendations, as it had done in the previous § 1307(f) cases.

19. The LUGF gas levels were raised again in the recent settlement between Peoples and the statutory parties in which Peoples was sold to a subsidiary of Steel River Infrastructure Fund. *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, Opinion and Order entered November 19, 2009. “[The new 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.” This further study is to be presented “no later than the filing of PNGC's 2011 1307(f) proceeding.” The settlement expressly noted that PNG’s “obligations” to control UFG that may be ordered by the Commission are not affected by this term. Order at 26 (citing Settlement ¶ 66).

20. Peoples’ justification of the proposed LUGF factor in its direct case consisted of two pages of testimony (PNG St. 3 at 15-17) and a five and one-half page exhibit (PNG Ex. 21).

21. PNG Statement 3 explained that, because last year's level of 6.25% was found reasonable, by implication, so too is this year's 7.45%. PNG St. 3 at 15.

22. PNG Statement 3 also noted 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..." PNG St. 3 at 17.

23. While PNG Exhibit 21 was described as a "status update on the forward-looking measures list," it does not appear that the list was updated in any substantial way from last year. PNG Exhibit 21 contains a clear orientation to 2009, and not 2010, as the point of reference. References to 2009 as being the current year are replete throughout Peoples' Ex. 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.

24. 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.

25. In its rebuttal testimony, PNG offered a few additional facts, including the claim that it "should be afforded special consideration," since its system "is perhaps unique in Pennsylvania..." PNG St. 5 at 4. This claim was not otherwise supported on the record of this case and does not explain this year's 20% increase on its own system.

26. Principally, PNG argues that the Commission and its customers should simply pay the higher rate and patiently await the 2011 1307(f) study since, to not flow through the current, ever expanding levels of LUFG, “would be premature and potentially penalize Peoples in the interim while its comprehensive plan to address UFG is underway.” PNG St. 5 at 5 and 6 (reiterated).

27. No where does PNG explain what measures management could have and should have undertaken previously in the normal course of business.

28. The gathering system leak survey was not commenced until last year. PNG St. 3 at 16-17. despite the fact that the gathering system LUFG factor has shot up 42% in the last three years, from 5.2% to 7.0%. PNG Ex. 20.

29. Peoples is just now, in 2010, commencing right-of-way maintenance. PNG St. 3 at 17 (“Peoples will also include ROW maintenance on an ongoing basis for all of its gathering system.”).

30. Peoples does not explain why these measures were not ongoing in the normal course of business and, therefore, with a consistency of effort, the current LUFG factor avoided or, at least, mitigated.

31. Peoples has failed to demonstrate by any evidence that currently deteriorated (and getting worse) level of LUFG on its system was unavoidable. Tr. 112-113.

32. No where does PNG explain the past efforts of management to control the situation as they reviewed the monthly reports. Tr. 112.

33. Peoples is not willing to discuss, even in generalized terms, what can be or should be done about the escalating LUFG factor, including this year’s 20% increase. PNG St. 5 at 3.

34. The merger application settlement was negotiated based upon the 2008 LUFGE result reported in 2009 when the UFG factor appeared to have potentially moderated. OSBA St. 1 at 3.

35. The promise of the 2011 study did not preclude Peoples from discussing intervening events and giving the parties an update in this case.

36. Exhibit 21 lists projects, particularly the internal review of local gas measurements and gathering leaks, as complete by December 30, 2009 and June 30, 2009, respectively. PNG Ex. 21 at 5-6. PNG's position is that it would not disclose anything on its studies or remediation plans in this case. Tr. 117-118.

37. Peoples does not provide any estimate of the effect of its "mitigation program" only that it "expects" some, unidentified level of results. OSBA St. 1 at 5.

38. Peoples refused to provide any assurances that LUFGE will not continue to rise. Tr. 113-114.

39. While the settlement here provides that "Peoples will initiate a check meter program to validate measurement accuracy at selected local gas custody transfer meter stations" (Settlement at 9 (Issue E), Peoples Exhibit 21 concluded that the data collected by the three gathering systems check meters previously installed in 2009 "did not provide much value." 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."))

40. If there is to be a moratorium on the LUFGE discussion, then so too should there be a moratorium on flowing through to customers an increase in higher LUFGE costs until Peoples

provides plausible explanations and this Commission (and PNG's customers) get some meaningful answers and results. Tr. 115-116.

41. Supplement No. 119, the original filing, proposed no change to transportation LUFGE levels. Mr. Gregorini testified that no change was "within the zone of reasonableness" and, therefore appropriate. 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."

42. PNG, on rebuttal, adopted the OTS' recommendation that retainage should be increased by the average of three years' experience. On the witness stand, Mr. Gregorini stated that this too was within the "zone of reasonableness." 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.")

43. In any zone of reasonableness that might be available, the transportation customers should receive the benefit of that range.

II. PROPOSED CONCLUSIONS OF LAW

1. PNG bears the burden of justifying any proposed increase in rates. 66 Pa.C.S. § 315(a).

2. It was incumbent upon Peoples to forthrightly and completely address the topic of LUFGE and explain its past, present and proposed future courses of action.

3. All utility rates must be "just and reasonable." 66 Pa.C.S. § 1301.

4. Section 1318 assists in defining ratemaking considerations peculiar to the recovery of gas costs, but does not supplant § 1301, which is over arching. 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 ...”). The LUFG problem relates more to management’s operation of the gas system itself and raise issues of prudence and efficiency.

5. The Commission’s “Natural Gas Transportation Service Terms and Objectives” which 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.” 52 Pa. Code § 60.2(12).

6. A cost is not recoverable simply because it is incurred; to be “just and reasonable” it must be shown to be necessary and prudent. *Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation*, R-2008-2039634, Opinion and Order entered November 14, 2008; and *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Opinion and Order entered September 24, 2009.

7. The determination of the reasonableness of a gas utility’s LUFG factor is a case specific finding. *Pennsylvania Public Utility Commission v. Equitable Gas Co.*, 65 PA PUC 27, 87 PUR 4th 131, 1987 WL257961.

8. A natural gas distribution company’s UFG percentage “should be judged on a system-wide basis, not on a segment-by-segment basis.” *Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation*, R-2008-2039634, Opinion and Order entered November 14, 2008 at 3.

9. Last year’s evidence and Commission findings, on its own, cannot support a new LUFG rate of 7.45%. Updates, additional information and further explanation is required, but was not presented here.

10. Peoples has failed to demonstrate that the proposed increase in transportation retainage is “just and reasonable” under the Public Utility Code or a “reasonable allowance” under the Commission’s regulations.

11. The increase the proposed increase in transportation retainage should be rejected.

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APPENDIX B

DOMINION RETAIL, INC.

PROPOSED ORDERING PARAGRAPH

DOMINION RETAIL, INC.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The proposed increase in transportation retainage rates contained in the non-unanimous settlement is denied, so that Rate GT-T and Rate T retainage factors will remain at 7.3% and 5.2%, respectively, without recourse to any other customer class of the difference.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2010, I did serve a true and correct copy of the foregoing upon the persons below via first class mail as follows:

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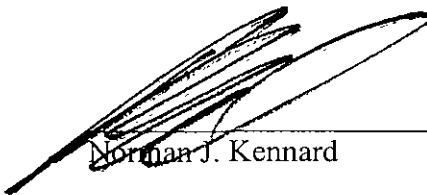
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