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July 1, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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400 North Street – Filing Room (2nd Floor)
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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 Reply
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:tl
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
et al. : C-2010-2163637
 : C-2010-2164664, et al.
 v. :
 :
 Peoples Natural Gas Company, LLC :

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REPLY BRIEF
OF
DOMINION RETAIL, INC.

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Dated: July 1, 2010

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I. STATEMENT OF THE CASE

Dominion Retail, Inc. (“Dominion Retail”) hereby responds to the Main Briefs (“MB”) submitted by the Pennsylvania Independent Oil and Gas Association (“PIOGA”) and Peoples Natural Gas Company (“PNG” or “Peoples”) consistent with the timetable established by Administrative Law Judge (“ALJ”) David A. Salapa in Prehearing Order # 2. Dominion Retail supports the position taken by the Office of Small Business Advocate (“OSBA”) in its Main Brief and does not reply. The Office of Trial Staff (“OTS”) and the Office of Consumer Advocate (“OCA”) did not submit briefs.

II. REPLY

A. Reply to Main Brief of *Amicus Curiae* PIOGA

Dominion Retail recognizes the opportunity for a “person interested in the issues involved in a Commission proceeding,” although it is not a party to the proceeding, to file a brief as *amicus curiae*.¹ Further, Dominion Retail acknowledges PIOGA members’ have an interest in the operation of Peoples’ system as a means to get local gas to market, both system supply and transportation.

However, of course, an *amicus curiae*, like all parties, must stay within the record developed in the proceeding and not stray beyond it. The references in the PIOGA *amicus curiae* brief regarding various factual matters, including: “regular meetings with Peoples”²; the manner in which “PIOGA became aware of several proposals in this case”³; and Peoples’

¹ 52 Pa. Code § 5.502(e).

² PIOGA Main Brief at 1.

³ *Id.*

engagement in “additional activities and measures”⁴; are cited not cited to the record and must be disregarded.

Dominion Retail has no understanding of the conversations between Peoples and PIOGA, which led to the filing of the *amicus curiae* brief. Clearly, Peoples shared its Main Brief with PIOGA prior to being filed.⁵ Indeed, PIOGA goes so far as to incorporate Peoples’ Main Brief into its own.⁶ Given the lack of reference in PIOGA’s *amicus curiae* brief to the record developed in this proceeding, it is reasonable to presume that PIOGA knows only what Peoples has told it. Thus, PIOGA’s view of which party’s position is “eminently reasonable” is likely a product of solely of discussions with Peoples.⁷ As such, its late participation in this proceeding is entitled to little or consideration.

Moreover, PIOGA nowhere describes how its interests are adversely affected were the Commission to reject Peoples’ request to increase the transportation retainage factor in this proceeding. Dominion Retail does not understand how producers, who are neither retail nor transportation customers of Peoples, would be affected were the transportation retainage factor to be maintained at its current level, as Dominion Retail advocates, particularly since it does not seek to shift any costs onto producers. Indeed, the rates for the transportation of natural gas volumes, *including* local production, would be lower, if the retainage rate is not raised.

This issue here is the level of recoverability by the utility, not the allocation of the cost. The potential rate design allocation of gathering system LUGF to producers *would be* of considerable interest to producers, but this issue is not raised here, because it has been expressly deferred by the settling parties, including Dominion Retail, to a future proceeding. As set forth

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.* (footnote 3).

⁷ *Id.* at 3.

in the settlement, “Peoples will analyze the potential impacts of assessing a gathering system retainage charge,” and, specifically, will review two alternatives, one of which is the allocation of gathering system LUFG to producers, and report back “no later than its 2011 1307(f) filing.”⁸ “All parties are free to address the issues raised as a result of this analysis.” Moreover, “[n]othing herein precludes any party from addressing charges to gas producers in the anticipated 2010 base rate case.”⁹

From Dominion Retail’s view, the deferral of the gathering system rate design issue to another proceeding was done to preserve the opportunity for PIOGA to participate, since it did not intervene in this case, and to insure a full and complete debate that includes all parties. While Dominion Retail submitted testimony advocating recovery of gathering system LUFG from producers,¹⁰ this issue was deferred by the settling parties, including Dominion Retail, until the next base rate case or §1307(f) filing.

In summary, Dominion Retail’s position in this case does not adversely affect the producers’ interests. Nor does PIOGA identify any impact. Indeed, maintaining LUFG and retainage at the current level benefits transportation should benefit the producers that sell gas to transportation customers. The settlement expressly defers the producer LUFG allocation issue to another proceeding, a resolution which PIOGA has expressed no objection.

B. Reply to Main Brief of Peoples

Peoples’ Main Brief support for the justness and reasonableness of the proposed transportation retainage rate -- the prospect of a study to be presented next year as a sufficient basis to demonstrate the reasonableness of the proposed 20% increase in the LUFG -- is exactly

⁸ Settlement Petition at 8-9 (¶ E).

⁹ *Id.*

¹⁰ DR St. 1 at 7-8 and DR St. 2 at 18-20.

as was described in Dominion Retail's Main Brief. The problem is that Peoples equates the undertaking of internal studies, the results of which it refuses to report discuss at all,¹¹ with meeting its burden of proof to justify a rate increase. Peoples is entirely incorrect to assert that its public utility obligation to operate its system prudently on an ongoing basis is satisfied with the prospect of an undefined study to be presented at some point in the future.

I. Peoples' Main Brief Fails To Meet Its Burden of Proof or "Completely Address" the Retainage Issue

It should not be a point of debate that Brief, Peoples has the burden of proof in this proceeding to demonstrate that its rates are just and reasonable.¹² Peoples' view, however, is markedly different 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. The record does not support that conclusion and Your Honor should so find.¹³

Of course, this is legally unsupportable. Peoples must *itself* demonstrate the justness and reasonableness of the proposed rates before any other party is required to show otherwise.

Moreover, that showing by PNG *must* be set forth in Main Brief, under the Commission's regulations:

*The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.*¹⁴

This Peoples has not done.

¹¹ DR MB at 15-16.

¹² DR MB at 2.

¹³ PNG MB at 11 (fn. 21) (Emphasis in original)..

¹⁴ 52 Pa. Code § 5.501(a)(3).

As a threshold matter, Peoples' Main Brief nowhere identifies the implicit LUFG factor or the proposed transportation retainage rate for which it seeks approval. Nowhere does it acknowledge that the LUFG rate has increased by 20% over the most recent twelve month period. This is an evidentiary gap in PNG's presentation. The aggregate system LUFG and company use figures were not previously recited in either the original filing or in PNG's supporting testimony.¹⁵

Nor does Peoples attempt to reconcile the LUFG rates calculated by the public advocates, among which there is considerable year-over-year divergence:

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
OSBA ¹⁶	5.26%	6.29%	6.25%	7.45%
OTS ¹⁷	N/A	7.01%	7.36%	8.27%

Moreover, there is also substantial spread in the three year average (2007-2009) LUFG factors calculated by the statutory parties ranging from the OSBA's figure of 6.66%¹⁸ and the OTS' 7.54%¹⁹ to the OCA's very high 8.2%. (All of these figures include both lost and unaccounted for and company use volumes.)²⁰

These divergent calculations are *all* based upon Peoples-supplied discovery answers,²¹ yet PNG never identifies its own calculation or its position on these conflicting calculations. The OSBA witness recognized the difference and found no errors in either the OSBA or OTS

¹⁵ 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.

¹⁶ OSBA St. 1 at 3.

¹⁷ OTS St. 1 at 6-7 and Ex. 1, Sch. 1.

¹⁸ OSBA St. 1 at 6.

¹⁹ OTS St. 1 at 8.

²⁰ OCA St. 1 at 9-10.

²¹ 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.

calculations, but rather anticipated that the “data supplied by the Company is incorrect and/or incomplete...”²² Peoples never responded.

Nor is there any discussion in Peoples’ Main Brief of the proposed increase in the transportation retainage rate. No where does Peoples explain the reasonableness of the higher settlement retainage rate as compared to its original, no change proposal. PNG does not address why the ostensible “zone of reasonableness” justifies a higher rate, when it previously justified no revision to the transportation retainage rate.²³ Nor does Peoples explain why the settlement retainage factors are based upon the OTS’ higher three year average (7.54%), rather the OSBA’s lower figure (6.66%), which would actually cause a *decrease in the current* transportation retainage factors.

These are all fundamental lapses in the record upon which Peoples seeks to have higher transportation retainage rates declared to be “just and reasonable.”

2 Peoples’ Claim of “Perhaps Uniqueness” Is Not Compelling

In support of the proposition that its LUGF levels “are still reasonable,” Peoples cites 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.²⁴ 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.²⁵ Dominion Retail finds no

²² OSBA St. 2 at 2.

²³ DR MB at 20.

²⁴ PNG MB at 11.

²⁵ PNG St. 3 at 13 (lines 2-6)(emphasis added).

reference to comparisons between Peoples and other gas distribution companies in any part of Statement No. 4.²⁶

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."²⁷ However, as pointed out in Dominion Retail's Main Brief, such a vague comparison is not helpful.²⁸ 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 LUFG levels might reasonably be higher. Peoples never sets forth what a reasonable range would be, or what the drivers are, or why its LUFG level should not be more comparable to other Western Pennsylvania gas companies, such as T.W. Phillips, which just reported out a three year LUFG of 4.6%²⁹ as compared to Peoples' three year average somewhere between 6.7% (OSBA) and 8.2% (OCA).

Thirdly, and most importantly, even were these comparisons with other companies more fully developed, they do not address year-on-year comparisons of Peoples *with itself* or justify the pass through of a 20% increase in LUFG in this case.³⁰

3. The Promised Study Is Less Than It Seems

Peoples' main defense is that the study that it has previously offered to present next year is a shield against any discussion of LUFG, even of a proposed increase this year. The thrust of this argument is captured in the Main Brief passage which states: "What is clear now is that

²⁶ Nor should Dominion Retail and Your Honor 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.

²⁷ PNG St. No. 5 at 4 (line 14) (emphasis added).

²⁸ DR MB at 6.

²⁹ *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.

³⁰ DR MB at 5-6.

Peoples should not be penalized for complying with the Commission's orders in past 1307(f) cases and the sales case."³¹

This is tortuous logic. It is true that Peoples, in order to obtain approval of the controversial sale of PNG stock to Steel River Infrastructure Fund, acknowledge that it would undertake a study of LUFG, but this simply affirmed that the issue would be dealt with in the company's 2009 § 1307(f) proceeding, as Judge Meehan noted.³² It is also true that the 2009 § 1307(f) case was resolved by a settlement by which PNG *volunteered* a study in 2011. There is, however, no corollary term in either of these two settlements that permits Peoples to raise LUFG in the interim or offers a moratorium on challenges to an increase. Peoples says that it is diligently undertaking this study, but this is a far cry from the proposition that the agreement to study also includes an automatic right to flow through increases in the interim.

While Peoples repeatedly points to its "obligations" and "commitments" to deal with UFG levels and the settlement approvals adopted by the Commission, these are not a shield. Nor do they, on their face, require an extraordinary effort, beyond what a prudent management would undertake. No Peoples witness has described them as such.

The 2009 § 1307(f) settlement, besides agreeing to calculate the losses on a component basis (i.e., gathering, storage and distribution), simply states that it will report on the progress of its UFG mitigation measures "as described in [its] direct testimony." Appendix "B," a part of the 2009 settlement, was simply a "summary of the mitigation measures and approximate

³¹ PNG MB at 16-17.

³² *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)("Order Denying") at 22.

completion dates” that PNG had already offered.³³ In other words, Peoples has not committed to undertaking any particular measures, but simply to report on the progress of its “mitigation measures” in a summary fashion to the Commission.

Nor does the “sales settlement” provide much comfort to customers. Paragraph 66 of the sales case settlement consists of a recitation of the 2008 § 1307(f) settlement 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,”³⁴ which had already been agreed to in the 2009 § 1307(f) case, three months earlier. In turn, the 2008 1307(f) settlement was nothing more than a requirement that Peoples “immediately initiate steps to begin monitoring [LUFG] levels on its gathering system” and “begin to quantify UFG levels as soon as possible once an initial detailed operational review of its gathering system is conducted.”³⁵

There is no explanation as to why any of these measures were not undertaken previously in the normal course of business operations. While Peoples claims that these settlement provisions “represent significant compromises by the company in terms of UFG reduction activity being undertaken presently and actions the company will employ in the future,”³⁶ we are just kicking the can down the road.³⁷ No where in its brief or in the record of this case has Peoples set forth any evaluation of the efficacy or prudence of these measures.³⁸

³³ *The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2009-2088069, Settlement at 8 (¶ D).

³⁴ *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; see *Order Denying* at 16-17.

³⁵ *Pa. P.U.C. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. R-2008-2022206 (Recommended Decision dated July 22, 2008) at 5.

³⁶ PNG MB at 17.

³⁷ DR MB at 18-20.

³⁸ DR MB at 13-18.

4. Exhibit 21 Is Not Adequate To Establish Either Prospective or Retroactive Prudence

As pointed out in Dominion Retail's Main Brief, the update of activity set forth in PNG Exhibit 21 contains a few updated references, but no report upon the results or effectiveness of last year's activity in controlling the escalating LUFG factor.³⁹ Indeed, a comparison of the 2009 Section 1307(f) Appendix "B" document⁴⁰ with Peoples' 2010 Exhibit 21 shows a number of unexplained setbacks, including the following:

- 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 or in its Main Brief.

The situation is even more obtuse in the gathering system, which represents, by far, the largest portion of system LUFG (2009).⁴¹ While Peoples describes its gathering line leak survey plan as a new initiative begun last year,⁴² the 2009 Appendix "B" already included a commitment to quantify leaks on the gathering system which was "targeted for completion by June 30, 2009."⁴³ Thus, Peoples description of its "leak survey" as being a new "voluntary initiative"⁴⁴ 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.

³⁹ DR MB at 12-13.

⁴⁰ Provided as an unmarked attachment to OSBA St. No. 3.

⁴¹ PNG Ex. 20.

⁴² PNG MB at 15. See also, PIOGA MB at 2 with no record citation ("an accelerated effort...").

⁴³ PNG Ex. 21 at 6 and original 2009 Appendix "B" at 5 (provided as an unmarked attachment to OSBA St. No. 3).

⁴⁴ PNG MB at 15.

5. Dominion Retail Opposes Findings of Fact Nos. 1, 3, 5 and 6 and Notes That Peoples Proposes No Affirmative Conclusions of Law Regarding LUGF or Transportation Retainage

Dominion Retail specifically objects to the following proposed Findings of Fact:

PNG Proposed FOF No. 1. The fact that Peoples' system is "perhaps unique" is too unspecific and unquantified to be meaningful, and there is no actual demonstration that Peoples' system is not unique.

PNG Proposed FOF No. 3. It is unproved that Peoples has undertaken "many steps ... to mitigate UFG." Peoples has undertaken studies and actions, but there has been no mitigation of UFG. Further, the activities described are all recent and there is no demonstration that management has consistently sought to mitigate UFG.

PNG Proposed FOF No. 5. There has been no demonstration in the record of this case that "UFG levels are reasonable given the type of system operated." The testimonial citation (PNG St. 5 at 4) although the witness asserts that "my position continues to be ... that Peoples' UFG level is reasonable," contains no demonstration that comparison with any other system that would make the rates reasonable. Rather, the testimonial section relates to the fact that no other party has demonstrated costs are unreasonable. Peoples has failed to justify the proposed increase in transportation retainage by comparison to itself in prior years.

PNG Proposed FOF No. 6. Peoples purports that it is studying the LUGF problem and has undertaken "extensive" mitigation measures. There is no reference at either of the testimony citations to "extensive" mitigation measures. The best we can say is that there have been "some" mitigation measures.

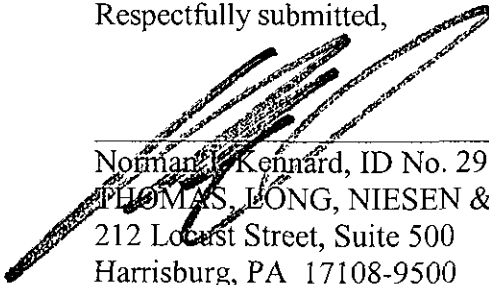
Finally, Dominion Retail notes that there are no Conclusions of Law proposed that the proposed increases in transportation retainage specifically, or LUGF generally, is "just and reasonable" or "prudent" and should be collected by the company.⁴⁵ In the absence of such legal conclusions, these increases cannot be flowed through to customers.

⁴⁵ 66 Pa.C.S. § 1301 and 52 Pa. Code § 60.2(12)

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: July 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2010, I did serve a true and correct copy of the foregoing upon the persons below as follows:

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