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May 17, 2011

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Peoples Independent Producers Group v. The Peoples Natural Gas Company d/b/a  
Dominion Peoples; Docket No. C-20054393**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Further Conference Memorandum of the Peoples Independent Producers Group, in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being served with a copy of this document. Please date stamp the extra copy of this transmittal letter and Prehearing Memorandum, and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Vasiliki Karandrikas

Counsel to the Peoples Independent Producers Group

VK/sds

Enclosures

c: Administrative Law Judge Wayne L. Weismandel (via E-mail and First-Class Mail)  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).


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\_\_\_\_\_  
Vasiliki Karandrikas

Counsel to the Peoples Independent Producers Group

Dated this 17<sup>th</sup> day of May, 2011, at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| Peoples Independent Producers Group | : |                       |
|                                     | : |                       |
| v.                                  | : | Docket No. C-20054393 |
|                                     | : |                       |
| The Peoples Natural Gas Company     | : |                       |
| d/b/a Dominion Peoples              | : |                       |

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**FURTHER CONFERENCE MEMORANDUM OF  
THE PEOPLES INDEPENDENT PRODUCERS GROUP**

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As requested by Administrative Law Judge ("ALJ") Wayne L. Weismandel in the April 21, 2011, Further Conference Order, the Peoples Independent Producers Group ("PIPG"), hereby submit this Further Conference Memorandum.

**I. HISTORY OF THE PROCEEDING**

On April 21, 2005, as subsequently amended on October 3, 2005,<sup>1</sup> PIPG contemporaneously filed a Complaint against The Peoples Natural Gas Company, d/b/a Dominion Peoples ("DP" or "Company") at Docket No. C-20054393 and a Petition for Emergency Order at P-00052162.<sup>2</sup>

**(a) 2005 PIPG Complaint**

PIPG's Complaint explains that, effective May 1, 2005, DP proposed to enforce unreasonable and unlawful requirements that would deny PIPG members the opportunity to use the Company's Production and Gathering Facilities to provide a vital source of natural gas supply to consumers in the Commonwealth. Specifically, DP proposed to shut in all wells that did not

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<sup>1</sup> The amendment removed the following companies from the proceeding: Dannic Energy Corporation; D.E. Limited Family Partnership; Fairman Corporation; Phillips Production Company and PC Exploration, Inc.; and US Energy Exploration.

<sup>2</sup> As noted below, in 2010, SteelRiver Infrastructure Investment Fund North America acquired Dominion Peoples. The Company is now known as The Peoples Natural Gas Company. Notwithstanding, for purposes of this Further Conference Memorandum, PIPG will refer to the Respondent as "DP" or "Company."

conform to a 5 pounds per mmcf water vapor standard, unless the local gas producer participated in the Company's 2005 Pennsylvania Production Enhancement Program ("PA PEP 2005"). To the best of PIPG members' knowledge, DP had never previously enforced a 5 pounds per mmcf water vapor standard on independent gas producers or DP's own local production.

Participation in PA PEP 2005 requires local gas producers to pay an illegal, untariffed bundled rate (i.e., "Production Enhancement Fee") for compression and dehydration facilities and activities that are already being paid for by retail customers through rates approved by the Pennsylvania Public Utility Commission ("PUC" or "Commission") in DP's last base rate case. The Production Enhancement Fee ranges between 18 – 28 cents per Mcf, of which 1 cent per Mcf ("Administrative Fee") is paid to the wholly owned subsidiary of the Independent Oil and Gas Association of Pennsylvania<sup>3</sup> ("IOGA-PA") for administrative and billing services related to PA PEP 2005. Moreover, participants must execute a non-negotiable six-year Production Enhancement Agreement that subjects all wells operated by the local producer on the DP system to the Production Enhancement Fee.

PA PEP 2005 follows on the heels of DP's PA PEP 2002 pursuant to which DP imposed an optional Production Enhancement Fee on local producers to finance the installation of new compression facilities.

To avoid the immediate and irreparable harm resulting from DP's unilateral enforcement of new water vapor standards and penalty by shut in for failure to conform to such standards, PIPG members' only recourse would have been to submit to the Company's efforts to coerce participation in the PA PEP 2005 program, despite objections on the lawfulness of the Production Enhancement Fee. PIPG members, however, refused to disregard legitimate

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<sup>3</sup> In 2010, IOGA-PA merged with Pennsylvania Oil and Gas Association ("POGAM") and formed the Pennsylvania Independent Oil and Gas Association of Pennsylvania ("PIOGA").

concerns about PA PEP 2005 and, accordingly, filed a Complaint requesting the Commission to: (i) stay DP's imposition of the Production Enhancement Fee and enjoin DP's enforcement of contractual water vapor standards pending evidentiary hearing; (ii) initiate action to address the merits of PIPG's Complaint; (iii) issue refunds of all unjust and unreasonable amounts paid pursuant to DP's PA PEP 2002; and (iv) provide any additional relief that the Commission deems necessary and appropriate.

**(b) PIPG Petition for Emergency Order**

As previously mentioned, contemporaneous with the Complaint, PIPG filed a Petition for Emergency Order requesting the PUC to prohibit DP from implementing the proposed new water vapor standards on May 1, 2005, and enjoining DP from shutting in any local production wells or requiring participation by local producers in the Company's PA PEP 2005 during the Commission's adjudication of PIPG's Complaint against the Company.

By its Petition for Emergency Order, PIPG sought to preserve the status quo in order to protect PIPG members' access to the essential facilities needed to take PIPG members' local natural gas production to market and to ensure the survival of PIPG members' production businesses. As a result of DP's sudden decision to enforce previously unenforced water vapor standards, PIPG members faced certain shut in. In the event of shut in, PIPG members will be irreparably harmed.

On April 29, 2005, the Commission issued an Emergency Order staying DP's implementation of new water vapor standards and enjoining DP from shutting in any local production based on failure to comply with the new water vapor standards or requiring participation by local gas producers in PA PEP 2005 for thirty days from May 1, 2005. At its Public Meeting on May 5, 2005, the Commission ratified the Emergency Order, subject to

modification. The Commission modified the Emergency Order by extending the duration of the Emergency Order by five days to coincide with the PUC's next Public Meeting.

By Interim Emergency Prehearing Order dated May 2, 2005, ALJ Weismandel scheduled a hearing on the Petition for Emergency Order for May 10, 2005. Due to illness the morning of the hearing, counsel for DP requested to postpone the hearing. The hearing was held on May 18, 2005.

On May 23, 2005, ALJ Weismandel issued an Interim Emergency Order, in which he ordered that the stay imposed by the Commission's May 5, 2005, Emergency Order be maintained "pending a final Commission order" in the above-captioned proceeding. By Order entered September 13, 2005, the Commission affirmed ALJ Weismandel's Interim Emergency Order.

**(c) 2008 Amendment to PA PEP 2005**

In May 2008, the Company issued an "Amendment to Production Enhancement Agreement" ("2008 PEP Amendment") purporting to modify the terms of the Company's PA PEP 2005. Specifically, the 2008 PEP Amendment extends the term of the PA PEP 2005 through March 31, 2015, with an automatic renewal clause, and institutes new rates associated with all producer gas "that passes through [a producer's] measurement points and/or metering equipment" to enter into the Company's system.

The new Production Enhancement Fee rates imposed by the 2008 PEP Amendment are established at two different levels, not based on the market price for gas. Specifically, the 2008 PEP Amendments institutes a \$0.32 per mcf fee on all gas entering the Company's gathering and distribution systems and a \$0.17 per mcf fee on gas above 200 psi operating pressure entering the Company's transmission systems. The rates constitute increases of \$0.06 per Mcf and \$0.02 per

Mcf, respectively, from the Company's original Production Enhancement Fee introduced with the PA PEP 2005; however, unlike the original Production Enhancement Fees, these revised fees under the 2008 PEP Amendment are entirely unrelated to the market price of natural gas.

The 2008 PEP Amendment also includes an additional charge of \$0.014 per Mcf to producers in the event that the Company "enters into a contract with [affiliate, Dominion Transmission, Inc. ("DT")] for firm transportation service at Truittsburg" and additionally permits the Company to "retain 0.25% for each Mcf of [a producer's] gas that passes through producer's measurement points and/or metering equipment."

The 2008 PEP Amendment additionally provides that a supplier agreeing to the Production Enhancement Fee under this revised program will also have to pay the Company "the sum, to be determined by [Respondent] based on the actual construction cost of [DT's] new interconnection at Rural Valley (currently estimated to be \$0.12 per Mcf)", while permitting the Company to retain "0.8% for each Mcf of [a producer's] gas that passes through [the producer's] measurement points and/or metering equipment."

The 2008 PEP Amendment proposes, ostensibly though not clearly, to continue allocating to Pennsylvania Independent Producers Service Company ("PIPSC"), a wholly-owned subsidiary of IOGA-PA, a \$0.01 "Administrative Fee" included in both Production Enhancement Fee rates "for arranging and administering the production enhancement program." Presumably, the remainder of this fees collected in association with this provision that are not used to compensate PIPSC for its administrative services will be transferred to IOGA-PA in accordance with the provisions of the PA PEP 2005.

As with the PA PEP 2005, the 2008 PEP Amendment is based on negotiations between the Company and IOGA-PA. These negotiations were consummated without the knowledge,

input or consent of the Complainants.

**(d) Mediation and Settlement Efforts**

By order adopted September 9, 2005, and entered September 13, 2005, the Commission remanded the above-captioned matter to the Office of Administrative Law Judge for "such proceedings as may be necessary." The parties consented to use the mediation process to resolve the dispute involved. By "Order Assigning Case for Mediation," dated September 26, 2005, ALJ Weismandel ordered that "the proceeding should move forward with mediation."

Prior to the mediation session, the Company reached accords with several PIPG members that resulted in those producers withdrawing from the proceeding. A mediation session occurred on December 14, 2005. On March 1, 2006, Equitable Resources, Inc. ("Equitable") announced its proposed acquisition of the Company. In light of this development, the Company and PIPG requested that further mediation be held in abeyance pending the proposed acquisition. In January 2008, Equitable's proposed acquisition of the Company was cancelled.

Between January 2008 and May 2008, the Company and PIPG engaged in settlement discussions. Settlement discussions with remaining PIPG members, however, were again stalled due to SteelRiver Infrastructure Fund North America's ("SteelRiver") proposed acquisition of the Company, which was announced in July 2008. SteelRiver's acquisition was concluded in early 2010.

On December 29, 2009, Herbert R. Nurick, mediator for the proceeding, submitted a report to the Commission. Due to the delay in reaching a full settlement, Mediator Nurick concluded that the mediation process was no longer appropriate for this case. As such, Mediator Nurick returned the case to the Office of Administrative Law Judge to continue with the formal hearing process.

On April 21, 2011, the PUC issued a notice scheduling a Further Prehearing Conference in this proceeding on May 24, 2011.

A Prehearing Conference is scheduled in this proceeding for May 24, 2011.

## **II. COMMUNICATIONS**

For purposes of service in the above-captioned proceeding, please direct all communications to:

Pamela C. Polacek (Pa. I.D. No. 78276)  
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## **III. COMPOSITION OF PIPG**

The names and addresses of Complainants are as follows:

DR Resources, Inc.  
1066 Hoover Road  
Smicksburg, Pennsylvania 16256

Catalyst Energy, Inc.  
800 Cranberry Woods Drive, Suite 290  
Cranberry Township, PA 16066

## **IV. ANTICIPATED ISSUES AND SUB-ISSUES**

PIPG anticipates pursuing the following issues during this proceeding and reserves the right to raise further issues and to respond to issues raised by other parties.

(a) **Issue 1: Whether the Production Enhancement Fee results in the double recovery of costs related to DP's production and gathering plant?**

The Company's PA PEP 2005 results in the double recovery of costs, i.e., from both retail customers and producers, related to the Company's Production and Gathering Facilities in contravention of the PUC's normal ratemaking process. As part of DP's 1995 base rate case, the Commission approved retail rates designed to recover production and gathering expense based on DP testimony that its cost of service included cost categories for utility plant and operating expenses related to gathering and production as well as for accounting services and administrative and general expense. Moreover, utility plant dedicated to gathering and production was included in the rate base upon which the Company was authorized to earn an annual rate of return. No valid basis exists to single out one category of plant or expenses for additional recovery through the Production Enhancement Fee. DP had the option to submit a rate increase pursuant to Section 1308 of the Public Utility Code if the cost of the facilities that it intends to install will result in an inadequate return, but chose not to do so until 2010. For the period from 2005 through 2010, DP was double recovering for these investments.

(b) **Issue 2: Whether the Production Enhancement Fee constitutes an illegal rate?**

Section 1301 mandates that the PUC regulate the rates of public utilities. See 66 Pa.C.S. § 1301. Section 102 sets forth an expansive definition of the term "rate," the liberal construction of which is supported by PUC precedent. See 66 Pa.C.S. § 102; Lytle v. T.W. Phillips Gas & Oil Co., Docket No. C-20027322 Opinion and Order (entered Dec. 30, 2002). Under PA PEP 2005, DP was requesting compensation from local producers for the installation of compression and dehydration facilities that are subject to the jurisdiction of this Commission. By the nature of the program, the Production Enhancement Fee is a mandatory gathering fee. Accordingly, the

Production Enhancement Fee is a rate. As such, DP's failure to submit a tariff filing setting forth the Production Enhancement Fee for PUC review and approval prior to collection renders it an illegal rate. Based on information elicited in the Emergency Petition proceeding, DP had no plans to install dehydration facilities commensurate with the revenues received from local producers under the fee. Upon information and belief, DP did not install sufficient facilities to justify the rates imposed on local producers under the PA PEP 2005. Under the 2008 Amendment, the Production Enhancement Fee was modified and is now purportedly being used to fund the construction of facilities at Rural Valley and Truittsburg to move locally produced gas off the Company's system. Again, this fee was modified without Commission review of the underlying costs, and applies regardless of whether a producer uses the proposed new facilities or sells its gas to an on-system pool.

(c) **Issue 3: Whether the Production Enhancement Fee constitutes a just and reasonable rate?**

Even if the Production Enhancement Fee were not illegal, it would constitute an unjust and unreasonable rate because: (i) it is not based on cost causation principles; (ii) it is not based on known and measurable costs; (iii) it bundles the costs of DP's provision of compression and dehydration services; (iv) it includes a \$0.01 per Mcf Administrative Fee to cover the administrative costs of IOGA-PA's wholly owned subsidiary, with any excess revenues passed through to IOGA-PA; (v) it represents an unauthorized rate increase for DP during a period of excessive rates of return; and (vi) it remains effective for a six-year term, subject to renewal, without being subject to reconciliation and refund. The fees under the 2008 Amendment to the PA PEP 2005 suffer similar infirmities.

(d) **Issue 4: Whether DP's PA PEP 2005 unreasonably and unnecessarily restricts Pennsylvania natural gas producers' access to DP's facilities in violation of the Commission regulations?**

PUC regulations provide that DP's tariff "may not unreasonably restrict Commonwealth natural gas producer access to gas utility facilities." 52 Pa. Code § 60.2(8). The Company's PA PEP 2005 contravenes PUC regulations by imposing a number of unreasonable restrictions on PIPG members' ability to access DP's Production and Gathering Facilities. Because the 2008 PES Amendment is predicated on DP's ability to enforce previously un-enforced water vapor standards, and the ability of the producer to avoid the enforcement of those standards by "voluntarily" participating in the PA PEP 2005, the amended program also unreasonably restricts producers' access to DP's facilities.

First, DP proposes to enforce a 5 pounds per mmcf water vapor standard only against local gas producers that do not participate in PA PEP 2005 (as amended in 2008). Producers that participate in PA PEP 2005 can deliver local gas with water vapor content as high as 543 pounds per mmcf.

Second, the 5 pounds per mmcf standard applicable to non-participating local gas producers is more stringent than the current industry standard of 7 pounds per mmcf.

Third, DP proposes to apply the 5 pounds per mmcf standard in a discriminatory manner to the extent that the Company will accept natural gas containing 7 pounds per mmcf of water vapor from suppliers delivering interstate gas through its affiliate, Dominion Transmission, Inc., but will penalize Pennsylvania producers supplying natural gas containing more than 5 pounds per mmcf of water vapor.

Fourth, participation in PA PEP 2005 is an all-or-nothing proposition. In other words, a local producer must agree to subject all meter sets to the Production Enhancement Fee for a six-

year term in order to participate regardless, for example, of whether some meters already comply with the 5 pounds per mmcf water vapor standard.

Fifth, the Production Enhancement Fee's bundled rate design forces PIPG members to absorb compression and dehydration costs in contravention of the Commonwealth's policy of promoting rate unbundling. In addition, the 2008 Amendment requires producers whose supplies remain on-system to compensate DP for the construction of facilities to transport gas off-system.

Sixth, participation in PA PEP 2005 requires a six-year commitment, the duration of which has no rational connection to the time necessary to install dehydration or related facilities. Similarly, the 2008 Amendment applies through 2015, with automatic one-year renewals.

Seventh, the Production Enhancement Fee violates cost causation principles because it socializes dehydration costs among local gas producers rather than allocating such costs among the specific wells that purportedly introduce gas supplies with excessive water vapor levels into DP's system. Similarly, the 2008 Amendment requires producers whose supplies remain on-system to compensate DP for facilities that will be constructed to transport gas off-system.

Eighth, the \$0.01 per Mcf Administrative Fee that is built into the Production Enhancement Fee forces local producers to fund IOGA-PA, whether or not they are members of IOGA-PA.

Ninth, the Production Enhancement Agreement is a non-negotiable contract. DP affords local gas producers absolutely no room to customize the terms of the agreement to suit their particular circumstances. In addition, based on the "amendment" that was imposed in 2008 and extended the program through 2015 (with rate increases and new retainage requirements), PIPG members and other local producers have no reasonable expectation that this program and its surcharges will ever expire. Rather, based on prior experience, the reasonable expectation is of

further extensions and increases to the surcharge, presumably without Commission review of the purpose or rate levels unless this Complaint is granted.

Finally, DP provided Pennsylvania natural gas producers with unreasonably short notice of its intention to enforce previously unenforced water vapor standards and, consequently, an inadequate amount of time to review PA PEP 2005 and to weigh the potential costs and benefits of participation against available alternatives.

(e) **Issue 5: Whether DP's PA PEP 2005 undermines the Commonwealth's policy of promoting Pennsylvania gas?**

PUC regulations task the Commission with the duty of promoting the development of Pennsylvania natural gas: "The development of Pennsylvania natural gas should be promoted, because it will achieve benefits that accrue to gas utilities and their customers." 52 Pa. Code § 60.1. DP's PA PEP 2005, however, presents an obstacle to fulfilling that duty. If implemented as proposed, DP's proposal will result in the certain and indefinite shut in of a substantial portion of local gas supplies provided to DP by PIPG members. Shut in presents not only grave and irreparable consequences for PIPG members' production businesses, but also adverse financial implications for Pennsylvania customers to the extent that DP must purchase higher-priced alternative gas supplies. The negative impact of shutting in Pennsylvania local gas is likely to be magnified by an already tight gas market, rising natural gas prices, and uncertain production levels affecting the entire nation.

**V. PROPOSED WITNESSES**

PIPG's witness list is still under development. However, PIPG tentatively expects to sponsor customer impact testimony regarding the PA PEP 2005 (including the 2008 Amendment), PA PEP 2002 and the impact of the programs on local gas producers by witnesses from PIPG member companies. PIPG is also evaluating the presentation of one or two expert

witnesses regarding the costs of installation and operation of dehydration facilities and/or interstate pipeline interconnection facilities (under the 2008 Amendment) and the appropriate ratemaking treatment for such costs.

PIPG also intends to participate in this proceeding through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs, exceptions and reply exceptions, if necessary.

## **VI. PROPOSED SCHEDULE AND DISCOVERY RULES**

PIPG will cooperate with the ALJ and the parties at the Prehearing Conference to develop a procedural schedule, which will ensure that all parties due process rights are adequately addressed. PIPG respectfully submits, however, that any such procedural schedule include a 60-day period for settlement discussions prior to the submission of direct testimony. PIPG is hopeful that the issues in this proceeding can be resolved via settlement. As previously stated, several of the original PIPG members were able to reach settlements with the Company; however, the uncertainty surrounding the future ownership of the Company frustrated then ongoing efforts to reach settlements with all members. Accordingly, PIPG respectfully submits that any procedural schedule should include a built-in 60-day time period to pursue settlement discussions. To this end, PIPG proposes the following procedural schedule:

|                                  |                         |
|----------------------------------|-------------------------|
| Settlement Discussions:          | May 24 to July 25, 2011 |
| PIPG Direct Testimony:           | September 2, 2011       |
| Other Parties' Direct Testimony: | October 11, 2011        |
| Rebuttal Testimony:              | November 11, 2011       |
| PIPG Surrebuttal Testimony:      | November 23, 2011       |
| Hearings:                        | December 6-8, 2011      |

Main Briefs: January 25, 2012

Reply Briefs: February 8, 2012

Furthermore, PIPG intends to submit an Amended Complaint to reflect the modifications that have been made to the PA PES 2005 program. PIPG intends to submit the Amended Complaint by June 10, 2011. PIPG also reserves the right to submit a Motion for Summary Judgment at an appropriate time.

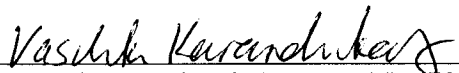
PIPG will also cooperate with the ALJ and the parties at the Prehearing Conference to develop appropriate discovery rules in accordance with the Commission's regulations and any directives issued by the ALJ.

#### **VII. POSSIBILITY OF SETTLEMENT**

As discussed above, PIPG is willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By   
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Counsel to the Peoples Independent Producers  
Group

Dated: May 17, 2011