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June 10, 2011

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

VIA HAND DELIVERY

**RE: Peoples Independent Producers Group v. The Peoples Natural Gas Company LLC;
Docket No. C-20054393**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and three (3) copies of the Second Amendment to the Complaint ("Complaint Amendment") of 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 Complaint Amendment, and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*
Vasiliki Karandrikas

Counsel to the Peoples Independent Producers Group

VK/sds

Enclosures

c: Administrative Law Judge Mark A. Hoyer (via E-mail and First-Class Mail)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PEOPLES INDEPENDENT
PRODUCERS GROUP,
COMPLAINANTS

v.

THE PEOPLES NATURAL GAS
COMPANY LLC

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Docket No. C-20054393

SECOND AMENDMENT TO COMPLAINT OF
PEOPLES INDEPENDENT PRODUCERS GROUP

Pursuant to the provisions of 52 Pa. Code Section 5.91, the Peoples Independent Producers Group ("PIPG") hereby requests to amend its Complaint filed on April 21, 2005, and subsequently amended on October 3, 2005,¹ in the above-captioned proceeding to reflect material changes that have occurred since the filing of the Complaint in both the factual and legal basis of PIPG's Complaint. Accordingly, the Complaint of PIPG in this proceeding is amended as follows:

I. INTRODUCTION

1. Castle Gas Company is removed from PIPG for the purpose of this Complaint.

The names and addresses of Complainants are as follows:

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

¹ 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.

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

Complainants' affidavits verifying the accuracy of the factual assertions in this Complaint are attached as Exhibit "A."

2. The names and addresses of Complainants' attorneys for the purpose of this proceeding is updated as follows:

Pamela C. Polacek (I.D. No. 78276)
Vasiliki Karandrikas (I.D. No. 89711)
Carl J. Zwick (I.D. 306554)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
vkarandrikas@mwn.com
czwick@mwn.com

3. Respondent utility remains:

The Peoples Natural Gas Company LLC ("Respondent" or "Company")²
625 Liberty Avenue
Pittsburgh, PA 15222-3197

II. BACKGROUND

4-7. Paragraphs 4 through 7 of the Complaint are incorporated herein.

8. Complainants are members of a class of independent Pennsylvania natural gas producers that supply Pennsylvania natural gas on Respondent's system. Collectively, Complainants produce approximately 843,000 Mcf of natural gas annually into Respondent's

² By order entered May 24, 2011, the caption to this proceeding was amended to reflect that Peoples Natural Gas Company LLC is the successor to the originally named Respondent, The Peoples Natural Gas Company d/b/a Dominion Peoples.

system. Complainants' combined production represents approximately 0.016% of Respondent's estimated annual throughput. Access to the Respondent's Production and Gathering Facilities is the primary method for Complainants to provide the local gas to the marketplace.

9-36. Paragraphs 9 through 36 of the Complaint are incorporated herein.

F. 2008 Production Enhancement Amendment

36.1. In May 2008, Respondent issued an "Amendment to Production Enhancement Agreement" ("2008 PEP Amendment") purporting to modify the terms of the Company's 2005 Pennsylvania Production Enhancement Program ("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 Respondent's system. See 2008 PEP Amendment, attached to this Second Amended Complaint as Exhibit "B."

36.2. 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 Respondent's gathering and distribution systems and a \$0.17 per Mcf fee on gas above 200 psi operating pressure entering Respondent's transmission systems. See id. at "Appendix B-1." The rates constitute increases of \$0.06 per Mcf and \$0.02 per Mcf, respectively, from Respondent's original Production Enhancement Fee introduced with the PA PEP 2005. See id.

36.3. The 2008 PEP Amendment also includes an additional charge of \$0.014 per Mcf charge to producers in the event that Respondent "enters into a contract with [affiliate, Dominion Transmission, Inc. ("DT")] for firm transportation service at Truittsburg" and additionally

permits Respondent to "retain 0.25% for each Mcf of [a producer's] gas that passes through producer's measurement points and/or metering equipment." *Id.* at ¶ 5.

36.4. The 2008 PEP Amendment additionally provides that a supplier agreeing to the Production Enhancement Fee under this revised program will also have to pay Respondent "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 Respondent to retain "0.8% for each Mcf of [a producer's] gas that passes through [the producer's] measurement points and/or metering equipment." *Id.*

36.5. The 2008 PEP Amendment proposes, ostensibly though not clearly, to continue allocating to Pennsylvania Independent Producers Service Company ("PIPSC"), a wholly-owned subsidiary of the Independent Oil & Gas Association of Pennsylvania ("IOGA-PA") and presumably now a wholly-owned subsidiary of the Pennsylvania Independent Oil and Gas Association of Pennsylvania ("PIOGA"),³ a \$0.01 per Mcf "Administrative Fee" included in both Production Enhancement Fee rates "for arranging and administering the production enhancement program." *Id.* at "Appendix B-1." Presumably, the remainder of the fees collected in association with this provision that are not used to compensate PIPSC for its administrative services will be transferred to PIOGA in accordance with the provisions of the PA PEP 2005.

36.6. As with the PA PEP 2005, the 2008 PEP Amendment is based on negotiations between Respondent and PIOGA. These negotiations were consummated without the knowledge, input or consent of the Complainants.

³ In 2010, IOGA-PA merged with the Pennsylvania Oil and Gas Association ("POGAM") and formed PIOGA.

36.7. On information and belief, the terms of the 2008 PEP Amendment will create a cost differential between those local suppliers who previously participated under the PA PEP 2005 and those who may subsequently be forced to agree to the Production Enhancement Fee under the revised terms of the 2008 PEP Amendment. It is not clear whether all PA PEP 2005 participants have been required to agree to the 2008 PEP Amendment, or whether some producers may continue operating under the PA PEP 2005 or other privately negotiated fee structures

III. INTERIM AND FINAL RELIEF REQUESTED

37-38. Paragraphs 37 and 38 of the Complaint are incorporated herein.

39. Complainants request that the Commission initiate action to address the merits of this Complaint. During that action, Complainants will demonstrate that Respondent's attempt to impose new water vapor standards, the PA PEP 2005, and additional off-system sales rates and less-favorable differentials under the 2008 PEP Amendment unrelated to water vapor standards or system supply safety and reliability must be rejected as unreasonable restrictions on the ability of local gas producers to access the Company's facilities and as contrary to sound public policy. Further, Respondent must be prohibited from charging the illegal, untariffed, unjust, unreasonable and unduly discriminatory Production Enhancement Fee or any other rate applicable under the 2008 PEP Amendment.

40-41. Paragraphs 40 and 41 of the Complaint are incorporated herein.

IV. LEGAL BASIS FOR RELIEF

A. **The Company Is Imposing an Unjust, Unreasonable and Discriminatory Rate for the Use of Jurisdictional Facilities That Has Not Been Approved by the Commission and Is Not Authorized by Respondent's Tariff.**

1. **The Production Enhancement Fee Results in the Double Recovery of Costs Related To the Company's Production and Gathering Plant.**

42-55. Paragraphs 42 through 55 of the Complaint are incorporated herein.

55.1. Furthermore, Respondent's attempt to now tie off-system access by local producers to the Company's gathering, distribution, and transmission systems through the imposition of new rates under the 2008 PEP Amendment is neither supported by Respondent's tariff nor related to the cost of this activity. The tariff does not authorize Respondent to shut in otherwise marketable gas in order to penalize a gas producer that may not meet Respondent's newly-imposed water quality standards. Similarly, the tariff does not permit Respondent to offer preferential pricing or other special treatment to suppliers that participate in the PA PEP 2005 simply based on their decision to participate.

56-57. Paragraphs 56 and 57 of the Complaint are incorporated herein.

2. **The Production Enhancement Fee Is an Illegal Rate.**

58-68. Paragraphs 58 through 68 of the Complaint are incorporated herein.

69.1. Additionally, the modification to the PA PEP 2005 initiated by Respondent with the 2008 PEP Amendment also constitutes an illegal rate. Just as the original Production Enhancement Fee constitutes a "rate" under the Public Utility Code by providing compensation to the Company for the use of its jurisdictional facilities, so too does the revised Production Enhancement Fee established by the 2008 PEP Amendment. Again, there is no tariff on file with the Commission allowing the Company to collect this fee or the additional retainage and charges

related to DT's Rural Valley construction facilities or to the contract with DT for firm transportation service at Truittsburg to move locally produced gas off the Company's system. As with the original Production Enhancement Fee, the Company has given no indication that it intends to file such a tariff. Absent Commission approval of a tariff authorizing the Company to collect these charges, the imposition of the revised Production Enhancement Fee in the manner contemplated by Respondent in the 2008 PEP Amendment is also illegal. See generally Lytle v. T.W. Phillips Gas & Oil Co., Docket No. C-20027322 Opinion and Order (entered Dec. 30, 2002) (prohibiting T.W. Phillips from charging an optional fee to process credit card payments until such fee was added to the tariff and requiring T.W. Phillips to refund all amounts previously collected).

69.2. Even if the revised Production Enhancement Fee contemplated by the 2008 PEP Amendment were not an illegal rate, it would also constitute an unjust, unreasonable and unduly discriminatory rate in violation of Section 1301.

69.3. Specifically, the revised rate is also not based in any conceivable manner on cost causation principles. Rather, the \$0.06 per Mcf and \$0.02 per Mcf increases to the gathering and distribution systems and transmission system rates, respectively, appear to be wholly arbitrary and are without any supporting explanation.

69.4. With respect to the retainage rates and charges associated with the contemplated Truittsburg construction contract with DT, these fees cannot be considered to be related to actual costs of a project, nor has it been established that the project is used or useful to the public. If Respondent desires to recover these costs from suppliers and, ultimately, ratepayers, it must acquire permission from the Commission to do so. See 66 Pa. C.S. § 1102(a)(3). Finally, Respondent likewise gives no identification of the costs or justification whatsoever for the

"estimated" \$0.12 per Mcf charge that it deems necessary to recover from local suppliers in relation to the new DT interconnection at Rural Valley. The costs are not known and measurable and, by logical extension, there is no basis to conclude that these revised charges constitute a just and reasonable cost-based rate.

69.5. Additionally, the revised Production Enhancement Fee included in the 2008 PEP Amendment unduly discriminates against those local suppliers, such as Complainants, that have not executed the PA PEP 2005 Production Enhancement Agreement for well-articulated reasons that have been the subject of this proceeding since the original Complaint was filed in April 2005. The effect of this revised rate is to further punish Complainants and other suppliers that have not acquiesced to the requirements of the PA PEP 2005. Specifically, the 2008 PEP Amendment offers a revised rate that favors those suppliers who remain under the terms of the PA PEP 2005. In other words, customers that may now elect to submit to the terms of the PEP will have to do so in accordance with the revised terms of the 2008 PEP Amendment, and thereby incur additional charges related to the increased Production Enhancement Fee, the DT Rural Valley transmission interconnection, and the prospective DT Truittsburg contract. Thus, similarly situated suppliers will be paying rates to Respondent that greatly vary simply because they have waited, for sound legal and business purposes, from participating in the illegal, unjust and unreasonable PA PEP 2005. This clearly violates the requirements for nondiscriminatory rates. See 66 Pa. C.S. § 1301.

69.6. Finally, as with the PA PEP 2005, the 2008 PEP Amendment also includes an Administrative Fee of \$0.01 per Mcf to compensate PIOGA's wholly owned subsidiary, PIPSC, for its billing services, with any remaining balance transferred to PIOGA. Because any revenues in excess of the billing costs are "transferred" to PIOGA, it is obvious that the \$0.01 per Mcf

included in the Production Enhancement Fee is not a "cost-based" billing rate. The Administrative Fee is not related to the installation and operation of Respondent's dehydration facilities and, to the extent that the Commission approves a cost-based Production Enhancement Fee, the billing and collection of such rate should be Respondent's responsibility. Any excess revenues should be refunded to ratepayers via the Purchased Gas Cost mechanism or to the local producers. As currently contemplated by the Company, however, the Administrative Fee is patently unjust and unreasonable.

70. Paragraph 70 of the Complaint is incorporated herein.

B. Respondent's Actions Violate Section 60.2(8) of the Commission's Regulations by Unreasonably and Unnecessarily Restricting Commonwealth Natural Gas Producers' Access to the Company's Facilities.

71. Paragraphs 71-80 of the Complaint are incorporated herein.

C. The Company's Actions are Contrary to the Commonwealth's Policy of Promoting Pennsylvania Gas.

72. Paragraphs 81-82 of the Complaint are incorporated herein.

WHEREFORE, the Peoples Independent Producers Group respectfully requests to amend its Complaint filed on April 21, 2005, and subsequently amended on October 3, 2005, to reflect these changes and for the Presiding Administrative Law Judge and the Pennsylvania Public Utility Commission to take whatever action are necessary to memorialize the requested amendment.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By *Vasiliki Karandrikas*
Pamela C. Polacek (I.D. No. 78276)
Vasiliki Karandrikas (I.D. No. 89711)
Carl J. Zwick (I.D. 306554)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
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Counsel to Peoples Independent Producers Group

Dated: June 10, 2011

EXHIBIT A

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EXHIBIT B

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**AMENDMENT TO
PRODUCTION ENHANCEMENT AGREEMENT**

THIS AGREEMENT made this _____ day of _____, 2010 by and between PEOPLES NATURAL GAS COMPANY, LLC, a Pennsylvania limited liability company, with its main office at 1201 Pitt Street, Pittsburgh, PA 15221 (“PEOPLES”) and ***** with a business address of ***** (“PRODUCER”).

WHEREAS, PEOPLES and PRODUCER entered into a Production Enhancement Agreement effective with the production period of April 2005; and

WHEREAS, PEOPLES and PRODUCER wish to modify the terms of said Agreement,

NOW, THEREFORE, for and in consideration of mutual covenants, the parties hereto agree to the following:

1. The following sentence shall be added at the end of paragraph 2:
“Beginning with April 2011 production period, PRODUCER shall pay PEOPLES, or its agent, the appropriate production enhancement program fee identified in the attached **Fee Schedule** (Appendix “B-1”) for each Mcf of PRODUCER’S gas that passes through PRODUCER’S measurement points and/or metering equipment identified on **Appendix “A”** to this Agreement.

2. **Fee Schedule** (Appendix “B-1”), which is attached hereto, shall be attached to the original Production Enhancement Agreement being modified hereby.

3. The following language shall replace paragraph 7:

“This Agreement shall take effect as of the production month of April 2005 (the “Effective Date”) and shall continue in effect until March 31, 2015. This Agreement shall renew automatically for successive additional twelve-month terms, upon the same terms and conditions, unless either party shall have cancelled the Agreement by giving to the other ninety (90) days’ written notice prior to the end of the initial term or ninety (90) days’ written notice prior to the expiration of any subsequent twelve-month term.”

4. Paragraph 21 shall be modified to replace the name, address and telephone number set forth therein with the following:

Frank Milfeit, Director, Operations-Engineering
PEOPLES NATURAL GAS COMPANY, LLC
1201 Pitt Street
Pittsburgh, PA 15221
Phone: 412-244-7164
Fax: 412-244-2546

5. The following language shall be added as new paragraph 27:

“27. Beginning with August 2008 production period, PEOPLES shall retain 0.25% for each Mcf of PRODUCER’S gas that passes through PRODUCER’S measurement points and/or metering equipment identified on **Appendix “A”** to this Agreement, which retainage percentage shall be reviewed periodically and, if appropriate, modified to reflect updated data. If PEOPLES enters into a contract with DTI for firm transportation service at Truittsburg, PRODUCER shall pay PEOPLES, or its agent, the sum of \$0.014 per Mcf. This rate will be reviewed periodically and, if appropriate, modified to reflect updated costs.

Additionally, beginning with the production period during which PEOPLES shall be first able to deliver locally produced natural gas into DTI’s new interconnection at Rural Valley, Pennsylvania, PRODUCER shall pay PEOPLES, or its agent, the sum, to be determined by PEOPLES based on the actual construction cost of DTI’s new interconnection at Rural Valley (currently estimated to be \$0.12 per Mcf), per Mcf and PEOPLES shall retain 0.8% for each Mcf of PRODUCER’S gas that passes through PRODUCER’S measurement points and/or metering equipment identified on **Appendix “A”** to this Agreement, which dollar amount and retainage percentage shall be reviewed periodically and, if appropriate, modified to reflect updated costs. The fee shall remain in effect for a period equal to the initial term of the agreement between PEOPLES and DTI for firm transportation service at the Rural Valley interconnection. Producer’s obligation to pay this fee shall survive this Agreement. ”

6. In all other respects, the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to Production Enhancement Agreement to be effective as of the day and year first written above.

PEOPLES NATURAL GAS
COMPANY, LLC

ATTEST:

By _____

By _____

Its _____

Its _____

ATTEST:

By _____

By _____

Its _____

Its _____

Appendix B-1

Fee Schedule

Gas entering Peoples' Gathering and Distribution systems

Production Enhancement Fee: \$0.32 per mcf¹

Gas entering Peoples' Transmission systems (above 200 psi operating pressure)

Production Enhancement Fee: \$0.17 per mcf¹

¹ Production Enhancement Fee includes an Administrative Fee of \$0.01 per Mcf of PRODUCER'S gas that passes through PRODUCER'S measurement points and/or metering equipment identified on **Appendix "A"** to this Agreement, which shall be retained by the Association for arranging and administering the production enhancement program.

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).

VIA E-MAIL AND FIRST-CLASS MAIL

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Vasiliki Karandrikas

Counsel to the Peoples Independent Producers Group

Dated this 10th day of June, 2011, at Harrisburg, Pennsylvania.

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