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August 3, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17108

VIA HAND DELIVERY

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the original and three (3) copies of the Reply of Peoples Independent Producers Group to the New Matter of Peoples Natural Gas Company LLC, in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Reply, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Vasiliki Karandrikas
Vasiliki Karandrikas

Counsel to the Peoples Independent Producers Group

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY OF PEOPLES INDEPENDENT PRODUCERS GROUP TO THE NEW MATTER OF PEOPLES NATURAL GAS COMPANY LLC

On June 10, 2011, Peoples Independent Producers Group ("PIPG") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") their Second Amendment to the Complaint, in the above-referenced proceeding. On July 14, 2011, Peoples Natural Gas Company LLC ("Peoples" or "Company") submitted an Answer and New Matter. PIPG hereby replies to the New Matter.

REPLY TO NEW MATTER

1. The allegations in the Paragraph 1 are admitted. By way of further response to the allegations in footnote 5 of Paragraph 1, PIPG submits:

a. Although participation in the 2002 Pennsylvania Production Enhancement Project ("PA PEP 2002") has been voluntary and PIPG member Catalyst Energy Inc. ("Catalyst") participates in PA PEP 2002, the Production Enhancement Fee for the 2002 PA PEP is not set forth in Peoples' Supplier Tariff and has never been subject to Commission review or approval to ensure such fee is lawful, just, reasonable, and non-discriminatory. 66 Pa. C.S. § 1301. A customer's voluntary payment of a public utility's fee is not determinative of whether such fee is just, reasonable, non-discriminatory or otherwise lawful, especially when the specific fee is not contained in a tariff. 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). Accordingly, the Company's request to estop PIPG from challenging a fee that may be illegal, unjust, unreasonable, or discriminatory and receiving any refunds that may be ordered by the Commission based on its disposition of this proceeding must be denied.

b. PIPG agrees that the PA PEP 2002 involved the installation of compression facilities and that the 2005 Pennsylvania Production Enhancement Program ("PA PEP 2005") purported to address water vapor standards. PIPG, however, denies that the primary purpose of the 2008 amendment to the PA PEP 2005 ("2008 PEP Amendment") is to address water vapor standards. Rather, the aim of the 2008 PEP Amendment is to enhance the Company's off-system sales of natural gas supply. According to the Company, "Unlike PA PEP 2005, the 2008 PEP Amendment provides for fees and investments to enhance the ability of local producers to take gas off-system to Dominion Transmission, Inc.'s interstate pipeline." See Peoples' Answer at ¶ 36.4.

2. The allegations in Paragraph 2 are admitted. By way of further response, due to a stay imposed in 2005 by the Commission, PIPG members have not been required to participate in or pay the Production Enhancement Fee for the Company's PA PEP 2005 or 2008 PEP Amendment (together, "PES programs") pending a final Commission order in this proceeding.

3. Paragraph 3 states a legal conclusion for which no response is necessary, but, to the extent that a response is necessary, the allegations in that Paragraph are denied. By way of further response, PIPG filed its Complaint, as subsequently amended, on behalf of its members. As set forth in PIPG's Second Amended Complaint, its members presently include Catalyst and

DL Energy Resources, Inc. ("DL Resources"). Contrary to the Companies' assertions, PIPG's Complaint does not seek to protect or advance the interests of non-PIPG member producers who have participated, voluntarily or under protest, in any of Peoples' Production Enhancement System Programs.

4. The allegations in Paragraph 4 are denied and specific proof is requested in support of the allegations. By way of further response, due to the stay imposed in 2005 by the Commission, which remains in effect, Commission precluded the Company from implementing and enforcing the 5 pounds/mmcf water vapor standard level. See, e.g., Peoples Independent Producers Group v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket Nos. C-20054394 and P-00052162, at pp. 14-16 (Sept. 15, 2005) ("September 15 Order"). Thus, DL Resources and Catalyst had no duty to comply with the alleged standards under the Company's PES programs. Furthermore, DL Resources and Catalyst are unaware of any testing that Peoples conducted regarding the wells on the system after May and June 2005.

5. The allegations in Paragraph 5 are admitted. By way of further response, PIPG members had no duty to comply with the challenged water vapor standards set forth in the PES programs due to the stay in the pending proceeding. Moreover, PIPG member wells are not centrally located. Furthermore, a number of PIPG member wells are located on lower pressure lines. Under these circumstances, the cost of investing in dehydration technology on a well-by-well basis is not commercially reasonable.

6. The allegations in Paragraph 6 are denied. By way of further response, the equitable doctrine of unjust enrichment seeks to remedy situations where one gains as the result of another's efforts for which that other has not received compensation and for which

compensation is reasonably expected. See Temple University Hospital v. Healthcare Management Alternatives, Inc., 832 A.2d 501 (Pa. Super. 2003).

a. As a threshold matter, the Company's assertion of unjust enrichment belies its argument that its PES programs are voluntary. See Peoples' Answer at ¶ 1. If the PES programs were truly voluntary, then Peoples would have no reasonable expectation of compensation from producers who elected not to participate.

b. Moreover, the Company's unjust enrichment argument is based on the false premise that PIPG members have received a benefit resulting from Peoples' PES programs. Specifically, since the Company's implementation of the PA PEP 2005, PIPG members have not realized an increase in their overall production levels. Accordingly, PIPG members have not realized benefits from the PES programs.

c. Furthermore, based on the results of ongoing discovery, it appears that there are approximately 20-30 producers on the Peoples system who do not participate in the PA PEP 2005 and/or 2008 PEP Amendment. As a result, PIPG members are not the only producers who have not paid the PA PEP 2005 and/or 2008 PEP Amendment fees.

d. Finally, to PIPG's knowledge and belief, the revenues received through the PES programs have far outpaced the Company's purported "investments to enhance local gas production." In other words, the exorbitant fees imposed under the PES programs have produced significant revenues, but only a percentage of such revenues has been "invested" to enhance local gas production on Peoples' system. To PIPG's knowledge, remaining revenues have been used to bolster the Company's financial condition. Therefore, Peoples' shareholders have been enriched due to the implementation of the PES programs.

7. The allegations in Paragraph 7 are admitted, in part, and denied, in part. By way of further response, PIPG admits that Peoples' current Supplier Tariff states, "Suppliers will pay for any investment costs and other agreed-upon fees related to the delivery of gas into the Company's system," and that the definition of "supplier" includes producers. PIPG, however, is without sufficient knowledge or information to form a belief as to the truth of the allegation and on that basis denies that the foregoing provisions have been contained in Peoples' Supplier Tariff "[s]ince before the inception of PA PEP 2002 and throughout the course of this proceeding." Furthermore, PIPG denies that the quoted language is applicable to the Company's PES programs.

8. The allegations in Paragraph 8 are admitted, in part, and denied, in part. By way of further response, PIPG admits that Peoples' current Supplier Tariff states, "Gas delivered into the Company's system should be free from oil, water, salt, gum, dust and other foreign substances that might interfere with the marketability of the gas." PIPG also admits that such provisions have been included in Peoples' Supplier Tariff throughout the course of this proceeding. PIPG, however, denies that the foregoing provisions authorize the Company to enforce the challenged water vapor standards, which were not enforced for many previous years and the satisfaction of which is technologically infeasible for low pressure wells on the Company's system.

9. Paragraph 9 states a legal conclusion for which no response is necessary, but, to the extent that a response is necessary, the allegations in that Paragraph are denied.

10. Paragraph 10 states a legal conclusion for which no response is necessary, but, to the extent that a response is necessary, the allegations in that Paragraph are denied.

11. The allegations in paragraph 11 are admitted, in part, and denied, in part. By way of further response, since at least July 1, 1977, Peoples and PIPG members have had gas purchase contracts, all of which have included language setting forth a water vapor standard of 5 pounds per mmcf. To PIPG's knowledge, however, Peoples has never enforced this standard against its members or any other independent producers on its system. As a result, by course of dealing this provision has been rendered inapplicable. See, e.g., J.W. Goodliffe & Son v. Odzer, 423 A.2d 1032 (Pa. Super. 1980). Moreover, Peoples' Supplier Tariff does not specify that all natural gas delivered to the system must meet a 5 pounds per mmcf water vapor standard. Finally, although Peoples' PA PEP 2005 program proposed to subject independent producers' gas supply to a 5 pounds per mmcf standard, Peoples has overlooked gas supplies that exceed that standard for participating producers who paid the Production Enhancement Fee. As the Commission aptly recognized, Peoples "has accepted natural gas with water vapor levels in excess of the 5 pound per mmcf standard for many years and will continue to do so in the near future, albeit with a charge/fee." September 15 Order, p. 16. Thus, although Peoples has proposed a 5 pounds per mmcf standard, the Company's basis and approach for enforcing such standard are unclear.

12. Paragraph 12 states a legal conclusion for which no response is necessary, but, to the extent that a response is necessary, the allegations in that Paragraph are denied.

13. The allegations in paragraph 13 are admitted, in part, and denied, in part. By way of further response, the Company's recent rate case, however, was resolved by a settlement agreement that was approved by the Commission. PIPG denies that the Commission reviewed the Company's PES programs based on the limited and one-sided presentation by Peoples that the program is "voluntary," which it is not. Moreover, any review of the PES programs or the

revenue could not deprive PIPG members of their due process rights related to the instant Complaint.

14. The PUC-approved settlement at Docket No. R-2010-2201702 is a legal document that speaks for itself.

15. The PUC-approved settlement at Docket No. R-2010-2201702 is a legal document that speaks for itself.

16. The PUC-approved settlement at Docket No. R-2010-2201702 is a legal document that speaks for itself. By way of further response, as discussed below, PIPG denies that its requested relief is contrary to the PUC's order approving the settlement and to the best interests of Peoples' ratepayers. The Commission's Order did not address the allegations in this Complaint.

17. PIPG is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 and on that basis denies those allegations. Moreover, regardless of whether the sharing mechanism represents a reasonable compromise for future revenues, Peoples was unjustly enriched by being able to charge an illegal, untariffed rate for the last six years, and will continue to coerce producers to participate in future programs based on the threat of enforcing the water vapor requirements that are being challenged here.

18. The allegation in Paragraph 18 is admitted. By way of further response, however, PIPG had no obligation to participate in such proceeding, particularly given that all its concerns were then pending before the Commission.

19. The allegation in Paragraph 19 is denied.

a. By way of further response, the Company's characterize PIPG's Complaint as "now seeking to upset the Commission-approved rates resulting from the [2010] base rate

proceeding," as if PIPG's Complaint were recently filed when, in fact, PIPG's Complaint pre-dates the Company's 2010 proceeding by approximately five years. Since approximately 2008, previously ongoing settlement discussions between the Company and PIPG had been stalled due to SteelRiver Infrastructure Fund North America's proposed acquisition of the Company. Upon completion of the acquisition and despite the pendency of this proceeding, the Company filed its base rate case with the Commission on October 28, 2010. Although fully aware of the pending Complaint, Peoples' base rate filing did not address the Complaint, nor did Peoples seek to consolidate these proceedings to ensure timely resolution of all issues with the potential to impact the rates, terms and conditions of service set forth in the base rate filing. Thus, Peoples pursued its 2010 base rate case at its own peril by allowing this ongoing Complaint proceeding to remain pending before the Commission.

b. Peoples also argues that PIPG should be "collaterally estopped" from upsetting "Commission-approved rates." Collateral estoppel is "a doctrine of issue preclusion which 'seeks to prevent the relitigation of a finally litigated issue in a subsequent proceeding between the same parties.'" See Anderson v. PECO Energy Co., 2011 WL 2530206 (May 19, 2011). A plea of collateral estoppel is valid only if the following elements are present: (1) the issue decided in the prior adjudication was identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication, and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action. Id. Peoples' claim of collateral estoppel, however, is dead on arrival because it does not meet the elements needed to make such a claim. First, the issues in this proceeding (i.e., the lawfulness, justness, reasonableness and non-discriminatory nature of the PES rates, among others) are not

identical to the issues in the base rate case (e.g., the justness and reasonableness of newly proposed distribution rates). Moreover, the parties in the base rate case are not identical to the parties in this proceeding, with the most notable difference being that PIPG was not a party in the base rate case. Furthermore, PIPG has not had a "full and fair" opportunity to litigate its issues of concern with respect to the PES programs because this Complaint proceeding remains ongoing. As a result, the Company fails to present a colorable claim of collateral estoppel and, therefore, such argument must be dismissed.

20. The allegations in Paragraph 20 are denied.

a. By way of further response, it is well established that Commission-made rates are those rates that have been determined in an adjudication and charged pursuant to an approved tariff. See Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission, 25 A.2d 334 (Pa. 1942). In Cheltenham, the Pennsylvania Supreme Court explained that rates were "Commission-made" when those rates were stamped with antecedent Commission approval based upon notice, hearing and an adjudication of the claims. Id. Contrary to Peoples' claim, the "revenue-sharing mechanism" authorized in the Company's base rate case does not constitute a Commission-made rate. Specifically, the rates Peoples seeks to impose through its PES programs and which give rise to the revenues being allocated via the revenue-sharing mechanism have not been filed with the Commission for "approval based upon notice, hearing and adjudication." Moreover, the rates under the PES programs are not set forth in the Company's tariff. Thus, there is no reasonable basis for Peoples to claim the PES program rates constitute Commission-made rates.

b. Furthermore, and contrary to Peoples' assertions, PIPG is not suggesting that a change in Peoples' rates is necessary. To the extent that the Commission orders refunds in

this proceeding, however, the cost of providing such refunds should be absorbed by Peoples' shareholders. In short, Peoples was aware of this pending Complaint proceeding when it signed on to the settlement agreement in its 2010 base rate case and, thus, of the risk that resolution of this Complaint proceeding could jeopardize the PES program revenues and its obligations under the settlement agreement.

21. PIPG is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21 and on that basis denies those allegations.

WHEREFORE, Peoples Independent Producers Group hereby respectfully request that the Commission reject the New Matter filed by Peoples Natural Gas Company LLC.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By Vasiliki Karandrikas

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Dated: August 3, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PEOPLES INDEPENDENT PRODUCERS GROUP, COMPLAINANTS	:	
v.	:	Docket No. C-20054393
THE PEOPLES NATURAL GAS COMPANY LLC	:	

VERIFICATION

I, Dave Bonacci, President of DL Resources, Inc., hereby state that facts in the Reply of Peoples Independent Producers Group to the New Matter of Peoples Natural Gas Company LLC are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

8/2/2011
Date

Signature

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PEOPLES INDEPENDENT PRODUCERS GROUP, COMPLAINANTS	:	
v.	:	Docket No. C-20054393
THE PEOPLES NATURAL GAS COMPANY LLC	:	

VERIFICATION

I, Paul Ryan Rodgers, Chief Executive Officer of Catalyst Energy, Inc., hereby state that facts in the Reply of Peoples Independent Producers Group to the New Matter of Peoples Natural Gas Company LLC are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

8/2/2011
Date

Signature

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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Dated this 3rd day of August, 2011, at Harrisburg, Pennsylvania.