

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-2645296
Office of Small Business Advocate	:	C-2018-3000574
Office of Consumer Advocate	:	C-2018-3000497
	:	
v.	:	
	:	
Peoples Gas Company LLC	:	

**RECOMMENDED DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

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## I. INTRODUCTION

This Decision recommends that the Joint Petition for Partial Settlement of the Section 1307(f) Rate Investigation be approved without modification, and that the request to apply additional retainage charges to producers or transporters to recover gathering system unaccounted for gas (UFG) be approved.

## II. HISTORY OF THE PROCEEDINGS

Peoples Gas Company LLC (Peoples Gas or Company), is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission's regulatory jurisdiction. Peoples Gas is also an affiliate of Peoples Natural Gas Company LLC (Peoples Natural Gas, Peoples or Peoples Companies). (Joint Petition, pp. 1-2.)

Peoples Gas is a public utility and a natural gas distribution company. (Joint Petition, p. 2.)

On January 31, 2018, Peoples Gas made its purchased gas costs (PGC) 60-day pre-filings with the Pennsylvania Public Utility Commission (Commission), pursuant to Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), and the Commission's regulations at 52 Pa.Code § 53.65. (Joint Petition, p. 3.)

On March 2, 2018, Peoples Gas made its PGC 30-day pre-filings with the Commission in compliance with Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), and the Commission's regulations at 52 Pa.Code §§ 53.64-53.65. (Joint Petition, p. 3.)

The Commission instituted an investigation to determine the lawfulness, justness and reasonableness of the rates proposed in the Section 1307(f) filing and to satisfy the

requirements of Sections 1307, 1317 and 1318 of the Public Utility Code (at 66 Pa.C.S.A. § 1307(f); § 1317 and § 1318), in connection with the Company's 2018 Purchased Gas Cost filing for the period ending September 30, 2018.

On March 9, 2018, the Commission's Bureau of Investigation and Enforcement (I&E) filed Notices of Appearance at Docket No. R-2018-2645296.

On March 15, 2018, the Office of Consumer Advocate (OCA) filed a Notice of Appearance and Complaint at Docket No. C-2018-3000497.

On March 20, 2018, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance and Complaint at Docket No. C-2018-3000574.

On March 29, 2018, a prehearing conference order was entered, directing the parties to file prehearing memoranda on or before 12:00 p.m. on April 3, 2018 and scheduling a prehearing conference to be held on April 5, 2018.

On April 2, 2018, Peoples Gas filed with the Commission its definitive PGC filings, including supporting information required by the Commission's regulations, the Company's direct testimony, exhibits, and Pro Forma Tariff Supplements reflecting actual and projected changes in natural gas costs and other tariff changes.

On April 2, 2018, PIOGA filed a petition to intervene at Docket No. R-2018-2645296. Without objection from any party, the petition to intervene filed by PIOGA on April 2, 2018 was granted at the prehearing conference on April 5, 2018 and was memorialized by the order entered on April 6, 2018.

On April 3, 2018, the parties filed their prehearing memoranda in compliance with the Prehearing Conference Order.

In addition, on April 3, 2018, a notice was issued scheduling a prehearing conference before the undersigned presiding officer (ALJ) at 10:00 a.m. on April 5, 2018, at Piatt Place, 2nd Floor Hearing Room, Suite 220, in Pittsburgh, Pennsylvania<sup>1</sup> and at the Commonwealth Keystone Building, Hearing Room 3, in Harrisburg, Pennsylvania.

A prehearing conference was held as scheduled on April 5, 2018. Counsel for Peoples Gas, as well as I&E, OCA, OSBA and PIOGA attended the conference.

On April 6, 2018, a prehearing order was entered that established the litigation schedule and consolidated the complaints of OCA and OSBA with the Commission's investigation. In addition, the Peoples Division and Peoples-Equitable Division PGC proceedings were consolidated with this Peoples Gas PGC proceeding at Docket No. R-2018-2645296 for purposes of hearing.

On April 27, 2018, a notice was issued and provided to the parties of record, scheduling the evidentiary hearing in this proceeding for June 4 and June 5, 2018 beginning at 10:00 a.m. each day in Harrisburg, Pennsylvania.

On April 30, 2018, Direct Energy Business Marketing, LLC (Direct Energy) filed a Petition to Intervene at Docket No. R-2018-2645296.

On May 3, 2018, OCA, I&E and PIOGA served written direct testimony.

On May 9, 2018, an interim order was entered granting Direct Energy's Petition to Intervene. On May 23, 2018, Peoples Gas, OCA, OSBA, I&E and PIOGA served written rebuttal testimony. On May 31, 2018, Peoples Gas, OCA, OSBA, I&E and PIOGA served written surrebuttal testimony.

In accordance with the Commission's Rules of Practice and Procedures, 52 Pa.Code § 5.231, the parties engaged in settlement discussions. As a result of those conferences, the Joint

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<sup>1</sup> The undersigned ALJ presided by telephone from the Pittsburgh hearing room.

Petitioners were able to reach a settlement in principle of all of their issues except proposed retainage charges for UFG on the gathering systems.

A hearing was held on June 4, 2018, at which time the Joint Petitioners' pre-filed testimony and exhibits were admitted into the record, and certain witnesses were cross-examined regarding the issue reserved for litigation. During cross-examination of Company witness Lynda W. Petrichevich, PIOGA made an On the Record Data Request. On June 14, 2018, the Company filed its response.

On June 15, 2018, PIOGA submitted its proposed late filed cross-examination Exhibit 4, which consisted of the Companies' answer to PIOGA's On the Record Data Request. The late filed cross-examination Exhibit No. 4 was admitted by interim order entered on June 20, 2018.

On June 22, 2018, the Joint Petitioners filed their Joint Petition for Partial Settlement with the Commission.<sup>2</sup> The Joint Petition included the tariff supplements<sup>3</sup> and statements in support of Settlement filed by Peoples Gas Company LLC, I&E, OSBA and OCA attached to the Settlement as Appendices A through E. PIOGA and Direct Energy are not parties to the Settlement but do not oppose the Settlement.

On July 12, 2018, an interim order was issued which admitted the Joint Petition for Partial Settlement of the Section 1307(f) Rate Investigation into the record along with the attached Appendices marked as A through E, and closed the record in this proceeding.

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<sup>2</sup> The Pennsylvania Independent Oil & Gas Association ("PIOGA") is not a party to the Partial Settlement and, while it does not oppose the settlement, it does object to the Proposed Findings of Fact, Findings and Proposed Conclusions of Law to the extent that they are inconsistent with or conflict with PIOGA's positions on the contested producer retainage issues. Direct Energy Services, LLC ("Direct Energy") is not a party to the Partial Settlement but has indicated that it does not object.

<sup>3</sup> The rates in Appendix A reflect the proposed gas cost rates, any quarterly rate changes that were effective March 2, 2018, and any settlement rate changes. The rates in Appendix A will be updated to reflect any changes as of October 1, 2018, when the final tariff supplements are filed.

This Recommended Decision recommends the Joint Petition for Partial Settlement be adopted, without modification, and that the request to apply additional retainage charges to producers or transporters to recover gathering system unaccounted for gas be approved.

### III. FINDINGS OF FACT

The Settling Parties have agreed to findings of fact numbers 1 through 21. These stipulated findings by the Settling Parties provide the information necessary to support the findings of fact set forth below and are adopted without modification, with regard to the partial settlement of this matter. All of the findings of fact below were established by the record evidence.

1. Peoples Gas pursues its goal of least cost reliable service through a combination of local and interstate assets and supplies. The local assets consist of gas purchase agreements for Local Pennsylvania Gas produced directly into the Company's pipeline system ("Local Pennsylvania Gas") and Company-owned on-system storage fields. The Local Pennsylvania Gas represents a significant portion of the annual supply needs of the system, while the on-system storage has limited supply capacity and is, therefore, utilized more for meeting the system's short-term peak requirements. (Peoples Gas Statement No. 2, p. 4; Settlement Petition ¶ 36.)

2. Peoples Gas's interstate assets consist of a portfolio of transportation and storage services that Peoples Gas has contracted for with various Federal Energy Regulatory Commission (FERC)-regulated pipelines, including Dominion Energy Transmission, Inc. (DETI), Texas Eastern Transmission LP (TETCO), Columbia Gas Transmission, LLC (TCO) and Equitrans L.P. (Equitrans). The Company also has interconnects with Tennessee Gas Pipeline Company, LLC (TGP), but does not currently contract for either transportation or storage services on TGP. Those assets give Peoples Gas access to a variety of locations at which it can receive gas supplies that are produced upstream of the Peoples Gas system. The interstate storage assets allow Peoples Gas to use its upstream assets more efficiently, mitigate the effects of price swings in the natural gas market and enhance the deliverability of Peoples Gas's interstate natural gas supplies during periods of peak demand. Peoples Gas's interstate supplies are gas that it purchases from

suppliers upstream of the Peoples Gas system for delivery into various receipt points of the interstate pipelines. (Peoples Gas Statement No. 2, pp. 4-5; Settlement Petition ¶ 37.)

3. Over the 1307(f)-2018 reconciliation period, Peoples Gas's interstate capacity portfolio included: (1) interstate pipeline transportation and storage services from Equitrans; (2) interstate pipeline transportation and storage services from DETI; (3) interstate pipeline transportation service from TETCO; and (4) interstate pipeline transportation and storage services from TCO. (Peoples Gas Statement No. 2, p. 16; Settlement Petition ¶ 38.)

4. On December 10, 2013, as set forth in the application proceeding at Docket Nos. A-2013-2353647, A-2013-2353649 and A-2013-2353651 and approved by Order entered November 14, 2013 (Equitable Acquisition), the Company entered into a firm storage agreement under Equitrans Rate Schedule 60SS and a no-notice firm transportation agreement under Equitrans Rate Schedule NOFT. The rates for both the storage and firm transportation service are negotiated rates that are less than the Equitrans recourse rates for the services and less than the current cost for this same capacity under the existing TCO and DETI agreements. Through the Commission Order referenced above, Peoples Gas received approval of the Equitrans storage and transportation agreements pursuant to Section 2204(e)(4) of the Public Utility Code, 66 Pa.C.S. § 2204(e)(4). (Peoples Gas Statement No. 2, pp. 17-18; Settlement Petition ¶ 39.)

5. The Equitrans contracts provided peak demand period daily deliverability of 27,500 Dth and storage capacity of 1,500,000 Dth for the storage withdrawal period of November 1, 2014, through March 31, 2015. The deliverability under these contracts increased to 33,917 Dth and storage capacity increased to 1,850,000 Dth for the withdrawal period of November 1, 2015, through March 31, 2016. Effective April 1, 2018, the daily deliverability under these contracts increased to 44,917 Dth and storage capacity increased to 2,450,000 Dth. Effective April 1, 2022, the daily deliverability under these contracts will increase to 72,417 Dth and storage capacity will increase to 4,000,000 Dth. (Peoples Gas Statement No. 2, p. 18; Settlement Petition ¶ 40.)

6. Peoples Gas is proposing for the projected period to assign to Peoples Natural Gas via capacity release 10,000 Dth/day of Equitrans services for a one-year period. These services would be a portion of the storage and related firm transportation services that Peoples Gas currently has under contract with Equitrans, and the assignment would consist of 545,455 Dth of storage capacity under Rate GSS which has a maximum daily withdrawal quantity of 10,000 Dth/day, and 10,000 Dth/day of firm transportation under Rate FTS. Peoples Gas would release this capacity to Peoples Natural Gas at the same rates that Peoples Gas pays for the services. Proceeds from this release would not be included in Peoples Gas's capacity release sharing mechanism. (Peoples Gas Statement No. 2, p. 19; Settlement Petition ¶ 41)

7. For the 1307(f)-2018 reconciliation period, Peoples Gas had 10,000 Dth/day of firm transportation (FT) firm transportation service, 35,000 Dth/day of firm transportation general storage service (FT-GSS) firm transportation service, and 45,000 Dth/day of GSS firm storage service under contract from DETI. (Peoples Gas Statement No. 2, p. 21; Settlement Petition ¶ 42.)

8. Peoples Gas largely intends to use the same DETI services during the projected period. However, 10,000 Dth/day of DETI GSS firm deliverability capacity and 600,000 Dth of related storage capacity expired on March 31, 2018. Also, Peoples Gas is not proposing for the projected period to release 10,000 Dth/day of DETI services for a one year period as it did last year. (Peoples Gas Statement No. 2, p. 22; Settlement Petition ¶ 43.)

9. TETCO provides Peoples Gas with firm transportation service of 10,000 Dths/day under Rate Schedule FT-1. Peoples Gas purchases gas on TETCO's market zone M-2 and moves it over TETCO's facilities to an interconnection at Delmont, Westmoreland County, which is also in market zone M-2. This negotiated rate agreement which commenced on November 1, 2015, and expires on October 31, 2030, allows the Company to purchase gas in a very liquid and competitively low-priced commodity market and deliver it to the southern part of the Peoples Gas system to support service to the Allegheny Valley. (Peoples Gas Statement No. 2, p. 23; Settlement Petition ¶ 44.)

10. For the 1307(f)-2018 reconciliation period, TCO provided Peoples Gas firm transportation service under Rate FTS of up to 3,257 Dth/day. TCO also provided firm storage service under Rate GSS and related firm transportation service under Rate SST of up to 10,807 Dth/day with a total storage capacity of 609,827 Dth. (Peoples Gas Statement No. 2, p. 24; Settlement Petition ¶ 45.)

11. Peoples Gas currently owns and operates four storage fields which have 567,000 Mcf of combined storage capacity and 19,800 Mcf of maximum daily withdrawal capacity. (Peoples Gas Statement No. 2, p. 26; Settlement Petition ¶ 46.)

12. Peoples Natural Gas and Peoples Gas have a gas exchange agreement that provides for an exchange of equivalent volumes between Peoples Natural Gas and Peoples Gas where the receipt of gas from the other party would provide for more efficient operation of the recipient's system and would improve service reliability for both companies. Under the exchange arrangement, Peoples Gas receives gas from Peoples Natural Gas at interconnections located in Mars, PA and Indiana, PA. In exchange, Peoples Natural Gas receives equivalent volumes of gas from Peoples Gas at various interconnections. (Peoples Gas Statement No. 2, pp. 28-29; Settlement Petition ¶ 47.)

13. Peoples Gas has traditionally used gas produced locally in Pennsylvania as the source of supply for base system supply requirements. This is due in large part to the operating characteristics of the Peoples Gas system, where gas produced from shallow conventional gas wells, located primarily on the eastern side of the pipeline system, is transported across the Peoples Gas system at a relatively constant flow into the distribution facilities serving ratepayers. The delivery of shallow gas is then supplemented during periods of peak demand by interstate pipeline gas that is delivered into the Company's Large Volume Pipelines and delivered to the same distribution facilities. (Peoples Gas Statement No. 2, pp. 30-31; Settlement Petition ¶ 48.)

14. Peoples Gas has an incentive pricing program that is intended to increase receipts of locally-produced gas into operationally favorable locations on lines that have limited redundancy options. Two years ago, Peoples Gas, through analysis, modeling and remediation,

identified Punxsutawney as the area on its system where supplemental, locally-produced gas could most benefit operational reliability. Peoples Gas continues to work with producers in the Punxsutawney area to increase the availability to Peoples Gas of local, conventionally-produced supplies. (Peoples Gas Statement No. 2, p. 34; Settlement Petition ¶ 49.)

15. Along with its local gas supplies, spot market purchases are the supplies that Peoples Gas uses to meet the demands of those customers who continue to buy their supplies from Peoples Gas. These are also the supplies that Peoples Gas uses its various interstate pipeline assets to transport and store. (Peoples Gas Statement No. 2, pp. 34-35; Settlement Petition ¶ 50.)

16. UFG is the difference between the total gas available from all sources and the total gas accounted for as sales, net interchange and company use. This difference includes leakage or other actual losses, discrepancies due to meter inaccuracies, variations of temperatures or pressures or both, and other variants, particularly billing lag. (I&E Statement No. 1, p. 3; Settlement Petition ¶ 51.)

17. For the period ending August 31, 2017, the overall Peoples Gas system loss was 1.7 Bcf, which results in an overall system loss rate of 6.8%. Applying the blending gathering loss rate to all local production areas, the remaining loss for distribution only systems was found to be 590 MMCF/year or 2.47%. (Peoples Gas Statement No. 1, p. 12; Settlement Petition ¶ 52.)

18. For the first time since the Commission required UFG reporting in 2014, the 2017 UFG report for Peoples Gas has segmented the loss of the gathering pipelines from the other functional pipeline systems. Through segmentation and other identification initiatives, Peoples Gas isolated the loss on gathering. (Peoples Gas Statement No. 1, p. 12; Settlement Petition ¶ 53.)

19. The Company agreed with the parties in the Company's 2017 PGC settlement to "provide to Joint Petitioners by April 2, 2018, a report from its UFG team providing an analysis and recommendations to mitigate UFG." (Peoples Gas Statement No. 1, pp. 12-13; Settlement Petition ¶ 54.)

20. In this proceeding, the Peoples Companies submitted their UFG Mitigation Plan, in which they have identified additional UFG mitigation measures that especially focus on reductions in the gathering systems. (Peoples Gas Statement No. 1, p. 13; Peoples Gas Exhibit No. 2; Settlement Petition ¶ 55.)

21. Peoples Gas monitors and participates in various proceedings before the FERC. Peoples Gas undertakes legal action as necessary to protect the interests of its ratepayers. (Peoples Gas Exhibit No. 15; Peoples Gas Statement No. 3, pp. 3-4; Settlement Petition ¶ 56.)

22. On January 31, 2018, Peoples Gas made its PGC 60-day pre-filing with the Commission in compliance with Section 1307(f) of the Public Utility Code, 66 Pa. C.S. § 1307(f), and the Commission's regulations at 52 Pa.Code § 53.65.

23. On March 2, 2018, Peoples Gas made its PGC 30-day pre-filing with the Commission in compliance with Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), and the Commission's regulations at 52 Pa.Code §§ 53.64, 53.65.

24. Since the series of acquisitions by the current owners of Peoples Natural Gas in 2010, Peoples Gas in 2011, and Equitable Gas Company (now a division of Peoples Natural Gas) in 2013 (collectively Peoples Companies), the Peoples Companies have invested substantial capital to improve and upgrade their pipeline infrastructure. (Peoples Gas Statement No. 5-R, p. 5, line 21 to p. 7, line 6.)

25. For the five years prior to acquisition and the current five-year period of 2014-2018, Peoples Natural Gas increased its capital spending from \$201.1 million to \$465.2 million (131% increase), Peoples-Equitable Division increased its capital spending from \$165.5 million to \$297.3 million (80% increase), and Peoples Gas increased its capital spending from \$49.3 million to \$102.6 million (108% increase). (Peoples Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1.)

26. In large part due to safety reasons, the Peoples Companies have devoted the vast majority of their initial post-acquisition capital investment toward replacing at-risk distribution pipelines. (Peoples Gas Statement No. 5-R, p. 7, line 3 to p. 8, line 12.)

27. Distribution pipelines represent 71% of the at-risk targeted pipeline miles and serve 99% of the customers, whereas the gathering pipelines represent 29% of the at-risk targeted pipeline miles and directly serve only 1% of the Peoples Companies' customers. (Peoples Gas Statement No. 5-R, p. 8, lines 1-8.)

28. Risk rankings under the federally mandated Distribution Integrity Management Plan (DIMP) are highly influenced by numbers of potentially affected customers. (Peoples Gas Statement No. 5-R, p. 9, lines 1-2.)

29. Risk scores are determined by multiplying the probability of failure by the consequence of failure. (Peoples Gas Statement No. 5-R, p. 9, lines 2-3.)

30. Population density around pipelines is evaluated in scoring the consequence of failure. (Peoples Gas Statement No. 5-R, p. 9, lines 3-4.)

31. Risk scores effectively mandate that most of the available funds be used to address at-risk distribution pipe. (Peoples Gas Statement No. 5-R, p. 9, lines 4-5.)

32. As a result of Peoples Companies efforts, Peoples Natural Gas and Peoples Gas have been able to reduce their distribution UFG levels to 2.42% and 2.47%, respectively, for the 12 months ended August 31, 2017. (Peoples Gas Statement No. 5-R, p. 9, lines 20-22.)

33. These figures are below the 3.5% distribution UFG level established by the Commission for that period. (Peoples Gas Statement No. 5-R, p. 9, lines 22-23.)

34. Peoples Gas is continuously challenged to reduce UFG on its pipelines that gather gas from local production wells. (Peoples Gas Statement No. 1, p. 11, line 22 to p. 12, line 1.)

35. The relatively few customers served from the gathering lines are generally scattered across the gathering system in relatively rural areas. (Peoples Gas Statement No. 5-R, p. 12, line 20; Peoples Gas Exhibit No. 2.)

36. The Peoples Companies have taken several steps to try to reduce gathering system UFG. Primarily, the Peoples Companies have prepared and submitted a detailed Combined UFG Mitigation Plan (UFG Mitigation Plan) in this proceeding. (Peoples Gas Exhibit No. 2.)

37. In the UFG Mitigation Plan, the Peoples Companies make several recommendations on areas for additional UFG mitigation activities, including: (1) additional segmentation to enhance identification of potential UFG targets; (2) accelerated leak repair program for bare steel gathering; (3) gathering pipeline improvement strategy; (4) removal/replacement of at-risk gathering pipelines; (5) further analysis to be performed concerning certain gathering pipelines; (6) gathering pipelines abandonment considerations and communication; (7) gas measurement enhancements; (8) unauthorized use; and (9) mapping enhancements. (Peoples Gas Statement No. 1, p. 13, lines 9-19; Peoples Gas Exhibit No. 2.)

38. In the last 4 years, Peoples Gas has spent \$9.7 million in capital expenditures on gathering line replacements and over \$3.0 million in gathering maintenance expenditures. (Peoples Gas Statement No. 1-R, p. 3, lines 7-10.)

39. The Peoples Companies are also proposing to spend approximately \$21.1 million over the next 4 years under their proposed UFG Mitigation Plan. (Peoples Gas Statement No. 1-R, p. 3, lines 10-12.)

40. In addition to its efforts to reduce gathering system UFG, Peoples Gas has proposed to charge conventional gas producers a retainage rate of 2.9% for gas delivered into the Company's system. (Peoples Gas Statement No. 1, p. 13, lines 23-24.)

41. The proposed 2.9% retainage collected from producers is new to Peoples Gas, but Peoples Natural Gas' Equitable Division already has Commission-approved tariff provisions for a negotiated retainage rate for wells connected to the gathering or distribution systems. (Peoples Gas Statement No. 1, p. 15, lines 1-3.)

42. The UFG and company use (CU) recovered from conventional gas producers through the proposed charge would reduce the amount of UFG and CU recovered from the Company's sales and transportation customers. (Peoples Gas Statement No. 3, p. 3, lines 11-17.)

43. Conventional gas producers are primary users and beneficiaries of the gathering system, however those producers do not contribute toward the costs of gathering system UFG. (Peoples Gas Statement No. 1-R, p. 17, lines 7-11; p. 18, line 23 to p. 19, line 1.)

44. Absent the existence of these gathering lines, the producers would not be able to move their gas to a market. (Peoples Gas Statement No. 5-R, p. 5, lines 12-13.)

45. Gathering charges to producers for recovering UFG are common. (Peoples Gas Statement No. 1-R, p. 16, lines 20-21.)

46. The Company's proposed retainage rate of 2.9% is "significantly less than other gathering pipelines in the area." (Peoples Gas Statement No. 1-R, p. 19, lines 1-2.)

47. Equitrans L.P.'s current FERC-approved tariff provides for 9.5% gathering system retainage, and as of August 1, 2016, which is the effective date of Dominion Energy Transmission spinning down its Appalachian gathering system to its unregulated gathering

affiliate, its FERC-approved tariff provided for 9.34% gathering retainage. (Peoples Gas Statement No. 1-R, p. 7, lines 17-21.)

48. Columbia Gas Transmission, LLC (TCo) currently recovers 4.5% UFG on its gathering facilities in its low-pressure systems in southwest Pennsylvania and West Virginia, and that amount will increase annually by 0.5% until reaching 6.0% in 2021. (Peoples Gas Statement No. 1-R, p. 24, lines 12-15.)

49. PIOGA has stipulated “that the proposed producer retainage charges are not, by themselves, of sufficient magnitude to materially affect existing production from wells or the drilling of new wells.” (Peoples Gas Exhibit No. 11-R.)

50. Peoples Natural Gas’ Equitable Division currently has a Commission-authorized charge in its tariff (Rate AGS) to recover UFG from producers. (Peoples Gas Statement No. 5-R, p. 22, lines 15-16.)

51. Rate AGS is applicable to any producer desiring to transport gas through the gathering system as well as to deliver gas directly into the distribution system of the Equitable Division. (Peoples Gas Statement No. 5-R, p. 22, lines 16-18.)

52. Volumes under this service are subject to both a gathering rate and a gas-in-kind retainage rate (for the recovery of gathering UFG) that is determined by negotiations. (Peoples Gas Statement No. 5-R, p. 22, lines 18-20.)

53. Although the retainage charges vary by gathering system, the maximum retainage charge is 9.5%. (Peoples Gas Statement No. 5-R, p. 22, lines 20-21.)

54. The charge has the potential to “incent producers to use a common line to bring gas to the Company’s system and eliminate the need for replacement of old at-risk gathering lines.” (Peoples Gas Statement No. 1, p. 14, lines 3-5.)

55. As the system improves and UFG loss declines, the retainage collected from producers can also decline. (Peoples Gas Statement No. 1, p. 14, lines 5-6.)

56. The Company's notice stated that the proposed charge would be "applicable to natural gas producers." (Peoples Gas Statement No. 1-R, p. 25, lines 20-22.)

57. The Company clarified the charge's application in its discovery responses and testimony in this proceeding. (PIOGA Statement No. 1, p. 5, line 13 to p. 8, line 1.)

58. Over 88% of directly connected local production is from conventional wells, and few producers on the Company's system own only non-conventional (shale) production. (Peoples Gas Statement No. 1-R, p. 25, line 23 to p. 26, line 2.)

59. Peoples Gas' evidence supports the application of the charge to all gas delivered by conventional gas producers to the Company's system. (Peoples Gas Statement No. 1-R, p. 26, lines 9-15.)

60. The Company's intent was to model the charge after the Commission approved AGS tariff of the Equitable Division which specifically applies both gathering fees and retainage to production entering into "distribution and gathering" lines. (Peoples Gas Statement No. 1-R, p. 26, lines 9-12.)

61. There is a negligible difference between the Company's proposed charge and a recalculated charge that applies only to volumes delivered by producers into the gathering system. (Tr. 56.)

62. If Peoples Natural Gas were to recalculate the retainage charge on the basis of using only volumes delivered into the Peoples Natural Gas gathering system and try to produce same amount of collection of UFG from that charge, then the charge would increase from 2 percent to 2.17 percent, so a small, less than 10 percent change. (Tr. 56.)

63. Those numbers would be similar for Peoples Gas because the systems operate very much the same. (Tr. 56.)

64. PIOGA's definition of "gathering pipeline", which it developed, is "a pipeline that may have free gas landowner customers connected but no PUC regulated customers connected, that aggregates production from multiple Production Pipelines and then connects with a Distribution Pipeline or a Transmission Pipeline." (PIOGA Statement No. 1-SR, p. 7, lines 8-12; Tr. 82-83.)

65. PIOGA's definition of "distribution pipeline", which it developed, is "a pipeline that has PUC regulated customers connected to it." (PIOGA Statement No. 1-SR, p. 7, line 12; Tr. 82-83.)

66. PIOGA criticizes the Company's use of the "primary function" test to determine if a pipeline is gathering or distribution. (PIOGA Statement No. 1-SR, p. 6, lines 15-20; p. 7, lines 13-17.)

67. PIOGA's definitions of gathering and distribution pipelines are not based on any regulatory definition of pipelines or recognized accounting practice. (Tr. 82-84.)

68. PIOGA's definitions of distribution and gathering pipelines are not consistent with the actual definitions set forth in Commission and Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. (*Compare* PIOGA Statement No. 1-SR, p. 7, lines 8-12, *with* 52 Pa.Code § 59.1; 49 C.F.R. § 192.3.)

69. The Company only proposes to charge conventional producers for a portion of gathering system UFG. Under the Company's proposal, retainage from gathering would be 347,014 Mcf, whereas the total gathering system UFG was approximately 1,117,933 Mcf. (Peoples Gas Exhibit No. 5, pp. 1-2; Peoples Gas Statement No. 1, p. 12, lines 11-14.)

70. The proposed producer retainage charge is designed to recover only approximately 31% of the gathering system UFG. (Peoples Gas Exhibit No. 5, pp. 1-2; Peoples Gas Statement No. 1, p. 12, lines 11-14.)

#### IV. DESCRIPTION AND TERMS OF THE PARTIAL SETTLEMENT

In accordance with Rule 5.231 of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.231, the parties explored the possibility of settlement. As a result of settlement discussions, the Joint Petitioners achieved a settlement in principle under which all but one issue, as discussed herein, was resolved. The Joint Petition, which is fully executed by Peoples Gas, I&E, OCA, and OSBA, consists of 20 pages and Appendix A through F. The appendices include the tariff supplement describing the agreed-upon rates in Appendix A, and statements in support of settlement by Peoples Gas, I&E, OCA, and OSBA in Appendix B through E.

The Joint Petitioners expressed their agreement with respect to the following issues: (1) Lost and Unaccounted For Gas; (2) Calculation of Retaining Charge; and (3) Miscellaneous Issues. The Settling Parties have specifically agreed to the following settlement terms, as provided below, which are adopted without modification. The issue of whether applying a retainage charge to producers and transporters to recover gathering system unaccounted for gas should be adopted, was reserved for litigation.

In addition, the Settling Parties have stipulated to facts sufficient to support the conclusion that Peoples Gas has met its Section 1307(f) and Section 1318 statutory obligation. (Settlement, pp. 7-15.) Accordingly, the Commission should approve Peoples Gas's filing as to this uncontested issue.

## V. SETTLEMENT TERMS

### A. Lost And Unaccounted For Gas

1. Peoples Gas will be subject to a gathering UFG target (UFG target) of 9.0% for the year ending August 31, 2019, 8.5% for the year ending August 31, 2020, and 7.5% for the year ending August 31, 2021. (Settlement Petition ¶ 24.)

2. There will be no adjustment for gathering system UFG for the year ending August 31, 2017, and no gathering UFG target for the year ending August 31, 2018. (Settlement Petition ¶ 25.)

3. In evaluating whether the gathering UFG target is achieved, there will be volumetric credits for (1) actual producer retainage charges or (2) any additional gathering retainage charges approved because producer retainage charges are not approved by the Commission. (Settlement Petition ¶ 26.)

4. Exceedances of the gathering UFG target after reflection of the above credits will create a rebuttable presumption that the excess is unreasonable. That presumption may be rebutted by a demonstration that Peoples Gas has taken reasonable actions to reduce gathering UFG and/or demonstration that other factors, such as but not limited to, production on the gathering systems has declined thereby increasing the percentage of gathering UFG experienced. The overall level of Peoples Gas's UFG will also be considered. (Settlement Petition ¶ 27.)

5. Peoples Gas will aggressively implement the Peoples Companies' Combined UFG Mitigation Plan to Address Gathering Pipelines (UFG Mitigation Plan) presented in this proceeding, including: (1) the "find-it / fix it" program under which bare steel gathering lines will be leak surveyed on an annual basis and found leaks will be prioritized for repair, and (2) the plan to remove and replace at-risk gathering pipelines. (Settlement Petition ¶ 28.)

6. In order to ensure ongoing safe operations of all gathering facilities, Peoples Gas agrees to continue the practice of treating all non-jurisdictional (DOT) gathering lines (which account for 92% of all gathering lines) as part of its normal distribution compliance program. This would include damage prevention locates, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys.

B. Calculation of Retainage Charge

1. Peoples Gas's method of calculating its retainage charge with respect to storage losses and company-use gas will be maintained. This agreement is for purposes of settlement of the current case only and this matter may be revisited in future PGC cases. (Settlement Petition ¶ 30.)

C. Miscellaneous

1. Except as revised by this Partial Settlement and subject to a decision on the issue reserved for litigation (*i.e.*, gathering system retainage), the proposed rates and other requested approvals contained in the Company's PGC filing should be approved. (Settlement Petition ¶ 31.)

2. In accordance with the provisions of 52 Pa.Code § 53.64(i)(5), the Company's compliance filing in this proceeding will reflect updated actual and projected over/undercollections through September 30, 2018. (Settlement Petition ¶ 32.)

3. Joint Petitioners agree that the Commission should approve the renewals and changes in gas supply, pipeline, and storage capacity contracts that are explained in Peoples Gas Statement No. 2 and related exhibits included in the 1307(f)-2018 definitive filing. (Settlement Petition ¶ 33.)

D. Rate Impact of Partial Settlement

Under the April 6, 2018 Interim Order, the parties were directed to set forth the following in their Joint Settlement Petition:

- a. The parties' proposal, or if a settlement, the agreed upon rates provided in the settlement.
- b. The current rates for each customer class as of the date of the filing by the Company.
- c. The requested and negotiated changes in gas costs for each customer class.
- d. The impact upon each customer class, (i.e. under the proposed rate each customer would have paid X, and under the agreed upon amount, each customer will pay Y.)

The response of the Joint Petitioners is set forth in the table below:

<b><u>Peoples Gas</u></b>	<u>Existing</u>	<u>As-Filed</u>		<u>Settlement</u>	<u>Annual Bill</u>	<u>Annual Bill</u>
<u>Rate Schedule</u>	<u>Tariff</u>	<u>Gas Cost</u>	<u>Percent</u>	<u>Gas Cost</u>	<u>As-Filed</u>	<u>Settlement</u>
	<u>Rates 1/</u>	<u>Change</u>	<u>Change</u>	<u>Change</u>		
RS	\$11.5505	(\$0.5800)	-5.0%	\$0.0000	\$1,091.75	\$1,091.75
SGS	\$9.2255	(\$0.5751)	-6.2%	\$0.0000	\$2,305.08	\$2,305.08
MGS	\$9.0214	(\$0.5632)	-6.2%	\$0.0000	\$28,853.13	\$28,853.13
LGS < 100,000 Mcf/yr	\$8.0549	(\$0.5954)	-7.4%	\$0.0000	\$33,216.78	\$33,216.78

1/ Peoples Gas net billing rate effective January 1, 2018.

(Settlement Petition ¶ 35.)

E. Conditions of Partial Settlement

1. The Partial Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Partial Settlement without modification. The Partial Settlement shall become effective on the date on which the Commission enters a final order that adopts the terms and conditions of the Partial Settlement. If the Commission enters a final order that approves the Partial Settlement, but with one or more modifications, the Partial Settlement shall nonetheless become effective unless one or more of the Joint Petitioners elects to withdraw from the Partial Settlement. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all parties within five business days after the entry of an Order modifying the Partial Settlement. In such event, the Partial Settlement shall be void and of no effect. (Settlement Petition ¶ 78.)

2. The Joint Petitioners acknowledge and agree that the Partial Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding resulting in the establishment of rates that are just and reasonable. (Settlement Petition ¶ 79.)

3. The Partial Settlement is proposed by the Joint Petitioners to settle all of their issues in the instant proceeding, with the exception of the issue reserved for litigation. If the Commission does not approve the Partial Settlement and the proceedings continue, the Joint Petitioners reserve their respective rights to present additional testimony and to conduct full cross-examination, briefing, and argument. The Partial Settlement is made without any admission against, or prejudice to, any position that any party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding. (Settlement Petition ¶ 80.)

4. The Joint Petitioners acknowledge that the Partial Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. The Partial Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Partial Settlement. (Settlement Petition ¶ 81.)

5. The Partial Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Partial Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Partial Settlement. The Partial Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities under Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), or any other proceeding. (Settlement Petition ¶ 82.)

## VI. DISCUSSION

### A. Applicable Legal Principles

The Commission encourages parties in contested on-the-record proceedings to settle cases. See 52 Pa.Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily imposes.

By definition, a "settlement" reflects a compromise of the parties' positions and arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991).

Because Peoples Gas's annual operating revenues derived from providing gas service to customers in Pennsylvania exceed \$40 million, the Company's recovery of purchased gas costs is governed by Section 1307(f) of the Code.

Sections 1318(a)(1), (2), (3) and (4), and Sections 1318(b)(1), (2) and (3) of the Code require that the Commission make the following specific findings with respect to Peoples Gas's procurement policy: a finding that Peoples Gas has fully and vigorously represented the interests of its ratepayers before FERC and other non-commission proceedings (§ 1318(a)(1)); a finding of prudence in negotiating or renegotiating of gas supply contracts (§ 1318(a)(2)); a finding of prudence concerning efforts to obtain lower cost gas supplies, including the use of gas transportation (§ 1318(a)(3)); a finding that gas supplies have not been withheld from the market imprudently (§ 1308(a)(4)); a finding that full and vigorous attempts have been made to obtain less costly gas supplies from nonaffiliated interests (§ 1318(b)(1)); a finding that each contract for the purchase of gas from an affiliated interest is consistent with a least cost fuel procurement policy (§ 1318(b)(2)); and a finding that affiliated interests have not imprudently withheld gas from the market (§ 1318(b)(3)).

**B. Statements of the Settling Parties in Support of the Settlement**

In the Partial Settlement, the Settling Parties have stipulated to facts that support the conclusion that Peoples Gas has complied with the requirements of Section 1318 with regard to its gas purchases and gas purchasing practices for the 12-month period ending January 31, 2018 and that the rates agreed upon are just and reasonable. (Settlement ¶¶ 36-66.)

With respect to Peoples Gas's purchases and gas purchasing practices during the 12-month historical reconciliation period ended January 31, 2018, the Settling Parties stipulated that Peoples Gas has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historical period. (Settlement ¶ 68.)

The Settling Parties further stipulated that, during the 12 months ended January 31, 2018:

- a. Peoples Gas met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with their obligations to provide safe, adequate, and reliable service to their customers; and
- b. All gas exchanges by Peoples Gas with entities that are considered an affiliated interest have met the requirements of Section 1318(b) of the Public Utility Code relating to purchases from and services provided by entities that are considered affiliates.

(Settlement ¶ 58.)

As Peoples Gas presented evidence to support its Section 1307(f) and Section 1318 statutory obligations, and the Settling Parties stipulated to these issues, the Commission should approve the Partial Settlement as to these uncontested issues, and as to the Partial Settlement in total, without modification.

The Partial Settlement was achieved only after a comprehensive investigation of Peoples Gas natural gas procurement policies and operations. In addition to a comprehensive filing and informal discovery, the Settling Parties responded to numerous formal discovery requests (many of which had multiple subparts). In support of their positions, Peoples Gas, I&E, OCA and OSBA exchanged information or served testimony and accompanying exhibits, which were subsequently admitted into the record at the evidentiary hearing held on June 4, 2018. The Joint Petitioners participated in numerous settlement discussions and formal negotiations, which ultimately led to the Partial Settlement.

In addition, the Joint Petitioners, as well as their experts and counsel, have considerable experience in PGC proceedings. Their knowledge, experience, and ability to evaluate

the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the settled issues.

For these reasons and the reasons set forth below, the Partial Settlement is just and reasonable and the Partial Settlement of the Section 1307(f) filings for Peoples Gas, as modified by the Partial Settlement, should be approved.

For the Commission's consideration the Settling Parties submitted separate Statements in Support of the Settlement Petition. In their Statements, Peoples Gas, I&E, OCA, and OSBA conclude, after extensive discovery and discussion, that the Partial Settlement is in the interests of Peoples Gas and its customers, and is otherwise in the public interest.

Noting there is no objection to the Partial Settlement, the positions of the Settling Parties are summarized below.

C. Lost And Unaccounted For Gas

1. Peoples Gas's Position

According to Peoples Gas, the principal issue in this proceeding is Unaccounted For Gas (UFG) sometimes referred to as Lost and Unaccounted For Gas (LUFG). As part of its filing in this proceeding, and as provided in the 2017 Purchased Gas Cost (PGC) settlements, Peoples Gas and Peoples Natural Gas Company LLC (Peoples Natural Gas) (collectively the Peoples Companies) submitted a detailed Combined UFG Mitigation Plan (UFG Mitigation Plan) in their respective PGC proceedings. (Peoples Gas Exhibit No. 2). Peoples Gas explained that UFG on the Peoples Companies' distribution systems had been reduced to 2.42% for Peoples Natural Gas and 2.4% for Peoples Gas, both well below the Pennsylvania Public Utility Commission standard of 3.5%. (Peoples Gas Statement No. 5-R, p. 9, lines 20-23.) Therefore, according to Peoples Gas, the UFG Mitigation Plan was focused on the Peoples Companies' extensive gathering systems that collected conventional or shallow gas to serve their customers. (Peoples Gas Statement in Support, pp. 1-2.)

Peoples Gas also proposed a charge to conventional gas producers that it explained is designed to recover some of the gas lost on the gathering system. (Peoples Gas Statement No. 1, p. 13, lines 23-24.) This charge is referred to as a producer retainage charge and is the subject of the remaining litigation in this proceeding. According to Peoples Gas, this charge, if adopted, would reduce the amounts charged to customers for gas lost on the gathering systems.<sup>4</sup> (Peoples Gas Statement No. 3, p. 3, lines 11-17; Peoples Gas Statement in Support, p. 2.)

According to Peoples Gas, under current ownership, the Peoples Companies have significantly increased capital spending on the distribution systems. Specifically, for the five years prior to the acquisitions of the Peoples Companies' and the current five-year period of 2014-2018, Peoples Gas explains that Peoples Natural Gas increased its capital spending from \$201.1 million to \$465.2 million (131% increase), Peoples-Equitable Division increased its capital spending from \$165.5 million to \$297.3 million (80% increase), and Peoples Gas increased its capital spending from \$49.3 million to \$102.6 million (108% increase). (Peoples Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1.) These expenditures, along with additional maintenance expenditures, have, according to Peoples Gas, substantially reduced UFG on the Peoples Companies' distribution systems and improved the safety of these systems. (Peoples Gas Statement No. 5-R, p. 5, line 21 to p. 9, line 23; Peoples Gas Statement in Support, pp. 2-3.)

Further, according to Peoples Gas, the Peoples Companies are proposing an additional \$21.5 million of capital expenditures on the gathering systems over the next four years and further study of the various segments on these systems to determine the best plan for UFG reductions on the gathering systems. (Peoples Gas Statement No. 1-R, p. 3, lines 10-12; Peoples Gas Exhibit No. 2; Peoples Gas Statement in Support, p. 3.)

Peoples Gas explains the gathering systems comprise approximately 2,100 miles of pipelines. (Peoples Gas Exhibit No. 2, pp. 1-2.) There is declining production on the Company's gathering system, but the gas produced is the lowest cost of gas available for Peoples Gas's customers. (Peoples Gas Statement No. 5-R, p. 13, line 20 to p. 14, line 2; p. 23, line 17 to p. 24,

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<sup>4</sup> The OCA supports the Company's producer retainage charge. (OCA Statement No. 1, p. 10, lines 9-11.) If the Company's proposal is not adopted, the OCA recommends that increased retainage charges to transportation customers be adopted. (OCA Statement No. 1, p. 11, lines 2-16.)

line 3; Peoples Gas Statement No. 1-R, p. 10, lines 4-7; Peoples Gas Exhibit No. 5-R.) The declining production, by itself, according to Peoples Gas, tends to increase the percentage of gas lost. (Peoples Gas Statement No. 1-R, p. 9, lines 1-12; Peoples Gas Statement in Support, p. 4.)

Moreover, as explained in the UFG Mitigation Plan, Peoples Gas agrees that replacing all yellow category at-risk gathering pipe is estimated to cost in excess of \$738 million. (Peoples Gas Statement No. 5-R, p. 16, lines 13-14.) By comparison, according to Peoples Gas, the current net book value of all the Peoples Companies' tangible plant is \$1.8 billion, and the Companies are projected to spend approximately \$822.5 million on replacement of distribution mains and services over the five-year term of the Combined Distribution Long-Term Infrastructure Improvement Plan (LTIIIP.) (Peoples Gas Statement No. 5-R, p. 16, lines 14-18; Peoples Gas Statement in Support, pp. 4-5.)

Peoples Gas explains the UFG Mitigation Plan is designed to find solutions to reducing UFG on the Peoples Companies' gathering systems, while maintaining service, to the extent possible, to customers served from those systems. The settlement provisions, which create a UFG target commencing with the year starting September 1, 2018, will require accelerated action by the Company. Although some UFG reductions may be achieved by replacing gathering lines and repairing leaks, Peoples Gas explains, it is simply uneconomic to replace or repair all the gathering lines. It is likely that some gathering lines will have to be transferred to producers or abandoned to achieve these targets.<sup>5</sup> (Peoples Gas Statement in Support, p. 5.)

## 2. OCA's Position

OCA explains that paragraphs 24 through 29 represent a resolution between the Company and I&E on the issue of whether a cap should be set on gathering system UFG and whether Peoples Gas should be prevented from recovering the costs of UFG volumes that are in

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<sup>5</sup> Transferring a gathering line to a producer or producers would place all responsibility for UFG on the line to a producer or producers, thereby reducing the Company's UFG. Although the Peoples Companies do not currently plan to transfer gathering lines to which customers are attached, the Peoples Companies would only transfer such lines after obtaining Commission approval.

excess of the cap. According to OCA, I&E proposed setting an initial cap of 8% on gathering system UFG and stepping the cap down to 5% over three years. In addition, because the UFG rate on Peoples Gas's gathering system is 9.5%, I&E recommended a disallowance of gathering system UFG volumes in excess of its proposed initial 8% cap. (OCA Statement in Support, p. 4.)

Although OCA did not take a position on the specific issue of gathering system UFG caps and the consequences of failing to meet them, it explains that it has, in this and previous Peoples Gas's PGC cases, expressed concern over the relatively high level of UFG on the Company's gathering system. Accordingly, the OCA supports the compromise reached in this Partial Settlement, submits that it is both reasonable and in the public interest and should be approved by the Commission. (OCA Statement in Support, pp. 4-5.)

### 3. I&E's Position

I&E explains that UFG includes, among other things, leakage or other actual losses due to line losses associated with corroding and leaking systems. (I&E Statement No. 1, p. 3.) Although Peoples Gas reported a distribution system UFG loss of 2.47% for the year ending August 31, 2017, Peoples Gas reported a gathering system UFG loss of 9.50% for 2017. (I&E Statement in Support, p. 5.)

I&E further notes that the Commission has expressed concern regarding Peoples Gas's<sup>6</sup> UFG and appropriate mitigation efforts since 2010.<sup>7</sup> As expressed by Vice Chairman Place in Peoples Gas's 2017 PGC proceeding, if Peoples Gas did not immediately reduce UFG and reflect improvements before the 2018 PGC proceeding, disallowance of certain costs might be necessary.<sup>8</sup> I&E similarly asserted that if Peoples Gas did not show improvement in UFG in 2018,

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<sup>6</sup> F/k/a T. W. Phillips Gas and Oil Co. and Peoples TWP LLC.

<sup>7</sup> See *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2017-2586317 (Order entered August 31, 2017), Statement of Vice Chairman Andrew G. Place, at 1.

<sup>8</sup> *Id.* at 5.

I&E would recommend an adjustment to disallow certain recovery. (I&E Statement No. 1, p. 3; I&E Statement in Support, p. 5.)

I&E explains that Commission regulations set maximum percent UFG levels for distribution systems only.<sup>9</sup> These regulations provide for a step-down of UFG by 0.5% per year, starting at 5% and ending at 3%. Although the 2.47% distribution system UFG was a decrease from the 3.95% reported in 2016, and below the proscribed fourth-year metric of 3.5%, 2017 was the first year Peoples Gas separately reported gathering system UFG volume. Accordingly, I&E expressed concern with a high 9.5% gathering system UFG, which Peoples Gas also indicated was unsatisfactory.<sup>10</sup> (I&E Statement in Support, pp. 5-6.)

I&E explains that exceedances of the gathering UFG target after reflection of credits (described below) will create a rebuttable presumption that the excess is unreasonable. That presumption may be rebutted by a demonstration that Peoples Gas has taken reasonable actions to reduce gathering UFG and/or demonstration that other factors, such as but not limited to, production on the gathering systems has declined thereby increasing the percentage of gathering UFG experienced. The overall level of Peoples Gas's UFG will also be considered. (I&E Statement in Support, pp. 6-7.)

In evaluating whether the gathering UFG target is achieved, there will be volumetric credits for (1) actual producer retainage charges or (2) any additional gathering retainage charges approved because producer retainage charges are not approved by the Commission. I&E also explains, there will be no adjustment for gathering system UFG for the year ending August 31, 2017, and no gathering UFG target for the year ending August 31, 2018. I&E further notes that Peoples Gas will aggressively implement the Peoples Companies' Combined UFG Mitigation Plan to Address Gathering Pipelines (UFG Mitigation Plan) presented in this proceeding, including: (1) the "find-it / fix it" program under which bare steel gathering

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<sup>9</sup> 52 Pa.Code § 59.111. I&E acknowledges that Peoples Gas's 2.47% distribution system UFG is below the fourth-year target of 3.5%. I&E St. No. 1, p. 5.

<sup>10</sup> Peoples Gas St. No. 1-R, p. 8 ("In no way am I [Lynda Petrichevich] asserting that Peoples Gas, the Commission, customers, or interested parties should be satisfied with a gathering system UFG level of 9.5%").

lines will be leak surveyed on an annual basis and found leaks will be prioritized for repair, and (2) the plan to remove and replace at-risk gathering pipelines. (I&E Statement in Support, pp. 7-8.)

In order to ensure ongoing safe operations of all gathering facilities, Peoples Gas agrees to continue the practice of treating all non-jurisdictional Department of Transportation (DOT) gathering lines (which account for 92% of all gathering lines) as part of its normal distribution compliance program. This would include damage prevention locates, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys. (I&E Statement in Support, p. 8.)

I&E explains that these settlement terms are critical to I&E's participation in this Partial Settlement because they resolve I&E's core issue of creating measurable standards for UFG on the Peoples Gas gathering system. The same concerns regarding safety and costs apply to UFG for gathering systems as for distribution systems.<sup>11</sup> Although Peoples Gas's UFG Mitigation Plan outlined a number of steps to improve its gathering system, it did not set forth any quantifiable commitment to adhere to a percent standard. Through this Partial Settlement, Peoples Gas now agrees to be held to a standard for UFG on its gathering system, similar to UFG for its distribution system. (I&E Statement in Support, p. 8.)

I&E also believes it is reasonable that Peoples Gas be allowed to demonstrate that exceedances of the gathering UFG target is reasonable. A similar rebuttable presumption is reflected in the Commission regulations for distribution system UFG standards at 52 Pa.Code § 59.111(c)(3). I&E also asserts it is reasonable that Peoples Gas not be subject to an annual UFG target until August 31, 2019. According to I&E, this will allow Peoples Gas sufficient time to produce results from its aggressive implementation of its UFG Mitigation Plan, in addition to other safety measures. (I&E Statement in Support, p. 9.)

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<sup>11</sup> I&E St. No. 1, p. 9. Peoples Gas serves 1,928 customers (109 commercial customers + 1,819 residential customers) directly from its gathering systems. *Id.*

#### 4. OSBA's Position

Although the OSBA did not submit testimony with respect to Peoples Gas's UFG, it explains that it does support the continued mitigation efforts outlined in the Settlement. (OSBA Statement in Support, pp. 3-4.)

OSBA concluded that Peoples Gas's UFG levels have been addressed satisfactorily in the Joint Petition, and that the settlement is therefore reasonable and in the interest of the Company's small commercial and industrial (C&I) customers. (OSBA Statement in Support, p. 4.)

#### D. Analysis

The Partial Settlement provides for Unaccounted For Gas targets for Peoples Gas's gathering system for three consecutive years beginning with the PGC year ending August 31, 2019. For that year the target will be 9.0%. For the year ending August 31, 2020, the target will be 8.5% and for the year ending August 31, 2021, it will be 7.5%. (Settlement ¶ 24.) There will be no target for the year ending August 31, 2018 and there will be no retroactive adjustment for gathering system UFG for the year ending August 31, 2017. (Settlement ¶ 25.)

In evaluating whether the UFG target is achieved in a given year, volumetric credits will be given to reflect the actual producer retainage charge or, if the producer retainage charge is not approved by the Commission, any other gathering retainage charges approved by the Commission. (Settlement ¶ 26.)

If in a given year gathering system UFG exceeds the established target, a rebuttable presumption will be created that the excess is unreasonable. The presumption may be rebutted by Peoples Gas demonstrating that it has taken reasonable steps to reduce gathering UFG and/or demonstrating that other factors, such as production on the gathering systems has declined thereby increasing the percentage of gathering UFG experienced. Peoples Gas's overall level of UFG will also be considered. (Settlement ¶ 27.)

The Partial Settlement further provides that Peoples Gas will commit to aggressively pursuing the “Peoples Companies’ Combined UFG Mitigation Plan to Address Gathering Pipelines” that was presented by Peoples Gas as an exhibit in this proceeding. This will include the “find it/fix it” program under which bare steel gathering lines will be surveyed for leaks on an annual basis and if leaks are found, they will be prioritized for repair. It will also include the removal and replacement of at-risk gathering pipelines. (Settlement ¶ 28.)

The Partial Settlement requires Peoples Gas to continue the practice of treating all non-jurisdictional (DOT) gathering lines (which according to Peoples Gas, account for 92% of all gathering lines) as part of its normal distribution compliance program. This would include One Call locations to prevent line damage, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys. (Settlement ¶ 30.)

In summary, the Partial Settlement establishes a gathering system UFG cap of 9% beginning in 2019 and lowers that cap to 7.5% by 2021. Further, it employs the use of a rebuttable presumption to allow Peoples Gas to offer a reasonable explanation for why the cap is exceeded in a given year. In addition, it calls for aggressive implementation of Peoples Gas’s UFG Mitigation Plan.

I&E’s testimony recommended that Peoples Gas’s gathering system be subject to an 8% maximum UFG for the historic period and stepped down by 1% each year, until a 5% maximum is reached.<sup>12</sup> I&E recommended disallowing recovery of 179,489 Mcf for the historic period, representing the volumes of UFG reported in excess of an 8% maximum.<sup>13</sup> I&E did not recommend the same standards for gathering as distribution systems because it asserts that gathering systems have a different design and function, and will maintain a higher level of UFG.<sup>14</sup>

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<sup>12</sup> I&E St. No. 1, pp. 11-12.

<sup>13</sup> I&E St. No. 1, p. 16. Such adjustment would result in a \$131,055 adjustment to Peoples Gas’s over/(under) collection calculation. I&E St. No. 1-SR, p. 3.

<sup>14</sup> I&E St. No. 1, pp. 10-11.

Peoples Gas opposed I&E's recommendations in rebuttal testimony, and I&E responded with surrebuttal testimony, maintaining I&E's core recommendations.<sup>15</sup> After continued discussion, the Settling Parties reached a resolution of these issues as reflected in the Partial Settlement terms.<sup>16</sup>

E. Calculation of Retainage Charge

1. Peoples Gas's Position

Peoples Gas's retainage rate calculation includes a component for compressor fuel and storage losses. (Peoples Gas Statement No. 1-R, p. 2, lines 2-8.) The amount of compressor fuel and storage losses allocated to retainage is adjusted to recognize that transportation customers use less than a pro rata portion of storage to meet balancing needs. (Peoples Gas Statement No. 1-R, p. 2, lines 2-8; Peoples Gas Statement in Support, pp. 5-6.)

An issue arose in this proceeding concerning the allocation of compressor fuel and storage losses. OCA argued in favor of an increase to the allocation. (OCA Statement No. 1, p. 9, lines 4-8.)

2. OCA's Position

OCA witness Mierzwa recommended that modifications be made to Peoples Gas's method of calculating its retainage rate for lost and unaccounted for gas. Mr. Mierzwa proposed changes to more accurately reflect the actual level of losses on the Company's storage system and the level of gas used by the Company. In addition, Mr. Mierzwa proposed that the percentage of storage losses and company-use gas allocated to the retainage rate be doubled to account for the fact that transportation customers (upon whom retainage rates are imposed) represent approximately 50 percent of the throughput on Peoples Gas's system.

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<sup>15</sup> I&E St. No. 1-SR, p. 21.

<sup>16</sup> Joint Petition, ¶¶ 24-29.

According to OCA, in its Rebuttal Testimony, Peoples Gas agreed with Mr. Mierzwa's proposal to update the level of storage losses and company-use gas included in the retainage calculation to reflect current levels. Peoples Gas did not agree, however, that the percentage of storage losses and company-use gas included in the retainage calculation should be doubled to reflect transportation customer throughput of 50 percent.

OCA agreed to allow Peoples Gas's current method of calculating retainage to be continued. However, the OCA and Peoples Gas also agreed that this would apply only to the current case and that this issue may be taken up in future PGC cases. (OCA Statement in Support, p. 5.)

3. I&E's Position

I&E explains that it does not oppose the inclusion of this provision in the Partial Settlement as this issue may be addressed in future PGC cases. (I&E Statement in Support, p. 9.)

4. OSBA's Position

OSBA determined that the issues initially outlined in its prehearing memorandum had been adequately addressed in the Partial Settlement. (OSBA Statement in Support, pp. 3-4.)

F. Analysis

The terms of the Partial Settlement provide that Peoples Gas's method of calculating its retainage charge with respect to storage losses and company-use gas will be maintained. However, the Parties reserved the right to examine the issue in future PGC cases. (Joint Petition ¶ 30.) As the Partial Settlement preserves the right of the Parties to revisit the issue in the future, allowing the current retainage calculation method to be used for this year is a reasonable compromise to reach settlement on this issue.

G. Miscellaneous

1. Peoples Gas's Position

Peoples Gas explains that the Partial Settlement resolves difficult issues with regard to UFG on the gathering systems. It provides a basis for monitoring the progress of the Peoples Companies over the three years ending August 31, 2021, as the Companies implement their UFG Mitigation Plan and also resolves the issue with the allocation of compressor fuel and storage losses in the calculation of the Company's retainage rate.

The Partial Settlement avoids hearings and briefing on the settled issues, thereby preventing the incurrence of additional time and expense by the Commission and the Parties. (Peoples Gas Statement in Support, p. 6.)

2. OCA's Position

OCA stresses that paragraph 31 of the Partial Settlement provides that except as revised by the Settlement and subject to a Commission decision on the litigated issue of the producer retainage charge, the rates proposed and other requested approvals contained in the Company's filing should be approved.

Paragraph 32 provides that the Company's compliance filing in this proceeding will reflect updated actual and projected over and undercollections through September 30, 2018.

Paragraph 33 provides that the parties agree that the Commission should approve the renewals and changes in gas supply, pipeline, and storage capacity contracts that are explained in Peoples Gas's Statement No. 2 and related exhibits included in the Company's definitive filing. (OCA Statement in Support, pp. 5-6.)

OCA concluded that the Settlement as a whole to be in the public interest, and for that reason, requested that the terms and conditions of the Settlement be approved by the Commission.

3. I&E's Position

In accordance with the provisions of 52 Pa.Code § 53.64(i)(5), I&E notes that Peoples Gas's compliance filing in this proceeding will reflect updated actual and projected over/undercollections through September 30, 2018. I&E agrees that the Commission should approve the renewals and changes in gas supply, pipeline, and storage capacity contracts that are explained in Peoples Gas Statement No. 2 and related exhibits included in the 1307(f)-2018 definitive filing. (I&E Statement in Support, p. 10.)

I&E supports the miscellaneous terms set forth in the Partial Settlement, including that the requested approvals in Peoples Gas's PGC filing should be granted, except as revised by this Partial Settlement and subject to a decision on the one issue reserved for litigation.<sup>17</sup>

4. OSBA's Position

OSBA concluded that Peoples Gas's UFG levels have been addressed satisfactorily in the Joint Petition, and that the settlement is therefore reasonable and in the interest of Peoples Gas's small C&I customers.

OSBA further notes that settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the Joint Petitioners, but ultimately by the Company's customers as well. Avoiding further litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas. (OSBA Statement in Support, p. 4.)

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<sup>17</sup> As explained above, I&E expresses no position regarding the disputed issue.

#### H. Summary Regarding Partial Settlement

The Settling Parties agreed to a settlement of all but one issue in the above-captioned proceeding and the Settlement was achieved only after an extensive investigation of Peoples Gas's filing, including extensive informal and formal discovery and the service of written direct testimony (including accompanying exhibits) by the Settling Parties. In addition to informal discovery, Peoples Gas responded to numerous formal discovery requests (many of which had multiple subparts). A number of the active parties served testimony and accompanying exhibits supporting their respective positions, which testimony and exhibits were subsequently admitted into the record at the evidentiary hearing held on June 4, 2018.

The Settling Parties assert the Partial Settlement is just and reasonable and Peoples Gas's 2018 1307(f) filings, as modified by the Partial Settlement, should be approved.

#### I. The Public Interest

The Partial Settlement was achieved by the Joint Petitioners after an extensive investigation of Peoples Gas's filings, including extensive informal and formal discovery and the service of written testimony and exhibits by the Settling Parties. Acceptance of the Partial Settlement avoids the necessity and costs of further administrative and potential appellate proceedings.

The Partial Settlement provides for the recovery of natural gas costs that are just and reasonable given the positions advanced in the testimony and exhibits of the various parties.

Attached as Appendices B through E are Statements in Support submitted by Peoples Gas, I&E, OCA, and OSBA setting forth the basis upon which they believe the Partial Settlement is in the public interest.

Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve

administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*; citing, *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (*Warner*); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

This Recommended Decision has examined whether the Partial Settlement is in the public interest, satisfies applicable statutes and regulations for 1307(f) filings and is supported by substantial evidence and therefore should be adopted. For the reasons similar to those stated by the Settling Parties in their respective Statements in Support of the Settlement, I agree that the Partial Settlement is in the public interest and recommend that it should be approved in its entirety without modification.

Finally, as with most settlements, this Partial Settlement is also in the public interest because it will conserve the resources of the Commission and the parties. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. Although a substantial amount of pre-served testimony has already been submitted in this proceeding, such efforts were necessary to properly examine the filings of Peoples Gas. Nonetheless, the resolution of the issues contained in the Partial Settlement will avoid further litigation on those issues, thereby, serving judicial efficiency and allowing the parties and the Commission to conserve their resources, the costs of which will ultimately be borne by customers.

As such, each of the provisions of the Partial Settlement is reasonable and supports adopting the Partial Settlement in its entirety, without modification, as being in the public interest and consistent with applicable statutes governing 1307(f) filings. While none of these provisions

individually is substantial, the standard to judge the Partial Settlement is only that the Partial Settlement be in the public interest. As a whole, the Partial Settlement is in the public interest. The continuation and/or further refinement of certain issues is reasonable and in the public interest. In addition, the issues raised by the parties in this proceeding were extensively discussed in preserved testimony that was admitted into the record of this proceeding. The Partial Settlement is, therefore, also supported by substantial evidence.

## VII. CONCLUSION REGARDING PARTIAL SETTLEMENT

For the reasons set forth in the Joint Petition, as well as the additional factors enumerated in the Statements in Support of Partial Settlement filed by the Settling Parties, the proposed Partial Settlement is in the public interest and supported by substantial evidence. The Partial Settlement addresses all of the statutory requirements and is therefore recommended for approval in its entirety, without modification.

## VIII. CONTESTED ISSUE

In accordance with the Commission's Rules of Practice and Procedures, 52 Pa.Code § 5.231, the parties engaged in settlement discussions. As a result of those conferences, the Joint Petitioners were able to reach a settlement in principle of all issues, except whether additional retainage charges to producers or transporters to recover gathering system UFG should be adopted in this proceeding.

### A. Question Presented

Whether the Company's proposed producer retainage charge on all gas delivered by conventional gas producers to the Company's system, or OCA's proposed other retainage charges, to recover a portion of gathering system UFG should be approved.

## B. Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A 212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).<sup>18</sup>

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<sup>18</sup> In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa.Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa.Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa.Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa.Cmwlth. 2007) (citation omitted).

A public utility has the burden of proof to show that a proposed rate is “just and reasonable.” 66 Pa.C.S. § 315(a); *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067, 1070 (Pa.Cmwlth. 1981). Thus, as the proponent of the proposed producer retainage charge, the Company has the burden of proof to demonstrate that the proposed charge is just and reasonable.

C. Peoples Gas’s Position

Under the Company’s proposal, conventional gas producers would be charged a retainage rate of 2.9% for gas gathered into the Company’s system. Currently, these producers do not contribute toward the recovery of system UFG. Rather, the costs of UFG, including UFG on the gathering system that connects the vast majority of conventional production to customers, are borne entirely by sales and transportation customers. Peoples Gas argues that it has been undertaking considerable efforts and investing substantial capital to reduce gathering system UFG, and that a portion of the retainage charge should be paid by conventional gas producers.

1. Background on UFG and Control Efforts

Peoples Gas argues it has made it a priority to reduce UFG<sup>19</sup> on its distribution and gathering systems. Since the series of acquisitions by the current owners of Peoples Natural Gas in 2010, Peoples Gas in 2011, and Equitable Gas Company (now a division of Peoples Natural Gas) in 2013 (collectively, Peoples Companies), Peoples Gas argues the Peoples Companies have invested substantial capital to improve and upgrade their pipeline infrastructure. (Peoples Gas Statement No. 5-R, p. 5, line 21 to p. 7, line 6; Peoples Gas M.B. p. 7.) Specifically, for the five years prior to acquisition and the current five-year period of 2014-2018, according to Peoples Gas, Peoples Natural Gas increased its capital spending from \$201.1 million to \$465.2 million (131% increase), Peoples-Equitable Division increased its capital spending from \$165.5 million to \$297.3 million (80% increase), and Peoples Gas increased its capital spending from \$49.3 million to

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<sup>19</sup> UFG is the difference between the total gas available from all sources and the total gas accounted for as sales, net interchange, and company use. This difference includes leakage or other actual losses, discrepancies due to meter inaccuracies, variations of temperatures or pressures or both, and other variants, particularly billing lag. (I&E Statement No. 1, p. 3, lines 9-21.)

\$102.6 million (108% increase). (Peoples Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1; Peoples Gas M.B. pp. 7-8.)

For safety reasons, Peoples Gas asserts the Peoples Companies have devoted the vast majority of their initial post-acquisition capital investment toward replacing at-risk distribution pipelines. (Peoples Gas Statement No. 5-R, p. 7, line 3 to p. 8, line 12.) According to Peoples Gas, distribution pipelines represent 71% of the targeted pipeline miles and serve 99% of the customers, whereas the gathering pipelines represent 29% of the targeted pipeline miles and directly serve only 1% of the Peoples Companies' customers. (Peoples Gas Statement No. 5-R, p. 8, lines 1-8; Peoples Gas M.B. p. 8.)

Peoples Gas asserts that Peoples Natural Gas and Peoples Gas have been able to reduce their distribution UFG levels to 2.42% and 2.47%, respectively, for the 12 months ended August 31, 2017. (Peoples Gas Statement No. 5-R, p. 9, lines 20-22.) These figures are below the 3.5% distribution UFG level established by the Commission for that period. (Peoples Gas Statement No. 5-R, p. 9, lines 22-23; Peoples Gas M.B. p. 8.)

Peoples Gas argues that it is continuously challenged to reduce UFG on its pipelines that gather gas from local production wells. (Peoples Gas Statement No. 1, p. 11, line 22 to p. 12, line 1). The relatively few customers served from the gathering lines are generally scattered across the gathering system in relatively rural areas according to Peoples Gas. (Peoples Gas Statement No. 5-R, p. 12, line 20; Peoples Gas Exhibit No. 2.) Peoples Gas asserts that the targeted gathering pipelines directly serve only 1% of the Peoples Companies' customers. (Peoples Gas Statement No. 5-R, p. 8, lines 6-8; Peoples Gas M.B. pp. 8-9.)

Peoples Gas argues it has taken several steps to try to reduce gathering system UFG. The Peoples Companies have prepared and submitted a detailed Combined UFG Mitigation Plan (UFG Mitigation Plan) in this proceeding. (Peoples Gas Exhibit No. 2.) In the UFG Mitigation Plan, the Company makes several recommendations on areas for additional UFG mitigation activities, including: (1) additional segmentation to enhance identification of potential UFG targets; (2) accelerated leak repair program for bare steel gathering; (3) gathering pipeline

improvement strategy; (4) removal/replacement of at-risk gathering pipelines; (5) further analysis to be performed concerning certain gathering pipelines; (6) gathering pipelines abandonment considerations and communication; (7) gas measurement enhancements; (8) unauthorized use; and (9) mapping enhancements. (Peoples Gas Statement No. 1, p. 13, lines 9-19; Peoples Gas Exhibit No. 2; Peoples Gas M.B. p. 9.) The Company also installed segmentation metering on three gathering systems and as a result was able to identify the isolated loss rates for those areas. (Peoples Gas Statement No. 1, p. 12, lines 5-7; Peoples Gas M.B. p. 9.)

For the first time since the Commission required UFG reporting in 2014, the 2017 UFG report for Peoples Gas has segmented the loss of the gathering pipelines from the other functional pipeline systems. (emphasis added) (Peoples Gas Statement No. 1, p. 12, lines 16-18.) Further, in the last 4 years alone, Peoples Gas asserts it has spent \$9.7 million in capital expenditures on gathering line replacements and over \$3.0 million in gathering maintenance expenditures. (Peoples Gas Statement No. 1-R, p. 3, lines 7-10; Peoples Gas M.B. p. 9.) The Peoples Companies also assert they are proposing to spend approximately \$21.1 million over the next 4 years under their proposed UFG Mitigation Plan. (Peoples Gas Statement No. 1-R, p. 3, lines 10-12; Peoples Gas M.B. pp. 9-10.)

## 2. Description of the Company's Proposal

Peoples Gas has proposed to charge conventional gas producers a retainage rate of 2.9% for gas delivered into the Company's system. (Peoples Gas Statement No. 1, p. 13, lines 23-24.) Peoples Gas explains the proposed 2.9% retainage collected from producers is new to Peoples Gas, but Peoples Natural Gas' Equitable Division already has Commission-approved tariff provisions for a negotiated retainage rate for wells connected to the gathering or distribution systems. (Peoples Gas Statement No. 1, p. 15, lines 1-3.) According to Peoples Gas, the UFG and CU recovered from conventional gas producers through the proposed charge would reduce the

amount of UFG and CU recovered from the Company's sales and transportation customers. (Peoples Gas Statement No. 3, p. 3, lines 11-17; Peoples Gas M.B. p. 10.)<sup>20</sup>

### 3. Reasons Advanced for the Company's Proposal

Peoples Gas asserts its proposed producer retainage charge is just and reasonable and should be approved for several reasons.

Peoples Gas argues, conventional gas producers are the primary users and beneficiaries of the gathering system, so it is reasonable for those producers to finally contribute toward the costs of gathering system UFG. (Peoples Gas Statement No. 1-R, p. 17, lines 7-11; p. 18, line 23 to p. 19, line 1.) Absent the existence of these gathering lines, the producers would not be able to move their gas to a market. (Peoples Gas Statement No. 5-R, p. 5, lines 12-13.) According to Peoples Gas, like new Marcellus Shale production, the delivery of market quality gas to the city gate should be the responsibility of conventional gas producers, not the gas utility. (Peoples Gas Statement No. 5-R, p. 21, lines 3-16.) Peoples Gas has not proposed to charge conventional gas producers all of the cost of gathering system UFG losses, (Peoples Gas Statement No. 5-R, p. 21, lines 5-6) but instead, a fraction of gathering system UFG losses. (Peoples Gas Statement No. 5-R, p. 21, lines 6-7; Peoples Gas M.B. p. 11.)

Next, Peoples Gas asserts that PIOGA acknowledges that someone other than the Company should be responsible to pay for UFG on the gathering pipe. (Peoples Gas Statement No. 1-SR, p. 5, lines 14-15.)

Peoples Gas also argues gathering charges for recovering UFG are common. As explained by Company witness Petrichevich, "it would be unusual **not** to have gas retained by the

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<sup>20</sup> The Company explains that the decision on this issue ultimately affects the retainage charge to non-discounted rate transportation customers. The rate of 5.4% proposed by the Company will be produced if the Company's proposed producer retainage charge is adopted. If the OCA's alternative, an unopposed, additional 2.9% retainage charge for transportation customers using the Company's gathering system, is adopted, the base retainage rate for non-discounted transportation customers would be unaffected. (OCA Statement No. 1, p. 9, line 22 to p. 10, line 12.) If neither of these proposals is adopted, the resulting retainage rate for non-discounted transportation customers would be increased to recover the additional 347,014 Mcf. (OCA Statement No. 1, p. 10, lines 6-12.)

gatherer.” (Peoples Gas Statement No. 1-R, p. 16, lines 20-21.) (emphasis in original) Peoples Natural Gas’ Peoples Division and Peoples Gas may be the only such gatherers in the region that do not collect retainage from producers on gas delivered into the gathering system. (Peoples Gas Statement No. 1-R, p. 16, lines 21-23; Peoples Gas M.B. p. 12.)

Peoples Gas further asserts the Company’s proposed rate of 2.9% is “significantly less than other gathering pipelines in the area.” (Peoples Gas Statement No. 1-R, p. 19, lines 1-2.) According to Peoples Gas, Columbia Gas Transmission, LLC (TCO) currently recovers 4.5% UFG on its gathering facilities in its low-pressure systems in southwest Pennsylvania and West Virginia, and that amount will increase annually by 0.5% until reaching 6.0% in 2021. (Peoples Gas Statement No. 1-R, p. 24, lines 12-15; Peoples Gas M.B. p. 12.)

Peoples Gas explains that Peoples Natural Gas’s Equitable Division currently has a Commission-authorized charge in its tariff (Rate AGS) to recover UFG from producers. (Peoples Gas Statement No. 5-R, p. 22, lines 15-16.) Rate AGS is applicable to any producer desiring to transport gas through the gathering system as well as to deliver gas directly into the distribution system of the Equitable Division. (Peoples Gas Statement No. 5-R, p. 22, lines 16-18.) Peoples Gas explains that volumes under this service are subject to a gathering rate and a gas-in kind retainage rate (for the recovery of gathering UFG) that is determined by negotiations. (Peoples Gas Statement No. 5-R, p. 22, lines 18-20.) Although the retainage charges vary by gathering system, the maximum retainage charge is 9.5%. (Peoples Gas Statement No. 5-R, p. 22, lines 20-21.) Therefore, Peoples Gas asserts, the Company’s proposal is similar to the charges already imposed by Peoples-Equitable Division. (Peoples Gas M.B. p. 13.)

Next, Peoples Gas argues that by allocating some of the gathering system UFG to producers, the Company hopes to incent the producers to partner with Peoples Gas in developing UFG mitigation initiatives. (Peoples Gas Statement No. 1, p. 13, line 28 to p. 14, line 3.) For example, the charge could “incent producers to use a common line to bring gas to the Company’s system and eliminate the need for replacement of old at-risk gathering lines.” (Peoples Gas Statement No. 1, p. 14, lines 3-5.) Peoples Gas contends, as the system improves and UFG loss declines, the retainage collected from producers can also decline. (Peoples Gas Statement No. 1,

p. 14, lines 5-6.) Absent the retainage rate being imposed, however, Peoples Gas argues there is no incentive for producers to help the Company reduce gathering system UFG. (Peoples Gas M.B. p. 13.)

4. PIOGA's Opposition to the Producer Retainage Charge

PIOGA has claimed that the Company provided differing descriptions of the proposed producer retainage charge in testimony and discovery compared to the notice sent to producers, (PIOGA Statement No. 1, p. 5, line 13 to p. 8, line 1) and that the charge should not apply to all gas delivered by conventional gas producers to the Company's system. (PIOGA Statement No. 1, p. 8, lines 1-9; Peoples Gas M.B. p. 14.)

Peoples Gas contends that no confusion exists about the proposed application of the producer retainage charge and the Company clarified the charge's application in its discovery responses and testimony in this proceeding. (PIOGA Statement No. 1, p. 5, line 13 to p. 8, line 1.) According to Peoples Gas, the proposal applies to all conventional production delivered into the Company's facilities. Moreover, "over 88% of directly connected local production is from conventional wells, and few producers on the Company's system own only non-conventional (shale) production." (Peoples Gas Statement No. 1-R, p. 25, line 23 to p. 26, line 2; Peoples Gas M.B. p. 15.) Although the Company's notice said that the proposed charge would be "applicable to natural gas producers," Peoples Gas asserts the notice was, at most, slightly overbroad. (Peoples Gas Statement No. 1-R, p. 25, lines 20-22; Peoples Gas M.B. p. 15.)

In addition, Peoples Gas asserts its evidence supports the application of the charge to all gas delivered by conventional gas producers to the Company's system. As explained by Company witness Petrichevich, "the Company's intent was to model the charge after the Commission approved AGS tariff of the Equitable Division which specifically applies both gathering fees and retainage to production entering into 'distribution and gathering' lines." (Peoples Gas Statement No. 1-R, p. 26, lines 9-12.) Thus, "the Company would prefer the administrative ease of applying the same rate to both its Companies and not have to introduce

different rules depending on which company a well ties into.” (Peoples Gas Statement No. 1-R, p. 26, lines 13-15; Peoples Gas M.B. p. 15.)

Peoples Gas further asserts there is a negligible difference between the Company’s proposed charge and a recalculated charge that applies only to volumes delivered by producers into the gathering system. According to Peoples Gas, the vast majority of conventional production actually flows into the gathering system. (Peoples Gas Statement No. 1-R, p. 25, line 23 to p. 26, line 2; p. 26, lines 12-13.) Accordingly, Peoples Gas asserts if the Company “were to recalculate the retainage charge on the basis of using only gathering and try to get the same amount of collection of UFG from that charge” there would be a small change to the rate. (Tr. 56.) For Peoples Natural Gas, “the charge would increase from 2 percent to 2.17 percent, so a small, less than 10 percent change” (Tr. 56) and similar numbers would be expected for Peoples Gas because “the systems operate very much the same, same age,” according to the Companies (Tr. 56.) Therefore, Peoples Gas asserts that if PIOGA’s claims had merit, the Company’s proposed charge could be recalculated to apply only to volumes produced into the gathering system and still recover the same amount of UFG with minimal impact on the amount charged. (Peoples Gas M.B. pp. 15-16.)

According to Peoples Gas, in an effort to avoid the producer retainage charge, PIOGA has developed its own definitions of distribution and gathering pipelines:

Gathering Pipeline – a pipeline that may have free gas landowner customers connected but no PUC regulated customers connected, that aggregates production from multiple Production Pipelines and then connects with a Distribution Pipeline or a Transmission Pipeline.

Distribution Pipeline – a pipeline that has PUC regulated customers connected to it.

(PIOGA Statement No. 1-SR, p. 7, lines 8-12.) Peoples Gas asserts that PIOGA seeks to redefine any gathering pipelines that have Commission-regulated customers connected to them as distribution pipelines, so that it can disclaim any responsibility for UFG on those lines. Further, PIOGA criticizes the Company’s use of the “primary function” test to determine if a pipeline is gathering or distribution. (PIOGA Statement No. 1-SR, p. 6, lines 15-20; p. 7, lines 13-17.)

Peoples Gas argues that PIOGA’s definitions are not based on any regulatory definition of pipelines or recognized accounting practice. (Tr. 82-84.) Peoples Gas notes there is no source for PIOGA’s definitions because its witness, Mr. Hillebrand, admitted that he devised them on his own. (Tr. 82-83.) However, Peoples Gas argues that Mr. Hillebrand lacks critical knowledge to properly classify these pipelines, what main line tap customers, field line customers, or dual purpose meters<sup>21</sup> are. (Tr. 85-86; Peoples Gas M. B. pp. 16-17.)

Next, Peoples Gas asserts that PIOGA’s definitions contradict the actual definitions set forth in Commission and PHMSA regulations. Both the Commission and PHMSA define “gathering line” as a “pipeline that transports gas from a current production facility to a transmission line or main” and define “distribution line” as a “pipeline other than a gathering or transmission line.” 52 Pa.Code § 59.1; 49 C.F.R. § 192.3. Nothing in those definitions mentions the type of customers, if any, that are connected to the pipeline. (Tr. 83-85.) In fact, Peoples Gas notes the Commission often refers to pipelines as “gathering” even if distribution customers are served directly off of those facilities.<sup>22</sup> Thus, Peoples Gas argues, it is completely reasonable that the Company adheres to and applies the Commission’s and PHMSA’s definitions to classify pipelines. (Tr. 55.)

Peoples Gas also argues, the Company’s classification of pipelines based on their primary function is consistent with FERC practice. The Natural Gas Act (NGA) does not define “gathering,” so FERC employs a “modified primary function test” to determine if facilities are non-jurisdictional gathering facilities. *Natural Gas Pipeline Co. of America LLC*, 151 FERC ¶ 61,232, P 46 (2015). Peoples Gas explains this test “considers the physical and geographical attributes of a facility, including: (1) the length and diameter of the pipelines; (2) the facilities’

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<sup>21</sup> See note 5, *infra*; *Equitable Resources, Inc.*, 2007 W. Va. PUC LEXIS 3477, at \*55-56 (W. Va. Pub. Serv. Comm’n Nov. 26, 2007) (Recommended Decision) (observing that “Equitable Gas Company” serves “approximately 5,000 customers” off of Equitrans’ transmission lines, gathering lines, and production facilities through the use of “field taps which include a dual-purpose meter that both purchases and sells the gas through the same meter”); *In re Application of Columbia Gas of Ohio, Inc. & Sunstone Corp.*, 1986 Ohio PUC LEXIS 1346, at \*2 (Ohio Pub. Utils. Comm’n Feb. 19, 1986) (“[M]any self-help customers take service directly through dual purpose meters on the transmission company’s mainlines,” and “[i]n those cases, there is no UFG at all.”); *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, 1990 Pa. PUC LEXIS 3, at \*6 (Order entered Mar. 28, 1990) (noting that “Rate MLS-I (Main Line Service) customers are those transportation and retail customers served by Columbia that are separated from an interstate pipeline by only a dual-purpose meter”).

<sup>22</sup> See note 5, *supra*.

geographical configuration; (3) the extension of the facilities beyond the central point in the field; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a facility; and (6) the operating pressures of the pipelines.” *Id.* (citing *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983)). FERC also “considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA).” *Id.* (citations omitted). Peoples Gas notes that none of these factors is whether a distribution customer is connected to the facilities. Peoples Gas asserts that Mr. Hillebrand admitted that he was unaware that FERC even uses the primary function test, (Tr. 84) and accordingly, PIOGA’s criticism of the primary function test is completely unfounded. (Peoples Gas M.B. pp. 18-19.)

Next, Peoples Gas argues that PIOGA’s definitions are contrary to FERC precedent. FERC has declared that “a gatherer’s incidental use of gathering facilities for the delivery of local production to an LDC,” which FERC defined as a “local distribution customer,” did “not alter the overall non-jurisdictional gathering function of the facilities.” *Columbia Gas Transmission Corp.*, 90 FERC ¶ 61,211, pp. 61,684, 61,686 (2000). Peoples argues that, like this Commission, FERC has considered pipelines to be gathering facilities, even though distribution customers were served directly off of those pipelines.<sup>23</sup> Moreover, in the “Appalachian Basin,” FERC has recognized that service to such customers off of gathering facilities is “typical,” given “the integrated nature of gas supply, gathering, transmission and distribution.” *Energy Corp. of America*, 141 FERC ¶ 62,151, p. 64,478 (2012; Peoples Gas M.B. p. 19.)

Peoples Gas next argues that PIOGA’s definitions would lead to irrational outcomes. Peoples Gas offers an example of a stretch of pipeline where there were two miles of gathering pipe with only local producers, then a single Commission-regulated customer, and then

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<sup>23</sup> See *id.*; *Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297, PP 8, 10, 33 (2004) (finding that pipelines at issue, which would be “primarily perform[ing] an exempt gathering function” and “mak[ing] non-jurisdictional deliveries to local distribution customers,” were “non-jurisdictional gathering facilities”); *Nat’l Fuel Gas Supply Corp.*, 65 FERC ¶ 61,131, p. 61,657 (1993) (observing that “about 1,200 residential and other small customers of Distribution and Clarion River Gas, Inc. are served directly off National Fuel’s gathering facilities”); *Carnegie Natural Gas Co.*, 64 FERC ¶ 61,164, 1993 FERC LEXIS 2439, at \*3-8 (1993) (noting that “Carnegie makes direct sales off its gathering system” in Pennsylvania to “residential and commercial (R & C) customers” and that FERC did not have “jurisdiction over sales made directly off Carnegie’s gathering system”). Further, with respect to the *Carnegie* case, the Company notes that PIOGA participated in that proceeding. See *Carnegie*, at \*2.

another two miles of pipe with only local producers. Peoples Gas asserts, according to Mr. Hillebrand, the presence of that single customer makes the entire line downstream of that customer “distribution.” (Tr. 89.) In other words, Peoples Gas asserts only the portion of the line upstream from that customer would be classified by PIOGA as “gathering,” despite local gas being gathered downstream of that customer. (Tr. 89.) Peoples Gas notes Mr. Hillebrand does not explain what occurs if that customer is removed from the system. By PIOGA’s definition, according to Peoples Gas, the entire line would transform into gathering until it reaches another distribution customer. Conversely, if a customer is added further upstream, then the line segment downstream of that new customer suddenly becomes distribution. Thus, although Mr. Hillebrand alleges that the Company’s number of gathering pipelines is a “floating number” (Tr. 91), Peoples Gas argues that he fails to realize that his proposed definitions would actually lead to unsettled classifications of the pipelines. Peoples Gas asserts the classification of pipelines should be driven by the definitions and analyses used by the Commission, PHMSA, and FERC, not the unprecedented and unfounded definitions suggested by PIOGA. (Peoples Gas M.B. pp. 19-20.)

Peoples Gas argues PIOGA’s proposal to install customer exchange meters in the gathering system is not a basis for rejecting the proposed producer retainage charge.

D. Argument

1. Applicable Legal Principles

Every rate of a public utility must be just and reasonable,<sup>24</sup> and the public utility bears the burden of proving that its proposed rates and tariff provisions are just and reasonable.<sup>25</sup> Proposed rates and tariff provisions must be supported by substantial evidence,<sup>26</sup> which is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>27</sup>

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<sup>24</sup> 66 Pa.C.S. § 1301.

<sup>25</sup> 66 Pa.C.S. §§ 315(a), 332(a), 1307(f)(3)(v) & (f)(5), 1318.

<sup>26</sup> 2 Pa.C.S. § 704.

<sup>27</sup> *Marr Development Mifflinville, LLC, v. Mifflin Township ZHB*, 166 A.3d 479, 482 n.3 (Pa.Cmwlth. 2017), quoting *In re Thompson*, 896 A.2d 659, 666 n.4 (Pa.Cmwlth. 2006).

PIOGA argues that Peoples Gas has not shown that its proposed producer retainage rate on deliveries of Pennsylvania natural gas supplies from conventional wells into what Peoples Gas characterizes as its gathering system is just and reasonable.

After years of operating their natural gas distribution company pipeline systems as if each is an integrated whole<sup>28</sup> and years after the focus on mitigating lost and unaccounted for gas on their pipeline systems – Peoples Gas proposes in this proceeding to partially unbundle its historical integrated cost allocation methodology that allocates to all sales and transportation customers the same pro rata share of the gas costs of the whole pipeline system. PIOGA asserts that Peoples Gas proposes to do this by assigning some responsibility for so-called gathering system UFG to producers’ deliveries of Pennsylvania natural gas supplies from conventional wells.<sup>29</sup>

PIOGA argues that Peoples Natural Gas’s owner now controls the other two public utilities (PNG’s Peoples and Equitable Divisions) that used to provide competitive alternatives to producers of natural gas supplies from conventional wells. Peoples Gas has excessive UFG on what it characterizes as its gathering pipelines,<sup>30</sup> which directly serve its customers.<sup>31</sup> Because of these two facts, PIOGA asserts that Peoples Gas suddenly proposes in this PGC proceeding to change its historical integrated cost allocation methodology because of its concern that, without the producers’ contribution, the UFG recovery from Peoples’ sales and transportation customers would be more than the representatives of the customers would accept based on the Statement of Vice Chairman Andrew G. Place in last year’s PGC proceedings that Peoples Gas should face potential UFG cost disallowance in this year’s proceeding if its UFG mitigation plan failed to show

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<sup>28</sup> Peoples Gas Exhibit No. 2 at 3 (“Even though the Companies operate the gathering, transmission, storage and distribution pipelines as an integrated system . . .”).

<sup>29</sup> Peoples Gas Statement No. 1 (Petrichevich) at 13:2314:22.

<sup>30</sup> I&E Statement No. 1 at 5:27; *see* OCA Statement No.1 at 4:185:3 (recent increase in total system UFG is attributable to an increase in gathering UFG.).

<sup>31</sup> PIOGA Exhibits MAH-4 (Peoples Gas), response b., MAH-7 (Peoples Gas), response c.

positive results.<sup>32</sup> According to PIOGA, Peoples Gas candidly admits that the 2.9% “rate level is chosen to mitigate any impacts of increasing gathering UFG on the retainage rate charged to transportation customers (Peoples Gas Statement No. 1 at 13:24-26) and “effectively reduces the UFG to be borne by sales and transportation customers.” (PIOGA M.B. pp. 5-6.)

PIOGA argues that Peoples Gas’s unique natural gas distribution company pipeline system supports continuing its historical integrated cost allocation methodology. (PIOGA M.B. p. 7.)

According to PIOGA, the Peoples Companies (Peoples Division, Equitable Division and Peoples Gas) assert that they are “unique when compared to other Pennsylvania natural gas distribution systems [because] they own and operate extensive gathering systems that provide direct access to local natural gas supplies.” (Peoples Gas Exhibit No. 2 at 1.) Peoples Gas acknowledges that it serves customers directly from what it characterizes as its gathering system,<sup>33</sup> and PIOGA agrees that the Peoples Companies’ natural gas distribution pipeline systems are unique because of that, which is attributable to the way the utilities developed<sup>34</sup> and have operated their systems.<sup>35</sup> PIOGA asserts that Peoples Gas has acknowledged that “Peoples Gas is very similar to the Peoples Natural Gas System in both age and composition” (Peoples Gas Statement No. 1 at 12:1-3) and Peoples Gas serves its customers from pipelines they characterize as gathering, distribution and transmission.<sup>36</sup> PIOGA further argues there is no dispute that Peoples Gas has historically operated, does currently operate and will continue to operate its unique

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<sup>32</sup> I&E Statement No. 1 at 7:48:9; I&E Exhibit No.1, Schedule 2; I&E Statement No. 1-SR at 15:1-6 (“The implication [of PNG’s stated reason for proposing its UFG Mitigation Plan] being that, were it not for the position of the parties in the last PGC proceeding and the threat of adjustment due to UFG, the Company may not have proposed its UFG Mitigation Plan.”); PIOGA Exhibit MAH-11 (Peoples Gas).

<sup>33</sup> PIOGA Exhibits MAH-4 (Peoples Gas), response b., MAH-7 (Peoples Gas), response c.

<sup>34</sup> PIOGA Statement No. 1 at 8:9-21, 9:11-18; PIOGA Statement No. 1-SR at 6:17:2, 7:29:11; Transcript (Tr.) at 69:2070:6 (Peoples Gas acknowledging that utility gathering line development involved both connecting utility-owned wells to serve its customers and connecting independent producer wells), Tr. At 91:23 (PIOGA acknowledging that Peoples Gas has “a unique utility system”); PNG Statement No. 1-R at 19:19-21.

<sup>35</sup> Peoples Gas Exhibit No. 2 at 3 (“[T]he [Peoples] Companies operate the gathering, transmission, storage and distribution pipelines as an integrated system, . . . .”); PIOGA Exhibit MAH-7 (PNG) at 14:18-22, 15:3-4.

<sup>36</sup> PIOGA Cross-examination Exhibit No. 3; Tr. at 64:8-15, 65:16-24.

pipeline system as if it is an integrated whole,<sup>37</sup> and that this integrated operation is the basis for its historical integrated cost allocation methodology.

PIOGA argues that, now, “[n]early forty years [after] the gas industry in general began the process of deregulating gas production”<sup>38</sup> – during which time Peoples Gas operated its natural gas distribution pipeline system as an integrated whole and allocated the costs accordingly – Peoples Gas asserts that in this deregulated energy market “PIOGA’s attempt to avoid responsibility for UFG on the gathering system is unprecedented” (Peoples Gas Statement No. 5-R at 20:18-19) and it should be the responsibility of producers to deliver market quality gas to a gas distribution utility’s city gate. (Peoples Gas Statement No. 5-R at 21:3-5; (PIOGA M.B. p 8.) PIOGA asserts that, what is unprecedented is Peoples Gas’s sudden proposal to partially unbundle its historical integrated cost methodology to assign so-called gathering system UFG costs to producers a few years after eliminating the competitive choices producers had after deregulation. PIOGA argues that Peoples Gas is proposing a simplified approach to UFG mitigation and recovery, which PIOGA describes as complex. The quality of producers’ conventional well gas is not an issue in this proceeding and, according to PIOGA, does not provide a basis for Peoples Gas’s change in its long-standing pipeline system cost allocation methodology. (PIOGA M.B. p. 8.)

PIOGA further asserts that Peoples Gas’s rationale for its proposed change in methodology is also contrary to how the Peoples Gas natural gas distribution pipeline systems were developed. PIOGA asserts that Peoples Gas agrees with it that what Peoples Gas characterizes as “the gathering system” was constructed as part of an integrated operation to provide natural gas to customers,<sup>39</sup> and acknowledges that customers located adjacent to these pipelines were connected as utility customers. (Peoples Gas Statement No. 1-R at 19:15-17.) According to PIOGA, at the hearing Peoples Natural Gas also acknowledged that it would

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<sup>37</sup> Peoples Gas Exhibit No. 2 at 1, 3 (“[T]he Companies operate the gathering, transmission, storage and distribution pipelines as an integrated system . . .”).

<sup>38</sup> Peoples Gas Statement No. 5-R (Gregorini) at 20:19-21.

<sup>39</sup> Peoples Gas Statement No. 1-R at 19:13-15; PIOGA Statement No. 1 at 11:23–13:11; PIOGA Exhibit MAH-6 (Peoples Gas).

continue to connect new utility customers to these pipelines, subject to evaluation. (Tr. at 69:1-11.) Yet, Peoples Gas argues, for the first time in rebuttal testimony, that Peoples Natural Gas's Peoples Division and Peoples Gas are "gatherers." (Peoples Gas Statement No. 1-R at 17:16-21; PIOGA M.B. p. 8.)

While the Peoples Companies rely upon accounting definitions or classifications to support their characterizations of pipelines to support their producer retainage proposals, PIOGA suggested different definitions that, in its view, more accurately describe the facilities of these unique natural gas distribution pipeline systems for the purposes of addressing UFG:

Production Pipeline – a pipeline connecting a single well to either a gathering pipeline or a Distribution Pipeline, and that may have a free gas landowner customer connected to it.

Gathering Pipeline – a pipeline that may have free gas landowner customers connected but no PUC regulated customers connected, that aggregates production from multiple Production Pipelines and then connects with a Distribution Pipeline or a Transmission Pipeline.

Distribution Pipeline – a pipeline that has PUC regulated customers connected to it. (PIOGA Statement 1-SR at 7:3-12.)

PIOGA asserts the accounting definitions or classifications relied upon by the Peoples Companies do not constrain the Companies or the Commission in addressing UFG. (PIOGA M.B. pp. 8-9.)

PIOGA believes that beginning a long-term process of assigning so-called gathering system-related costs to conventional producers based on a UFG Mitigation plan that *only now* begins to focus on what the Companies assert is the largest contributor to total system UFG with results concerning the largest portion of "at-risk" pipelines reported in the Companies' 2020 PGC proceedings is not the appropriate tool. (PIOGA M.B. p. 10.)

2. PIOGA argues the Peoples Companies are not “gatherers.”

PIOGA asserts, although Peoples Gas acknowledges that what it characterizes as “the gathering system” was not originally constructed as a stand-alone gathering operation with no customers (Peoples Gas Statement No. 1-R at 19:11-13) it nonetheless argues that the Peoples Companies’ so-called gathering system integrated with its distribution system are gatherers similar to unregulated gathering companies and interstate pipelines that unbundled their gathering services, which, as a rule, impose retainage charges on producers delivering into their systems. PIOGA argues this comparison is flawed, as the Companies’ are not “true” gatherers with respect to their so-called gathering systems. (PIOGA Statement No. 1-R at 2:203:7; PIOGA Statement No. 1-SR at 3:16–6:8; PIOGA M.B. p. 10.)

PIOGA argues the Commission has stipulated that gathering services “are generally provided on a contract basis rather than a ‘public utility’ service basis,”<sup>40</sup> which is consistent with Peoples Gas’s reference to gathering services being provided by unregulated entities. But Peoples Gas’s comparison of its gathering pipelines integrated with its distribution pipelines to provide PUC-regulated public utility service to interstate pipelines that unbundled their gathering services according to PIOGA, is misplaced. While state-regulated public utility customers may be served directly from these gathering pipelines, in every example provided by Peoples Natural Gas the gathering pipelines are owned by the FERC-regulated pipeline and not by the natural gas distribution public utility whose customers are served according to PIOGA.<sup>41</sup> PIOGA asserts the Peoples Companies own the so-called gathering systems that serve their customers. (PIOGA M.B. p. 11.)

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<sup>40</sup> Appendix D, JOINT STIPULATION AND REQUEST TO DISCONTINUE at 7, *PIOGA v. Pa. Pub. Util. Comm’n*, No 1790 C.D. 2011, granted by order entered September 7, 2012, <https://ujportal.pacourts.us>. See *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624, 628, n.3 (Pa. Cmwlth. 2017) (judicial notice of PUC decision); *Lycoming v. Pennsylvania Labor Relations Board*, 943 A.2d 333, 335 n.8 (Pa.Cmwlth. 2007) (judicial notice of pleadings and judgments in other proceedings where appropriate).

<sup>41</sup> PIOGA Late-Filed Cross-examination Exhibit No. 4 (Peoples Companies Answer to PIOGA’s On the Record Data Request).

3. PIOGA argues UFG on what Peoples Gas characterizes as gathering pipelines is not the fault of producers.

PIOGA notes that another rationale for Peoples Gas's producer retainage rate proposals is to begin "a long-term process" of assigning gathering systems costs to conventional producers and thus requiring them to share in Peoples Gas's recovery of these costs. PIOGA's witness explained that this rationale does not support Peoples Gas's proposed change in its historical integrated pipeline system cost allocation because it imposes a cost-based incentive on producers to do something that is not the producers' responsibility. (PIOGA Statement No. 1 at 13:314:23.) PIOGA's witness Mr. Hillebrand also noted that the current state of these pipelines concerning UFG is because of years of neglect. (PIOGA Statement No. 1 at 13:314:23.) While Peoples Gas responded to this testimony by providing amounts of capital expenditures on gathering replacements and gathering maintenance expenditures in the past five years under current ownership, I&E's testimony showed, according to PIOGA, just how small the expenditures for the gathering pipelines was – only 12.4%. (I&E Statement No. 1 at 8:119:10; PIOGA M.B. pp. 11-12.)

4. PIOGA argues that application of the proposed Rate GS tariff to producers' deliveries of Pennsylvania natural gas supplies from conventional wells into its distribution or transmission pipelines is not just and reasonable.

PIOGA argues that Peoples Gas proposed a retainage rate on deliveries of Pennsylvania natural gas supplies from conventional wells into what Peoples Gas characterizes as its gathering systems (Peoples Gas Statement No. 1 at 13:23-24) consistent with the proposals of the Peoples and Equitable Divisions described as assessing gathering retainage. The basis for Peoples Gas's proposed Rate GS relates, according to PIOGA, solely to UFG and retainage on what Peoples Gas characterizes as its gathering systems, and has nothing to do with UFG, retainage or deliveries into Peoples Gas's distribution or transmission pipelines.<sup>42</sup> (PIOGA M.B. pp. 12-13.)

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<sup>42</sup> See Peoples Gas Statement No. 1 generally and Peoples Gas Exhibit No. 2 generally.

Accordingly, PIOGA concludes there is no evidentiary support for the language in Peoples Gas's proposed Rate GS tariff applying to deliveries into Peoples Gas's distribution or transmission pipelines. Simply put, Peoples Gas's proposed Rate GS tariff language doesn't match its evidence relied upon as support. (PIOGA M.B. p. 13.)

5. PIOGA argues Peoples Gas's producer retainage proposals are bad policy.

According to PIOGA, Peoples Gas candidly discloses that its proposed producer retainage rate "is the beginning of a long-term process" of assigning gathering systems costs to conventional producers. While in this proceeding the costs are only UFG, Peoples Gas's statement shows that this is just the beginning of a process of Peoples Gas attempting to assign capital and operating costs related to what it characterizes as its gathering systems to conventional producers. In future proceedings, PIOGA expects Peoples Gas to attempt to impose on producers other additional costs related to what Peoples Gas characterizes as its gathering pipelines. In view of what PIOGA characterizes as Peoples Gas's acknowledging that deliveries of conventional well natural gas continues to decline with, in Peoples Gas's view, no end in sight, imposing these additional costs on producers of conventional well gas will exacerbate that decline and jeopardize the provision of safe, reliable and continuous service to the customers directly connected to these lines and those located downstream that depend on these pipelines for gas supply. (PIOGA Statement No. 1 at 9:2-10, 12:4-17, 14:13-23; Peoples Gas Exhibit No. 10-R.) Accordingly, PIOGA contends this sudden change in Peoples Gas's cost allocation methodology is not only unsupported by substantial evidence showing that it is just and reasonable, it is also bad policy. (PIOGA M.B. pp. 13-14.)

E. OCA's Position (Main Brief)

1. Storage Losses and Company-Use Gas

OCA notes that the issue it raised regarding Peoples Gas's method of calculating its retainage charge with respect to storage losses and company-use gas has been resolved.

OCA and Peoples Gas have agreed to the terms of a Partial Settlement Agreement addressing the calculation of the storage loss and company-use gas retainage charge.

2. Producer Retainage Charge

OCA argues the Commission should approve the producer retainage charge. (OCA St. 1 at 8; Peoples Gas St. 1 at 13.) As described by Company witness Petrichevich, the producer retainage charge is intended to begin “a long-term process of rationalizing the costs and the recovery of costs of systems that were constructed primarily for the purpose of gathering gas rather than serving end use customers.” (Peoples Gas St. No. 1 at 13.) If approved, the producer retainage charge would reduce the losses recovered from transportation customers and retail sales customers. (OCA St. 1 at 8.)

Peoples Gas operates a distribution system and a gathering system. (OCA St. 1 at 4.) Currently, all customers are assessed the same retainage charge whether or not they use the gathering system. (OCA St. 1 at 9.) In the instant proceeding and past proceedings involving Peoples Gas’ Section 1307(f) filings, OCA has been concerned with the level of responsibility of transportation customers and sales customers for gathering system UFG. Specifically, as OCA witness Mierzwa explained, in this proceeding:

[T]he most significant component of the Company’s total losses occur on its gathering system, and transportation customers are a proportionately greater user of the gathering system than sales customers. For example, during the historic review period, transportation customers purchased nearly 10 Bcf of gas from local producers that was delivered by Peoples Gas’ gathering system. By comparison, Peoples Gas purchased approximately 4 Bcf of gas from local producers to serve PGC customers that was delivered by the gathering system.

(OCA St. 1 at 8 (citations omitted).)

In other words, OCA explains transportation customers and PGC customers do not utilize the gathering system to the same degree and, as such, it is not appropriate to impose the same retainage charge upon each group of customers. Accordingly, OCA submits that the

Commission should approve the proposed producer retainage charge in order to begin to appropriately assign responsibility for gathering UFG to those that benefit from, or use, the Peoples Gas gathering system. (OCA St. 1 at 9; OCA M.B. pp. 5-6.)

As OCA witness Mierzwa stated, “[t]he producer retainage charge proposed by Peoples Gas is one way to begin the process of recognizing the differences in the responsibility for gathering system UFG by collecting additional retainage for the use of the gathering system.” (OCA St. 1 at 9; OCA St. 1S at 3-4.) Moreover, OCA contends, it is not unusual for gatherers to collect a retainage charge on gas delivered into the gathering system and it is reasonable for producers, who benefit from the gathering system, to be assigned responsibility for UFG. (OCA M.B. p. 6.)

OCA argues if the producer retainage charge is not approved, the Commission should approve a gathering system retainage charge.

OCA contends the producer retainage charge would serve to recognize the differences in the responsibility for gathering system UFG.<sup>43</sup> (OCA St. 1S at 3-4.)<sup>44</sup>

An alternative approach to recognizing these differences, however, is imposing an additional retainage charge on the transportation customer volumes delivered on the gathering system. OCA St. 1 at 9; OCA St. 1S at 4. OCA witness Mierzwa explained:

Peoples Gas’ gathering system is used to collect gas from local production wells and deliver that gas to Peoples Gas’ distribution system. Those customers that do not utilize Peoples Gas’ gathering system to obtain their gas supplies from local production wells utilize interstate pipelines to have their gas delivered to Peoples Gas’ distribution system. Customers using

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<sup>43</sup> Company witness Petrichevich stated that “Peoples Natural Gas’s Peoples Division and Peoples Gas may be the only such gatherers in the region that do not collect retainage on gas delivered into the system” and that Peoples Gas seeks to retain “a small fraction, compared to that collected by other gatherers in the region, of the producers’ gas delivered into the Companies’ systems.” Peoples Gas St. 1R at 16, 17.

<sup>44</sup> OSBA witness Kalcic stated that “[p]roducers clearly benefit from their connections to the Company’s system” and that “given the potential impact of increases of gathering system losses on end-user retainage rates . . . it is reasonable for producers to contribute toward the costs associated with LUGF on the Company’s system.” (OSBA St. 1R at 3.)

interstate pipelines to acquire gas supplies are required to pay retainage to the interstate pipelines. Customers relying on Peoples Gas' gathering system to deliver gas to Peoples Gas' distribution system are not required to pay any portion of the interstate pipeline retainage assessed to customer relying on interstate pipelines to deliver gas to Peoples Gas' distribution system.

OCA St. 1 at 9.

Therefore, if the producer retainage charge is not approved, OCA submits that a gathering system retainage charge of 2.9 percent should be assessed on the volumes delivered on the gathering system in the Peoples Division. (OCA St. 1 at 10; OCA M.B. p. 7.) Further, as OCA witness Mierzwa pointed out, PIOGA witness Hillebrand "agrees with [the] alternative approach to recognizing differences in the responsibility for gathering system UFG through an additional transportation customer gathering retainage charge."<sup>45</sup> (OCA St. 1S at 4.)

OCA argues if neither the producer retainage charge nor the gathering system retainage charge are approved, the Commission should increase the retainage charge proposed by Peoples Gas to 10.4 percent.

OCA witness Mierzwa noted that, if the Commission does not approve the producer retainage charge or the gathering system retainage charge, there would be a retainage deficiency amounting to 4.8 percentage points that Peoples Gas would need to recover from sales and nondiscounted transportation customers. (OCA St. 1 at 10; OCA M.B. pp. 7-8.) OCA witness Mierzwa explained, as shown on Revised Peoples Gas Exhibit No. 5, page 1, the proposed producer retainage charge was projected to recover 347,014 Mcf. Without assessing either a producer retainage charge or a separate gathering system retainage charge, according to OCA, the 347,014 Mcf would be recoverable from PGC and non-discounted retainage transportation customers. The projected PGC and non-discounted retainage transportation customer receipt volumes total 7,185,752 Mcf. OCA asserts to recover the additional 347,014 Mcf, Peoples Gas's retainage rate would be increased by 4.8 percentage points from 5.6 percent to 10.4 percent.

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<sup>45</sup> Company witness Petrichevich stated that PIOGA witness Hillebrand's interest is in "avoiding any responsibility for producers to share in [the cost of gathering system LUFGE], even though producers benefit from those gathering facilities." Peoples Gas St. 1SR at 5.

(OCA St. 1 at 10.) OSBA witness Kalcic likewise recommended an increase in the retainage charge to account for the deficiency in the event the producer retainage charge is not approved. (OSBA St. 1R at 3.) Accordingly, OCA recommends, if the producer retainage charge and gathering system retainage charge proposals detailed in Section IV.B.1 and IV.B.2 above are not approved, the Commission should increase the retainage rate to 10.4 percent. (OCA M.B. pp. 7-8.)

F. OSBA's Position

1. Argument

OSBA notes that PIOGA opposes the Company's proposal. PIOGA's witness, Michael A. Hillebrand, argues, in part, that: 1) the Company's testimony in support of its retainage proposal (which suggests that the retainage rate would only apply to conventional gas volumes delivered into Peoples Gas's *gathering system*) is inconsistent with the Company's proposed tariff language (which specifies that the producer retainage rate would apply to *all* delivered conventional gas volumes); and 2) production from conventional wells is not the cause of the Company's high gathering system losses and, therefore, the cost associated with such losses should not be shifted to producers. (PIOGA Statement No. 1 at 5.)

OSBA asserts that, although Mr. Hillebrand is technically correct that producers do not cause the Company's high gathering system losses, in the sense that gathering system losses depend upon the physical condition of pipeline segments, operating pressures, etc., rather than the fact that producers are connected to the system, the same could be also said for the Company's sales and transportation customers. (OSBA Statement No. 1-R at 2; OSBA M.B. p. 3.)

OSBA asserts that if Mr. Hillebrand's argument that producers should not pay any portion of the costs associated with gathering system losses since producers do not cause such losses fails, such an argument would also be valid in the case of sales and transportation customers, which would lead to the conclusion that natural gas distribution companies (NGDCs) should be responsible for 100% of the costs of UFG. *Id.* (OSBA M.B. pp. 3-4.) Mr. Hillebrand disagrees, citing the difference in how producers and distribution customers "use" the utility's

system. Producers supply the gas, whereas customers consume it. (See PIOGA Statement No. 1-SR at 2.) OSBA asserts this is a distinction without a difference. (OSBA M.B. pp. 3-4.)

Because producers clearly benefit from their connections to Peoples Gas's system, OSBA argues, they should pay their fair share of UFG costs and help to mitigate increases in Peoples Gas's end use retainage rate. OSBA notes, Peoples Gas's current retainage rate is 5.4% and it has not proposed an increase in this proceeding. However, in order to keep the current retainage charge unchanged, Peoples Gas has proposed to implement the producers' retainage rate of 2.9%. (OSBA Statement No. 2-R at 2-3.) If the 2.9% producer retainage charge is not approved by the Commission, OSBA asserts the retainage rate for end use customers would be 10.2%.<sup>46</sup> (OSBA M.B. p. 4.)

Furthermore, OSBA notes, as Peoples Gas witness Ms. Petrichevich testified, charging producers a retainage rate is not at all uncommon or unreasonable. In fact, Peoples Gas may be one of the few, if only, gatherers that does not. (Peoples Gas Statement No. 1-R at 16-18; OSBA M.B. p. 4.)

Accordingly, OSBA recommends the approval of Peoples Gas's proposed producer retainage charge.

## G. Analysis

### 1. Issue

The sole issue remaining in this case is whether a 2.9% retainage charge to conventional gas producers to recover unaccounted for gas delivered into the Company's system, should be permitted. The charge was proposed by Peoples Gas and is opposed by PIOGA. OCA

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<sup>46</sup> According to Peoples Gas Exhibit No. 5, page 1 of 2, producers would contribute 347,014 Mcf toward UFG under the Company's proposal. If that producer contribution were eliminated, an additional 347,014 Mcf would need to be recovered from sales and non-discounted transportation customers. Per Peoples Gas Exhibit No. 5, page 2 of 2, the applicable sales and transportation receipt volumes for such customers is 7,185,752 Mcf. Therefore, the Company's existing retainage rate of 5.4% would need to increase by (347,014 Mcf divided by 7,185,752 Mcf) or 4.8%, or from 5.4% to 10.2%. OSBA Statement No. 2-R at 3.

and OSBA support the proposed producer retainage charge and alternatively, OCA proposes a gathering system retainage charge of 2.9% on volumes delivered on the gathering system in the Companies' system. If neither retainage charge is approved, OCA proposed an increase of the retainage charge by Peoples Gas to 10.4%. I&E took no position on the producer retainage proposals. Although PIOGA opposes Peoples Gas's proposed charge, it supports either retainage rate proposed by OCA.

## 2. Background

Peoples Gas proposed a 2.9% retainage rate<sup>47</sup> on deliveries of Pennsylvania natural gas supplies from conventional wells into what Peoples Gas characterizes as its gathering system, (Peoples Gas Statement No. 1 at 13:23-24) and in its tariff supplement proposed Rate GS – Gathering Service to impose a 2.9% retainage rate on deliveries of “conventional well gas directly into the Company's system.” (Peoples Gas Exhibit No. 7, p. 5; PIOGA M.B. pp. 1-2.) Peoples Gas proposed that the charge would apply to all conventional gas producers delivering their gas to the Company, because they flow the vast majority of their gas on the gathering system. Peoples Gas asserted if the proposed charge were recalculated to apply only to volumes on the gathering system, the impact would be negligible. (Peoples Gas M.B. p. 6.)

Under the proposal advanced by Peoples Gas, conventional gas producers would be charged a retainage rate of 2.9% for gas gathered into the Company's system.<sup>48</sup> Currently, these producers do not contribute toward the recovery of system UFG. Rather, the costs of UFG, including UFG on the gathering system that connects the vast majority of conventional production to customers, are incurred by sales and non-discounted transportation customers. Peoples Gas asserted that it has been undertaking considerable efforts and investing substantial capital to reduce gathering system UFG, and argued that a portion of the retainage charge should be paid by conventional gas producers.

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<sup>47</sup> I&E Statement No. 1 (Cline) describes “retainage” at 17:1818:4, 18:13-20, 19:3-9, and “UFG” (lost and unaccounted for gas) at 3:9-21.

<sup>48</sup> Peoples Gas is proposing a 2.9% retainage charge. In its summary of argument in its Main Brief, Peoples Gas indicated the rate was 2.0% under the Company's proposal.

Peoples Gas explained that conventional producers are the primary beneficiaries of the gathering system because it often provides the only way to move their gas to market; that gathering charges for the recovery of UFG, such as the one proposed by the Company, are common in Pennsylvania (such as the Peoples Natural Gas’s Equitable Division tariffed UFG retainage charge to producers that was previously approved by the Commission); and that without the proposed charge, conventional producers have no incentive to help the Company reduce UFG on the gathering system.

PIOGA stresses that it does not agree that the pipelines Peoples Gas characterizes as gathering comprise a separate and discrete gathering system. (PIOGA MR.B. p. 1.) As shown by Peoples Gas Exhibit No. 2, PIOGA asserts the Companies all operate integrated natural gas systems, consisting of distribution, transmission, storage and gathering pipelines and related facilities, that serve approximately 690,000 customers in southwestern Pennsylvania.<sup>49</sup> As shown by Peoples Gas’s discovery responses, PIOGA argues the pipelines Peoples Gas’s characterizes as gathering do not comprise one separate and discrete gathering system.<sup>50</sup> (PIOGA R.B. p. 1.) PIOGA further argues that the Companies’ UFG Mitigation Plan references work done on “gathering systems located in the Indiana, Valley, and Kiski divisions.” (Peoples Gas Exhibit No. 2 at 12; PIOGA R.B. p. 1.) (emphasis added)

PIOGA contends the Peoples Gas’s producer retainage rate and tariff proposals should be rejected, and that either of the retainage rate proposals of the OCA be approved. In view of the Partial Settlement, PIOGA asserts its initial recommendation that the Company bear some responsibility for so-called gathering system UFG is moot. In the alternative, if Rate GS is

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<sup>49</sup> Peoples Gas Exhibit No. 2 at 1, 3 (“[T]he Companies have installed gas measurement equipment at various strategic system locations for the sole purpose of isolating **a gathering system** or a portion thereof and separately determining the UFG on **that isolated gathering system.**”) (emphasis added).

<sup>50</sup> Compare map at PIOGA Exhibit MAH-3 (Peoples Gas) (response to PIOGA-II-001), response 3 (Peoples Gas whole system), with maps at PIOGA Exhibit MAH-4 (Peoples Gas) (response to PIOGA-I-002), (three separated gathering systems – Plumville, Boyer and Schmidt – comprising all Peoples Gas’s gathering lines) and MAH-6 (Peoples Gas) (response to PIOGA-I-12) (location of Peoples Gas portion of 115 miles of gathering pipeline the Peoples Companies intend to abandon). The gathering lines shown on the MAH-6 map are not shown on the MAH-3 map.

approved, PIOGA requests that its application be limited to deliveries of conventional well gas into what Peoples Gas characterizes as its gathering pipelines. (PIOGA R.B. p. 14.)

OSBA agreed with the charge proposed by Peoples Gas. (OSBA M.B. p.p. 3-4.) I&E took no position on the producer retainage proposals. (I&E Statement No. 1-SR at 22:19-20.) OCA provided alternative recommendations if the Peoples Gas producer retainage proposal is not approved: either an additional 2.9% gathering retainage charge assessed to transportation customers on volumes delivered on Peoples Gas's gathering system, (OCA Statement No. 1, at 3:8-10, 9:22-25) or a 10.4% customer retainage rate if the additional 2.9% gathering transportation customer retainage charge is also not approved. (OCA Statement No. 1 at 3:11-13, 10:5-12; PIOGA M.B. pp. 2-3.)

### 3. Whether the Proposed Charge Is Just and Reasonable

The Company has proposed a retainage rate, under which conventional gas producers would be charged 2.9% for gas gathered into the Company's system. (Peoples Gas M.B. at 10.) As explained in the Company's Main Brief, the proposed charge is just and reasonable because, among other reasons, conventional gas producers are primary beneficiaries of the gathering system, which often provides the only way to move those producers' gas to market. (Peoples Gas M.B. at 10-13.)

The Company has made several commitments and taken several steps to try to reduce gathering system UFG. Since last year's PGC proceeding, the Peoples Companies' UFG Mitigation Team developed a detailed and comprehensive Combined UFG Mitigation Plan. (Peoples Gas Exhibit No. 2.) This Plan was the result of the Peoples Companies examining their gathering systems in detail and determining the ways in which they could reduce UFG on the gathering systems. (Peoples Gas Statement No. 1, p. 13, lines 9-19; Peoples Gas Exhibit No. 2.) The Peoples Companies are proposing to spend approximately \$21.1 million over the next 4 years on gathering line replacements and maintenance. (Peoples Gas Statement No. 1-R, p. 3, lines 10-12; Peoples Gas R.B. p. 5.)

Further, under the Partial Settlement filed in this proceeding, the Company has made additional commitments to reduce gathering UFG. Specifically, the Company has agreed to be subject to a gathering UFG target (UFG target) of 9.0% for the year ending August 31, 2019, 8.5% for the year ending August 31, 2020, and 7.5% for the year ending August 31, 2021. (Joint Petition for Partial Settlement ¶ 24.) The Company also will aggressively implement the UFG Mitigation Plan presented in this proceeding, including: (1) the “find-it / fix it” program under which bare steel gathering lines will be leak surveyed on an annual basis and found leaks will be prioritized for repair, and (2) the plan to remove and replace at-risk gathering pipelines. (Joint Petition for Partial Settlement ¶ 28.) Further, to ensure ongoing safe operations of all gathering facilities, Peoples Gas has agreed to continue treating all non-jurisdictional (DOT) gathering lines (which account for 92% of all gathering lines) as part of its normal distribution compliance program. (Joint Petition for Partial Settlement ¶ 29.) This would include damage prevention locates, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys. (Joint Petition for Partial Settlement ¶ 29; Peoples Gas R.B. p. 5.)

The Company is making substantial commitments to address gathering UFG. As a beneficiary of the gathering system, it is certainly reasonable for conventional gas producers to contribute by paying for a portion of gathering system UFG, as proposed by the Company. (Peoples Gas R.B. p. 6.)

4. Whether Peoples Gas’s Historical Practice of Not Charging Producers a Gathering Retainage Prohibits Prospective Changes

PIOGA asserts that Peoples Gas does not explain, after decades of integrated operations of the three utility distribution pipeline systems now under common ownership, why now is the time to begin separating costs related to what the Companies characterize as gathering pipelines and assigning a portion of those costs for UFG to producers delivering supplies from conventional wells into the gathering system. PIOGA asserts the integrated nature of the operation of the Companies’ pipeline systems has not changed, and the Companies opposed OCA’s proposal to Peoples Natural Gas in last year’s PGC proceeding for a separate gathering system retainage charge on transportation customers “using” the so-called gathering system. (PIOGA R.B. pp. 1-2.)

Peoples Gas argues that the Company's historical practice of not charging producers a gathering retainage does not govern prospective changes. PIOGA asserts that the Company's proposed producer retainage charge should not be adopted because the Company has not charged conventional gas producers for UFG on the gathering system previously. (PIOGA M.B. at 8.)

Every year, parties are afforded the opportunity to examine whether the PGC rates are just and reasonable and whether prospective changes are appropriate. *See* 66 Pa.C.S. § 1307(f). Several issues arose in this case concerning the recovery of the cost of UFG other than the proposed producer retainage charge. Peoples Gas notes, for example, I&E proposed disallowing the Company's recovery of 179,489 Mcf in gathering system UFG, which equated to the amount of UFG in excess of I&E's proposed 8% gathering UFG standard. (I&E Statement No. 1, p. 16, lines 3-5.) In other words, I&E's proposal would have allocated those gathering UFG costs to the Company. Further, as an alternative to the Company's proposed producer retainage charge, OCA recommended "an additional gathering retainage charge of 2.9 percent that would be assessed on the volumes delivered on the gathering system." (OCA Statement No. 1, p. 9, lines 22-25.) Therefore, it is reasonable to conclude that the Company was not precluded from proposing to partially unbundle the costs associated with gathering system UFG. (Peoples Gas R.B. p. 6.)

In support of its proposal, Peoples Gas provides the example that conventional gas producers would be incited to "use a common line to bring gas to the Company's system," which would "eliminate the need for replacement of old at-risk gathering lines." (Peoples Gas Statement No. 1, p. 14, lines 3-5.) Absent the proposed producer retainage charge being imposed, however, Peoples Gas asserts conventional producers have no incentive to help reduce UFG on the gathering system. (Tr. 92; Peoples Gas R.B. pp. 6-7.)

5. Whether the Proposed Charge is Inconsistent With the Integrated Nature of the Company's Distribution, Transmission and Gathering Systems

PIOGA has argued that the Company's proposal is "contrary to how the Peoples Gas's natural gas distribution pipeline systems were developed." (PIOGA M.B. at 8.) Because the

Company's gathering system was "constructed as part of an integrated operation to provide natural gas to customers," PIOGA claims that the Company cannot impose a producer retainage charge to recover a portion of gathering system UFG. (PIOGA M.B. at 8, 10-11, 14-15.) PIOGA also argues that because the Commission's interpretation of a statute is not entitled to much deference if it is contrary to the Commission's previous interpretation, Peoples Gas's changing view on its integrated system should not be afforded much deference either. (PIOGA M.B. at pp. 4-5; Peoples Gas R.B. p. 7.)

Peoples Gas disputed PIOGA's characterization of the integrated distribution, transmission, and gathering systems as meaning that the Company cannot charge different rates for different components of its system. The Company asserts that Peoples-Equitable Division's Commission-approved Rate AGS applies to any producer wanting to transport gas through the gathering system as well as to deliver gas directly into the distribution system of Peoples-Equitable Division. (Peoples Gas Statement No. 5-R, p. 22, lines 16-18.) Volumes under this service are subject to a gathering rate and a gas-in kind retainage rate (for the recovery of gathering UFG) that is determined by negotiations. (Peoples Gas Statement No. 5-R, p. 22, lines 18-20.) Therefore, according to Peoples Gas, Rate AGS is a prime example of charging different rates for the gathering component of an integrated system. (Peoples Gas R.B. pp. 7-8.)

Peoples Gas also argues that PIOGA fails to acknowledge that, at the interstate level, integrated pipelines charge separately for gathering retainage. As explained in the Company's Main Brief, Equitrans L.P.'s current FERC-approved tariff provides for 9.5% gathering system retainage, and as of August 1, 2016, which is the effective date of Dominion Energy Transmission spinning down its Appalachian gathering system to its unregulated gathering affiliate, its FERC-approved tariff provided for 9.34% gathering retainage. (Peoples Gas Statement No. 1-R, p. 7, lines 17-21.) Additionally, Columbia Gas Transmission, LLC (TCO) currently recovers 4.5% UFG on its gathering facilities in its low-pressure systems in southwest Pennsylvania and West Virginia, and that amount will increase annually by 0.5% until reaching 6.0% in 2021. (Peoples Gas Statement No. 1-R, p. 24, lines 12-15.) As a result, Peoples Gas argues it is common for interstate pipelines in the area to charge for gathering retainage, even though their systems are integrated. Due to the Company's "unique" position as a Pennsylvania

gas utility that owns gathering pipelines, its integrated operations are comparable to these interstate integrated pipelines. Thus, Peoples Gas's proposed producer retainage charge is not inconsistent with the Company's integrated systems and appears consistent with practice in the Appalachian Basin. (Peoples Gas R.B. p. 8.)

PIOGA's reliance on the Commonwealth Court's decision in *Crown Castle NG East LLC v. Pa. Pub. Util. Comm'n*, No. 697 C.D. 2017 (Pa.Cmwlt. 2018) is not persuasive to deny the proposed charge. That case concerned the Commission's interpretation of a statute regarding the transportation of wireless data and voice traffic for cell phone customers, not how a utility classifies its facilities or recovers the costs of providing services on those facilities. Furthermore, as explained in the Company's Main Brief, the Company utilizes the regulatory definitions of the Commission and PHSMA, as well as FERC's "modified primary function test," to classify its pipelines. (Peoples Gas M.B. at 17-18.)

6. PIOGA's Argument to Redefine the Company's Gathering and Distribution Pipelines

Peoples Gas asserts that PIOGA should not be permitted to disclaim all responsibility for gathering system UFG and force customers and the Company to incur the costs of gathering system UFG." (Peoples Gas M.B. p. 111.) But, PIOGA asserts Peoples Gas has been the Company that has, for decades, "forced" customers to bear all of the costs of gathering system UFG because of the integrated development and operation of the Company's pipeline system. PIOGA argues that the Companies' position raises the question of whether their integrated cost allocation methodology was consistently approved by the Commission in error, as its producer retainage proposals and initiation of "a long-term process of rationalizing the costs and the recovery of the costs" is fundamentally at odds with their integrated cost allocation methodology. PIOGA asserts that the Commission has not erred in consistently approving the Companies' integrated cost allocation methodology and that this methodology should continue because it is consistent with the integrated operation of the Companies' unique pipeline systems. (PIOGA R.B. pp. 6-7.)

PIOGA further argues that the Companies have not explained why this methodology should change at all, much less change so abruptly and shortly (less than one year) after Peoples Gas’s sister company Peoples Natural Gas argued against a similar change as an oversimplification of a problem Peoples Gas describes as complex.<sup>51</sup> Yet this “use” by producers, PIOGA asserts, is the basis for the Companies’ producer retainage charge proposals. PIOGA stresses that the integrated nature of the operation of the Companies’ pipeline systems has not changed and will not change, and the Companies’ proposals have not provided any answers to the many questions Peoples Natural Gas raised in last year’s Peoples Natural Gas PGC case in opposition to OCA’s proposal for a separate gathering system retainage charge on transportation customers “using” the so-called gathering system. (PIOGA R.B. pp. 7-8.)

PIOGA asserts that the reason for this abrupt change in methodology is the elimination of the historic competition among the three utility distribution systems now united under common ownership along with a real concern of UFG cost disallowance after more than ten (10) years of failing to address so-called gathering system UFG, as noted by Vice Chairman Place’s Statement in the Companies’ 2017 PGC cases. (PIOGA Exhibit MAH-11; PIOGA R.B. p. 8.)

Generally, PIOGA avers that the Company is not a “true” gatherer because distribution customers are served directly off of the gathering pipelines. (PIOGA M.B. at 9-11.) PIOGA also sets forth its own definitions of “distribution pipeline” and “gathering pipeline” and claims that “the Peoples Companies rely upon accounting definitions or classifications to support their characterizations of pipelines.” (PIOGA M.B. at 9.) Further, PIOGA presented, for the first time in its Main Brief, a factual stipulation between PIOGA and the Commission in a Commonwealth Court proceeding that references gathering systems. (PIOGA M.B. at 11, Appx. D.) (Peoples Gas R.B. p. 9.)

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<sup>51</sup> Peoples Gas Statement No. 1-R at 15:23–16:2 (“In the Companies’ 1307(f)-2017 testimony, the Companies explained that gathering system issues are complex . . .”).

The Company utilizes the definitions set forth in the regulations of the Commission and PHMSA as well as FERC's "modified primary function test" to classify its pipelines for safety and operational purposes. (Peoples Gas M.B. pp. 10, 17-18.)

PIOGA's definitions of distribution and gathering pipelines are not industry recognized definitions and are not applied by any regulatory agency. No persuasive evidence was presented to establish that the connection of customers to gathering plant would alter the essential nature of the plant as gathering under the existing circumstances. (Peoples Gas R.B. p. 10.)

Peoples Gas argued that PIOGA's reliance on the stipulation provided in its Main Brief to claim that the Company is not a true gatherer is improper. Although PIOGA, in a footnote in its Main Brief, asks for judicial notice of this document, Peoples Gas correctly argues that such notice is inappropriate, both in the manner and at the time in the proceeding that it was presented. PIOGA indicated in footnote 43 of its Main Brief that the Commission may take judicial notice of the document,<sup>52</sup> as a signatory of this stipulation, Peoples Gas notes that PIOGA should have had this document in hand throughout this entire proceeding. After multiple rounds of written testimony and oral rejoinder testimony at the evidentiary hearing, PIOGA first presented this stipulation in its Main Brief. Peoples Gas notes that PIOGA provides no justification for its failure to introduce the stipulation at one of its several previous opportunities. (See PIOGA M.B. at 11.) Therefore, Peoples Gas correctly argues that the Parties were prevented from reviewing the stipulation during the evidentiary phase of the proceeding and presenting evidence in rebuttal. Accordingly, if judicial notice of the stipulation would be taken, the Company correctly argues that its due process rights may be compromised. See *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 15 (Pa.Cmwlt. 1984) (citation omitted) (stating that due process is satisfied when a party is "afforded notice and the opportunity to appear and be heard"). Thus, the stipulation was not considered in this proceeding. (Peoples Gas R.B. pp. 10-11.)

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<sup>52</sup> PIOGA Main Brief, p. 11, footnote 43.

7. Whether PIOGA's Allegations of "Fault" Are a Basis for Denying Recovery of a Portion of Gathering System UFG from Conventional Gas Producers

PIOGA contends the proposed producer retainage charge should be rejected because UFG on the gathering system is not the producers' fault or responsibility. (PIOGA M.B. at 11-12.) In support, PIOGA alleges that the Company has neglected its gathering system and only spent 12.4% of its capital expenditures on the gathering system. (PIOGA M.B. at 12.)

Peoples Gas notes that fault is not the standard for recovering a portion of gathering system UFG from conventional gas producers. As explained by the OSBA in its Main Brief, if PIOGA's "argument against cost assignment were valid in the case of producers, it must also be valid in the case of sales and transportation customers," which would lead to an unreasonable conclusion that natural gas distribution companies (NGDCs) should be responsible for 100% of the costs of LUFG." (OSBA M.B. at 3.) Rather, Peoples Gas has demonstrated that a proper standard to be applied in this proceeding is that beneficiaries of a particular system should pay their fair share of the UFG on that system. Here, the Company asserts that the conventional gas producers are primary beneficiaries of the Company's gathering system. Therefore, they should share in some of the associated costs of gathering system UFG in the circumstances presented in this proceeding. (Peoples Gas R.B. pp. 11-12.)

Peoples Gas has spent \$12.7 million in capital expenditures over the past four years to improve and upgrade its gathering pipeline infrastructure. (Peoples Gas Statement No. 1-R, p. 3, lines 7-10.) Although this amount is much smaller than the amount of capital spent on the distribution system, Company witness Gregorini explained that for safety reasons, the Peoples Companies have devoted the vast majority of their initial post-acquisition capital investment toward replacing at-risk distribution pipelines. (Peoples Gas Statement No. 5-R, p. 7 to p. 8, line 12.) Specifically, Peoples Gas established that distribution pipelines represent 71% of the targeted pipeline miles and serve 99% of the customers, whereas the gathering pipelines represent 29% of the targeted pipeline miles and directly serve only 1% of the Peoples Companies' customers. (Peoples Gas Statement No. 5-R, p. 8, lines 1-8.) Further, due to the criteria utilized in risk rankings under the federally mandated Distribution Integrity Management Plan (DIMP), the

Company effectively must use most of its available funds to address at-risk distribution pipe. (Peoples Gas Statement No. 5-R, p. 9, lines 1-5; Peoples Gas R.B. p. 12.)

Notwithstanding, Peoples Gas explains the Peoples Companies are proposing to spend approximately \$21.1 million over the next four years to further address their gathering systems. (Peoples Gas Statement No. 1-R, p. 3, lines 10-12.) In that four-year period, the Peoples Companies will remove 115.2 miles of at-risk gathering pipeline, which it asserts, will save \$90 million that would be spent if these lines were replaced, and will replace 20.0 miles of gathering pipeline. (Peoples Gas Exhibit No. 2, pp. 18-19.) Peoples Gas asserts these 135.2 miles of gathering pipeline are over 11% of the total 1,221 miles of at-risk gathering pipeline. (Peoples Gas Exhibit No. 2, pp. 17-19.) Thus, PIOGA's assertion that the Company has neglected its gathering system, under the circumstances, is not persuasive to support a denial of the proposed charge. (Peoples Gas R.B. pp. 12-13.)

8. Whether Applying The Producer Retainage Charge To All Conventional Production Is Reasonable In This Proceeding

PIOGA challenges the Company's proposed producer retainage charge on the grounds that it will apply to all production from conventional gas producers delivered into Peoples Gas's system. (PIOGA M.B. at 14-17.) As support, PIOGA claims that the Company failed to provide evidence supporting the charge's application to production from those wells that is delivered directly into distribution lines. (PIOGA M.B. at 12-13; Peoples Gas R.B. p. 13.)

According to PIOGA, the Peoples Companies have all identified what they characterize as gathering pipelines, there is no basis for expanding tariff language beyond what Peoples Gas's evidence addresses to accommodate Peoples Gas's preference. (PIOGA R.B. p. 3.)

According to PIOGA, Peoples Gas has identified what it classifies as gathering pipelines, so there is no basis for expanding tariff language beyond what the Company's evidence addresses – which is the recovery of gathering system UFG – to accommodate Peoples Gas's preference for administrative ease. PIOGA asserts Peoples Gas's recalculated producer retainage based on only deliveries into what the Company classifies or characterizes as gathering pipelines

should be rejected because the basis for the Company's proposal was not the UFG volumes to be recovered, but the producer retainage percentage. PIOGA argues, the Company's failure to properly conform its calculations to its evidence in its initial proposals does not entitle the Company to retroactively change its initial proposal. (PIOGA R.B. pp. 13-14.)

The Company asserted that it clarified the charge's application in its discovery responses and testimony in this proceeding. (Peoples Gas M.B. at 14.) According to Peoples Gas, PIOGA conceded in its testimony that the Company made this clarification: it applies to all conventional production delivered to Company facilities. (PIOGA Statement No. 1, p. 5, line 13 to p. 7, line 21.) Moreover, the Company asserted it presented sufficient evidentiary support for its proposal. As explained by Company witness Petrichevich, "the Company's intent was to model the charge after the Commission approved AGS tariff of the Equitable Division which specifically applies both gathering fees and retainage to production entering into 'distribution and gathering' lines." (Peoples Gas Statement No. 1-R, p. 26, lines 9-12.) Although, in its Main Brief, PIOGA disputed that there is "administrative ease of applying the same rate to both its Companies and not hav[ing] to introduce different rules depending on which company a well ties into," PIOGA never presented any evidence to refute the Company's claim. (Peoples Gas Statement No. 1-R, p. 26, lines 13-15; Peoples Gas R.B. p. 13.)

Nevertheless, Peoples Gas explained, even if the proposed charge were only applied to volumes delivered into the gathering system, there would be a negligible difference between that charge and the one proposed by the Company. (Peoples Gas M.B. at 15.) The Company argued that if it "were to recalculate the retainage charge on the basis of using only gathering and try to get the same amount of collection of UFG from that charge," there would be a small change to the rate. (Tr. 56.) In fact, the Company demonstrated for Peoples Natural Gas, "the charge would increase from 2 percent to 2.17 percent, so a small, less than 10 percent change." (Tr. 56.) The Company explained that similar numbers would be expected for Peoples Gas because "the systems operate very much the same, same age." (Tr. 56.) PIOGA did not introduce any evidence to dispute that calculation or claim. Thus, the un rebutted evidence of record established little difference between the Company's proposed charge and a charge calculated based on gas volumes delivered into the gathering system. (Peoples Gas R.B. p. 14.)

9. Whether The Proposed Producer Retainage Charge Is Appropriate Policy For The Unique Situation Presented in this Proceeding

PIOGA argued that the proposed producer retainage charge is “bad policy.” (PIOGA M.B. at 13-14.) To support this position, PIOGA claimed that “this is just the beginning of a process” of Peoples Gas “attempting to assign capital and operating costs related to what [the Company] characterizes as its gathering systems to conventional producers in future proceedings.” (PIOGA M.B. at 13.) Further, PIOGA asserted that the proposed producer retainage charge will exacerbate the decline of conventional gas production and will “jeopardize the provision of safe, reliable and continuous service to the customers” connected to the gathering pipelines and those customers located downstream. (PIOGA M.B. at 13-14.) PIOGA also argued that the proposed charge runs contrary to the Company’s intent to use local production to supply its customers. (PIOGA M.B. at 13.) (Peoples Gas R.B. p. 14.)

Peoples Gas argued that findings in this proceeding should not be based on speculation about what may or may not happen in other future proceedings. (Peoples Gas R.B. p. 15.) Peoples Gas also argued there is no evidence that the proposal will jeopardize the provision of safe and reliable service or would exacerbate the decline of conventional wells. Although PIOGA witness Hillebrand made this assertion in testimony, no actual analysis or data was presented to support this conclusion. (Peoples Gas Statement No. 5-R, p. 23, lines 4-5; Peoples Gas Exhibit No. 10-R; Peoples Gas Statement No. 5-R, p. 23, lines 5-7; Peoples Gas R.B. p. 15.) Peoples Gas explained that PIOGA stipulated “that the proposed producer retainage charges are not, by themselves, of sufficient magnitude to materially affect existing production from wells or the drilling of new wells.” (Peoples Gas Exhibit No. 11-R; Peoples Gas Statement No. 5-R, p. 23, lines 10-13.) Peoples Gas has demonstrated its concern for safety and reliability of service by establishing the extensive efforts and by investing substantial capital to replace at-risk pipe. (Peoples Gas Statement No. 5-R, p. 23, lines 10-13; Peoples Gas R.B. p. 15.)

IX. CONCLUSION AND RECOMMENDATION

A public utility has the burden of proof to show that a proposed rate is “just and reasonable.” 66 Pa.C.S. § 315(a); *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067,

1070 (Pa.Cmwlt. 1981). Thus, as the proponent of the proposed producer retainage charge, the Company has the burden of proof to demonstrate that the proposed charge is just and reasonable.

Under the proposal advanced by Peoples Gas, conventional gas producers would be charged a retainage rate of 2.9% for gas gathered into the Company's system.<sup>53</sup> Currently, these producers do not contribute toward the recovery of system UFG. Rather, the costs of UFG, including UFG on the gathering system that connects the vast majority of conventional production to customers, are incurred by sales and non-discounted transportation customers.

Peoples Gas explained that conventional producers are primary beneficiaries of the gathering system because it often provides the only way to move their gas to market; that gathering charges for the recovery of UFG, such as the one proposed by the Company, are common in Pennsylvania (such as the Peoples Natural Gas's Equitable Division tariffed UFG retainage charge to producers that was previously approved by the Commission); and that without the proposed charge, conventional producers have no incentive to help the Company reduce UFG on the gathering system.

Peoples Gas demonstrated it has made substantial commitments to reduce UFG on its gathering system including further commitments in the Partial Settlement in this proceeding. As conventional gas producers are the primary beneficiaries of the gathering system, it is reasonable to conclude they should be assessed the producer retainage charge as part of the costs to deliver their product and to create an incentive to encourage them to help the Company reduce gathering system UFG. Absent the proposed charge, they have no incentive to assist in the Company's efforts. (Peoples Gas R.B. p. 2.)

Moreover, the Company's historical practice of not charging producers for gathering retainage does not foreclose such a charge from being adopted in this proceeding. Every year, parties are entitled in 1307(f) cases to examine the existing PGC rates and charges and propose changes to them.

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<sup>53</sup> Peoples Gas is proposing a 2.9% retainage charge. In its summary of argument in its Main Brief, Peoples Gas inadvertently indicated the rate was 2.0% under the Company's proposal.

Even though the Company operates an integrated system, it can, like Peoples Natural Gas Company LLC's (Peoples Natural Gas) Equitable Division, impose charges for individual cost components of that system, such as gathering pipelines. Peoples Gas explained that other integrated pipeline systems impose charges by components of their systems as proposed by the Company. (Peoples Gas R.B. p. 2.)

PIOGA's definitions of gathering and distribution pipelines to support its challenge to the Company's segregation of the gathering systems are not recognized in the industry and are not consistent with the regulations of the modified primary function test, which the Company uses to classify its pipelines.

Additionally, PIOGA's claims that conventional gas producers should not have to pay for gathering system UFG because they did not cause the losses are not sufficiently persuasive to deny the charge proposed by the Company. PIOGA's own testimony demonstrates that the gathering lines were built to gather conventional gas supplies, and the producers are primary beneficiaries of the gathering systems. Therefore, the producers should pay a portion of the gathering system UFG, based upon the facts established and the circumstances present in this proceeding. (Peoples Gas R.B. pp. 2-3.)

PIOGA claims that the Company has failed to prove that the proposed producer retainage charge should apply to volumes delivered into the Company's system whether it is delivered to gathering or distribution facilities. However, the Company has demonstrated there is a negligible difference between calculating the charge based upon volumes delivered into gathering only versus delivered into the system generally. (Peoples Gas R.B. p.3.)

Finally, the proposed producer retainage charge is not poor policy, as alleged by PIOGA. There is no evidence that this proposal will jeopardize the provision of safe and reliable service to customers, nor has PIOGA presented any data or analysis to support its general claim that the proposed charge will exacerbate the decline of conventional gas production. To the contrary, PIOGA stipulated that the charge will not have a material effect on the production from existing wells or the production from new wells. As Peoples Gas explains, the producer retainage

charge would properly balance the interests of both customers and producers, where there is currently no balance at all. (Peoples Gas R.B. p. 3.)

Based upon the evidence presented and the unique nature of the integrated system operated by the Company, and the particular circumstances identified in this proceeding, Peoples Gas has demonstrated that the proposed charge is just and reasonable and I recommend that the retainage charge proposed by Peoples Gas be approved. Even though the Company operates an integrated system, it can, like Peoples Natural Gas Company LLC's (Peoples Natural Gas) Equitable Division, impose charges for individual cost components of that system, such as gathering pipelines.

#### X. CONCLUSIONS OF LAW

The Settling Parties in ¶ 57 – 66 of the Joint Petition have stipulated to the following Conclusions of Law identified as numbers 1 through 10, which are approved and based upon the record evidence, adopted below, in addition to the remaining conclusions of law.

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 1307(f), 1317-18.

2. With respect to Peoples Gas's gas purchases and gas purchasing practices during the 12-month historical reconciliation period ended January 31, 2018, Peoples Gas has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historical period. It is requested that the Commission find that during the 12 months ended January 31, 2018:

a. Peoples Gas met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate, and reliable service to its customers; and

b. All gas exchanges by Peoples Gas with entities that are considered an affiliated interest have met the requirements of Section 1318(b) of the Public Utility Code relating to purchases from and services provided by entities that are considered affiliates.

3. Peoples Gas has fully and vigorously represented the interests of its ratepayers in proceedings before FERC and other relevant non-Commission proceedings during the relevant time period in compliance with 66 Pa.C.S. § 1318(a)(1).

4. Peoples Gas has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the Company from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the Company's ratepayers in compliance with 66 Pa.C.S. § 1318(a)(2).

5. Peoples Gas has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies in compliance with 66 Pa.C.S. § 1318(a)(3).

6. Peoples Gas has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy in compliance with 66 Pa.C.S. § 1318(a)(4).

7. Peoples Gas has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests in compliance with 66 Pa.C.S. § 1318(b)(1).

8. Neither Peoples Gas nor its affiliated interests have withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy in compliance with 66 Pa.C.S. § 1318(b)(3).

9. During the eight-month interim period beginning February 1, 2018, and the projected 12-month period beginning October 1, 2018, when rates contained in the Partial Settlement will be in effect,<sup>54</sup> based upon information presently available and based upon evidence of record in this proceeding concerning Peoples Gas’s projected purchases and purchasing policies, the rates to be adopted by the Commission result from Peoples Gas’s compliance with the provisions of Section 1318 of the Public Utility Code, including subsections (a)(1)-(4) and (b)(1)-(3). 66 Pa.C.S. § 1318(a)(1)-(4), (b)(1)-(3). It is expressly understood and agreed that this finding is made solely for the purpose of setting prospective rates that shall continue to be subject to the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and to further review in an appropriate future proceeding. This provision is not intended to limit or prevent the parties from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether Peoples Gas’ gas purchases and gas purchasing practices complied with Section 1318. If in an appropriate future proceeding Peoples Gas’ gas purchases and gas purchasing practices from February 1, 2018, through September 30, 2019, were challenged, the Commission’s findings based upon this provision shall not bar the examination of such purchases and practices, including, but not limited to, disallowance of or reductions to such costs during the eight-month interim period commencing February 1, 2018, and the 12-month application period commencing October 1, 2018, and ending September 30, 2019.

10. The Joint Petition for Settlement is in the public interest.

11. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).

12. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

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<sup>54</sup> The proposed tariff rates effective October 1, 2018, will be updated to reflect actual and projected over/undercollections through September 30, 2018, as stated in Paragraph 32 of this Partial Settlement.

13. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).

14. This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008) (citation omitted).

15. A public utility has the burden of proof to show that a proposed rate is “just and reasonable.” 66 Pa.C.S. § 315(a); *Brockway Glass Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067, 1070 (Pa.Cmwlth. 1981).

16. PIOGA’s definitions of distribution and gathering pipelines are not consistent with the actual definitions set forth in Commission and PHMSA regulations. *See* 52 Pa.Code § 59.1; 49 C.F.R. § 192.3.

17. Both the Commission and PHMSA define “gathering line” as a “pipeline that transports gas from a current production facility to a transmission line or main” and define “distribution line” as a “pipeline other than a gathering or transmission line.” 52 Pa.Code § 59.1; 49 C.F.R. § 192.3.

18. Pipelines can be characterized as “gathering” lines even if distribution customers are served directly off of those facilities.<sup>55</sup>

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<sup>55</sup> See *Application of Equitable Gas Co. for Approval of Abandonment of Natural Gas Service to Twenty-Six (26) Field Line Customers Located in the Township of Richhill, Greene County, Pennsylvania*, 2009 Pa. PUC LEXIS 889, at \*1-5 (Order entered Mar. 3, 2009) (approving Equitable Gas Company’s abandonment of service to distribution customers served off of gathering facilities owned by Equitrans, L.P.); *Application for Approval of Abandonment of Service by Equitable Gas Co. to Twenty-Three (23) Field Gathering Line Customers in Washington County, Pennsylvania*, 2010 Pa. PUC LEXIS 1256, at \*1, 4-7, 40-46 (Nov. 1, 2010) (Initial Decision on Remand), adopted, Docket No. A-2009-2089152 (Order entered Aug. 1, 2011) (approving Equitable Gas Company’s abandonment of service to distribution customers served off of gathering facilities owned by Equitrans, L.P.); *Application for Approval of Abandonment of Service by Columbia Gas of Pennsylvania, Inc. to One Customer Located in Clarion County, Pennsylvania*, 2017 Pa. PUC LEXIS 241, at \*2-3, 6-8 (Order entered Nov. 8, 2017) (approving the utility’s abandonment of service to one customer served from a tap off a gathering pipeline); *Lucy v. Columbia Gas of Pennsylvania, Inc.*, 2014 Pa. PUC LEXIS 44, at \*1-3, 21-23 (Order entered Feb. 6, 2014) (approving the utility’s abandonment of service to “one field gathering line customer” and dismissing the complaint filed by that customer).

19. The Company’s classification of pipelines based on their primary function is consistent with FERC practice in this proceeding. *Natural Gas Pipeline Co. of America LLC*, 151 FERC ¶ 61,232, P 46 (2015).

20. The Natural Gas Act (NGA) does not define “gathering,” so FERC employs a “modified primary function test” to determine if facilities are non-jurisdictional gathering facilities. *Id.*

21. FERC’s modified primary function test “considers the physical and geographical attributes of a facility, including: (1) the length and diameter of the pipelines; (2) the facilities’ geographical configuration; (3) the extension of the facilities beyond the central point in the field; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of a facility; and (6) the operating pressures of the pipelines.” *Id.* (citing *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983)).

22. FERC also “considers the purpose, location, and operation of the facilities; the general business activities of the owner of the facility; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA),” when determining if facilities are non-jurisdictional gathering facilities. *Id.* (citations omitted).

23. PIOGA’s definitions are not consistent with FERC precedent, as FERC has declared that “a gatherer’s incidental use of gathering facilities for the delivery of local production to an LDC,” which FERC defined as a “local distribution customer,” did “not alter the overall non-jurisdictional gathering function of the facilities.” *Columbia Gas Transmission Corp.*, 90 FERC ¶ 61,211, pp. 61,684, 61,686 (2000).

24. Like the Commission, FERC in several decisions considered pipelines to be gathering facilities, even though distribution customers were served directly off of those pipelines.<sup>56</sup>

25. In the “Appalachian Basin,” FERC has recognized that service to customers off of gathering facilities is “typical,” given “the integrated nature of gas supply, gathering, transmission and distribution.” *Energy Corp. of America*, 141 FERC ¶ 62,151, p. 64,478 (2012).

26. The Company’s classification of gathering lines is consistent with the Commission’s, FERC’s, and PHMSA’s definitions of gathering lines in this proceeding.

27. PIOGA’s contention that the Company’s gathering lines are distribution lines is unsupported by the weight of the factual evidence and is inconsistent with the Commission’s, FERC’s, and PHMSA’s definitions of gathering lines in this proceeding.

28. The Company has sustained its burden of proof that the proposed producer retainage charge is just and reasonable and, therefore, should be adopted.

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<sup>56</sup> See *Id.*; *Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,297, PP 8, 10, 33 (2004) (finding that pipelines at issue, which would be “primarily perform[ing] an exempt gathering function” and “mak[ing] non-jurisdictional deliveries to local distribution customers,” were “non-jurisdictional gathering facilities”); *Nat’l Fuel Gas Supply Corp.*, 65 FERC ¶ 61,131, p. 61,657 (1993) (observing that “about 1,200 residential and other small customers of Distribution and Clarion River Gas, Inc. are served directly off National Fuel’s gathering facilities”); *Carnegie Natural Gas Co.*, 64 FERC ¶ 61,164, 1993 FERC LEXIS 2439, at \*3-8 (1993) (noting that “Carnegie makes direct sales off its gathering system” in Pennsylvania to “residential and commercial (R & C) customers” and that FERC did not have “jurisdiction over sales made directly off Carnegie’s gathering system”). Further, with respect to the *Carnegie* case, the Company notes that PIOGA participated in that proceeding. See *Carnegie*, at \*2.

XI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Partial Settlement at Docket No. R-2018-2645296 among Peoples Gas Company LLC, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate in the above-captioned case be approved and adopted.

2. That Peoples Gas Company LLC file a tariff supplement, on at least one day's notice to the Commission, containing changes in rates to provide for the recovery of its costs of purchased gas, consistent with the terms and conditions of the Partial Settlement and the resolution of the issue reserved for litigation, as set forth in these ordering paragraphs.

3. That Peoples Gas Company LLC, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate comply with the terms and conditions of the Partial Settlement submitted in this proceeding as though each term and condition stated therein had been subject of an individual ordering paragraph.

4. That upon Peoples Gas Company LLC's filing of a tariff supplement acceptable to the Commission as conforming with this Order and the Partial Settlement and the Commission's approval thereof, the purchased gas rates established therein become effective for service rendered on and after October 1, 2018.

5. That the complaint filed by the Office of Small Business Advocate in this proceeding at Docket No. C-2018-3000574 be deemed satisfied and marked closed.

