

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-2645278
Office of Consumer Advocate	:	C-2018-3000494
Office of Small Business Advocate	:	C-2018-3000567
	:	
v.	:	
	:	
Peoples Natural Gas Company LLC – Peoples Division	:	
	:	
	:	
Pennsylvania Public Utility Commission	:	R-2018-3000236
Office of Consumer Advocate	:	C-2018-3000496
Office of Small Business Advocate	:	C-2018-3000573
	:	
v.	:	
	:	
Peoples Natural Gas Company LLC – Equitable Division	:	
	:	

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 Natural Gas Company LLC (Peoples Natural Gas, PNG, or Company), acting on behalf of its Peoples Division (Peoples Division) and its Equitable Division (Peoples-Equitable Division), 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 Natural Gas operates two divisions – the Peoples Division and Peoples-Equitable Division. Peoples Natural Gas is also an affiliate of Peoples Gas Company LLC (Peoples Gas). (Joint Petition, pp. 1-2.)

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

On January 31, 2018, Peoples Natural Gas, on behalf of both its Peoples Division and Peoples-Equitable Division, 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, the Peoples and Peoples-Equitable Divisions made their 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 Nos. R-2018-2645278 and R-2018-3000236.

On March 15, 2018, the Office of Consumer Advocate (OCA) filed Notices of Appearance and Complaints at Docket No. C-2018-3000494 and C-2018-3000496.

On March 20, 2018, the Office of Small Business Advocate (OSBA) filed Notices of Appearance and Complaints at Docket Nos. C-2018-3000567 and C-2018-3000573.

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 Division and Peoples-Equitable Division filed with the Commission their 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, Pennsylvania Independent Oil and Gas Association (PIOGA) filed a petition to intervene in both proceedings at Docket Nos. R-2018-2645278 and R-2018-3000236. 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, Pennsylvania¹ 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 Division and Peoples-Equitable Division, 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 the 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 Nos. R-2018-2645278, R-2018-2645296 and R-2018-3000236.

On May 3, 2018, OCA, OSBA, 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 Natural Gas, OSBA and PIOGA served written rebuttal

¹ The undersigned ALJ presided by telephone from the Pittsburgh hearing room.

testimony. On May 31, 2018, Peoples Natural Gas, OCA, OSBA, I&E and PIOGA served written surrebuttal testimony.

In accordance with the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.231, the parties engaged in settlement discussions. As a result of those discussions, the Joint 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 Company's 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.² The Joint Petition included the tariff supplements³ and statements in support of the Settlement filed by Peoples Natural Gas Company LLC, I&E, OSBA and OCA and attached to the Settlement as Appendices A through E.

² 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.

³ 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.

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.

This Recommended Decision recommends the Settlement Agreement 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 the following findings of fact numbers 1 through 29. These findings as stipulated 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 Natural Gas pursues its goal of least cost reliable service through a combination of local and interstate assets and supplies. The local assets are Peoples Natural Gas's on-system storage facilities and a gathering system, which have allowed Peoples Natural Gas to enhance the deliverability of local natural gas supplies produced in Pennsylvania and purchased by Peoples Natural Gas from Pennsylvania producers. (Peoples Natural Gas Statement No. 2, p. 4; Settlement Petition ¶ 38.)

2. Peoples Natural Gas's interstate assets are comprised of a portfolio of transportation and storage services that Peoples Natural Gas has contracted for with various Federal Energy Regulatory Commission (FERC)-regulated pipelines, including Dominion Energy Transmission, Inc. (DETI), Texas Eastern Transmission LP (TETCO), Equitrans L.P. (Equitrans), and National Fuel Gas Supply Corporation (NFG). Those assets give Peoples Natural Gas access to a variety of locations at which it can receive gas supplies that are produced upstream of the Peoples Natural Gas system. The interstate storage assets allow Peoples Natural 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 Natural Gas's interstate natural gas supplies during periods of peak demand. Peoples Natural Gas interstate supplies are primarily EQT Energy LLC (EQT Energy) and other Appalachian-produced gas that it purchases from suppliers upstream of the Peoples Natural Gas system for delivery into various receipt points of the interstate pipelines and occasionally purchases on a delivered-to-the-city gate basis. (Peoples Natural Gas Statement No. 2, pp. 4-5; Settlement Petition ¶ 39.)

3. Over the 1307(f)-2018 reconciliation period, Peoples Natural Gas's natural gas 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 NFG. In addition, Peoples Natural Gas purchases winter-only firm city-gate delivered supply via Tennessee and winter-only firm city-gate delivered supply via TETCO. Although these are gas purchase arrangements, Peoples Natural Gas treats them the same as interstate capacity because the Company requires deliveries at the respective delivery points. Therefore, Peoples Natural Gas would pursue firm capacity at these points if firm city-gate delivered supply was not available. (Peoples Natural Gas Statement No. 2, pp. 15-16; Settlement Petition ¶ 40.)

4. Beginning December 17, 2013, when the acquisition of Equitable Gas Company (Equitable) closed, Equitrans began providing firm transportation and firm storage services from Equitrans' Allegheny Valley Connector (AVC) to the Peoples Division. The AVC services consist of transportation service under Rate Schedule Firm Transportation Service (FTS), no-notice transportation service under Rate Schedule Firm Transportation Storage Service (FTSS), and storage service under Rate Schedule General Storage Service (GSS.) The FTSS and GSS service agreements provide Peoples Natural Gas and its customers with access to AVC storage capacity of 8.6 MMDth annually and maximum deliverability of 200,000 Dth/day. The FTS service agreement provides Peoples Natural Gas and its customers up to 251,700 Dth/day of firm transportation capacity. These service agreements provide for a total of 451,700 Dth/day of firm capacity on the AVC system. (Peoples Natural Gas Statement No. 2, p. 19; Settlement Petition ¶ 41.)

5. Beginning April 1, 2014, Equitrans began providing the Peoples Division with firm transportation service under Rate Schedule FTS from Equitrans' Mainline system. This firm capacity replaces 251,700 Dth per day of firm transportation and storage capacity previously provided by DETI under service agreements that expired March 31, 2014. Gas transported under this agreement is sourced from receipt points on the Sunrise and Mainline systems and delivered to Equitrans' Ginger Hill station, which is the point of interconnection between Equitrans' Mainline and AVC systems. The capacity is seasonal, and the maximum daily quantity is 251,700 Dth during November through March and 62,000 Dth during April through October. (Peoples Natural Gas Statement No. 2, p. 19; Settlement Petition ¶ 42.)

6. DETI provides service to Peoples Natural Gas under four service agreements and three rate schedules. DETI provides year-round Rate Firm Transportation No Notice (FTNN) no-notice transportation service at 40,000 Dth/day, Rate FT firm transportation service of 40,000 Dth/day, and Rate GSS storage service under two separate service agreements, one with capacity of 4.6 MMDth annually and maximum deliverability of 40,000 Dth/day and the other with capacity 2.48 MMDth annually and up to 40,000 Dth/day of deliverability. These agreements promote service reliability in parts of the Peoples Natural Gas Distribution system that are particularly well suited for gas delivery from DETI. (Peoples Natural Gas Statement No. 2, p. 21; Settlement Petition ¶ 43.)

7. TETCO provides Peoples Natural Gas with firm transportation service under Rate Schedule FT-1 and also delivers firm-to-the-city-gate purchases made by Peoples Natural Gas. Peoples Natural Gas requires deliveries of gas at Ebensburg, Claysburg and Rockwood in the eastern portion of its service territory. TETCO is the only pipeline that physically interconnects with Peoples Natural Gas at those three points. Peoples Natural Gas purchases gas on TETCO and moves it over TETCO's facilities under its Rate FT-1 service agreement to the Ebensburg delivery point. Peoples Natural Gas also contracts with gas suppliers for the purchase of firm supply that is delivered on TETCO to Peoples city-gates at the Claysburg and Rockwood delivery points in addition to occasionally supplementing the firm transportation deliveries at Ebensburg. TETCO also provides an operational balancing agreement that helps Peoples Natural Gas to manage the unanticipated swings in demand at its

physical interconnections with TETCO. (Peoples Natural Gas Statement No. 2, pp. 22-23; Settlement Petition ¶ 44.)

8. Peoples Natural Gas had 15,650 Dths/day of FT-1 firm transportation service under contract from TETCO for the entire 1307(f)-2018 reconciliation period. Gas supplies under this transportation contact, which expires on April 3, 2019, are delivered by TETCO primarily at Peoples Natural Gas's Ebensburg delivery point located in TETCO's market zone M3. This service agreement may also be used to deliver gas supplies at Claysburg, also in M3, and Rockwood, which is upstream of Ebensburg in TETCO's market zone M2. Peoples Natural Gas plans to renew this TETCO FT-1 firm transportation service agreement during the 1307(f)-2018 projected period. (Peoples Natural Gas Statement No. 2, p. 23; Settlement Petition ¶ 45.)

9. The Company proposed in the 1307(f)-2015 proceeding to put in place an arrangement for additional firm gas deliveries of up to 25,000 Dth per day to the Ebensburg delivery point for the 2015-2016 winter period. In the following year's 1307(f)-2016 proceeding, Peoples Natural Gas recommended seeking proposals for similar arrangements for the following winter which request for proposal (RFP) resulted in firm agreements covering both the 2016-2017 and 2017-2018 winter periods. This most recent winter included two days with 61 heating degree days (HDDs) on Jan. 5th and 6th when Peoples Natural Gas used the firm agreements to deliver over 29,000 Dths per day at Ebensburg which assisted effectively to hold up the eastern portion of the Peoples Natural Gas service territory. (Peoples Natural Gas Statement No. 2, p. 25; Settlement Petition ¶ 46.)

10. Peoples Natural Gas requires up to 3,000 Dth/day at its Rockwood interconnection with TETCO in TETCO's market zone M-2. Prior to 2007, Peoples Natural Gas satisfied this requirement with TETCO firm transportation capacity, but the M-2 firm transportation capacity was not renewed upon its March 31, 2007 expiration. Peoples Natural Gas then entered into a series of annual agreements for either firm delivered supply or for the purchase of released capacity that Peoples Natural Gas then matched with spot purchases that extended through the 2013-2014 winter period. For the next two winter seasons, Peoples Natural Gas satisfied its needs

at this delivery point with delivered gas purchases. For the 2017-2018 season, Peoples Natural Gas issued RFPs and contracted for a firm delivered gas agreements for up to 3,000 Dth/day each. (Peoples Natural Gas Statement No. 2, p. 25; Settlement Petition ¶ 47.)

11. RFPs were issued to over 20 potential suppliers for the Company's Rockwood meter in TETCO M2 that had an expiration of March 31, 2017, and Peoples Natural Gas received five responsive proposals. Peoples Natural Gas entered into an agreement with a supplier to make deliveries of up to 3,000 Dth/day with an associated reservation fee of \$1,800 per month and a commodity based premium to the TETCO M2 index. This agreement expired March 31, 2018. As a result of acceptance of the lowest cost offer, Peoples Natural Gas rejected four higher cost offers. (Peoples Natural Gas Statement No. 2, p. 26; Settlement Petition ¶ 48.)

12. The Company has proposed to issue an RFP to potential suppliers for TETCO Zone M-2 firm delivered supply up to 3,000 Dth/day for the winter period November 2018 through March 2019. The Company also proposes to issue a separate RFP to potential suppliers for TETCO Zone M-3 firm delivered supply up to 24,000 Dth/day for the winter period November 2018 through March 2019. (Peoples Natural Gas Statement No. 2, p. 27; Settlement Petition ¶ 49.)

13. Prior to the winter of 2010-2011, Peoples Natural Gas had contracted for firm transportation capacity on Tennessee. Beginning that winter, Peoples Natural Gas has continuously pursued an RFP process and contracted for firm city-gate delivered gas supply as a replacement for the firm transportation service that Peoples Natural Gas had been purchasing from Tennessee on a year-to-year basis. (Peoples Natural Gas Statement No. 2, p. 27; Settlement Petition ¶ 50.)

14. The delivered supply agreements required the supplier to utilize Tennessee pipeline delivery points directly into Peoples Natural Gas at Pittsburgh Terminal and Pulaski. In addition, the agreements also required deliveries into the Columbia Gas of Pennsylvania (CPA) natural gas distribution system at New Castle, PA. This supply supports an exchange agreement under which CPA delivers gas into the Grove City area of Peoples Natural Gas's service

territory, which is not physically integrated with the rest of the Peoples Natural Gas system. (Peoples Natural Gas Statement No. 2, p. 27; Settlement Petition ¶ 51.)

15. During the 1307(f)-2018 reconciliation period, following the RFP process, Peoples Natural Gas entered into a firm delivered supply agreement with South Jersey Resources. The contract provided for up to 26,000 Dth/day of firm supply delivered to Peoples Natural Gas with 0 - 20,000 Dth/day delivered to Pittsburgh Terminal, 3,000 Dth/day delivered to Pulaski, and 3,000 Dth/day delivered to New Castle. Like TETCO, Tennessee also provides Peoples Natural Gas with an operational balancing agreement to manage unanticipated swings in demands at the Tennessee/Peoples Natural Gas physical interconnections. (Peoples Natural Gas Statement No. 2, p. 28; Settlement Petition ¶ 52.)

16. The Company issued another RFP for firm delivered supply on Tennessee that will provide for delivery of natural gas on a firm basis at the same quantities and same Tennessee delivery points as previous years' agreements for the winter period of November 2018 through March 2019. (Peoples Natural Gas Statement No. 2, p. 28; Settlement Petition ¶ 53.)

17. NFG provides Peoples Natural Gas with no-notice storage service and firm transportation service under rates approved by the FERC. Peoples Natural Gas uses NFG's services primarily to serve the isolated Grove City area of its service territory. Like its other storage assets, Peoples Natural Gas uses its storage service from NFG as a no-notice balancing service to manage supply to an uncertain demand and, as a way to reduce natural gas costs, by buying supplies when they generally are cheaper during the summer months and injecting them into storage, and to enhance reliability, by withdrawing the volumes from storage during the winter when demand is highest. Peoples Natural Gas utilizes its firm transportation service from NFG both to support the NFG storage service and for deliveries from other supply sources. (Peoples Natural Gas Statement No. 2, p. 29 Settlement Petition ¶ 54.)

18. During the entire 1307(f)-2018 reconciliation period and for the first two months of the 1307(f)-2018 projected period, NFG provided 9,793 Dth/day of no-notice storage service to Peoples Natural Gas under its Rate ESS and 15,476 Dth/day of firm transportation service

to Peoples Natural Gas under its Rate EFT. Peoples Natural Gas entered into both of those contracts in the mid-1990s, and the primary terms of those contracts expired on March 31, 2003. However, each of the contracts contains a one-year notice of termination provision so that if neither party gives the other one year's notice of termination, the contracts automatically renew for another year. The contracts have automatically renewed on April 1 of each year since 2003 and will renew again, effective April 1, 2018. As a result, the NFG contracts will be in effect throughout the 1307(f)-2018 projected period. (Peoples Natural Gas Statement No. 2, p. 30; Settlement Petition ¶ 55.)

19. Peoples Natural Gas currently owns and operates the Dice Storage Field, which has 1,530,000 Mcf of storage capacity and 32,000 Mcf of maximum daily withdrawal capacity. (Peoples Natural Gas Statement No. 2, p. 33; Settlement Petition ¶ 56.)

20. 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 Natural Gas Statement No. 2, p. 36 Settlement Petition ¶ 57.)

21. Peoples Natural Gas has traditionally used gas produced locally in Pennsylvania as the source of supply to which it turns first in fulfilling its supply requirements. In order to absorb local gas into its system, Peoples Natural Gas constructed a network of pipelines and related facilities that move the gas either to customers who happen to be located in areas in which gas is produced or to the more populated areas of the service territory where the greatest level of consumption occurs, and, in summer months, to Peoples Natural Gas's on-system and off-system storage facilities. (Peoples Natural Gas Statement No. 2, p. 38; Settlement Petition ¶ 58.)

22. Peoples Natural Gas has been purchasing spot market supplies since 1986. Along with its local gas supplies, these are the supplies that Peoples Natural Gas uses to meet the demands of those customers who continue to buy their supplies from Peoples Natural Gas. With the exception of the EQT Energy supply, these are also the supplies that Peoples Natural Gas uses its various interstate pipeline assets to transport and store. (Peoples Natural Gas Statement No. 2, pp. 41-42; Settlement Petition ¶ 59.)

23. Peoples Division and Equitable Division purchased gas under the EQT Energy gas purchase agreements during the 1307(f)-2018 reconciliation period. The Peoples Division agreement matches gas supply with the Equitrans Sunrise/Mainline firm transportation contract of up to 251,700 Dth/day. The Equitable Division agreement matches a firm gas supply with the Equitrans firm transportation contract of up to 164,935 Dth/day. The annual quantity is 20 MMDth, and EQT Energy will deliver up to 164,935 Dth/day at active receipt point interconnects with the Equitrans Sunrise and Mainline systems. (Peoples Natural Gas Statement No. 2, p. 44; Settlement Petition ¶ 60.)

24. 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. 4; Settlement Petition ¶ 61.)

25. For the period ending August 31, 2017, the overall Peoples Natural Gas system loss was 5.8 Bcf, which results in an overall system loss rate of 4.84%, which is 1.6 Bcf or 21% less than the 2011 UFG. (Peoples Natural Gas Statement No. 1, p. 10; Settlement Petition ¶ 62.)

26. Consistent with the settlement terms in the 1307(f)-2017 proceeding, during the reconciliation period of this case, the Peoples Companies' UFG Mitigation Team (UFG Team) met weekly. The UFG Team established and reviewed any potential operational changes that could have contributed to calculation errors as well as reviewing all existing UFG

mitigation measures. The team's work ruled out certain facilities as being major contributors to UFG, identified additional measures that could reduce UFG and further identified areas of the system for concentration of the Company's efforts. (Peoples Natural Gas Statement No. 1, p. 11; Settlement Petition ¶ 63.)

27. The Company also began an assessment of the future operations of its gathering system and prepared a report on that assessment to date that also addresses future UFG mitigation. This is consistent with the terms of paragraph 25 of the 1307(f)-2017 settlement where the Company committed to provide by April 2, 2018, a report from its UFG team providing an analysis and recommendations to mitigate UFG, with a specific focus on the gathering system. (Settlement Petition ¶ 64).

28. 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 Natural Gas Statement No. 1, p. 12; Peoples Natural Gas Exhibit No. 2; Settlement Petition ¶ 65).

29. Peoples Natural Gas monitors and participates in various proceedings before the FERC. Peoples Natural Gas undertakes legal action as necessary to protect the interests of its ratepayers. (Peoples Natural Gas Exhibit No. 15; Peoples Natural Gas Statement No. 3, pp. 3-4; Settlement Petition ¶ 66.)

30. On January 31, 2018, Peoples Natural Gas, on behalf of both its Peoples Division and Peoples-Equitable Division, 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.

31. On March 2, 2018, the Peoples and Peoples-Equitable Divisions made their 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.

32. 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 Natural Gas Statement No. 5-R, p. 5, line 21 to p. 7, line 6.)

33. 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 Natural Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1.)

34. 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 Natural Gas Statement No. 5-R, p. 7 to p. 8, line 12.)

35. 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 Natural Gas Statement No. 5-R, p. 8, lines 1-8.)

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

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

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

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

40. As a result of these efforts, Peoples Natural Gas was able to reduce the total UFG on its system. Since 2010, Peoples Natural Gas's highest UFG was 7.4 Bcf in 2011, which resulted in a loss rate of 5.35%. (Peoples Natural Gas Statement No. 1, p. 9, lines 19-20.)

41. For the period ending August 31, 2017, however, the overall Peoples Natural Gas system UFG was 5.8 Bcf, resulting in an overall system loss rate of 4.84%, which is 1.6 Bcf or 21% less than the 2011 UFG. (Peoples Natural Gas Statement No. 1, p. 10, lines 1-3.)

42. 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 Natural Gas Statement No. 5-R, p. 9, lines 20-22.)

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

44. Peoples Natural Gas is continuously challenged to reduce UFG on its pipelines that gather gas from local production wells. (Peoples Natural Gas Statement No. 1, p. 9, line 23 to p. 10, line 2.)

45. The Peoples Companies' gathering systems are comprised of approximately 2,100 miles of older, low pressure pipe, much of which has provided service for producers and customers for many years and are nearing the end of their useful life. (Peoples Natural Gas Statement No. 1, p. 10, lines 2-4; Peoples Natural Gas Exhibit No. 2, pp. 1-2.)

46. The relatively few customers served from the gathering lines are generally scattered across the gathering system in relatively rural areas, and there are very few areas where

there are high concentrations of customers. (Peoples Natural Gas Statement No. 1, p. 10, lines 4-6.)

47. The Company has 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 Natural Gas Exhibit No. 2.)

48. 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 Natural Gas Statement No. 1, p. 12, lines 13-23; Peoples Natural Gas Exhibit No. 2.)

49. In the last 4 years alone, Peoples Natural Gas has spent \$4.1 million in capital expenditures on gathering line replacements and over \$13 million in gathering maintenance expenditures. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 11-13.)

50. The Peoples Companies also are proposing to spend approximately \$21.1 million over the next 4 years under their proposed UFG Mitigation Plan. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 13-15.)

51. In addition to its many efforts to reduce gathering system UFG, Peoples Natural Gas has proposed to charge conventional gas producers a retainage rate of 2.0% for gas delivered into the Company's system. (Peoples Natural Gas Statement No. 1, p. 13, lines 13-15.)

52. The proposed 2% retainage collected from producers is new to the Peoples Division, but the Peoples-Equitable Division already has Commission-approved tariff provisions

for a negotiated retainage rate for wells connected to the gathering or distribution systems. (Peoples Natural Gas Statement No. 1, p. 15, lines 4-6.)

53. To have consistency between both Divisions, the Company has proposed to change the Peoples-Equitable Division tariff to provide for a minimum of 2% retainage from production from all new wells connected to the Peoples-Equitable Division system. (Peoples Natural Gas Statement No. 1, p. 15, lines 6-9.)

54. 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 Natural Gas Statement No. 3, p. 3, lines 16-23.)

55. 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 Natural Gas Statement No. 1-R, p. 17, lines 14-18; p. 19, lines 7-10.)

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

57. 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 Natural Gas Statement No. 5-R, p. 21, lines 3-16.)

58. Gathering charges to producers for recovering UFG are common. (Peoples Natural Gas Statement No. 1-R, p. 17, lines 4-5.)

59. It is the industry exception rather than the rule regarding the application of retainage charges on gathering systems. (Peoples Natural Gas Statement No. 1-R, p. 23, lines 20-21.)

60. The Company's proposed rate of 2.0% is "significantly less than other gathering pipelines in the area." (Peoples Natural Gas Statement No. 1-R, p. 19, lines 9-10.)

61. 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 Natural Gas Statement No. 1-R, p. 7, lines 19-23.)

62. 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 Natural Gas Statement No. 1-R, p. 25, lines 4-7.)

63. The Company's gathering retainage proposal does not impose a cost on producers that is any way extraordinary or in excess of charges in the market. (Peoples Natural Gas Statement No. 1-R, p. 17, lines 14-18.)

64. 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 Natural Gas Exhibit No. 8-R.)

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

66. 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 Peoples-Equitable Division. (Peoples Natural Gas Statement No. 5-R, p. 22, lines 16-18.)

67. 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 Natural Gas Statement No. 5-R, p. 22, lines 18-20.)

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

69. By allocating some of the gathering system UFG to producers, the Company hopes to incent the producers to partner with Peoples Natural Gas in developing UFG mitigation initiatives. (Peoples Natural Gas Statement No. 1, p. 13, lines 17-20.)

70. The charge could “incent producers to aggregate wells and use a common line to bring gas to the Company’s system at a single downstream interconnection and thereby eliminate the need for replacement of old at-risk gathering lines upstream of the single interconnection.” (Peoples Natural Gas Statement No. 1, p. 13, lines 20-23.)

71. As the system improves and UFG loss declines, the retainage collected from producers can also decline. (Peoples Natural Gas Statement No. 1, p. 13, line 23 to p. 14, line 2.)

72. Absent the retainage rate being imposed, no incentive has been identified for producers to help the Company reduce gathering system UFG. (Tr. 92.)

73. Although the Company’s notice said that the proposed charge would be “applicable to natural gas producers,” the notice was, at most, slightly overbroad. (Peoples Natural Gas Statement No. 1-R, p. 26, lines 13-15.)

74. The Company clarified the charge’s application in its discovery responses and testimony in this proceeding. (PIOGA Statement No. 1, p. 8, line 11 to p. 9, line 14.)

75. 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 Natural Gas Statement No. 1-R, p. 26, lines 16-18.)

76. Peoples Natural Gas's evidence supports the application of the charge to all gas delivered by conventional gas producers to the Company's system. (Peoples Natural Gas Statement No. 1-R, p. 27, lines 3-9.)

77. As explained by Company witness Petrichevich, "the Company's intent was to model the charge after the Commission-approved AGS tariff of the Peoples-Equitable Division which specifically applies both gathering fees and retainage to production entering into 'distribution and gathering' lines." (Peoples Natural Gas Statement No. 1-R, p. 27, lines 3-6.)

78. The Company would prefer the administrative ease of applying the same rate to both its divisions and not have to introduce different rules depending on which division a well ties into. (Peoples Natural Gas Statement No. 1-R, p. 27, lines 7-9.)

79. 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.)

80. 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 the 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.)

81. Those numbers would be similar for Peoples Gas because the systems operate very much the same, and are of the same age. (Tr. 56.)

82. PIOGA has developed its own definitions of distribution and gathering pipelines. (PIOGA Statement No. 1-SR, p. 6, lines 19-23.)

83. PIOGA's definition of "gathering pipeline" is a pipeline that may have free gas landowner customers connected but no Commission-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. 6, lines 19-22.)

84. PIOGA's definition of "distribution pipeline" is a pipeline that has Commission-regulated customers connected to it. (PIOGA Statement No. 1-SR, p. 6, line 23.)

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

86. PIOGA's definitions of distribution and gathering pipelines contradict the actual definitions set forth in Commission and Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. (*Compare* PIOGA Statement No. 1-SR, p. 6, lines 19-23, *with* 52 Pa.Code § 59.1; 49 C.F.R. § 192.3.)

87. PIOGA's witness, Mr. Hillebrand, devised these definitions on his own. (Tr. 82-83.)

88. 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 593,390 Mcf (*i.e.*, 418,883 Mcf for Peoples Division and 174,507 Mcf for Peoples-Equitable Division), whereas the total gathering system UFG was 3,117,826 Mcf. Therefore, the proposed producer retainage charge is designed to recover only approximately 19% of the gathering system UFG. (Peoples Natural Gas Exhibit No. 5, pp. 1-2.)

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 Division, Peoples-Equitable Division, I&E, OCA, and OSBA, consists of 26 pages and Appendix A through F. The appendices include the tariff supplement describing the agreed-upon rates in Appendix A, and Appendix B through F, which set forth the statements in support of settlement by Peoples Division, Peoples-Equitable Division, I&E, OCA, and OSBA.

The Joint Petitioners expressed their agreement with respect to the following issues: (1) Lost and Unaccounted For Gas; (2) Sharing Mechanism; (3) Allegheny Valley Connector Capacity Costs; and (4) Miscellaneous Issues. The Settling Parties have specifically agreed to the following settlement terms, as provided below, which are adopted without modification. The issue of gathering system retainage was not settled by the Parties and was reserved for litigation.

In addition, the Settling Parties have stipulated to facts sufficient to support the conclusion that Peoples Division and Peoples-Equitable Division have met their Section 1307(f) and Section 1318 statutory obligation. (Settlement, pp. 9-20.) Accordingly, the Commission should approve Peoples Division's and Peoples-Equitable Division's filings as to these uncontested issues.

V. SETTLEMENT TERMS

A. Lost And Unaccounted For Gas

1. Peoples Natural 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 ¶ 25.)

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 ¶ 26.)

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 ¶ 27.)

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 Natural 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 Natural Gas's UFG will also be considered. (Settlement Petition ¶ 28.)

5. Peoples Natural 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 ¶ 29.)

6. In order to ensure ongoing safe operations of all gathering facilities, Peoples Natural 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. (Settlement Petition ¶ 30.)

B. Sharing Mechanism

1. Peoples Natural Gas's current off-system sales/capacity release sharing mechanism, of 75% to customers and 25% to the Company, shall continue indefinitely. If in a future proceeding any party proposes in direct testimony to change the current mechanism, other parties may offer their own contrary proposals in the next scheduled round of testimony to be submitted in such case. Peoples Natural Gas agrees that it retains the ultimate burden of proof if the sharing mechanism is challenged in a future proceeding. (Settlement Petition ¶ 31.)

C. Allegheny Valley Connector Capacity Costs

1. Peoples Natural Gas will retain its current method of recovering Allegheny Valley Connector capacity costs. This agreement is for purposes of settlement of the current case only and this matter may be revisited in future PGC cases. (Settlement Petition ¶ 32.)

D. 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 ¶ 33.)

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 ¶ 34.)

3. The 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 Natural Gas Statement No. 2 and related exhibits included in the 1307(f)-2018 definitive filing. (Settlement Petition ¶ 35.)

E. 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 tables below:

<u>Peoples Natural Gas</u>			As-Filed		Settlement		
<u>Rate Schedule</u>	<u>Average Annual Usage (Mcf)</u>	<u>Existing Tariff Rates 1/</u>	<u>Gas Cost Change</u>	<u>Percent Change</u>	<u>Gas Cost Change</u>	<u>Annual Bill As-Filed</u>	<u>Annual Bill Settlement</u>
RS	87	\$8.6347	(\$0.1637)	-1.9%	(\$0.0583)	\$913.39	\$908.32
Commercial SGS	229	\$7.1054	(\$0.1454)	-2.0%	(\$0.0926)	\$1,781.97	\$1,760.77
Industrial SGS	229	\$6.6540	(\$0.1454)	-2.2%	(\$0.0925)	\$1,743.12	\$1,721.93
Commercial MGS	3,418	\$6.9272	\$0.0291	0.4%	(\$0.3100)	\$24,746.83	\$23,687.25
Industrial MGS	3,418	\$6.2307	\$0.0290	0.5%	(\$0.3099)	\$22,365.85	\$21,306.62
Commercial LGS	50,000	\$6.8369	\$0.3294	4.8%	(\$0.4944)	\$365,182.00	\$340,462.00
Industrial LGS	50,000	\$6.1718	\$0.3295	5.3%	(\$0.4944)	\$331,932.00	\$307,212.00
1/ PNG net billing rate effective January 1, 2018.							

<u>Peoples Natural Gas - Equitable Division</u>			As-Filed		Settlement		
<u>Rate Schedule</u>	<u>Average Annual Usage (Mcf)</u>	<u>Existing Tariff Rates 1/</u>	<u>Gas Cost Change</u>	<u>Percent Change</u>	<u>Gas Cost Change</u>	<u>Annual Bill As-Filed</u>	<u>Annual Bill Settlement</u>
RS	87	\$8.5085	(\$0.1642)	-1.9%	(\$0.0574)	\$885.52	\$880.52
GSS	229	\$7.3684	(\$0.1456)	-2.0%	(\$0.0923)	\$1,858.58	\$1,837.45
GSL	3,418	\$7.0989	\$0.0289	0.4%	(\$0.3097)	\$26,162.82	\$25,104.27
GSL>25,000 Mcf/Yr	50,000	\$6.7985	\$0.3293	4.8%	(\$0.4942)	\$385,190.00	\$333,480.00
1/ PNG - ED net billing rate effective January 1, 2018.							

(Settlement Petition ¶¶ 36-37.)

F. 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 ¶ 88.)

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 ¶ 89.)

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 ¶ 90.)

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 ¶ 91.)

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 ¶ 92.)

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 Natural 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 the Company’s gas procurement policy. These required findings include: a finding that the Company 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)).

In the Partial Settlement, the Settling Parties have stipulated to facts that support the conclusion that Peoples Natural 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 ¶¶ 38-76.)

With respect to Peoples Division's and Peoples-Equitable Division's gas purchases and gas purchasing practices during the 12-month historical reconciliation period ended January 31, 2018, the Settling Parties stipulated that Peoples Division and Peoples-Equitable Division have 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 and the record evidence has established that, during the 12 months ended January 31, 2018:

a. Peoples Division and Peoples-Equitable Division 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 Division and Peoples-Equitable Division 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 ¶ 68.)

As the Companies 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.

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

The Partial Settlement was achieved only after a comprehensive investigation of Peoples Division's and Peoples-Equitable Division's 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 Division, Peoples-Equitable Division, 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 Division and Peoples-Equitable Division, 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 Division, Peoples-Equitable Division, I&E, OCA, and OSBA conclude, after extensive discovery and discussion, that the Partial Settlement is in the interests of Peoples Natural Gas and their 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 Natural Gas's Position

A 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 settlements, Peoples Natural Gas and Peoples Gas Company LLC (Peoples Gas) (collectively the Peoples Companies) submitted a detailed Combined UFG Mitigation Plan (UFG Mitigation Plan) in their respective PGC proceedings. (See Peoples Natural Gas Exhibit No. 2) Peoples Natural 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 Commission standard of 3.5%. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 20-23.) Therefore, Peoples Natural Gas asserts the UFG Mitigation Plan was focused on the Peoples Companies' extensive gathering systems that collected conventional or shallow gas to serve their customers. (Peoples Natural Gas Statement in Support, pp. 1-2).

Peoples Natural Gas explains that it also proposed a charge to conventional gas producers that is designed to recover some of the gas lost on the gathering system. (Peoples Natural Gas Statement No. 1, p. 13, lines 16-18.) This charge is referred to as a producer retainage charge and is the subject of the remaining litigation in this proceeding. According to Peoples Natural Gas, this charge, if adopted, would reduce the amounts charged to customers for gas lost on the gathering systems.⁴ (Peoples Natural Gas Statement No. 3, p. 3, lines 16-23; Peoples Natural Gas Statement in Support, p. 2).

I&E proposed that a cap of 8% be applied to the amount of lost gas on the gathering system and that this cap be reduced over time, (I&E Statement No. 1, p. 13, line 17 to p. 14, line 17), however the Company opposed this cap, noting, among other things, its focus on distribution system repairs to maximize the safety of customers. (Peoples Natural Gas Statement

⁴ The Office of Consumer Advocate ("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)

No. 1-R, p. 3, line 4 to p. 14, line 22; Peoples Natural Gas Statement No. 5-R, p. 4, line 5 to p. 19, line 22; Peoples Natural Gas Statement in Support, p. 2).

The Company asserted that, 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 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 Natural Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1; Peoples Natural Gas Statement in Support, pp. 2-3.) These expenditures, along with additional maintenance expenditures, have, according to the Company, substantially reduced UFG on the Peoples Companies' distribution systems and improved the safety of these systems. (Peoples Natural Gas Statement No. 5-R, p. 5, line 21 to p. 9, line 23; Peoples Natural Gas Statement in Support, p. 3.)

The Peoples Companies assert they 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 Natural Gas Statement No. 1-R, p. 3, lines 13-15; Peoples Natural Gas Exhibit No. 2; Peoples Natural Gas Statement in Support, p. 3.)

Peoples Natural Gas explains that the Parties were able to develop a settlement that is designed to further reduce UFG on the Company's gathering system. According to Peoples Natural Gas, the Peoples Companies' gathering systems comprise approximately 2,100 miles of older, low pressure pipe, much of which has provided service for producers and customers for many years and is nearing the end of its useful life. (Peoples Natural Gas Statement No. 1, p. 10, lines 5-7; Peoples Natural Gas Exhibit No. 2, pp. 1-2.) According to Peoples Natural Gas, there is declining production on the Company's gathering system, but the gas produced is the lowest cost of gas available for Peoples Natural Gas's customers. (Peoples Natural Gas Statement No. 5-R, p. 13, line 20 to p. 14, line 2; p. 23, line 17 to p. 24, line 3;

Peoples Natural Gas Statement No. 1-R, p. 10, lines 7-10; Peoples Natural Gas Exhibit No. 5-R.) The declining production, by itself, tends to increase the percentage of gas lost, according to the Company. (Peoples Natural Gas Statement No. 1-R, p. 9, lines 3-15; Peoples Natural Gas Statement in Support, p. 3.)

Peoples Natural Gas further asserts that replacing all yellow category at-risk gathering pipe is estimated to cost in excess of \$738 million. (Peoples Natural Gas Statement No. 5-R, p. 16, lines 13-14.) By comparison, it asserts 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 Natural Gas Statement No. 5-R, p. 16, lines 14-18; Peoples Natural Gas Statement in Support, p. 5.)

Peoples Natural 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. (Peoples Natural Gas Statement in Support, p. 5.)

2. OCA's Position

OCA explains that the Partial Settlement represents a resolution between Peoples Natural Gas and I&E on the issue of whether a cap should be set on gathering system UFG and whether PNG should be prevented from recovering the costs of UFG volumes that are in excess of the cap. Through its testimony in this case, 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 PNG's gathering system experienced a 10.16% UFG rate for 2017, I&E recommended a disallowance in this proceeding of gathering system UFG volumes in excess of its proposed initial 8% cap. OCA notes 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 concept of a rebuttable presumption to allow PNG to offer a reasonable explanation for why the cap was

exceeded in a given year. In addition, according to OCA, the Partial Settlement calls for aggressive implementation of Peoples Natural Gas's UFG Mitigation Plan. (OCA Statement in Support, pp. 4-5).

Although OCA did not take a position on the issue of gathering system UFG caps and the consequences of failing to meet them, OCA explains that, in this and previous Peoples Natural Gas PGC cases, it has 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 and asserts that it is in the public interest and should be approved by the Commission. (OCA Statement in Support, p. 5).

3. I&E's Position

I&E stresses the importance of the following settlement terms (as set forth in ¶¶ 25-30 in the Joint Petition):

- Peoples Natural Gas will be subject to a gathering 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. However, there will be no adjustment or gathering system UFG for the year ending August 31, 2017, and no gathering UFG target for the year ending August 31, 2018.
- 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.
- 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 PNG has taken reasonable actions to reduce gathering UFG and/or a 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 Natural Gas's UFG will also be considered.
- PNG will aggressively implement the Peoples Companies' Combined UFG Mitigation Plan to Address Gathering Pipelines ("UFG Mitigation Plan").

- To ensure the ongoing safe operations of all gathering facilities, PNG 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.

(I&E Statement in Support, pp. 5-6).

I&E avers that the above-referenced terms were crucial to its ability to join this Partial Settlement because they were necessary to resolve the central issue that I&E raised in this case regarding Peoples Natural Gas's levels of UFG on its gathering system. As I&E witness Cline explained in his direct testimony, UFG represents the difference between the total gas available from all sources and the total gas accounted for as sales, net interchange, and company use. (I&E Statement No. 1, p. 4.) Witness Cline explained that increased levels of UFG equate not only to increased costs for customers, but also present a potential safety hazard. (I&E Statement No. 1, p. 10.) In assessing Peoples Natural Gas's levels of UFG, witness Cline acknowledged that the Commission has set UFG targets that apply to UFG on PNG's distribution system, and Peoples Natural Gas did not exceed the applicable standard of 3.5% because its combined distribution system loss was only 2.42% for the year ended August 31, 2017. (I&E Statement No. 1, p. 5.) However, I&E explains that, while the Commission has not yet established UFG targets for gathering lines, witness Cline identified that Peoples Natural Gas reported a gathering system UFG of 10.16%, which was concerning for several reasons. (I&E Statement No. 1, p. 6.) Chief among these reasons, according to I&E, is that PNG's gathering system is unique in that it actually serves a total of 2,861 customers, comprised of 1,652 customers (65 commercial customers + 1,587 residential customers) directly from its gathering systems in the Equitable Division and 1,209 customers (58 commercial customers + 1 industrial customer + 1,150 residential customers) in the Peoples Division. Therefore, I&E asserts these customers are directly impacted by the UFG level. (I&E Statement No. 1, pp. 9-10; I&E Statement in Support, pp. 7-8).

I&E asserts that, as recognized by Vice Chairman Place, in its 2017 PGC filings,⁵ Peoples Natural Gas's level of UFG on its gathering system has been at issue since as early as 2008, even though it committed to monitoring UFG since that time.⁶ Despite this commitment, its gathering system UFG has increased, as evidenced by the fact that in its 2017 PGC proceeding, the gathering system losses were 9.2% (I&E Statement No. 1, p. 6), and that level has increased to 10.16% this year. Consistent with its position in Peoples Natural Gas's 2017 PGC filing, whereby I&E indicated that if Peoples Natural Gas did not show improvement in the following year, I&E would make an adjustment to disallow recovery in the 2018 PGC (I&E Statement No. 1, p. 7.), I&E made such a recommendation in this case. More specifically, witness Cline recommended that 661,937 Mcf be disallowed for recovery, which accounts for the volumes of UFG reported by Peoples Natural Gas in its 2017 annual UFG report that are in excess of an 8% UFG standard. (I&E Statement No. 1, p. 18.) This resulted in a \$860,648 reduction to Peoples Natural Gas's over/under collection calculation. (I&E Statement No. 1-SR, p. 4; I&E Statement in Support, pp. 7-8).

I&E explains its adjustment was predicated on witness Cline's recommendation that the target for Peoples Natural Gas's UFG be set at 8% for the historic period, and then stepped down by 1% each year to arrive at a level no more than 5%. To support his recommendation, witness Cline explained that UFG is a potential safety hazard and customers served directly by gathering lines should receive comparable protections to ensure safe and reliable service as those served by distribution lines. At the same time, he did not recommend that the Commission's UFG targets for distribution line losses be imposed. Instead, his recommendation was also tempered by his observation that gathering systems are not designed in the same manner as distribution systems and have a different function and, therefore, will maintain a higher level of UFG. Finally, witness Cline indicated that the initial 8% UFG target for gathering systems was consistent with a recommendation that I&E previously made in Equitable's 2009 PGC filing (prior to its merger with Peoples) at Docket No. R-2009-2088072. In that case, I&E, then the Office of Trial Staff, recommended a distribution UFG level of 5%

⁵ See Docket Nos. R-2017-258610 and R-2017-2586318.

⁶ I&E St. No. 1, p. 8; I&E Ex. No. 1, p. Sch. 2.

and a gathering UFG level of 8% (R-2009-2088072 OTS St. 1, pp. 8-10). (I&E Statement No. 1, pp. 12-14; I&E Statement in Support, p. 8).

Peoples Natural Gas opposed I&E's recommendation, alleging that (1) I&E's recommendation was inconsistent with the gathering system targets for distribution systems (Peoples Natural Gas Statement No. 1-R, pp. 10-11); (2) legacy gathering systems have UFG in excess of I&E's recommended levels; (3) no penalty is required to incentivize Peoples Natural Gas to address its UFG levels; (4) the decline in volumes of local gas being produced into the gathering systems coupled with a slower decline in UFG could result in spikes in UFG percentage; (5) Peoples Natural Gas included a comprehensive mitigation plan as part of this case; and (6) meeting the recommended requirement may force Peoples Natural Gas to cap gathering lines, acquire more expensive gas from interstate pipelines, divert funds away from at-risk distribution system replacements, and potentially abandon customers. (Peoples Natural Gas Statement No. 1-R, pp. 7, 9-10, 12-14; Statement No. 5R, pp. 15, 18; I&E Statement in Support, pp. 8-10.)

I&E notes that the Joint Petitioners agreed that there will be no adjustment for gathering system UFG for the years ending August 31, 2017 and August 31, 2018. Furthermore, the Joint Petitioners agreed that the presumption of unreasonable UFG levels created when UFG levels exceed the agreed-upon targets may be rebutted by a demonstration that Peoples Natural Gas has taken reasonable actions to reduce gathering UFG and/or a 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 Natural Gas's UFG will also be considered. These terms, according to I&E will ensure that Peoples Natural Gas is not held to a standard that it was unaware existed, and they also allow it to tailor and refine its UFG mitigation tactics to increase its ability to comply with the targets. Moreover, I&E asserts these terms ensure that Peoples Natural Gas is able to rebut the presumption of unreasonableness if the levels of UFG exceed the targets for reasons beyond its control. I&E concludes that the gathering system targets present a resolution that is fair and acceptable to Peoples Natural Gas and that provide an additional layer of protection against unwarranted costs and increased safety risks to its ratepayers. (I&E Statement in Support, pp. 10-11).

I&E further concludes that Peoples Natural Gas's commitment to safe operations and UFG mitigation is of paramount importance in this proceeding, as its success in this area will directly translate to its customers. Therefore, the implementation of these measures is in the public interest and worthy of I&E's support. (I&E Statement in Support, p. 11).

4. OSBA's Position

Although OSBA did not submit testimony with respect to Peoples Natural Gas's UFG, it asserts that it has concerns with the Company's steadily increasing UFG levels. OSBA stresses that Peoples Natural Gas has committed to continue its efforts to reduce distribution and gathering system UFG, including: (1) submitting to annual UFG targets over the next three years, with a rebuttable presumption that any levels over such targets is unreasonable; (2) aggressive implementation of the UFG Mitigation Plan; and (3) continuing 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. (OSBA Statement in Support, pp. 3-4.)

OSBA concluded that Peoples Natural Gas's UFG levels have been addressed satisfactorily in Section II.A of 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 settlement regarding lost and unaccounted for gas⁷ specifically provides the following:

25. Peoples Natural 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.

⁷ Section II.A. of the Partial Settlement, Paragraphs 25 through 30.

26. 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.

27. 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.

28. 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 Natural 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 Natural Gas' UFG will also be considered.

29. Peoples Natural 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.

30. In order to ensure ongoing safe operations of all gathering facilities, Peoples Natural 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.

Joint Petition, pp. 6-7.

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, it seems uneconomic to replace or repair all the gathering lines. It is possible that some gathering lines

will have to be transferred to producers or abandoned to achieve these targets.⁸ Peoples Natural Gas has indicated that it committed to take these actions to attempt to achieve the targets contained in the Partial Settlement. (Peoples Natural Gas Statement in Support, p. 5).

The Partial Settlement establishes Unaccounted For Gas (UFG) targets for Peoples Natural 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%. ¶ 25. 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. ¶ 26.

OCA explains that 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. Joint Petition ¶ 27; OCA Statement in Support, p. 3).

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 Natural 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 Natural Gas's overall level of UFG will also be considered. ¶ 28.

The Partial Settlement further provides that Peoples Natural Gas will commit to aggressively pursuing the "Peoples Companies' Combined UFG Mitigation Plan to Address Gathering Pipelines" that was presented by Peoples Natural Gas as an exhibit in this proceeding. This will include the "find it/fix it" program under which bare steel gathering lines will be

⁸ Transferring a gathering line to a producer or producers would place all responsibility for UFG on the line on 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.

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. ¶ 29.

The Partial Settlement requires Peoples Natural Gas 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 One Call locations to prevent line damage, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys. ¶ 30. OCA Statement in Support, pp. 4-5).

Peoples Natural Gas 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. If Peoples Natural Gas exceeds the gathering UFG target, after consideration of any applicable credits, it will create a rebuttable presumption that the excess is unreasonable. This term was of substantial import, according to I&E, because Peoples Natural Gas's agreement to adopt these standards is critical to ensuring that its efforts to mitigate UFG on its gathering level are continued and measurable. I&E asserts high levels of UFG impose additional costs and increased safety risks upon customers; therefore, ensuring that these levels are lowered is in the public interest. Additionally, as it has set forth a mitigation plan in this case, which outlines Peoples Natural Gas's continued commitment to address gathering pipelines (Peoples Natural Gas Exhibit No. 2) and outlines activity and cost data related to planned removal and replacement of gathering lines annually from January 1, 2018 through December 31, 2021, the established targets can be used as an additional metric to gauge the progress over a similar time period. (I&E Statement in Support, pp. 9-10).

Accordingly, the Settlement reflects a reasonable compromise of the parties' litigation positions and, under the circumstances, should be approved without modification.

E. Off-System Sale and Capacity Release Sharing Mechanism

1. Peoples Natural Gas's Position

Peoples Natural Gas proposed to make the currently-approved mechanism for sharing proceeds from off-system sales and capacity release revenues (75% to customers and 25% to Company) permanent. (Peoples Natural Gas Statement No. 3, p. 18, line 22 to p. 19, line 8.) Peoples Natural Gas explained that several other natural gas distribution companies have adopted this approach, including the Company's affiliate, Peoples Gas. (Peoples Natural Gas Statement No. 3-R, p. 5, lines 1-12.) As reflected in Paragraph 31 of the Partial Settlement, the mechanism is extended indefinitely, but Peoples Natural Gas retains the ultimate burden of proof in a future proceeding if a party were to challenge the mechanism. (Peoples Natural Gas Statement in Support, p. 6).

2. OCA's Position

OCA did not address this issue in this proceeding. However, OCA does not object to the Partial Settlement's disposition of the matter. (OCA Statement in Support, p. 5).

3. I&E's Position

I&E explains that it did not oppose the sharing mechanism, but it did oppose Peoples Natural Gas's proposal to extend it on an indefinite basis. As I&E witness Cline explained, I&E had reservations about approving the mechanism on an indefinite basis, including a concern that the burden to challenge the continuation of the mechanism in future PGC proceedings would transfer from Peoples Natural Gas to the other parties.⁹ I&E also noted that generally in the context of ratemaking, it may not be prudent to commit to anything in perpetuity because of the evolving nature of the circumstances in each case, meaning that what is beneficial today may not be beneficial tomorrow.¹⁰ (I&E Statement in Support, p. 12.)

⁹ I&E St. No. 1, p. 3.

¹⁰ *Id.*

I&E notes that Peoples Natural Gas benefits from the arrangement by receiving a monetary incentive to maximize its efforts to increase capacity release and off-system sales activity. In turn, PGC customers benefit from Peoples Natural Gas's efforts in the form of reduced gas costs. Accordingly, I&E asserts that this settlement term protects the parties and Peoples Natural Gas's customers, and it is therefore in the public interest. (I&E Statement in Support, pp. 13-14.)

4. OSBA's Position

OSBA agreed that the sharing mechanism should be extended, but not indefinitely.¹¹ The OSBA was concerned that extending the sharing mechanism indefinitely would shift the existing burden of proof from Peoples Natural Gas to any party wishing to modify the mechanism in a future proceeding. To ensure that the burden of proof remains with Peoples Natural Gas, OSBA recommended that the existing sharing mechanism be extended for a finite period. Since PNG's existing mechanism appears to be consistent with the sharing (or incentive) mechanisms approved by the Commission for other National Gas Distribution Companies (NGDCs), OSBA witness, Brian Kalcic, recommended that the Commission approve an extension of the current sharing mechanism for two years through September 30, 2020.¹² (OSBA Statement in Support, pp. 4-5).

OSBA explains that the partial settlement extends the current sharing mechanism indefinitely as initially proposed by Peoples Natural Gas. However, Peoples Natural Gas "agrees that it retains the ultimate burden of proof if the sharing mechanism is challenged in a future proceeding." Since this alleviates OSBA's concerns with an indefinite extension and the issue of burden of proof, OSBA concluded that the partial settlement is therefore reasonable and in the interest of the Company's Small C&I customers. (OSBA Statement in Support, p. 5).

¹¹ *Id.*

¹² *Id.*

F. Analysis

Peoples Natural Gas proposed that the current 75% (customer)/25% (company) sharing mechanism for capacity release and off-system sales revenues, scheduled to expire on September 30, 2018, be extended indefinitely. A concern was raised over the effect that an indefinite extension would have on the issue of which party would bear the burden of proof with regard to any future changes to the sharing mechanism. Partial Settlement ¶ 31 retains the PNG proposal for an indefinite extension of the sharing mechanism. However, it also includes acknowledgement by Peoples Natural Gas that it retains the ultimate burden of proof if the sharing mechanism is challenged in a future proceeding. (OCA Statement in Support, p. 5).

Under the Company's current revenue sharing mechanism, set to expire on September 30, 2018, the margins generated from eligible capacity release transactions, off-system sales and parks/loans are shared between 1307(f) customers and the Company, with customers receiving 75% and shareholders retaining 25%. The Company initially proposed to extend the current sharing mechanism "indefinitely," with the understanding that the sharing formula would remain in place until such time as it is shown to be unreasonable. (OSBA Statement No. 1, pp. 1-2.)

The Partial Settlement adopts Peoples Natural Gas's proposal as modified by the Partial Settlement. The Partial Settlement provision will avoid unnecessary presentations by the Parties in future proceedings.

The settlement term represents a fair compromise of all parties' positions regarding the sharing mechanism and protects the public interest. While the term will resolve Peoples Natural Gas's concerns regarding the burden of making a proposal for the mechanism in each annual PGC filing, conserving its resources and promoting efficiency, it also preserves important rights that are necessary to protect its customers. Importantly, this term makes it clear that in future proceedings, parties have the right to offer contrary proposals regarding the sharing mechanism. The ability to offer contrary proposals in the future ensures that there will be an avenue of recourse, if the mechanism does not prove to be beneficial to ratepayers in the future. Additionally, this term

clarifies that the burden of proof regarding the sharing mechanism will remain with Peoples Natural Gas.

Therefore, this settlement provision represents a reasonable compromise of the parties' litigation positions and should be approved without modification.

G. Allegheny Valley Connector Capacity Costs

1. Peoples Natural Gas's Position

Peoples Natural Gas proposed to allocate the costs of the Allegheny Valley Connector, an interstate pipeline owned by Equitrans, L.P., based on customer demand, as the Company asserts it does with other interstate capacity costs. (Peoples Natural Gas Statement No. 3, p. 13, line 4 to p. 14, line 19; Peoples Natural Gas Statement No. 3-R, p. 2, line 7 to p. 4, line 2.) Peoples Natural Gas explains, because these facilities were owned by Peoples Natural Gas and transferred to Equitrans when Peoples Natural Gas acquired Equitable Gas Company, these costs have been allocated on the basis that they were recovered by Peoples Natural Gas when it owned the facilities. (Peoples Natural Gas Statement No. 3, p. 13, lines 4-11; Peoples Natural Gas Statement in Support, p. 6.)

Paragraph 32 of the Partial Settlement provides that the current allocation of AVC costs shall continue for this case and may be revisited in future PGC cases. Peoples Natural Gas notes that it supports this resolution. (Peoples Natural Gas Statement in Support, pp. 6-7.)

2. OCA's Position

According to OCA, Peoples Natural Gas proposed to include AVC capacity costs with other purchased gas capacity costs and to recover those costs through a single capacity charge. OCA objected to the inclusion of AVC capacity costs with other PGC capacity costs on the ground that doing so would deviate from the fixed percentage of AVC capacity costs assigned to each customer class as part of the 2013 settlement of the merger between Peoples

Natural Gas and Equitable Gas Company. OCA witness Mierzwa testified that such a deviation would result in assigning an additional \$1.66 million to the Residential Class. (OCA Statement in Support, pp. 5-6.)

OCA concluded that the settlement term was an acceptable compromise and supports this provision of the Partial Settlement. (OCA Statement in Support, pp. 5-6.)

3. I&E's Position

According to I&E, this issue was raised in the direct testimony of OCA witness Mierzwa. In his testimony, witness Mierzwa recommended the rejection of PNG's proposal to modify the cost recovery procedures for the Allegheny Valley Connector costs, which would increase the allocation of costs to the residential class.¹³ I&E explains that, in response, Peoples Natural Gas witness Anthony Caldro indicated his disagreement with witness Mierzwa. Specifically, witness Caldro indicated that AVC costs should not be treated like all of Peoples Natural Gas's other capacity costs since AVC capacity costs are primarily used to serve sales and P-1 transportation ratepayers and should be assigned accordingly, as proposed by PNG.¹⁴ (I&E Statement in Support, pp. 14-15.)

Although I&E did not take a position regarding this issue, I&E explains that it supports this term because it was necessary to facilitate the partial settlement of this matter and it does not limit the Joint Petitioners' positions in future PGC proceedings. (I&E Statement in Support, pp. 14-15.)

4. OSBA's Position

OSBA did not express a position regarding this issue.

¹³ OCA St. No. 1, p. 6.

¹⁴ PNG St. No. 3-R, p. 2.

H. Analysis

Pursuant to the Settlement, the Joint Petitioners have agreed to the following term, which represents a compromise between the Settling Parties:

Peoples Natural Gas will retain its current method of recovering Allegheny Valley Connector capacity costs. This agreement is for purposes of settlement of the current case only and this matter may be revisited in future PGC cases.¹⁵

In Settlement, the Company offered to retain its current method of recovering AVC capacity costs rather than combining all capacity costs into a single charge. The Partial Settlement provides that retention of the current method will apply only to the current case and that the issue may be raised in any future PGC case.

I. Summary

The Settling Parties explain they have 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' 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 Natural Gas responded to numerous formal discovery requests (many of which had multiple subparts). 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 Natural Gas's 2018 1307(f) filings, for its Peoples Division and its Peoples-Equitable Division, as modified by the Partial Settlement, should be approved.

¹⁵ Joint Petition, p. 7, ¶ 32.

J. The Public Interest

The Partial Settlement was achieved by the Joint Petitioners after an extensive investigation of Peoples Natural 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 Natural Gas on behalf of both Divisions, I&E, OCA, and OSBA setting forth the bases 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 Nos. 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 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 Natural 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 sufficient to support approving the Partial Settlement without modification. In addition, the issues raised by the parties in this proceeding were extensively discussed in pre-served 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 Procedure, 52 Pa.Code § 5.231, the parties engaged in settlement discussions. As a result of those discussions, the Joint Petitioners were able to reach a settlement in principle of all of their issues except proposed retainage charges for UFG on the gathering systems.

Peoples Natural Gas explains that risk rankings under the federally mandated Distribution Integrity Management Plan (DIMP) are highly influenced by numbers of potentially affected customers. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 1-2.) Risk scores are determined by multiplying the probability of failure by the consequence of failure. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 2-3.) Population density around pipelines is evaluated in scoring the consequence of failure. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 3-4.) The Company explains, this effectively mandates that most of the available funds be used to address at-risk distribution pipe. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 4-5; Peoples Natural Gas M.B. p. 8.)

For safety reasons, Peoples Natural Gas asserts the Peoples Companies have devoted the vast majority of their initial post-acquisition capital investment toward replacing at-risk distribution pipelines. (Peoples Natural Gas Statement No. 5-R, p. 7, to p. 8, line 12.) According to Peoples Natural 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 Natural Gas Statement No. 5-R, p. 8, lines 1-8; Peoples Natural Gas M.B. p. 8.)

As a result of these efforts, Peoples Natural Gas asserts it was able to reduce the total UFG on its system. According to the Company, since 2010, Peoples Natural Gas' highest UFG was 7.4 Bcf in 2011, which resulted in a loss rate of 5.35%. (Peoples Natural Gas Statement No. 1, p. 9, lines 19-20.) For the period ending August 31, 2017, however, the overall Peoples Natural Gas system rate was 5.8 Bcf, resulting in an overall system loss rate of 4.84%, which is 1.6 Bcf or 21% less than the 2011 UFG. (Peoples Natural Gas Statement No. 1, p. 9, lines 21-23.) Moreover, 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 Natural Gas Statement No. 5-R, p. 9, lines 20-22.) The Company asserts these figures are well below the 3.5% distribution UFG level established by the Commission for that period. (Peoples Natural Gas Statement No. 5-R, p. 9, lines 22-23; Peoples Natural Gas M.B. p. 8.)

Despite these ongoing efforts and the improved results, Peoples Natural Gas explains it is continuously challenged to reduce UFG on its pipelines that gather gas from local production wells. (Peoples Natural Gas Statement No. 1, p. 9, line 23 to p. 10, line 2.) The Peoples Companies' gathering system comprise approximately 2,100 miles of older, low pressure pipe, much of which has provided service for producers and customers for many years and are nearing the end of their useful life. (Peoples Natural Gas Statement No. 1, p. 10, lines 2-4; Peoples Natural Gas Exhibit No. 2, pp. 1-2.) Further, the relatively few customers served from the gathering lines are generally scattered across the gathering system in relatively rural areas, and there are very few areas where there are high concentrations of customers. (Peoples Natural Gas Statement No. 1, p. 10, lines 4-6) In fact, according to the Company, the targeted gathering pipelines directly serve only 1% of the Peoples Companies' customers. (Peoples Natural Gas Statement No. 5-R, p. 8, lines 6-8; Peoples Natural Gas M.B. p. 9.)

Nevertheless, the Company asserts it has 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 Natural 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 Natural Gas Statement No. 1, p. 12, lines 13-23; Peoples Natural Gas Exhibit No. 2.) Moreover, in the last 4 years alone, Peoples Natural Gas has spent \$4.1 million in capital expenditures on gathering line replacements and over \$13 million in gathering maintenance expenditures. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 11-13.) The Peoples Companies also are proposing to spend approximately \$21.1 million over the next 4 years under their proposed UFG Mitigation Plan. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 13-15; Peoples Natural Gas M.B. pp. 9-10.)

1. Description of the Company's Proposal

Peoples Natural Gas has proposed to charge conventional gas producers a retainage rate of 2.0% for gas delivered into the Company's system. (Peoples Natural Gas Statement No. 1, p. 13, lines 13-15.) The Company explains the proposed 2% retainage collected from producers is new to the Peoples Division, but the Equitable Division already has Commission-approved tariff provisions for a negotiated retainage rate for wells connected to the gathering or distribution systems. (Peoples Natural Gas Statement No. 1, p. 15, lines 4-6.) To have consistency between both Divisions, the Company has proposed to change the Equitable Division tariff to provide for a minimum of 2% retainage from production from all new wells connected to the Equitable Division system. (Peoples Natural Gas Statement No. 1, p. 15, lines 6-9.) The Company explains 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 Natural Gas Statement No. 3, p. 3, lines 16-23; Peoples Natural Gas M.B. p. 10.)¹⁶

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

¹⁶ The decision on this issue ultimately affects the retainage charge to non-discounted rate transportation customers. The rate of 6.6% 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 2.0% retainage charge for transportation customers using the Company's gathering system, is adopted, the base retainage rate for non-discounted transportation customers would remain 6.6%. (OCA Statement No. 1, p. 11, lines 2-16.) If neither of these proposals is adopted, the resulting retainage rate for non-discounted transportation customers would be 7.0%. (OCA Statement No. 1, p. 11, lines 10-16)

order from the Commission must produce additional evidence to sustain its burden of proof. *See Replegle 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).¹⁷

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 Natural Gas's Position

Under the Company's proposal, conventional gas producers would be charged a retainage rate of 2.0% 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. The Company 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. (Peoples Natural Gas M.B. p. 5.)

¹⁷ 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).

1. Background on UFG and Control Efforts

Peoples Natural Gas argues it has made it a priority to reduce UFG¹⁸ 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 Natural 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 \$102.6 million (108% increase). (Peoples Natural Gas Statement No. 5-R, p. 5, line 25 to p. 7, line 1; Peoples Natural Gas M.B. p. 7.)

2. Reasons Advanced for the Company's Proposal

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

Peoples Natural 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 Natural Gas Statement No. 1-R, p. 17, lines 14-18; p. 19, lines 7-10.) Absent the existence of these gathering lines, the producers would not be able to move their gas to a market. (Peoples Natural Gas Statement No. 5-R, p. 5, lines 12-13.) According to Peoples Natural 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 Natural Gas Statement No. 5-R, p. 21, lines 3-16.) Peoples Natural Gas

¹⁸ 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. 4, lines 3-15.)

has not proposed to charge conventional gas producers all of the cost of gathering system UFG losses, (Peoples Natural Gas Statement No. 5-R, p. 21, lines 5-6) but instead, to charge a fraction of gathering system losses to producers. (Peoples Natural Gas Statement No. 5-R, p. 21, lines 5-6; Peoples Natural Gas M.B. p. 11.)

Next, Peoples Natural Gas asserts that PIOGA acknowledges that someone other than the Company should be responsible to pay for UFG on the gathering pipe. (Peoples Natural Gas Statement No. 1-SR, p. 5, lines 8-9.)

Peoples Natural 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 gatherer.” (Peoples Natural Gas Statement No. 1-R, p. 17, lines 4-5.) (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. 23, lines 20-21; Peoples Natural Gas M.B. p. 12.)

Peoples Natural Gas further asserts the Company’s proposed rate of 2.0% is “significantly less than other gathering pipelines in the area.” (Peoples Natural Gas Statement No. 1-R, p. 19, lines 9-10.) According to Peoples Natural 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. 25, lines 4-7; Peoples Natural Gas M.B. pp. 12-13.)

Peoples Natural 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 Natural 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 Natural Gas Statement No. 5-R, p. 22, lines 16-18.) Peoples Natural 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 Natural 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 Natural Gas Statement No. 5-R, p. 22, lines 20-21.) Therefore, Peoples Natural Gas asserts, the Company's proposal is similar to the charges already imposed by Peoples-Equitable Division. (Peoples Natural Gas M.B. p. 13.)

Next, Peoples Natural Gas argues that by allocating some of the gathering system UFG to producers, the Company hopes to incent the producers to partner with Peoples Natural Gas in developing UFG mitigation initiatives. (Peoples Natural Gas Statement No. 1, p. 13, lines 17-20.) Peoples Natural Gas contends, as the system improves and UFG loss declines, the retainage collected from producers can also decline. (Peoples Natural Gas Statement No. 1, p. 13, lines 23 to p. 14, line 2.) Absent the retainage rate being imposed, however, Peoples Natural Gas argues there is no incentive for producers to help the Company reduce gathering system UFG. (Peoples Natural Gas M.B. p. 14.)

3. PIOGA's Opposition to the Producer Retainage Charge

Peoples Natural Gas argues there is no confusion about the proposed application of the charge. (Peoples Natural Gas M.B. p. 15.)

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 17 to p. 8, line 8) 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, line 11 to p. 10, line 2; Peoples Natural Gas M.B. p. 15.)

Peoples Natural 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. 8, line 11 to p. 9, line 14.) According to Peoples Natural 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 Natural Gas Statement No. 1-R, p. 26, lines 16-18; Peoples Natural 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 Natural Gas Statement No. 1-R, p. 26, lines 13-15; Peoples Natural Gas M.B. p. 15.)

In addition, Peoples Natural 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 Natural Gas Statement No. 1-R, p. 27, lines 3-6.) 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 Natural Gas Statement No. 1-R, p. 27, lines 7-9; Peoples Gas M.B. pp. 15-16.)

Peoples Natural 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 Natural Gas, the vast majority of conventional production actually flows into the gathering system. (Peoples Natural Gas Statement No. 1-R, p. 26, lines 16-18; p. 27, lines 6-7.) Accordingly, Peoples Natural 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.) Therefore, Peoples Natural 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 Natural Gas M.B. p. 16.)

According to Peoples Natural 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. 6, lines 19-23.) Peoples Natural 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. 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 3-8; p. 6, line 24 to p. 7, line 2.)

Peoples Natural Gas argues that PIOGA’s definitions are not based on any regulatory definition of pipelines or recognized accounting practice. (Tr. 82-84.) Peoples Natural 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 Natural Gas argues that Mr. Hillebrand lacks critical knowledge to properly classify these pipelines, and to define the meaning of main line tap customers, field line customers, or dual purpose meters¹⁹. (Tr. 85-86; Peoples Natural Gas M.B. pp. 16-17.)

¹⁹ See *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”).

Next, Peoples Natural 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 Natural Gas notes the Commission often refers to pipelines as "gathering" even if distribution customers are served directly off of those facilities.²⁰ Thus, Peoples Natural 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 Natural 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 Natural 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' 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 Natural Gas notes that none of these factors is whether a distribution customer is connected to the facilities. Peoples Natural 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 unfounded. (Peoples Natural Gas M.B. pp. 18-19.)

²⁰ 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 March 3, 2009).

Next, Peoples Natural 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). The Company argues that, like this Commission, FERC has considered pipelines to be gathering facilities, even though distribution customers were served directly off of those pipelines.²¹ 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 Natural Gas next argues that PIOGA's definitions would lead to irrational outcomes. Peoples Natural 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 another two miles of pipe with only local producers. Peoples Natural 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 Natural 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 Natural Gas notes Mr. Hillebrand does not explain what occurs if that customer is removed from the system. By PIOGA's definition, according to Peoples Natural 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

²¹ 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.

gathering pipelines is a “floating number” (Tr. 91), Peoples Natural Gas argues that he fails to realize that his proposed definitions would actually lead to unsettled classifications of the pipelines. Peoples Natural 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 Natural Gas further argues PIOGA’s proposal to install customer exchange meters in the gathering system is not a basis for rejecting the proposed producer retainage charge. (Peoples Natural Gas M.B. p. 20.)

D. PIOGA’s Position

1. Applicable Legal Principles

Every rate of a public utility must be just and reasonable, (66 Pa.C.S. § 1301) and the public utility bears the burden of proving that its proposed rates and tariff provisions are just and reasonable. (66 Pa.C.S. §§ 315(a), 332(a), 1307(f)(3)(v) & (f)(5), 1318.) Proposed rates and tariff provisions must be supported by substantial evidence (2 Pa.C.S. § 704), which is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²²

PIOGA argues that Peoples Natural Gas has not shown that its proposed producer retainage rate on deliveries of Pennsylvania natural gas supplies from conventional wells into what Peoples Natural Gas characterizes as its gathering system is just and reasonable. (PIOGA M.B. pp. 4-5.)

After years of operating their natural gas distribution company pipeline systems as if each is an integrated whole²³ and years after the focus on mitigating lost and unaccounted

²² *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).

²³ Peoples Natural Gas Exhibit No. 2 at 3 (“Even though the Companies operate the gathering, transmission, storage and distribution pipelines as an integrated system . . .”).

for gas on their pipeline systems, Peoples Natural 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 Natural 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.²⁴

PIOGA argues that Peoples Natural Gas's owner now controls the other two public utilities (PNG's and Peoples Gas's Equitable Division, f/k/a T.W. Phillips Gas and Oil Co., and Peoples TWP) that used to provide competitive alternatives to producers of natural gas supplies from conventional wells. Peoples Natural Gas has excessive UFG on what it characterizes as its gathering pipelines,²⁵ which directly serve its customers.²⁶ Because of these two facts, PIOGA asserts that Peoples Natural 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 Natural Gas's 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 Natural Gas should face potential UFG cost disallowance in this year's proceeding if its UFG mitigation plan failed to show positive results.²⁷ According to PIOGA, Peoples Natural Gas candidly admits that the producer retainage charge would reduce the UFG borne by sales and transportation customers.²⁸ (PIOGA M.B. pp. 6-7.)

²⁴ Peoples Natural Gas Statement No. 1 at 9:1910:17, 11: 2112:11, and 12:2515:3.

²⁵ I&E Statement No. 1 at 6:13-15, 16:22-17:5; OCA Statement No. 1 at 7:7-8 (table).

²⁶ PIOGA Exhibits MAH-5 (Peoples Natural Gas), response 2., MAH-7 (Peoples Natural Gas), at 14:15-17, 15:11-15.

²⁷ PIOGA Statement No. 1 at 11:4-18, 21:12-22:6. PIOGA Exhibit MAH-13 (Peoples Natural Gas).

²⁸ Peoples Natural Gas Statement No. 1R at 15:13-15; See OSBA Statement No. 1-R at 2:25-27).

PIOGA argues that Peoples Natural Gas’s unique natural gas distribution company pipeline system supports continuing its historical integrated cost allocation methodology. (PIOGA M.B. p. 8.)

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 Natural Gas acknowledges that it serves customers directly from what it characterizes as its gathering system,²⁹ 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 developed³⁰ and have operated their systems.³¹ PIOGA asserts the Peoples Natural Gas Companies serve their customers from pipelines they characterize as gathering, distribution and transmission. (PIOGA Cross-Examination Exhibit No. 2; Tr. 64:8-65:10, PIOGA M.B. p. 8.) PIOGA further argues there is no dispute that Peoples Natural Gas has historically operated, does currently operate and will continue to operate its unique pipeline system as if it is an integrated whole,³² and that this integrated operation is the basis for its historical integrated cost allocation methodology. (PIOGA M.B. pp. 8-9.)

PIOGA argues that, now, “[n]early forty years [after] the gas industry in general began the process of deregulating gas production”³³ – during which time Peoples Natural Gas operated its natural gas distribution pipeline system as an integrated whole and allocated the costs accordingly – Peoples Natural Gas asserts that in this deregulated energy market “PIOGA’s attempt to avoid responsibility for UFG on the gathering system is unprecedented” (Peoples Natural Gas Statement No. 5-R at 20:18-19) and it should be the responsibility of producers to

²⁹ PIOGA Exhibits MAH-4 (Peoples Gas), response b., MAH-7 (Peoples Gas), response c.

³⁰ PIOGA Statement No. 1 at 11:1913:11; PIOGA Statement No. 1-SR at 5:136:13, 7:159:10; Transcript (Tr.) at 69:2070:6; Tr. at 91:23; PNG Statement No. 1-R at 19:19-21.

³¹ Peoples Natural Gas Exhibit No. 2 at 3 PIOGA Exhibit MAH-7 (PNG) at 14:18-22, 15:3-4.

³² Peoples Natural Gas Exhibit No. 2 at 1, 3 (“[T]he Companies operate the gathering, transmission, storage and distribution pipelines as an integrated system . . .”).

³³ Peoples Natural Gas Statement No. 5-R (Gregorini) at 20:19-20.

deliver market quality gas to a gas distribution utility's city gate. (Peoples Natural Gas Statement No. 5-R at 21:3-5; (PIOGA M.B. p 8.) PIOGA asserts that, what is unprecedented is Peoples Natural 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 Natural Gas is proposing a simplified approach to UFG mitigation and recovery, which it 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 Natural Gas's change in its long-standing pipeline system cost allocation methodology, according to PIOGA. (PIOGA M.B. p. 9.)

PIOGA further asserts that Peoples Natural Gas's rationale for its proposed change in methodology is also contrary to how the Peoples Natural Gas natural gas distribution pipeline systems were developed. PIOGA asserts that Peoples Natural Gas agrees with it that what Peoples Natural Gas characterizes as "the gathering system" was constructed as part of an integrated operation to provide natural gas to customers,³⁴ and acknowledges that customers located adjacent to these pipelines were connected as utility customers. (Peoples Natural Gas Statement No. 1-R at 19:23-20:4; Peoples Gas Statement No. 1-R at 19:15-17.) According to PIOGA, at the hearing Peoples Natural Gas also acknowledged that it would continue to connect new utility customers to these pipelines, subject to evaluation. (Tr. p. 69:1-11; Tr. at 69:1-11.) Yet, Peoples Natural Gas argues for the first time in rebuttal testimony that Peoples Natural Gas's Peoples Division and Peoples Gas are "gatherers." (Peoples Natural Gas Statement No. 1-R, p. 17:14-7, 18:1-6; PIOGA M.B. p. 8.)

While PIOGA asserts the Peoples Companies rely upon accounting definitions or classifications to support their characterizations of pipelines to support their producer retainage

³⁴ Peoples Gas Statement No. 1-R at 21-23; PIOGA Statement No. 1 at 11:23-13:11; PIOGA Exhibit MAH-8 (Peoples Natural Gas).

proposals, PIOGA suggested different definitions that 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 No. 1-SR, p. 6:1-23.)

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. 10-11.)

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. 11.)

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

PIOGA asserts, although Peoples Natural Gas acknowledges that what it characterizes as “the gathering system” was not originally constructed as a stand-alone gathering operation with no customers (Peoples Natural Gas Statement No. 1-R, p. 19:19-21), 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 argues the Commission has stipulated that gathering services “are generally provided on a contract basis rather than a ‘public utility’ service basis,”³⁵ which is consistent with Peoples Natural Gas’s reference to gathering services being provided by unregulated entities. But Peoples Natural 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.³⁶ PIOGA asserts the Peoples Companies own the so-called gathering systems that serve their customers. (PIOGA M.B. pp. 12-13.)

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

PIOGA notes that another rationale for Peoples Natural 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 Natural Gas’s recovery of these costs (at this point only so-called gathering system UFG) and thereby “incent the producers to partner with Peoples Natural Gas in developing UFG mitigation initiatives.” PIOGA’s witness explained that this rationale does not support Peoples Natural 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 notes that Mr. Hillebrand also noted that the current state of these pipelines concerning UFG is because of years of neglect. (PIOGA Statement No. 1 at 13:3-14:23.) While Peoples Natural Gas responded to this testimony by providing amounts of capital

³⁵ 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.624 n.3 (Pa.Cmwlth. 2017) (judicial notice of PUC decision); *Lycoming County 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).

³⁶ PIOGA Late-Filed Cross-examination Exhibit No. 4 (Peoples Companies Answer to PIOGA’s On the Record Data Request).

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 2.2%. (I&E Statement No. 1-5R, p. 15:1-9; PIOGA M.B. p. 13.)

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 the basis for Peoples Natural Gas's proposed Rate GS relates, according to PIOGA, solely to UFG and retainage on what Peoples Natural Gas characterizes as its gathering systems, and has nothing to do with UFG, retainage or deliveries into Peoples Natural Gas's distribution or transmission pipelines. (PIOGA M.B. pp. 14.15.)

Accordingly, PIOGA concludes there is no evidentiary support for the language in Peoples Natural Gas's proposed Rate GS tariff applying to deliveries into Peoples Natural Gas's distribution or transmission pipelines. Simply put, Peoples Natural Gas's proposed Rate GS tariff language doesn't match its evidence relied upon as support. (PIOGA M.B. p. 15.)

PIOGA further argues that Peoples Natural Gas's sole reason for the proposed tariff charge is to have consistency between both Divisions. (PIOGA M.B. p. 16.)

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

According to PIOGA, Peoples Natural 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 Natural Gas's statement shows that this is just the beginning of a process of Peoples Natural Gas's attempting to assign capital and operating costs related to what Peoples Natural Gas characterizes as its gathering systems to conventional producers in future proceedings. In view of what PIOGA characterizes as Peoples Natural Gas acknowledging that deliveries of

conventional well natural gas continue to decline with, in Peoples Natural 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 Natural Gas Exhibit No. 10-R.) Accordingly, PIOGA contends this sudden change in Peoples Natural Gas's cost allocation methodology is not only unsupported by substantial evidence showing that it is just and reasonable, but is also bad policy. (PIOGA M.B. pp. 17-18.)

E. OCA's Position

1. Producer Retainage Charge

OCA argues the Commission should approve the producer retainage charge of 2.0 percent on producers in the Peoples Division. (OCA St. 1 at 9; Peoples Natural 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 Natural 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 9; OCA M.B. p. 6.)

OCA explains that Peoples Natural Gas operates a distribution system and a gathering system. (OCA St. 1 at 7.) Currently, all customers are assessed the same retainage charge whether or not they use the gathering system. (OCA St. 1 at 10-11.) In the instant proceeding and past proceedings involving Peoples Natural Gas's 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. (OCA M.B. pp. 6-7.)

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 Natural Gas's gathering system. (OCA St. 1 at 10; OCA M.B. pp. 7-8.)

As OCA witness Mierzwa stated, "[t]he producer retainage charge proposed by Peoples Natural 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 10-11; OCA St. 1S at 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. 8.)

OCA argues that the calculation of the retainage charge at 6.6 percent is appropriate as proposed by Peoples Natural Gas and, if the Commission approves the producer

retainage charge, it should also approve the 6.6 percent retainage charge. (OCA St. 1 at 10; OCA M.B. p. 8.)

OCA contends the producer retainage charge would serve to recognize the differences in the responsibility for gathering system UFG.³⁷ (OCA St. 1S at 4.)

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 11; OCA St. 1S at 4. OCA witness Mierzwa explained:

[Peoples Natural Gas's gathering system is used to collect gas from local production wells and deliver that gas to Peoples distribution system. Those customers that do not utilize Peoples gathering system to obtain their gas supplies from local production wells utilize interstate pipelines to have their gas delivered to Peoples distribution system. Customers using interstate pipelines to acquire gas supplies are required to pay retainage to the interstate pipelines. Customers relying on Peoples gathering system to deliver gas to Peoples 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 Natural Gas's distribution system.]

OCA St. 1 at 10.

Therefore, if the producer retainage charge is not approved, OCA submits that a gathering system retainage charge of 2.0 percent should be assessed on the volumes delivered on the gathering system in the Peoples Division. (OCA St. 1 at 11; OCA M.B. p. 9.) 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."³⁸ (OCA St. 1S at 4.)

³⁷ 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.

³⁸ 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 LUGF], even though producers benefit from those gathering facilities." Peoples Gas St. 1SR at 5.

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 Natural Gas to 7.0 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 0.4 percentage points that Peoples Natural Gas would need to recover from sales and nondiscounted transportation customers. (OCA St. 1 at 11; OCA M.B. pp. 9-10.) OCA witness Mierzwa explained as shown on Revised Peoples Gas Exhibit No. 5, page 1, the proposed producer retainage charge was projected to recover 418,333 Mcf. Without assessing either a producer retainage charge or a separate gathering system retainage charge, according to OCA, the 418,333 Mcf would be recoverable from PGC and non-discounted retainage transportation customers. The projected PGC and non-discounted retainage transportation customer receipt volumes total 101,103,271 Mcf. OCA asserts to recover the additional 418,333 Mcf, Peoples Natural Gas's retainage rate would be increased by 0.4 percentage points from 6.6 percent to 7.0 percent. (OCA St. 1 at 11.) OSBA witness Kalcic likewise recommended an increase in the retainage charge from 6.6 percent to 7.0 percent in the event the producer retainage charge is not approved. (OSBA St. 1R at 2-3.) Accordingly, OCA recommends, if the producer retainage charge and gathering system retainage charge proposals are not approved, the Commission should increase the retainage rate to 7.0 percent. (OCA M.B. pp. 9-10.)

F. OSBA's Position

1. Argument

OSBA notes that PIOGA opposes the Company's proposal. Its 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' *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 succeeds, 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. p. 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. p. 4.)

Because producers clearly benefit from their connections to Peoples Natural Gas's system, OSBA argues, they should pay their fair share of UFG costs and help to mitigate increases in Peoples Natural Gas's end use retainage rate. OSBA notes, Peoples Natural Gas's current retainage rate is 6.4% and it has proposed increasing it to 6.6% in this proceeding. If the 2.0% producer retainage charge is not approved by the commission, OSBA asserts the retainage rate for end use customers would be 7.0%. (citation omitted.) (OSBA M.B. pp. 3-4.)

Furthermore, OSBA notes, as Peoples Natural Gas witness Ms. Petrichevich testified, charging producers a retainage rate is not at all uncommon or unreasonable. In fact, Peoples Natural 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 Natural Gas's proposed producer retainage charge.

G. Analysis

1. Issue

The sole issue remaining in this case is whether a 2.0% 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 Natural Gas and is opposed by PIOGA. OCA supports the proposed producer retainage charge and alternatively, proposes a gathering system retainage charge of 2.0% on volumes transferred on the gathering system or a 7.0% customer retainage rate if the 2% retainage charge would not be approved. I&E took no position on the producer retainage proposals. OSBA supports the charge proposed by Peoples Natural Gas. PIOGA noted that it opposes Peoples Natural Gas's proposed charge but supports either retainage rate by OCA.

2. Background

Peoples Natural Gas proposed that conventional gas producers would be charged a retainage rate of 2.0% for gas delivered into the Company's system. Peoples Natural Gas proposed that the charge would apply to all conventional gas producers delivering their gas into the Company's system. (Peoples Natural Gas M.B. pp. 5, 10.)

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 Natural 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. (Peoples Natural Gas M.B. p. 5.)

Peoples Natural 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. (Peoples Natural Gas M.B. pp. 5-6.)

PIOGA stresses that it does not agree that the pipelines Peoples Natural Gas characterizes as gathering comprise a separate and discrete gathering system. (PIOGA M.B. p. 1.) As shown by Peoples Natural 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.³⁹ As shown by Peoples Natural Gas’s discovery responses, PIOGA argues the pipelines Peoples Natural Gas characterizes as gathering do not comprise one separate and discrete gathering system.⁴⁰ (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 Natural Gas Exhibit No. 2 at 12; PIOGA R.B. p. 2.)

PIOGA contends the Peoples Natural 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 approved, PIOGA requests that its application be limited to deliveries

³⁹ Peoples Natural 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).

⁴⁰ 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.

of conventional well gas into what Peoples Natural Gas characterizes as its gathering pipelines. (PIOGA R.B. p. 15.)

OSBA agreed with the charge proposed by Peoples Natural Gas. (OSBA M.B. pp. 3-4.) I&E took no position on the producer retainage proposals. OCA provided alternative recommendations if the Peoples Natural Gas proposal is not approved: either a gathering retainage charge of 2% should be assessed on the volumes delivered on Peoples Natural Gas's gathering system (OCA Statement No. 1, at 11) or a 7.0% customer retainage rate imposed if the additional 2.0% gathering transportation customer retainage charge is not approved. (OCA Statement No. 1R at 2-3; OCA M.B. p. 10.)

3. Whether the Proposed Charge Is Just and Reasonable

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 Natural Gas Exhibit No. 2.) The Peoples Companies are also proposing to spend approximately \$21.1 million over the next 4 years under their proposed UFG mitigation plan. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 13-15; Peoples Natural Gas M.B. p. 10.)

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 Natural Gas Statement No. 1, p. 12, lines 13-23; Peoples Natural Gas Exhibit No. 2.) Moreover, in the last 4 years alone, Peoples Natural Gas has spent \$4.1 million in capital expenditures on gathering line replacements and over \$13 million in gathering maintenance expenditures. (Peoples Natural Gas Statement No. 1-R, p. 3, lines 11-13; Peoples Natural Gas M.B. p.p. 9-10.)

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 ¶ 25.) 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 ¶ 29.) Further, to ensure ongoing safe operations of all gathering facilities, Peoples Natural 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 ¶ 30.) This would include damage prevention locates, corrosion prevention, leak surveys, placement of line markers, and atmospheric corrosion surveys. (Joint Petition for Partial Settlement ¶ 30; Peoples Natural Gas R.B. pp. 5-6.)

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 Natural Gas R.B. p. 6.)

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

PIOGA asserts that Peoples Natural Gas does not explain, after decades of integrated operations of the three utility distribution pipeline systems now under common

ownership, why it now proposes 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 so-called 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. p. 2.)

Peoples Natural Gas argues that the Company's historical practice of not charging producers a gathering retainage does not foreclose such a charge from being adopted in this proceeding. (Peoples Natural Gas R.B. p. 2.) 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. pp. 6-8; 9-10.)

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 Natural Gas notes, for example, I&E proposed disallowing the Company's recovery of 661,937 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. 18, lines 6-10.) 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 2.0 percent that would be assessed on the volumes delivered on the gathering system." (OCA Statement No. 1, p. 11, lines 1-4.) 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. pp. 6-7.)

In support of its proposal, Peoples Natural Gas provides the example that, conventional gas producers would be prompted to aggregate wells and use a common line to

bring gas to the Company's system at a single downstream interconnection which would "eliminate the need for replacement of old at-risk gathering lines upstream of the single interconnection." (Peoples Natural Gas Statement No. 1, p. 13, lines 20-23.) Absent the proposed producer retainage charge being imposed, however, Peoples Natural Gas asserts conventional producers have no incentive to help reduce UFG on the gathering system. (Tr. 92; Peoples Gas R.B. p. 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 Natural Gas's natural gas distribution pipeline systems were developed." (PIOGA M.B. p. 10.) Because the Company's gathering system was "constructed as part of an integrated operation to provide natural gas to customers," PIOGA essentially claims that the Company should not be able to impose a producer retainage charge to recover a portion of gathering system UFG. (PIOGA M.B. pp. 10, 12-13, 18-19.) 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 Natural Gas's changing view on its integrated system should not be afforded much deference either. (PIOGA M.B. pp. 4-5; Peoples Natural Gas R.B. p. 8.)

Peoples Natural 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 Natural 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 Natural Gas Statement No. 5-R, p. 22, lines 18-20.) Therefore, according to Peoples Natural Gas, Rate AGS is a prime example of charging different rates for the gathering component of an integrated system. (Peoples Natural Gas R.B. p. 8.)

Peoples Natural 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 Natural Gas Statement No. 1-R, p. 7, lines 19-23.) 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 Natural Gas Statement No. 1-R, p. 25, lines 4-7.) As a result, Peoples Natural 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 Natural 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 Natural Gas R.B. pp. 8-9.)

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. As Peoples Natural Gas points out, that case concerned the Commission's interpretation of a statute, 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 Natural Gas M.B. pp. 18-19.) Although these pipelines can be broken down into separate components, such as distribution, gathering, and transmission, they still nonetheless form the basis of the Company's integrated system. (Peoples Natural Gas R.B. p. 10.)

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

Peoples Natural Gas asserts that PIOGA should not be permitted to disclaim all responsibility for gathering system UFG. But, PIOGA asserts it 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, 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. p. 7.)

PIOGA 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 Natural Gas argued against a similar change as an oversimplification of a problem and a “piecemeal” approach.⁴¹ 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. p. 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

⁴¹ Peoples Natural Gas Statement No. 1-R at 15:23-16:2; PIOGA Exhibit MAH-7. (Peoples Natural Gas Statement at 17:4-7.)

Vice Chairman Place's Statement in the Companies' 2017 PGC cases. (PIOGA Exhibit MAH-13; PIOGA R.B. p. 9.)

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. pp. 10-13.) 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. p. 10.) 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. p. 12, Appx. D.) (Peoples Natural Gas R.B. p. 10.)

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 Natural Gas M.B. pp. 10-11; Peoples Natural Gas R.B. p. 11.)

Further, 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. (Peoples Natural Gas R.B. p. 11.)

Furthermore, Peoples Natural 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 Natural 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 51 of its Main Brief that the Commission may take judicial notice of the document,⁴² as a signatory of this stipulation, Peoples Natural Gas notes that PIOGA should have had this document in hand throughout this entire proceeding. After multiple rounds of written testimony and oral rejoinder

⁴² PIOGA Main Brief, p. 12, footnote 51.

testimony at the evidentiary hearing, PIOGA first presented this stipulation in its Main Brief. Peoples Natural 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. p. 12.) Therefore, Peoples Natural Gas correctly argues that the Parties were prevented from reviewing the stipulation during the evidentiary phase of the proceeding and from 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.Cmwlth. 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 Natural Gas R.B. p. 11.)

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. pp. 13-14.) In support, PIOGA alleges that the Company has neglected its gathering system and only spent 2.2% of its capital expenditures on the gathering system in the past five years. (PIOGA M.B. p. 13.)

Peoples Natural 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 Natural 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. 12-13.)

Peoples Natural Gas has spent \$17.1 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 11-13.) 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 Natural 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 Natural 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 Natural Gas Statement No. 5-R, p. 9, lines 1-5; Peoples Natural Gas R.B. pp. 12-13.)

The Company 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 12-15.) 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 Natural 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. 13-14.)

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 Natural Gas's system. (PIOGA M.B. pp. 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. pp. 14-17; Peoples Natural Gas R.B. pp. 14-15.)

PIOGA argues that Peoples Natural Gas's reliance upon the mere existence of the Equitable Division Rate AGS and Peoples Natural Gas's preference for administrative ease are not evidence supporting Commission approval of the language in Peoples Natural Gas's proposed Rate GS tariff applying the proposed new producer retainage rate to deliveries of Pennsylvania natural gas supplies from conventional wells into Peoples Natural Gas's distribution and transmission pipelines. 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 Natural Gas's evidence addresses to accommodate Peoples Natural Gas's preference. (PIOGA R.B. p. 3.)

PIOGA argues that Peoples Natural Gas relies upon the mere existence of Equitable Rate AGS and the Company's intent to "model" its proposed Rate GS tariff after the Equitable tariff to support Commission approval of its Rate GS tariff language applying the proposed new producer retainage rate to deliveries of Pennsylvania natural gas supplies from conventional well into the Company's distribution and transmission pipelines. (PIOGA R.B. p. 14.) PIOGA asserts Peoples Natural Gas's preference for administrative ease is not evidence supporting Commission approval of either proposal. According to PIOGA, Peoples Natural 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 Natural Gas's preference for administrative ease. PIOGA asserts Peoples Natural Gas's recalculated producer retainage based on only deliveries into what 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. 14-15.)

The Company asserted that it clarified the charge’s application in its discovery responses and testimony in this proceeding. (Peoples Natural Gas M.B. at 15.) According to Peoples Natural 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 17 to p. 9, line 14.) 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 Natural Gas Statement No. 1-R, p. 27, lines 3-6.) 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 Natural Gas Statement No. 1-R, p. 27, lines 7-9; Peoples Natural Gas R.B. p. 15.)

Nevertheless, Peoples Natural 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 Natural Gas M.B. at 16.) 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,” then the charge would increase from 2 percent to 2.17 percent, so a small, less than 10 percent change.” (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. pp. 15-16.)

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 17-18.) To support this position, PIOGA claimed that “this is just the beginning of a process” of Peoples Natural 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 17.) 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 17-18.)

Peoples Natural Gas 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 Natural Gas Statement No. 5-R, p. 23, lines 4-5; Peoples Natural Gas R.B. pp. 16-17.) Peoples Natural 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 Natural Gas Exhibit No. 8-R; Peoples Gas Statement No. 5-R, p. 23, lines 8-10.) Peoples Natural 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 Natural Gas Statement No. 5-R, p. 23, lines 11-13; Peoples Natural Gas R.B. p. 17.)

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.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.

Under the proposal advanced by Peoples Natural Gas, conventional gas producers would be charged a retainage rate of 2.0% for gas delivered 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 incurred by sales and non-discounted transportation customers.

Peoples Natural 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 Natural 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.

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.

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 Natural 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 or 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.

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 Natural Gas explains, the producer retainage charge would properly balance the interests of both customers and producers, where there is currently no balance at all.

In sum, 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, as identified above, Peoples Natural Gas has demonstrated that the proposed charge is just and reasonable and I recommend that the retainage charge proposed by Peoples Natural Gas be approved.

PIOGA's claims that conventional gas producers should not have to pay for gathering system UFG because they did not cause the losses is not sufficiently persuasive to deny the charge proposed by the Company. PIOGA's own testimony demonstrated 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.

Based upon the evidence presented and the unique nature of the integrated system operated by the Company, Peoples Natural Gas has demonstrated that the proposed charge is just and reasonable, and should be approved.

X. CONCLUSIONS OF LAW

The Settling Parties in ¶¶ 67 – 76 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 Division's and Peoples-Equitable Division's gas purchases and gas purchasing practices during the 12-month historical reconciliation period ended January 31, 2018, Peoples Division and Peoples-Equitable Division have 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. During the 12 months ended January 31, 2018:

a. Peoples Division and Peoples-Equitable Division 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 Division and Peoples-Equitable Division 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 Division and Peoples-Equitable Division have fully and vigorously represented the interests of their 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 Division and Peoples-Equitable Division have taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utilities from terms in existing contracts with their gas suppliers which are or may be adverse to the interests of the utilities' ratepayers in compliance with 66 Pa.C.S. § 1318(a)(2).

5. Peoples Division and Peoples-Equitable Division have 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 Division and Peoples-Equitable Division have 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 Division and Peoples-Equitable Division have 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 Division, nor Peoples-Equitable Division, nor their 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 this Partial Settlement will be in effect,⁴³ based upon information presently available and based upon evidence of record in this proceeding concerning Peoples Division's and Peoples-Equitable Division's projected purchases and purchasing policies, the rates to be adopted by the Commission result from Peoples Division's and Peoples-Equitable Division'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 Division's and Peoples-Equitable Division's gas purchases and gas purchasing practices complied with Section 1318. If in an appropriate future proceeding Peoples Division's and Peoples-Equitable Division's 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.

⁴³ 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 34 of this Partial Settlement.

10. The Joint Petition for Partial 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).

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 is 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. 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.

17. Nothing in those definitions mentions the existence or lack of customers that are connected to the pipeline. (Tr. 83-85)

18. Pipelines can be characterized as “gathering” lines even if distribution customers are served directly off of those facilities.⁴⁴

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 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).

22. 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).

⁴⁴ 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); *Lucey 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).

23. Like this Commission, FERC in several decisions considered pipelines to be gathering facilities, even though distribution customers were served directly off of those pipelines.⁴⁵

24. 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).

25. 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.

26. 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.

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

⁴⁵ 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 Nos. R-2018-2645278 and R-2018-3000236 among Peoples Natural Gas Company LLC, acting on behalf of its Peoples Division and Peoples-Equitable Division, 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 is hereby approved and adopted.

2. That Peoples Natural Gas Company LLC file tariff supplements, on behalf of both Divisions, 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 Natural 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 shall 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 Natural Gas Company LLC's filing of tariff supplements 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 shall become effective for service rendered on and after October 1, 2018.

