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Via Electronic Filing and Overnight Delivery

August 1, 2019

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

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AUG -1 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **Docket Number C-2018-3005956**
Wallace McGaughey v. Peoples Natural Gas Company LLC

Dear Secretary Chiavetta:

On behalf of Peoples Natural Gas Company LLC ("Peoples"), please find enclosed for filing Peoples' Reply to Complainant's Exceptions in the above-noted docket.

Please contact the undersigned at (412) 208-6834 should you have any questions or concerns regarding this matter.

Very truly yours,

Jennifer L. Petrisek
Senior Counsel

cc: All Parties listed on the Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WALLACE MCGAUGHEY)

)

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V.)

DOCKET NO. C-2018-3005956

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PEOPLES NATURAL GAS COMPANY LLC)

BRIEF OF PEOPLES NATURAL GAS COMPANY LLC

INTRODUCTION

In accordance with the Commission's directive in the Secretarial Letter, dated July 1, 2019, and Section 5.535 of the Commission's Regulation's, 52 Pa. Code §5.535, Peoples Natural Gas Company LLC ("Peoples" or the "Company") submits its Reply to the Exceptions of Wallace McGaughey (the "Complainant") to the Initial Decision of Administrative Law Judge Andrew M. Calvelli ("Judge Calvelli"). The Commission should deny the Exceptions, affirm the Initial Decision in its entirety and sustain the dismissal of the Formal Complaint. The findings of facts and conclusions of law set forth in the well-reasoned Initial Decision are based on the record evidence and support the dismissal of the Formal Complaint.

PROCEDURAL HISTORY

On October 31, 2018, Wallace McGaughey (the "Complainant") filed a formal complaint against Peoples Natural Gas Company LLC ("Peoples" or the "Company") which, among other things, averred that Peoples is in violation of the Federal Pipeline Safety Regulations, 49 CFR 192, for failing to maintain and repair a natural gas service line located between the meter and the Company's natural gas distribution system main-line (the "Complaint"). As relief, Complainant sought reimbursement for the expenses

associated with the repair of the aforementioned service line. The Complaint was served on Peoples on November 13, 2019.

On December 6, 2018, Peoples filed an Answer to the Complaint denying the Complainant's allegations. Peoples also filed Preliminary Objections on December 6, 2018 requesting to strike Complainant's relief for reimbursement as an impertinent matter.

On January 4, 2019, Complainant filed an Answer to the Company's Answer to the Complaint, which is dated December 20, 2018.

On January 4, 2019, a Telephonic Hearing Notice was issued that set an initial telephonic hearing for February 6, 2019 at 10 a.m. A Prehearing Order was issued on January 17, 2019.

An Order Granting Preliminary Objections and Dismissing a Portion of the Complaint was issued by Judge Calvelli on January 17, 2019. The Order dismissed any claims against Peoples insofar as they relate to a claims for monetary damages, but retained any remaining issues, such as whether Peoples was improperly passing on costs to customers that should be borne by Peoples and claims that Peoples has disregarded certain laws and regulations regarding gas service line maintenance and repair obligations, to be considered during an Initial Hearing.

On February 6, 2019, a telephonic hearing was held to address the Complaint at which hearing both parties were present. Complainant presented his own testimony and offered two (2) Complainant Exhibits, which were admitted into evidence. Peoples was represented by Jennifer L. Petrisek, Esquire, who presented testimony of one (1) witness and offered nine (9) Exhibits, which were admitted into evidence. A transcript of the telephonic hearing was prepared consisting of 75 pages. At the conclusion of the telephonic hearing, Judge Calvelli granted Peoples' request to file a Post Hearing Brief.

On March 6, 2019, Administrative Law Judge Calvelli issued a Briefing Order setting forth the briefing parameters. On April 2, 2019 Peoples filed a Post Hearing Brief. Complainant did not file a Post Hearing Brief.

The record was closed on April 2, 2019. Judge Cavelli's Recommended Decision, dated June 26, 2019, was released by the Commission's Executive Secretary's office on July 1, 2019. Complainant filed Exceptions dated July 9, 2019.

REPLIES TO EXCEPTIONS

Exception One: *I disagree with Judge Calvelli's determination of the facts presented in the hearing. In his "Introduction" on page 1, he states, "This decision dismisses a formal Complaint filed by a customer of a natural gas distribution company seeking a Commission order directing the company to maintain and repair the customer-owned service line leading to the service address." I never indicated that the pipeline in question was customer-owned and no legal document has been offered by the gas company or the Commission establishing my ownership of said line. As well, the pipeline in question is not on the downstream side of the meter, between the meter and the building wall, it is between the meter and the distribution main pipeline located on the opposite side of the street from the house.*

The Introduction in the Recommended Decision is a reasonable and fair summary of the Complaint and is supported by the Peoples' tariff and provisions within the applicable Pennsylvania statute and regulations. The Complaint, as drafted by Complainant, seeks to (1) recover expenses related to the replacement/repair of the gas service line located between the meter and the Company main-line (see, Complaint, Sections 4 and 5) and (2) a determination that the Company's position of stating the identified service line is owned by the customer is in violation of the Federal Pipeline Safety Regulations (see, fourth page of attachment to Compliant). As presented at the Hearing, and as identified in the Peoples' Post Hearing Brief, the service line in dispute is located between the Company's main-line and the meter (see, Page 38 of the transcript). Section 4, Page 20, of the Peoples Natural Gas Company LLC Retail Tariff PA PUC Number 45 establishes that the applicant, which in this case would be Wallace McGaughey at the time he applied for service in 2014, is the owner of the service line in question and is responsible for the maintenance and repair/replacement of said service line. Mr. McGaughey was made aware of this fact on February 19, 2014 via a New Customer Notification Letter that was sent to Mr. McGaughey's Premise, which was his mailing address as well as his service address see, Company Exhibit A). Further, Section 59.34 of Title 52 of the Pennsylvania Code sets forth a definition of a customer-owned service line as well as the responsibilities related to a customer-owned service line. Subsection (a) defines a customer-owned service line as "...includes that piping serving a residential or commercial customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping."

Customer-owned service lines can occur in various format, most commonly the customer-owned service line is located between the Company's main-line and the meter which is located at the exterior of the premise structure. In other cases, the customer-owned service line is located between the Company's main-line and the meter, which is located away from the premise exterior wall. In this case, the line in dispute is located between the meter, which is placed by and owned by Peoples, and the Company's main-line. The meter was located approximately 50 feet from the exterior wall of the premise. (Transcript, Pages 38-41). Pursuant to Section 59.34(a), the line in question is clearly a customer-owned service line.

Further, Section 1510 of the Pennsylvania Consolidated Statutes sets forth that the utility shall furnish, install and maintain service lines in accordance with the rules and regulations of the utility's filed tariff. As previously stated, the Peoples Tariff identifies the responsibility for the provision, installation and maintenance of the connections between the Company's main-lines and the place of consumption to be the responsibility of the customer. Section 1510 continues by providing that a "...public utility shall not be authorized or required to acquire or assume ownership of any customer's service line..." and "(m)aintenance of service lines shall be the responsibility of the owner of the service line." Thus it is clear that the service line located between the meter and the Company's main-line is a customer-owned service line.

Exception Two: *On Page 3, of the Initial Decision, Item 4 states: "In October 2018, Mr. McGaughey detected a leak on the gas service line that runs from the meter, located at the edge of the road, to the service address." This statement is also untrue, I never indicated the leak was on the customer side of the meter, in fact it was Peoples Natural Gas Company that indicated to me that the leak was on the piping between the meter and the street distribution main pipeline.*

Complainant testified that "The evening before we began packing up, I was out walking my dog and detached an order of gas, at which time I called the gas company and reported that." (Transcript, Pages 7-8). Thus, it is far to state that Mr. McGaughey detected a leak as he smelled an odor of gas on his property. Peoples agrees that it was Peoples, as identified in Finding of Fact 6, that identified the leak existed on the customer-owned service line.

Exception Three: *On Page 3 of the Initial Decision, Item 5 states: "The line in question is located between the meter, which is placed by and owned by Peoples, and the location where the gas supply is recorded, and the exterior wall of the service address." This too is untrue, again the pipeline segment in question is between the meter and the distribution main up stream of the meter, NOT on the downstream side of the meter.*

At the Hearing, Mr. Thomas, witness for Peoples, testified to the following: (1) the Company owns the meter, (2) the meter records the gas usage at the premise and (3) the service line requiring replacement was located between the Company's main-line and the meter. As stated in response to the First Exception, the service line located between the Company's main-line and the meter is owned by the customer and such ownership is supported by the Company's Tariff and applicable Pennsylvania statute and regulations.

Exception Four: *On Page 3, of the Initial Decision, Item 10 states: "The Peoples Natural Gas Company LLC Tariff, Section 4, sets forth that the customer owns, provides and is responsible for the repair of the Customer-Owned Service Line. Tr.43; Peoples Exhibit B." This section referenced is for monetary determinations for Peoples Natural Gas Company and in no way establishes ownership of pipeline that is governed by Title 49, Code of Federal Regulations, Part 191 and 192...*

Finding of Fact Number 10 ("The Peoples Natural Gas Company LLC Tariff, Section 4, sets forth that the customer owns, provides and is responsible for the repair of the Customer-Owned Service Line. Tr. 43; Peoples Exhibit B.") is a true and accurate statement. Complainant's assertion that the Tariff section is for monetary determination is inaccurate. Section 4 of the Tariff is entitled "Connection for Service – Extension of Facilities" and discusses the responsibilities for the placement, maintenance and ongoing use of the various facilities necessary to connect the customer's premise to the company's distribution system. This section provides, in part (emphasis added):

The applicant hereby undertakes to **furnish, be responsible for, and pay the necessary costs of service pipe,** fixtures, fittings, valves, regulators, and appliances **to make the necessary connections between the Company's lines and the place of consumption or the agreed upon delivery point to the applicant** and keep the same in good repair, in a skillful and workmanlike manner, furnishing at his own expense said materials, and the labor, care, and supervision necessary and proper to safely conduct and burn the gas, but the applicant shall not otherwise

make changes in or interfere with said pipes and appliances and material. The arrangement and location of all piping and appliances (including meters) shall be subject to the approval of the Company, but the Company shall not be responsible in any manner for the selection, maintenance, or use of said pipes and appliances, or for said labor, care, or supervisions, and shall have no duty or obligation with respect to the same. To facilitate this process, the Company makes available a manual entitled "Service Line Installation Standards'."

The Company shall make the necessary connections between its curb cock or shutoff valve and the applicant's service pipe, provide a meter and the necessary fittings, and connect the meter.

Peoples does not disagree that Title 49, Code of Federal Regulations, Part 191 and 192 are applicable to the operation of the Company's natural gas distribution system. Peoples, as stated in the Hearing and in the Post-Hearing Brief, does, however, disagree with Complainant's interpretation of various sections of the Code of Federal Regulations.

Exception Five: *On page 5 of the Initial Decision, Item 2, beginning at Peoples Brief at p.4. states: "Peoples Brief at p.4. Peoples states that the line in question is located between the meter, which is placed and owned by Peoples and the location where the gas supply is recorded, and the exterior wall of the service address." This again is untrue. The pipeline in question is between the meter, placed and owned by Peoples and their distribution main pipeline.*

As discussed above, the service line in question is located between the Company's main-line and the meter location, which sometimes is at the exterior wall and sometimes is located away from the premise. As Mr. Thomas testified, the leak that occurred was located on the customer-owned service line, specifically on the riser section. The meter was located out near the street – about 50 feet from the house. The leak occurred between the meter and curb stop, which is the point of connection between the main-line and the customer-owned service line. (Transcript pages 40-41). The description of the facilities is consistent with definition of customer-owned service line in Section 59.34 of Title 52 of the Pennsylvania Code which provides the following: "includes that piping serving a residential or commercial customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping."

Exception Six: *On page 6 of the Initial Decision, Item 3), Judge Calvelli states: "Complainant Exhibit C-2 (October 18, 2018 letter). Mr. McGaughey relies heavily on this regulation as standing for the proposition that Peoples is required to maintain the service line at issue. However, Mr. McGaughey ignores the express language of this regulation, which merely requires Peoples to create a manual with procedures for operating, maintaining and repairing the pipeline. Nowhere does this regulation state that Peoples itself is required to perform the maintenance and repairs; it simply provides that Peoples must create a procedural manual in that regard." If Judge Calvelli is correct, then pipeline operators can simply create Operations, Maintenance and Repair Manuals for the operations, maintenance and repair of their regulated pipelines, but have no obligation to actually perform the maintenance or repairs of their pipeline facilities. I do not believe he actually represents this to be true.*

Initially, Peoples notes that the referenced expert from the Initial Decision appears on Page 7 of the Initial Decision, note page 6. Judge Cavelli is correct that 49 CFR § 192.605 (b)(1) states "(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations. (1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of the part."

Peoples complies with the applicable sections of the CFR and maintains the procedures in accordance with the noted section of the CFR. Complainant's statement that pipeline operators can "simply create Operations, Maintenance and Repair Manuals for the operations, maintenance and repair of their regulated pipelines, but have no obligation to actually perform the maintenance or repairs of their pipeline facilities" is speculative, not founded in any stated facts and without merit.

Exception Seven: *Next in the same item 3, on page 61 Judge Calvelli states: "The next factor in reaching this conclusion is that Peoples' Commission-approved Tariff expressly provides that the customer is responsible for maintaining and repairing customer-owned service lines. Additionally, Peoples is required by Section 1510 of the Public Utility Code to furnish, install and maintain service lines in accordance with its filed Tariff. Since Peoples' filed Tariff requires customer-owned service lines to be repaired and maintained by the customer, Peoples contends that it was acting lawfully in requiring Mr. McGaughey to bear the cost and responsibility of fixing the leak. Tr. 43; Peoples Exhibit*

B; Peoples Brief at pp. 3, 5. Given the evidence in this case, Peoples has demonstrated that the line in question is Mr. McGaughey's customer-owned service line as that term is defined in Peoples Tariff and related Commission filings. rd. Therefore, Mr. McGaughey is responsible for maintaining and repairing the line in question."

As stated above, the Commission can not by statute or Tariff require or allow an operator to ignore the minimum safety regulations as established by 49 CFR 191 and 192. Nothing in the Tariff filing or PA PUC Code 15 IO can change or diminish the definition of a service line as stated clearly in 49 CFR 192.3, Service line means a distribution line that transports gas from a common source of supply to any individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or the at the connection to a customer's piping, whichever is further downstream, or at the connection to the customer piping if there is no meter.

Peoples does not disagree that Title 49, Code of Federal Regulations, Part 191 and 192 are applicable to the operation of the Company's natural gas distribution system. Peoples, as stated in the Hearing and in the Post-Hearing Brief, does, however, disagree with Complainant's interpretation of various sections of the Code of Federal Regulations. Most specifically, Peoples contends that Section 192.16 of Title 49 of the Code of Federal Regulations Provides for Customer Buried Piping and has contemplated this exact situation.

Contrary to Mr. McGaughey's argument, Title 49 of the Code of Federal Regulations does not require the utility to maintain and repair/replace the line in question in this Complaint, namely the line referred to herein as the Customer-Owned Service which runs from the meter to the Company main-line. Section 192.16 of 49 CFR provides that the operator, in this case, Peoples, is not responsible to maintain the customer's buried piping, the customer is responsible to repair any unsafe conditions, and the operator is responsible only to notify the customer, of amongst other things, that the operator does not maintain the customer's buried piping (emphasis added):

192.16 Customer Notification

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "customer's buried piping" does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary

equipment. Also, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

(3) Buried gas piping should be -

(i) Periodically inspected for leaks;

(ii) Periodically inspected for corrosion if the piping is metallic; and

(iii) Repaired if any unsafe condition is discovered.

(4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

(c) Each operator shall notify each customer not later than August 14, 1996, or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to customers within the previous 3 years.

As Mr. Thomas testified at the Hearing, this Section of the CFR was part of a proposed rulemaking, issued by the Department of Transportation ("DOT"), in 1994. The Notice proposed to define customer owned piping and comments were issued by various parties and considered by the DOT. In the proposed rulemaking, the DOT specifically considered the term "Customer Owned Service Lines" and noted that some lines are, in fact, owned by the customer and using the term "Customer Owned Service Line" in the regulations may pose confusing:

B. The Term "Customer-Owned Service Line" The mandate applied to customer piping Congress called "customer owned service lines." So the NPRM and SNPRM used this term to designate the customer piping covered by the proposed rules. Despite its statutory origin, many commenters felt the term "customer owned service line" would be confusing in a Part 192 regulation. *They said many service lines under Part 192 include piping owned by customers.* Consequently, they argued the term was too similar to "service line" to distinguish customer piping not regulated by Part 192 from service lines regulated by Part 192. The commenters suggested as alternatives the names "supply pipe," "yard line," "fuel line," and "customer-owned piping." We agree that "customer-owned service line" would be a misnomer in Part 192. *The term could easily be confused with "service line," because some customers own the portion of a service line on private property between a distribution main and customer meter...* (emphasis added) (Federal Register, Volume 60, Number 156, August 14, 1995, Pages 418225168.)

In the Final Rule, the DOT discussed that various commenters, as well as the DOT felt that the term "Customer Owned Service Lines" could be confused with the term "Service Line" which was already defined and discussed in Section 192. As a result, the DOT elected to instead utilize the term Customer Buried Piping. (Federal Register, Volume 60, Number 156, August 14, 1995, Page 41821 - 41822).

Exception Eight: *I hereby request this Initial Decision be reversed, Peoples Natural Gas Company and any other operators of distribution pipeline systems in the State of Pennsylvania regulated by the Code of Federal Regulations Title 49 Parts 191 and 192 be ordered to and enforced on to operate, maintain and repair its service lines as defined in the stated Federal Pipeline Safety Regulations. All regulations referenced by the Judge were based on the wrong pipeline segment.*

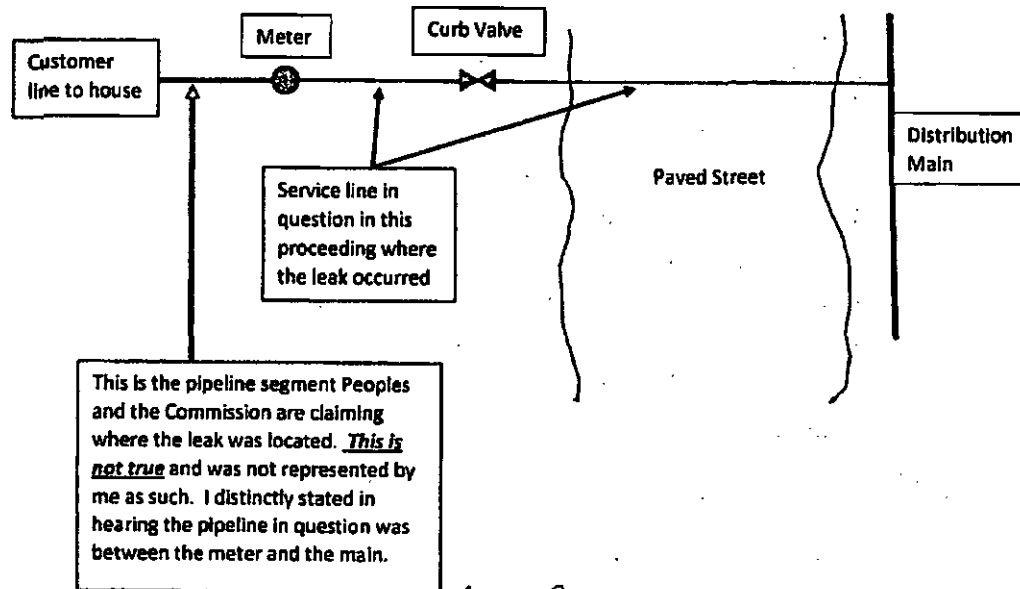
Complainant cannot seek a resolution by the Commission which would modify Commonwealth of Pennsylvania Regulations as modification of Regulations requires a Rulemaking proceedings, or the modification of a Commonwealth of Pennsylvania Statute, which would require a legislative action. As stated herein, Peoples treatment of the service line located between the meter and the main-line is in compliance with the Pennsylvania Code and the Pennsylvania Consolidated Statutes. Further, Complainant cannot seek a resolution that would bind non-parties, such as other operators or distribution pipeline systems in Pennsylvania.

Exception Nine: *The most important issue in these proceedings is Pipeline Safety. Requiring inexperienced customers to be responsible for maintaining and repairing the high-pressure side of the gas pipeline system, 60 psi or higher, is just asking for similar disasters like seen in New England in recent years. There is no room for non-qualified persons to be working on regulated pipeline systems.*

Peoples agrees that safety is paramount and the proper maintenance of natural gas facilities is vitally important. Accordingly, the Company complies with Commonwealth of Pennsylvania laws and regulations as well as Federal laws and regulations in conducting service line inspections, responding to leak and other gas facility related concerns and requiring the certification of a qualified plumber, as well as pressure-testing, before restoring natural gas to a repaired or replaced customer-owned service line.

While customers may be “inexperienced”, Peoples complies with the laws and procedures designed for the detection of leaks and the repair and replacement of customer-owned facilities to ensure safety is maintained.

Exceptions Ten: Below is a simple line drawing of the pipeline segment in question in these proceedings. **NOTE**, the line shade green and labeled "Customer line to house" is the only pipe the customer is responsible for, operates at less than 1 psi in most cases, and is the "customer owned pipeline referenced in 49 CFR 192.16.

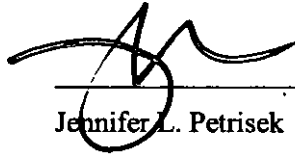


First and foremost, this is a new offering my Complainant that has not previously been offered in this proceeding. The drawing is not verified nor has Peoples' had the opportunity to questions Complainant about the drawing. As such, it should be stricken from the record and not considered. If, however the Commission determines the unverified drawing should remain in the record, Peoples disagrees with Complainant's notation about where the leaking line was located. As discussed herein, Mr. Thomas testified that the leak occurred between the meter and the Company's main-line.

WHEREFORE, Peoples Natural Gas Company LLC, based upon the foregoing, respectfully requests that the Recommended Decision issued by Judge Cavelli be upheld and the Complaint of

Wallace McGaughey against Peoples Natural Gas Company LLC at Docket No. C-2018-3005956 be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer L. Petrisek", is written over a horizontal line.

Jennifer L. Petrisek

Counsel for

Peoples Natural Gas Company LLC

Dated: August 1, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day August, 2019 served a true copy of Peoples Natural Gas Company LLC's Reply to Complainant's Exceptions upon the individuals listed below in the manner stated:

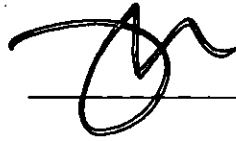
VIA OVERNIGHT DELIVERY:

Wallace McGaughey
29001 Gaylord Road
Walker, LA 70785

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SECRETARY'S BUREAU



Jennifer L. Petrisek

Dated this 1st day of August, 2019

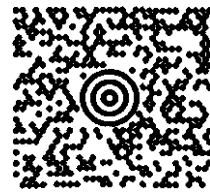
PEOPLES NATURAL GAS
375 N SHORE DR
PITTSBURGH PA 15212

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SHIP TO:

ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
2ND FLOOR
400 NORTH STREET
COMMONWEALTH KEYSTONE BUILDING
HARRISBURG PA 17120-0093



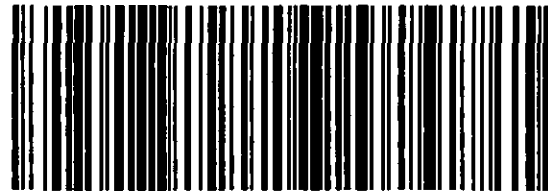
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