

COMMONWEALTH OF PENNSYLVANIA



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June 13, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission
v.
Peoples Natural Gas Company LLC
Docket No. R-2023-3044549

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in Opposition to the Joint Petition for Non-Unanimous Settlement in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/Gina L. Miller
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Enclosures:

cc: The Honorable Mary D. Long (email only)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket No. R-2023-3044549
Peoples Natural Gas Company LLC :

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Office of Consumer Advocate's Comments in Opposition to the Joint Petition for Non-Unanimous Settlement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of June 2024.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2023-3044549
 :
 Peoples Natural Gas Company LLC :

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO
THE JOINT PETITION FOR APPROVAL OF
NON-UNANIMOUS SETTLEMENT

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I. INTRODUCTION

On May 30, 2024, Peoples Natural Gas Company LLC (Peoples) filed a Joint Petition for Non-Unanimous Settlement among the Settling Parties (Joint Petition or Non-Unanimous Settlement) that was executed by Peoples, the Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), Peoples Industrial Intervenors (PII), and the Pennsylvania Independent Oil and Gas Association (PIOGA) (collectively Joint Petitioners).¹

Pursuant to Administrative Law Judge Mary D. Long's (the ALJ or ALJ Long) May 10, 2024, Interim Order and 52 Pa. Code Section 5.232(g), the Pennsylvania Office of Consumer Advocate (OCA) hereby respectfully requests that Pennsylvania Public Utility Commission (Commission) reject the Non-Unanimous Settlement. As explained in more detail below, the Non-Unanimous Settlement is not in the public interest due to (1) an unnecessarily high, significant, and unsupported stipulated revenue requirement increase; (2) unjust and unreasonable resulting rates, including significant increases to customer charges; and (3) authorization of the Weather Normalization Adjustment (WNA). The OCA respectfully requests that the Commission carefully (1) scrutinize the record of this proceeding and consider the arguments contained herein as well as in the OCA's Main and Reply Briefs; and (2) find that the OCA's fully litigated proposals and recommendations are in the public interest, supported by substantial record evidence, would result in just and reasonable rates, and better balance the utility's need for sufficient revenue with the public's need for rate affordability than the Non-Unanimous Settlement.

As such, the OCA states in opposition as follows:

¹ The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Pennsylvania Weatherization Providers Task Force (PWPTF), and several consumer formal complainants are parties to this proceeding, but they did not join the Non-Unanimous Settlement. CAUSE-PA and PWPTF agreed not to oppose the Non-Unanimous Settlement.

II. LEGAL STANDARDS

A. No Deference Is Owed to the Non-Unanimous Settlement.

The Non-Unanimous Settlement is not entitled to deference under the Commission’s policy of supporting settlements because, while the Commission has adopted a policy which encourages settlements at 52 Pa. Code Section 5.231(a), a previously adopted “policy cannot be made a substitute for evidence in a proceeding before” the Commission and “[t]he [C]ommission must remain free at all times in order to carry out the objectives of the utility law.” *Aizen v. Pa. PUC*, 60 A.2d 443, 449 (Pa. Super. Ct. 1948). The Commission’s policy that encourages settlements does so only to the extent that the results achieved from a negotiated settlement are preferable to those secured at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Here, the OCA’s litigated position is preferable to the results of the Non-Unanimous Settlement as a whole, is supported by substantial record evidence, and will produce just and reasonable rates.

B. Joint Petitioners Bear the Burden of Proof to Demonstrate that the Non-Unanimous Settlement Is in the Public Interest and Will Produce Just and Reasonable Rates.

The parties requesting that the Commission adopt a settlement without modification bear the burden of proof to show that the terms and conditions of the settlement are in the public interest. 52 Pa. Code § 5.231; *Pa. PUC v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256 (Order entered April 15, 2021) (*City of Bethlehem*) at 13. “It is the Commission’s duty to determine the public interest and to protect the rights of the public.” *Duquesne Light Co. v. Pa. PUC*, 715 A.2d 540, 546 (Pa. Cmwlth. Ct. 1998) (citations omitted). Consistent with the Commission’s other statutory responsibilities, the Commission must determine the public interest with “due consideration to the interests of consumers.” 71 P.S. § 309-5.

“The Commission’s standards for reviewing a non-unanimous settlement . . . are the same as those for deciding a fully contested proceeding.” *Joint App. of West Penn Power Co. d/b/a*

Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp., Docket Nos. A 2010 2176520 and A-2010-2176732 (Order entered March 8, 2011) (*West Penn 2011*) at 17. As such, every rate the public utility proposes to charge under the terms of the settlement must still be just and reasonable. *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. Ct. 1996) (*Popowsky 1996*); 66 Pa. C.S. § 1301(a). The non-unanimous settlement must demonstrate that the proposed rates are “supported by substantial evidence of record, achieve a fair and equitable balance of the issues impacting the Company, residential consumers, business customers, and the public interest at large, and are in the public interest.” *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2020-3019369 *et al.* (Order entered Feb. 25, 2021) (*PAWC 2021*) at 46. If the petitioners fail to meet their burden of proof, the Commission must deny the petition for settlement. In this case, the Joint Petitioners fail to meet the public interest or just and reasonable standard, warranting rejection of the Joint Petition.

III. SUMMARY OF OCA’S POSITION

The Non-Unanimous Settlement provides for a revenue requirement increase of \$93 million. Joint Petition at ¶ 42. With limited exception, the remainder of the provisions contained in the Non-Unanimous Settlement are otherwise proposed by Peoples in its initial filing or agreed to in the course of litigation.² This includes the agreement to add a three percent deadband to Peoples’ proposed WNA. Joint Petition at ¶ 71. However, agreements made to modify initial Company proposals to respond to issues raised in the course of litigation do not contribute to the Joint Petitioners’ satisfaction of their burden of proof in showing that the Non-Unanimous Settlement is in the public interest.

² Specifically, the terms adopted in the Non-Unanimous Settlement which were not included in the initial filing or agreed to in litigation include: the decreased revenue requirement, adjusted revenue allocation and rate design, implementation of a collar capping WNA charges to 100% of a customer’s bill in the month of May, tracking WNA charges in excess of 50% of a customer’s bill, gas safety terms, and PIOGA-specific issues.

In these Comments in Opposition, the OCA demonstrates that the following Settlement provisions are not in the public interest, will not result in just and reasonable rates, and are not supported by substantial evidence: the proposed \$93 million revenue requirement, Peoples' Act 40 contributions, the Settlement's language regarding the early implementation of a distribution system improvement charge (DSIC), revenue allocation and rate design, the proposed WNA, the \$1.2 million post-retirement benefits other than pensions expense, recovery of costs associated with offering fee-free payment to PGD customers, and permitting customers to claim electricity as a competitive alternative fuel source.³ However, the terms of the Non-Unanimous Settlement, taken as a whole, are not in the public interest and would not result in just and reasonable rates. Therefore, the OCA respectfully requests that the Joint Petition for Non-Unanimous Settlement be rejected as not being in the public interest and the OCA's recommendations set forth fully in its Main Brief be adopted because they are supported by substantial evidence and meet the applicable legal standards governing the litigated case.

IV. COMMENTS

A. Revenue Requirement. (¶¶ 42-47).

1. Substantial Record Evidence Demonstrates that Peoples Does Not Need \$93 Million in Rate Relief to Offer Reasonable, Safe, and Reliable Distribution Service. (¶ 42).

Peoples could continue operations, recover all of its expenses, and have the opportunity to earn a reasonable profit with a revenue requirement increase of no more than \$13 million, as proposed by the OCA. OCA M.B. at 17; OCA St. 2SR at 2. The additional \$80 million offered by the Non-Unanimous Settlement is excessive and unnecessary, and it constitutes a substantial harm

³ The OCA does not directly oppose the terms provided in the Non-Unanimous Settlements that are not specifically addressed in these Comments, if the Commission finds them to be in the public interest and that they would result in just and reasonable rates. However, the Non-Unanimous Settlement as a whole is not in the public interest and would not result in just and reasonable rates and, therefore, should be rejected.

to Peoples' ratepayers by needlessly increasing rates beyond the level required by Peoples. The OCA's Main Brief contains a full discussion of this issue. OCA M.B. at 17-88. Substantial evidence supports the OCA's calculated rate relief, and adopting a higher rate increase is not in the public interest.

The Non-Unanimous Settlement is a "black box" settlement, meaning that the settling parties – in reaching the final revenue requirement authorized by the Non-Unanimous Settlement – have chosen not to break down how the \$93 million increase was achieved with respect to allowance of particular utility plant and expenses and at what return on equity the Company is permitted to recover. "Black box" settlements have historically been permitted by the Commission. *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013) at 28. However, the use of a black box settlement does not alleviate the Settling Parties' burden of proof to show that the proposed \$93 million increase would result in just and reasonable rates. 66 Pa. C.S. § 315, 332(a). The Settling Parties have not met their burden of proof.

Importantly, by its nature, the black box settlement of a revenue requirement does not provide transparency or impose the kind of discipline on Peoples that is necessary to ensure that they engage in prudent management, as would be expected of a company that does not have captive customers. By way of example, the OCA recommended the disallowances of more than \$17 million in expenses claimed by Peoples which should not be passed on to ratepayers. OCA M.B. at 32; OCA Exh. DM-SR-10. Such expenses included funding for Peoples' sports sponsorships, incentive plans for employees to meet the Company's corporate objectives outside of providing natural gas service, anniversary awards and employee events, lobbying expenses, and unreasonable and unsupported inflationary adjustments.⁴ OCA M.B. at 18; OCA St. 2 at 42, 43;

⁴ While Peoples claims that the OCA's recommended disallowance of inflationary adjustments is unreasonable because it limits the use of the FPFTY in contradiction to the Public Utility Code, Peoples clearly fails to consider the

OCA St. 2SR at 4, 20. There is simply no reasonable means of ensuring that Peoples will not continue this practice under the terms of the Non-Unanimous Settlement – because it is black box. Costs such as these should not be passed on to ratepayers because they do not improve safety, reliability, or quality of service, or customer service or are otherwise necessary to the provision of natural gas distribution service.

While Peoples and I&E may claim that the stipulated \$93 million revenue increase represents a compromise of their litigation positions, the OCA submits that awarding revenue at such an unsubstantiated level only compromises one thing: the interests of ratepayers in just and reasonable rates. The fact that the revenue requirement increase is *lower* than what Peoples initially requested does not inherently make it *in the public interest*. The appropriate standard for approving the Joint Petition is not “less harmful than filed.” The Joint Petitioners are charged with demonstrating that a \$93 million revenue requirement increase is in the public interest *and* would result in just and reasonable rates. *West Penn 2011* at 17. They have failed to do so.

The Statements in Support of Peoples and I&E make much of the reduction to the overall revenue requirement from People’s originally filed request.⁵ However, neither Peoples nor I&E point to substantial evidence, let alone any specific evidence, which supports that the Non-Unanimous Settlement’s proposed \$93 million revenue requirement increase would be in the public interest or would result in just and reasonable rates. This includes a lack of evidentiary support for the assumptions, reductions, capital structure, and return that would be authorized

statutory requirements of implementing the FPFTY. Peoples SIS at 6. Specifically, Section 315(e) of the Public Utility Code requires that “the utility shall provide . . . *appropriate data evidencing the accuracy of the estimates* contained in the future test year or a fully projected future test year.” 66 Pa. C.S. § 315(e) (emphasis added). The OCA has merely claimed that Peoples failed to provide such data and, instead of offering the statutorily required evidence, Peoples asks the Commission to overlook the Public Utility Code’s requirements, as well as those implemented in Commission and Pennsylvania court precedent.

⁵ The Statements in Support of OSBA, PII, and PIOGA do not discuss support for the authorized revenue requirement increase in detail. *See* OSBA SIS at 2; PII SIS at 4; PIOGA SIS at 3

under this amount. Instead, both Peoples and I&E indicate that the \$93 million is a decrease from Peoples' initial request and that it is a value above but close to the overall litigation position adopted by I&E in testimony. Peoples SIS at 5; I&E SIS at 12. Despite I&E's claim that \$93 million is within a reasonable range compared to its final litigation position, I&E does not point to any particular evidence that shows that an upward departure from its litigation position is supported and would be in the public interest. I&E SIS at 12.

The difference between the negotiated amount of \$93 million and the OCA's litigated position of \$13 million should not be overlooked in light of the fact that the evidence of record demonstrates that a revenue requirement increase of \$13 million is sufficient to satisfy Peoples' request for rate relief and allow it the opportunity to earn a fair rate of return. Importantly, the OCA has not challenged Peoples' significant and extensive updates to its plant in service of more than \$1 billion; rather, the OCA's revenue requirement would fully allow this investment. Peoples' customers are entitled to safe and reliable service and – as identified by Peoples – the Company's investment in its plant will remove leak-prone pipe, especially in urban areas where there may be a high density of customers. 66 Pa. C.S. § 1501; Peoples St. 1 at 10. The OCA supports both the investment in Peoples' system to ensure safe and reliable service and ensuring that ratepayers are protected. The revenue requirement supported by the case presented by the OCA adequately balances both of these interests by awarding an annual revenue increase of \$13 million.

I&E and Peoples recommended substantially higher revenue requirements than the OCA because of their calculated costs of equity. Both I&E's and Peoples' calculated costs of equity are far in excess of the OCA's recommendation because both I&E and Peoples use highly subjective, non-market-based inputs into their cost of equity calculations, needlessly increasing the calculated cost of equity. OCA M.B. at 85; OCA St. 3R at 4. In contrast, the OCA's recommended 8.02%

cost of equity is market-based, does not include subjective inputs – such as growth rates – or subjective adjustments – such as leverage, size, and management performance adjustments – and would provide sufficient capital to Peoples to continue investing in plant. OCA St. 3 at 8; OCA M.B. at 54-88. As a result, deviation from I&E’s or Peoples’ final litigation positions regarding the revenue requirement in this proceeding should only be considered reasonable if it is downwards, to reflect the removal of non-market-based, subjective inclusions in cost of equity proposals.

In its Statement in Support, Peoples inappropriately advances the notion that its \$93 million revenue settlement with I&E is warranted because it is higher than I&E’s \$88 million recommendation in which I&E did not adopt the current DSIC rate of 10.15%. Peoples SIS at 5. According to Peoples, “the Commission often awards ROEs that are higher than the DSIC amount in litigated cases.” *Id.* The Commission should expressly dispel Peoples and the Joint Petitioners of any notion that a utility is automatically entitled to the DSIC return on equity simply by virtue of filing a rate case or that the Commission will in any way use the DSIC return on equity as a proxy when faced with the task of examining the actual record evidence before it. The public interest requires more than an unabashed entitlement and the Commission should expressly reject such entitlement from serving as the basis to grant an unsupported revenue award.

The Joint Petition’s reliance upon the DSIC return on equity as a basis for supporting its calculated revenue requirement is more egregious when coupled with the combined weight of Peoples’ current alternative ratemaking mechanisms, the fully projected future test year (FPFTY) and DSIC. Notwithstanding the proposed WNA discussed below, Peoples’ FPFTY and DSIC each already permit the Company to reduce the risk of recovery it bears, whereas the cost of equity recommended by the OCA is consistent with the risk the Company experiences and should expect

to experience through the end of its FPFTY. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (a fair rate of return “should be commensurate with returns on investments in other enterprises having corresponding risks” while being sufficient “to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.”). A return on equity of 8.02% balances the interests of consumers and the Company by seeking to maximize the affordability of the Company’s rates and reduce the costs associated with uncollectible expense and terminations while still conforming to market-based expectations rooted in historical and expected option and dividend growth.

Put simply, Peoples’ as-filed 11.75% return on equity claim was unsupported and its decision to implicitly peg its settlement revenue requirement number to the DSIC return on equity is equally unsupportable based on the record. As noted above, the appropriate standard for approving the Joint Petition is not “less harmful than filed.” Instead, the analysis of whether the Non-Unanimous Settlement’s revenue requirement increase is in the public interest must be compared to market-based calculations of Peoples’ cost of equity which balance the interests of the Company and its ratepayers, such as that presented by the OCA, and the resulting calculated revenue requirement. There is little evidence of weight to support such a dramatic rate increase over and above the OCA’s recommendation, whereas the OCA’s recommendation is in the public interest and should be adopted as supported by substantial evidence.

In addition to recommending a cost of equity which will ensure Peoples’ access to sufficient revenue, the OCA’s recommended rate relief also considers Peoples’ customers interests, as Peoples’ rates are already unaffordable for customers *at present*. In the past seven years, residential bills in winter months have gone up by nearly \$100. OCA St. 6 at 5. During that time, Peoples has been authorized to increase rates only once, in 2019. OCA St. 2 at 53. When

customers are unable to pay their bills in full and on time, they face an uphill battle to get back on track; Peoples Natural Gas Division (PNGD) imposes late payment charges of 1.5% on the full unpaid balance of a customer's bill each month, and Peoples Gas Division (PGD) imposes a similar charge of 1.25%. OCA St. 6 at 59. Low-income customers face the most significant cost burden, as utility bills continue to occupy greater portions of their income while income growth is not nearly as high. *Id.* at 7.

Bill affordability poses paramount concerns for both Peoples' customers and the Company itself. OCA St. 6 at 14; *Pa. PUC v. Roaring Creek Water Co.*, 73 Pa. PUC 373, 400 (1990) (*Roaring Creek 1990*) (affordability "is in both the shareholders' and ratepayers' best interest. Affordable bills will maximize revenues for the Company and will enable ratepayers to continue to receive an essential service."). When setting just and reasonable rates, the Commission can consider the impact of new rates on customers' ability to afford their utility bills. *Pa. PUC v. Columbia Gas of Pa., Inc.*, R-2020-3018835 (Order Feb. 19, 2021) (*Columbia 2021*) at 46-47 (citing *Pa. PUC et. al v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80)). "The commission stands between the public and the utility and under the law the commission is charged with the duty of protecting the rights of the public," a right which includes access to essential utility service. *Pittsburgh v. Pa. PUC*, 126 A.2d 777, 784-85 (Pa. Super Ct. 1956). Rates that are unaffordable endanger the utility's customers – both those who cannot afford their bills as well as from those customers who can afford their bills but see bill increases to cover the utility's lost revenues from unaffordable rates – and the utility itself, by decreasing net revenues and possibly prompting the utility to request rate relief earlier than if just and reasonable rates had been set in the initial proceeding. OCA St. 6 at 13-14.

While Peoples' customer assistance program (CAP) may alleviate the burden of increased rates for enrolled customers, it does little for the substantial number of customers who are not enrolled but face difficulties in meeting their monthly payments.⁶ *Id.* at 12-13. Throughout this proceeding, Peoples continued to emphasize the value of its CAP in increasing affordability for its low-income customers; however, Peoples failed to acknowledge that CAP customers are not the only ones who may face difficulty in affording Peoples' requested rate increase. *See* Peoples St. 9-R at 19-20. Low-income customers are enrolling in CAP less frequently and are disconnected more often than in recent years⁷, and are defaulting on payment arrangements with alarming frequency.⁸ OCA St. 6SR at 21; *see also* OCA M.B. at 131, 134. Importantly, Peoples' *current rates* are in excess of the Commission's affordability benchmark – that 6% of a customer's monthly income at or below 150% of the federal poverty level should be paid to receive natural gas service – for the lowest quintile of income in Peoples' service territory, occupying approximately 7.8% of those customers' monthly income. OCA St. 6 at 8. If the settlement rate increase is authorized, natural gas bills will occupy an even greater proportion of these customers' bills.

As the data provided in this case suggests, Peoples' customers are struggling and will continue to struggle with current and increased rates.⁹ The Statements in Support offered with the Non-Unanimous Settlement simply do not address ratepayers' interests in affordable bills or

⁶ Currently, Peoples has identified that it has 51,072 confirmed low-income customers, of whom only 29,091, or 57%, are enrolled in CAP. OCA St. 6 at 12. BCS, however, estimates that Peoples has a total of 146,971 low-income customers, meaning that approximately 95,899, or 65%, of Peoples' customers may be low-income but not confirmed low-income, with only 20% of all potential low-income customers being enrolled in CAP. *Id.* at 13.

⁷ 2023 enrollment in CAP is lower than in 2017 through 2021, 20,352 have been disconnected since 2021, and between 2020 and 2022, 28,163 have defaulted on payment arrangements.

⁸ Peoples' payment arrangements for customers at or below 150% FPL were unsuccessful 36% - 55% of the time since 2021. OCA St. 6 at 34.

⁹ Of note, Peoples did not present an affordability analysis or other data which suggests that Peoples' customers can afford current or increased rates – including under the Non-Unanimous Settlement's revenue requirement increase – except to the extent that customers are enrolled in CAP, under a percentage of income plan.

minimized rate increases when setting the authorized revenue requirement increase. *See* Peoples SIS at 5-6; I&E SIS at 8-12; OSBA SIS at 2; PII SIS at 4; PIOGA SIS at 3. The parties' failure to consider ratepayer interests when establishing the amount of rate relief is a clear and compelling example of how the stipulated revenue requirement increase is not in the public interest. The parties to the Non-Unanimous Settlement failed at a core duty to ensure that, not only will shareholders benefit from the Non-Unanimous Settlement, but so too will ratepayers. In weighing the evidence in support of and against the Non-Unanimous Settlement, the Commission is required to appropriately give due consideration to the interests of consumers. *See* 71 P.S. § 309-5 (providing that when a utility's general rate increase request will substantially affect the interests of consumers, the Commission must "consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers.").

Furthermore, the Company has not demonstrated that the rate increase authorized in the Non-Unanimous Settlement is necessary to provide safe and adequate service. No party, in its Statement in Support, indicated that a revenue requirement *lower* than \$93 million would present a threat to Peoples' ability to continue with capital investment. Instead, I&E and Peoples merely claimed that the \$93 million revenue requirement was lower than Peoples' initial request and above, but close to, I&E's final recommendation, not that it was a floor on necessary rate relief. Instead, the OCA submits that the Non-Unanimous Settlement's revenue requirement increase is above the ceiling on just and reasonable rate relief, a conclusion which is supported by evidence of substantial weight, considering both Peoples' customers' and shareholders' interest in having affordable rates and that no evidence indicates that Peoples would be put into financial jeopardy under the OCA's recommendation.

It is axiomatic that only after the Commission finds a rate proposal to balance the interests of both the public and the Company that the proposed rates can be found to be just and reasonable. *Permian Basin Area Rate Cases*, 390 U.S. 747, 794-95 (1968). Consumers rely on the Commission to provide “a complete, permanent, and effective bond of protection from excessive rates and charges” of public utilities. *Id.* Rates within this “zone of reasonableness” protect consumers from excessive rates while ensuring the financial integrity of the utility, though they do not ensure that the utility will receive net revenues. *Id.*; *Hope*, 320 U.S. at 603. Peoples’ rates proposed in its initial filing were beyond the zone of reasonableness. The fact that the Company has moderated its request does not mean that *any* decreased revenue requirement request would result in rates within the zone of reasonableness.

The Non-Unanimous Settlement provides rate relief still beyond the zone of reasonableness. Many customers are struggling to afford Peoples’ service at present rates. *See* OCA Exh. DE-2 (summarizing the public input hearing testimony of five consumers who indicated that Peoples’ rates are currently unaffordable, and a rate increase should not be authorized to prevent further unaffordability). Authorizing an increase of \$93 million will significantly and unnecessarily exacerbate the unaffordability of Peoples’ rates. The Non-Unanimous Settlement’s revenue requirement term is not in the public interest and should be rejected, as it provides returns to the Company far greater than the benefits received by Peoples’ customers. *See Pa. PUC v. Pa. Power Co.*, 55 Pa. PUC 552, 579 (1982) (“The interests of the Company and its investors are to be considered along with those of the customers, *all to the end of assuring adequate service to the public at the least cost*, while at the same time maintaining the financial integrity of the utility.”) (emphasis added). The weight of the evidence presented supports that the Company could increase revenues by no more than \$13.0 million, as recommended by the OCA, and maintain its financial

integrity. The OCA fully addresses the support for its \$13 million revenue requirement authorized increase in its Main Brief and response to Peoples' arguments in its Reply Brief. The OCA submits that the Non-Unanimous Settlement's authorized rate increase is not supported by substantial evidence and is not in the public interest and does not result in just and reasonable rates. The Non-Unanimous settlement should be rejected. Instead, the OCA's fully substantiated recommendations should be adopted as just and reasonable.

2. Peoples Has Not Provided Adequate Assurance that its Consolidated Tax Expense Adjustment Satisfies the Requirements of Section 1301.1. (¶ 44).

Under Section 1301.1(b) of the Public Utility Code, a public utility is required to dedicate 50% of its consolidated tax expense adjustment to infrastructure improvement projects and 50% to general corporate purposes. 66 Pa. C.S. § 1301.1(b). The OCA presented evidence that Peoples had not adequately specified how it was going to expend the 50% of its consolidated tax expense adjustment dedicated to general corporate purposes. OCA St. 2 at 63. Based on this evidence, the OCA recommended a reduction to ratepayer-funded working capital in the amount of the 50% left unspecified by the Company, \$27,460. OCA M.B. at 28.

The Non-Unanimous Settlement provides that the dispute regarding the allocation of this adjustment has been resolved between the Joint Petitioners; however, it does not specify how the consolidated tax expense adjustment will be dedicated to general corporate purposes. Settlement at ¶ 44. When prompted by the OCA's adjustment, Peoples did not supply an explanation for how it intended to spend the \$27,460 required to be dedicated to general corporate purposes; instead, the Company indicated that its long-term infrastructure improvement expenditures were sufficient to satisfy the requirements of Section 1301.1. Peoples St. 6-R at 5:16-20 ("The Company's position is that because far more than 100% of the funds will be used on infrastructure replacement, no adjustment to non-investor supplied funding for utility working capital is appropriate and therefore

there should be no Consolidated Tax adjustment applied in this case.”). In rejoinder, Peoples claimed that, because its operations and management expenses claim is in excess of \$27,460, the requirements of Section 1301.1 are satisfied. Peoples St. 6-RJ at 2. However, in neither rebuttal nor rejoinder did Peoples provide that the \$27,460 consolidated tax expense adjustment would be dedicated to general corporate purposes.

Peoples correctly cited to *McCloskey v. Pa. PUC*, 225 A.3d 192 (Pa. Cmwlth. 2020) for legal authority as to how consolidated tax expenditures must be dedicated to both infrastructure improvement and general corporate purposes to satisfy the requirements of Section 1301.1. Peoples M.B. at 15. In that case, the Commission and Commonwealth Court found that the utility had stated it would use its consolidated tax expense adjustment for capital additions and general corporate purposes. *McCloskey*, 225 A.3d at 201-02, 211. Peoples has failed to meet even this very low bar as it made no such assurances in this proceeding, and the Non-Unanimous Settlement does not provide that the \$27,460 consolidated tax expense adjustment would be dedicated to general corporate purposes. As a result, the weight of the evidence supports the OCA’s claim that Peoples’ consolidated tax expense adjustment dedicated to general corporate purposes has not been delineated with sufficient specificity to satisfy the minimal requirements of Section 1301.1. Therefore, the OCA maintains its recommendation that Peoples’ working capital claim be reduced by \$27,460 to satisfy the requirements of Section 1301.1. OCA M.B. at 28. As the Non-Unanimous Settlement failed to remediate the OCA’s concerns, the term pertaining to Section 1301.1 compliance is not in the public interest and would not result in just and reasonable rates, and the weight of the evidence supports its rejection.

3. Permitting Early DSIC Recovery Is Not in the Public Interest. (§ 45).

Under the terms of the Non-Unanimous Settlement, Peoples is eligible to begin collecting a DSIC “once the total projected plant in service balance exceeds the level projected by the

Company in this proceeding at October 31, 2025.” Settlement ¶ 45. At the outset, it is unclear whether the intention of this term is to permit DSIC recovery prior to October 31, 2025 so long as they reach their projected total plan in service balance. If the Non-Unanimous Settlement permits Peoples to recover DSIC revenues prior to October 31, 2025, the term is not in the public interest and would not result in just and reasonable rates.

Specifically, the purpose of the DSIC is to permit utility recovery of gross plant which is placed in service and is in excess of the amount of prospective recovery reflected in the utility’s base rates as in service or projected to be in service. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Supp. Implementation Order entered Sept. 21, 2016) at 13-14. By permitting the utility to recover on DSIC-eligible plant prior to the end of the FPFTY because it has surpassed its prospective recovery amount set in its prior rate relief request, the Commission would be disincentivizing the use of accurate projections for the plant the utility intends to place in service when setting rates.

If accurate projections are not required, utilities would be permitted to underestimate their DSIC-eligible plant balance in their rate request filing so as to reflect a lower projected rate increase than customers will actually experience by the end of the FPFTY. Rate impact notices are essential to encourage consumer participation in the ratemaking process and to assess the public interest. *See* 52 Pa. Code §§ 53.31, 53.45. The determination of whether DSICs should be implemented have substantially fewer procedural protections for consumers than general rate increase requests and customers are not advised of DSIC rate impact until the bill they receive *which includes the DSIC*. 66 Pa. C.S. § 1354. As a result, the plant projections contained in a request for rate relief are essential to protecting consumers from utilities’ recovery of such plant through the DSIC, instead of through a rate proceeding.

Utilities should be incented to utilize as accurate of projections as possible when filing their requests for rate relief relying on FPFTYs to satisfy their burden of proof. By permitting the recovery of DSIC revenues prior to the end of the FPFTY, the Commission would be reducing or removing Peoples' incentive to accurately and fully project the amount of DSIC-eligible plant it will install within the first year after rates go into effect. Removing this incentive is not in the public interest and would not result in just and reasonable rates and this term of the Non-Unanimous Settlement is not supported by substantial evidence. Therefore, the OCA requests that the Commission reject this term of the Joint Petition, or if it accepts the term, specifically find that Peoples is not permitted to begin collecting its DSIC until the *later of* when Peoples reaches its total projected plant in service balance *or* October 31, 2025. In other words, both must be met before a DSIC is able to be collected.

B. Revenue Allocation and Rate Design. (§§ 61-65).

1. Revenue Allocation. (§§ 61, 62).

The revenue allocation proposed in the Non-Unanimous Settlement is not in the public interest as it would not result in just and reasonable rates. The proposed revenue allocation was achieved through a Frankenstein-like mix of several different cost of service study methodologies, despite the fact that one of the Joint Petitioners – I&E – utilized the Commission's preferred methodology of the peak and average method. Settlement, App'x C; *see, e.g., Columbia 2021* at 215-18 (citing Commission precedent regarding adoption of the peak and average method while further elaborating on the reasonableness of the peak and average methodology). The proposed revenue allocation is premised on the incorporation of a customer component into the allocation of the cost of mains. Peoples M.B. at 56. The Commission has rejected, time and time again, the notion that any customer component should be included in allocating the cost of mains. *See, e.g., Columbia 2021* at 215-18; *Pa. PUC v. Phila. Gas Works*, Docket No. R-2023-3037933 (Order

entered Nov. 9, 2023) (*PGW 2023*) at 137; *Pa. PUC v. Nat'l Fuel Gas Dist. Co.*, 83 Pa. P.U.C. 262, 360 (1994).

Captive customers are harmed by the revenue allocation proposed by Peoples in this proceeding, especially residential customers. This can be seen in the following table:

Comparison of Non-Unanimous Revenue Allocation to OCA Revenue Allocation					
Customer Class	Non-Unanimous Settlement Revenue Allocation				
	Residential	SGS	MGS	LGS	Total
Allocated Revenues	\$428,062,434.00	\$55,998,662.00	\$72,835,678.00	\$61,984,577.00	\$618,881,351.00
Percentage of Total Revenues	69.2%	9.0%	11.8%	10.0%	100.0%
(1) Non-Unanimous Settlement App'x C, p. 1					
OCA Revenue Allocation at Non-Unanimous Settlement Revenue Requirement					
Customer Class	Residential	SGS	MGS	LGS	Total
	Allocated Revenues	\$411,556,098.42	\$60,650,372.40	\$78,597,931.58	\$68,076,948.61
Percentage of Total Revenues	66.5%	9.8%	12.7%	11.0%	100.0%
(1) OCA Exh. CJ-2					

Under the Non-Unanimous Settlement’s proposal, residential customers are being allocated an additional 2.7% (\$16.5 million) of total revenues so SGS customers could be allocated 0.8% less, MGS customers 0.9% less, and LGS customers 1.0% less; in other words, residential customers continue to bear the burden of cross-subsidization under the Non-Unanimous Settlement. *See OCA St. 4 at 27* (providing that residential customers pay rates in excess of their

cost of service, while SGS and MGS customers pay substantially less than their cost of service); OCA M.B. at 95. This revenue allocation evidences the detriment of including a customer component when allocating the cost of mains, as including a customer component allocates greater costs to higher-density, lower-usage customers than to lower-density, higher-usage customers. OCA St. 4R at 4. For example, the average length of main required to service Peoples' five largest industrial customers – or low-density high-usage customers – would serve, on average, 28 residential customers – or high-density, low-usage customers – in Peoples' service territory. *Id.* at 5.

The Commission has consistently disallowed the allocation of the costs of main through the use of a customer component because it is prone to abuse, permitting large, industrial customers to take advantage of captive, residential customers who contribute the majority of an NGDC's rate revenues. *Columbia 2021* at 215-18; *PGW 2023* at 137; *Pa. PUC v. Nat'l Fuel Gas Dist. Co.*, 83 Pa. P.U.C. 262, 360 (1994). Necessarily, allocation of the cost of mains using a customer component results in cross-subsidization, whereby residential customers, and other low-density customer classes, subsidize all other classes; such cross-subsidization is unreasonable and should not be permitted. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (providing cost of service is the guiding principle in rate design and the Commission should avoid cross-subsidization wherever possible).

Furthermore, according to Peoples, the revenue allocation employed in the Non-Unanimous Settlement “provides considerable weight to the [peak and average] methodology.” Peoples SIS at 6 (providing that the Company's support for its revenue allocation is located in its Main Brief); Peoples M.B. at 57. However, this argument does little to indicate that the Non-Unanimous Settlement's revenue allocation is in the public interest, as the Commission has

consistently relied *solely* on the peak and average method of allocating revenues and has given it considerable weight to the exclusion of other methodologies. *See, e.g., Columbia 2021* at 215-28. While PII, PIOGA, OSBA, and Peoples may disagree with Commission precedent in this regard, the Commission's consistent holding that the peak and average methodology is a superior method to determine cost of service necessitates that deviation from the preferred methodology is less likely to be in the public interest or result in just and reasonable rates. In sum, the Non-Unanimous Settlement's allocation includes methodologies which deviate from Commission precedent, unfairly and unreasonably assign costs to residential customers, and should be given little weight as a result.

Instead, the Commission should utilize the peak and average methodology to determine the cost of service and allocate costs accordingly, as recommended by the OCA in its Main Brief. OCA M.B. at 94-98. The OCA's recommendation is supported by the weight of the evidence in this proceeding, which is substantial, and is in the public interest. The Joint Petitioners have not met their burden of proof that the disproportionate allocation of revenues to the residential class would be in the public interest or would result in just and reasonable rates. Therefore, the Non-Unanimous Settlement's revenue allocation should not be adopted and the OCA's recommended revenue allocation should be adopted, instead, as it is supported by substantial evidence and is in the public interest.

2. Rate Design. (¶¶ 63-65).

As with Peoples' initial filing, the proposed customer charge for residential customers collects revenues far in excess of the actual cost to service residential customers under the terms of the Non-Unanimous Settlement. The Non-Unanimous Settlement provides for a residential customer charge for all customers in the PNGD and PGD of \$16.80. Settlement App'x C at 1.

The cost of servicing residential customers is \$9.00 per customer. OCA St. 4 at 34. As a result, the OCA recommends that the Commission adopt PNGD's current customer charge of \$14.50 for all residential customers in Peoples' service territory, as the customer charge covers the direct cost of service while providing an additional \$5.50 to cover shared indirect costs. OCA St. 4 at 38; *Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-00038805, 2004 Pa. PUC LEXIS 39 at *98 (Order entered July 23, 2004) (*Aqua 2004*) (indirect costs may only be considered for inclusion in a customer charge on a case-by-case basis).

The Non-Unanimous Settlement's customer charge necessarily includes costs which more appropriately vary with demand, including the cost of mains¹⁰, than the number of customers. *See Columbia 2021* at 264 (adopting the Recommend Decision's rejection of a proposed customer charge increase where the customer charge included the cost of mains under the Company's proposed, and rejected, CCOSS). The Non-Unanimous Settlement provides no evidentiary or legal basis for its rate design, and none is included in the Statements in Support or in Peoples' Main Brief, other than I&E's recognition that the customer charge represents a scale-back of its initial proposal of \$20.00. I&E SIS at 15. However, I&E's residential customer charge recommendation improperly included administrative and general expenses, which is inappropriate, as such costs are not chargeable directly to any particular customer class, but are indirectly incurred by *all* customer classes, not just residential customers. OCA St. 4R at 17-18. In essence, the scrutiny that the Commission requires be offered with respect to inclusion of indirect customer costs in customer charges – in this case, all those costs in excess of \$9.00 – is not satisfied under the terms of the Non-Unanimous Settlement. *See* 66 Pa. C.S. § 315(a), 332(a); *City of Bethlehem* at 13 (finding the

¹⁰ The costs of mains were allocated disproportionately to residential customers under Paragraphs 61 and 62, pertaining to revenue allocation, which includes a customer component in allocating the cost of mains.

proponents of a non-unanimous settlement petition jointly bear the burden of proof to show the petition would result in just and reasonable rates and is in the public interest).

Further, the rate design proposed in the Non-Unanimous Settlement violates the Commission’s guiding principles of incentivizing conservation and affordability. Importantly, the purpose of the customer charge is to provide accurate price signals and to guide a customer class towards paying their direct or marginal cost of service over time, reducing rate shock and unaffordability until cost-of-service ratemaking is achieved. *See, e.g., PGW 2023* at 164. The comparative bill impact resulting from the proposed customer charges are laid out in the table below:

Comparison of Non-Unanimous Settlement and OCA Rates at Non-Unanimous Settlement Revenues for PNGD customers				
	Monthly Customer Charge	Annual Customer Charge	Total Average Annual Bill	Customer Charge as a Percentage of Total Average Annual Bill
Present Rates	\$14.50	\$174.00	\$874.84	19.9%
OCA Rates	\$14.50	\$174.00	\$957.25	18.2%
Settlement Rates	\$16.80	\$201.63	\$982.23	20.5%
Difference between OCA and Settlement	\$2.30	\$27.63	\$25.02	2.3%
(1) Non-Unanimous Settlement, App’x D, p. 1.				

A significant portion of a customer’s bill under the rate design proposed in the Non-Unanimous Settlement will be occupied by the customer charge, at 20.5%. *Compare with PGW 2023* at 165 (14.2% of an average customer’s annual bill represents the customer charge) *and PECO Gas 2021* at 276 (17.4% of a customer’s monthly bill at 8 MCF represents the fixed customer charge). Even accepting the OCA’s recommendation that the residential customer charge of PNGD be adopted for both PNGD and PGD places the customer charge at a portion of a

customer's bill greater than in two recently-approved NGDC proceedings in Pennsylvania. At the Non-Unanimous Settlement's portion of an annual bill, the customer charge occupies substantially more of customers' bills. *See Columbia 2021* at 264 (adopting the Recommend Decision's rejection of a proposed customer charge increase on the basis of gradualism concerns).

Having such a high proportion of a customer's annual bill be rooted in the customer charge also distorts price signals, reduces incentives for energy conservation, and has a disproportionate impact on low-income customers. OCA M.B. at 103-07. Including costs properly allocated by the demand function in a cost-of-service study – which the Non-Unanimous Settlement necessarily does, as its residential customer charge is in excess of the \$9.00 direct customer cost of service for the residential class – to the customer charge distorts price signals. OCA St. 4 at 37-38. By distorting price signals, the Non-Unanimous Settlement disincentivizes conservation by insufficiently rewarding customers on their monthly bills for their efforts to conserve natural gas.

Similarly, the Non-Unanimous Settlement increases unaffordability of Peoples' rates. Low-income customers are more vulnerable to increases in the portions of their rates they cannot control, compared to non-low-income customers. OCA St. 6 at 50. Such customers often resort to extreme and unsafe measures in an attempt to reduce their monthly bills; by reducing the proportion of the monthly bills they can control, desperate customers are unable to control greater and greater portions of their monthly bills, increasing unaffordability and the likelihood of arrearages accruing. *Id.* at 51-53 (providing that customers struggling to afford their monthly bills are more likely to rely on their oven or stove for heat, live at unsafe or unhealthy temperatures, or close off portions of their home). As Peoples' rates are already unaffordable, and such unaffordability is only likely to increase under the rate increase provided-for in the Non-Unanimous Settlement, affordability is of paramount concern when considering whether the rate

design of the Non-Unanimous Settlement is in the public interest. *Pa. PUC v. Twin Lakes Util., Inc.*, 2020 Pa. PUC LEXIS 340, *46-54 (Order Mar. 26, 2020).

When examining the evidence supporting the proposed rate design, in addition to its impact on affordability and incentives to conserve energy, the Non-Unanimous Settlement's rate design is poorly aligned with the fundamental ratemaking principles of supporting accurate price signals, gradualism, incentivizing conservation, and reducing unaffordability. Further, the Non-Unanimous Settlement is not based on sufficient evidence to satisfy the Commission's scrutiny in including indirect customer costs in the proposed residential customer charge. The OCA requests that the averments provided in support of the proposed rate design be assigned little weight, and the OCA's recommendation be assigned substantial weight, as it provides for greater affordability and incentives to conserve while retaining Peoples' ability to collect direct – and some indirect – customer costs. Because there is little weight supporting the rate design included in the Non-Unanimous Settlement, it is not in public interest and would not result in just and reasonable rates, and should be rejected. Instead, the OCA's recommendations should be adopted, as they would result in just and reasonable rates and are in the public interest. OCA M.B. at 98-107.

C. Weather Normalization Adjustment. (¶¶ 69-74).

The burden of proof that the Weather Normalization Adjustment (WNA) contained in the Non-Unanimous Settlement is in the public interest or would result in just and reasonable rates has not been satisfied. 66 Pa. C.S. § 315(a), 332(a). As stated above, the Joint Petitioners must show that the WNA will *both* be in the public interest *and* will result in just and reasonable rates. *City of Bethlehem* at 13, 33. They have shown neither.

The Joint Petitioners carry the burden of proof to demonstrate that the *proposed* WNA is both in the public interest and would result in just and reasonable rates. *West Penn 2011* at 17; *Popowsky 1996* at 961 (“every rate charged by a public utility, whether through a tariff or

supplement filing with the PUC, must be ‘just and reasonable.’”). The Joint Petitioners must still satisfy their burden that the Non-Unanimous Settlement’s WNA proposal would result in just and reasonable rates, regardless of whether prior WNAs have been approved by the Commission. *See Bell Atl. – Pa., Inc. v. Pa. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. Ct. Dec. 18, 1995) (administrative agencies are not bound by the rule of *stare decisis*, but are, instead, tasked with rendering consistent opinions that affirm, overrule, or distinguish prior opinions).

Notably, Peoples itself has presented evidence that it does not have the “same customer profile, weather, and more” as other NGDCs in Pennsylvania. Peoples St. 3R at 13:16-17. Specifically, these statements were made in response to the concerns raised by OCA’s witnesses regarding Philadelphia Gas Works’ (PGW) collecting \$12 million in revenue in the month of May 2022 from the WNA alone, and the risk that such an event may occur again. *Id.* at 13. As a result, the Joint Petitioners’ contention that implementation of the Non-Unanimous Settlement’s WNA proposal is in line with Commission precedent because other NGDCs have implemented WNAs is not supported by Peoples’ own evidence or applicable law. Peoples SIS at 8; I&E SIS at 18; OSBA SIS at 5. The WNA should not be accepted as a foregone conclusion. The fact that WNAs have been authorized in prior proceedings for other gas utilities – subject to the terms of *unanimous* settlement agreements and based on the underlying records in those proceedings – is not adequate evidentiary support for the WNA’s implementation in Peoples’ service territory under the terms of the Non-Unanimous Settlement.

Instead, data provided by Peoples indicates that the WNA is a way for the Company to collect additional revenues from customers by shifting the risk of warming weather onto captive customers. OCA St. 4SR at 23. Peoples’ historical study of the WNA indicates that 55% of customer bills were increased by the WNA and the Company would have collected \$9.9 million

in net revenue through the WNA. *Id.* While \$9.9 million may be a small portion of the overall revenue Peoples would have collected in the course of the study, the result is clear: the WNA is a rate which causes rate harm to captive customers in the short- and long-term.

The OCA submits that it is unjust and unreasonable to shift a “cost of doing business” – as weather-related risk is inherent to the natural gas distribution industry, a fact of which Peoples and its investors are certainly cognizant – on to ratepayers because other Pennsylvania NGDCs have a WNA. OCA St. 1 at 28. The Company has myriad possibilities to mitigate its risks – without passing risk on to captive customers – by, for example, minimizing costs, promoting its revenues, retaining revenues, or otherwise managing the earnings impact of weather. Tr. 411. Peoples, in one form or another, has been providing natural gas service in Pennsylvania since 1885. Peoples Exh. 15, Sch. 1, p. 1. Surely, since 1885, the Company has managed to develop ways to maintain its financial integrity during periods of warmer-than-anticipated weather, as warmer-than-anticipated weather is not a new business risk which has surfaced since the Company’s last request for rate relief in 2019.

The “consumer protections” supported by I&E and OSBA in the Non-Unanimous Settlement are not sufficient to counteract the fundamental nature of the WNA, which shifts risks inherent to natural gas distribution companies to consumers, regardless of the existence of deadbands or other collars. I&E’s position that a deadband should be implemented in Peoples’ WNA because no other WNAs in Pennsylvania have been approved without a deadband is parallel to its overall entitlement argument in support of implementing a WNA. I&E SIS at 18. While I&E is correct that the Commission has previously rejected an NGDC’s attempt to remove its deadband, the cited precedent is insufficient to indicate that the Commission has previously approved a WNA

as in the public interest and resulting in just and reasonable rates when it was not the product of a *unanimous*, negotiated settlement. *See* OCA M.B. at 199-22.

Similarly, OSBA's support for the WNA flowing from a collar capping WNA charges in the month of May to 100% of a customer's basic service charges has two significant shortcomings. OSBA SIS at 5.¹¹ First, data presented by Peoples demonstrates that the average increase of at least 100%, which would be prevented under the proposed collar, is over \$82. Peoples St. 15R at 20. Customers, including small businesses, paying their natural gas bills month to month or paycheck to paycheck (or, in the case of small businesses who have monthly cash flow differences) could struggle to afford their monthly payments with a cap on WNA bill increases of as high as 100%. Tr. 353. The OCA takes little solace in a cap that permits Peoples to increase customer bills up to 100% because the weather was warmer than Peoples projected that it would be. Second, the 100% cap only applies during the month of May, despite the fact that there are significant risks to substantial bill increases during other shoulder months, such as October, April, and November, during which the number of heating degree days can vary greatly year-over-year.

Therefore, the consumer protections included in the Non-Unanimous Settlement are not sufficient to render the WNA in the public interest, or to ensure that it will result in just and reasonable rates. The OCA submits that the best way to protect consumers from the WNA is to not implement the WNA. With or without such protections, the WNA inequitably shifts risks from the Company to consumers and will not result in just and reasonable rates and cannot be in the public interest.

¹¹ The Joint Petition fails to support this collar in any way, as it is simply referenced as a consumer protection without any underlying analyses or explanation in the Joint Petition nor in the Statements of Support submitted by Peoples, the OSBA or any other party.

Finally, on net, Peoples' WNA proposal, as modified by the Non-Unanimous Settlement, fails to meet the Commission's guiding policies regarding alternative ratemaking and will not result in just and reasonable rates. 66 Pa. C.S. § 1330; 52 Pa. Code § 69.3302. The WNA undermines cost of service considerations by providing the Company with greater revenues when customers use the distribution system less, if the weather is warmer-than-normal. OCA M.B. at 110-12. The WNA disincentivizes conservation because the Company will collect a portion of customers' saved costs from used usage through the WNA in months the WNA collects a charge. OCA M.B. at 112-14. The WNA is difficult to understand for customers because it is a complex calculation, and customers have limited access to the determinants of their WNA charge/credit. OCA M.B. at 114-16. The WNA decreases bill affordability by, more likely than not, collecting more in charges than customers receive in credits and creating instability and unpredictability on a month-to-month basis, which will have a disproportionate impact on low-income customers. OCA M.B. at 118-119.

The OCA submits that the weight of the evidence presented in this proceeding weighs against implementation of the WNA. As the Joint Petitioners failed to satisfy the burden of proof that the WNA is *both* in the public interest *and* would result in just and reasonable rates, the WNA provisions of the Non-Unanimous Settlement should be rejected and the WNA should not be allowed.

D. Post Employment and Post Retirement Benefits. (¶¶ 75, 76).

The Non-Unanimous Settlement adopts Peoples' post-employment and post-retirement benefits (PBOP) expense amount updated in rebuttal. OCA St. 2SR at 3. The updated expense claim was made following Peoples' realization that it could have asked for additional rate revenue but failed to do so in its initial filing, despite having access to all of the same information at the time of the update that it had when making the initial claim. *Id.* Peoples did not provide an adequate

explanation as to how it arrived at the update expense amount or why it did not include its updated claim in the initial filing, when no information was different at the time of the update compared to the time of filing. *Id.* at 28. However, even when a utility's mid-litigation expense update flows from information not in its possession at the time of initial filing, the utility must still provide an explanation for updated expense claims and provide evidence in support of its updated claims. *Pa. PUC v. Aqua Pa. Water Co.*, 2022 Pa. PUC LEXIS 161, *59 (Order entered May 16, 2022). Peoples did not provide such an explanation and, accordingly, there is no evidence of weight to support the PBOP expense amount included in the Non-Unanimous Settlement. Instead, the weight of the evidence supports an FPFTY PBOP net expense allowance of \$928,172, as recommended by the OCA, which is still an increase over Peoples' request at the time of filing. OCA St. 2 at 63.

As the Non-Unanimous Settlement's term regarding PBOP expense would permit the Company to recover unjustified expenses, the term is not in the public interest and would not result in just and reasonable rates. Therefore, the Joint Petitioners have not provided evidence of sufficient weight to meet their burden of proof regarding this term, and it should not be accepted.

E. Credit Card Payments by Customers. (¶ 78).

While the OCA agrees with the Joint Petitioners that the cost of eliminating credit card payment fees for PGD customers is properly recovered in rates, the Joint Petitioners have failed to meet their burden of proof that the totality of the costs suggested by Peoples in its case-in-chief will materialize. OCA M.B. at 51. As such, the Non-Unanimous Settlement's term regarding the recovery of such costs should be limited to only those costs proven to be known and measurable. The OCA recommends disallowance of \$219,721 of the claimed expense, for a total permitted expense recovering of \$1,796,099. OCA St. 2 at 50-52. It is not in the public interest to permit speculative recovery of unjustified expenses that may not materialize – as such recovery would

result in unjust and unreasonable rates – and, therefore, the Non-Unanimous Settlement’s allowance of such costs should be rejected.

F. Competitive Rate Discounts. (¶¶ 88, 89).

The Non-Unanimous Settlement did not alleviate the OCA’s concerns that, if Peoples is authorized to offer negotiated, discounted (or “flex”) rates to customers claiming electricity as an alternative fuel source, Peoples’ captive customers will be placed at-risk of bearing revenue shortfalls. *See* OCA M.B. at 147-151. The Non-Unanimous Settlement would permit the Company to adopt its proposal to offer below-tariff rates to large industrial and commercial customers claiming that electricity is a competitive alternative fuel source to natural gas, instead of limiting such discounted rates to situations where electricity is a competitive alternative and the customer’s electricity distribution provider offers that customer discounted rates. Settlement App’x A, Suppl. No. 2 to GAS – Pa. PUC No. 48, First Revised p. 33.

Specifically, the tariff revisions contained in the Non-Unanimous Settlement regarding competitive discounts shift revenue risk on to customers who are not able to receive competitive discounts. OCA St. 4SR at 30-31. Currently, electric distribution companies (EDCs) offering service within Peoples’ service territory can elect whether to offer flex rates to customers currently receiving flex rates from Peoples. *Id.* at 47. Electing to offer a flex rate creates price competition between the EDC and Peoples; therefore, the EDC is properly incented to close the door to price competition with Peoples by not offering flex rates. *Id.* at 48. If Peoples is permitted to adopt the Non-Unanimous Settlement’s flex rate revisions, then EDCs in Peoples’ service territory will be vulnerable to load loss from the new recipients and will be compelled to offer competitive rates which it did not offer previously to avoid price competition. *Id.* Access to electricity is ubiquitous: it is likely that the number of competitive customers could grow significantly, increasing intra-class revenue shifting to cover the cost difference between tariffed rates and flex rates. *Id.* at 49.

The only Joint Petitioner to discuss offering electricity as a competitive alternative in all circumstances is Peoples; I&E, OSBA, PII, and PIOGA do not offer support to this tariff provision, specifically, in their Statements in Support. The ability for Peoples to offer flex rates to all customers claiming electricity as a competitive alternative under the Non-Unanimous Settlement appears only as a position of illusory compromise. Otherwise, Joint Petitioners other than Peoples would have included support for the included tariff change. Instead, the lack of factual or legal averments pertaining to the public benefits which would result from Peoples' expansion of its flex rate authority speaks volumes: only Peoples and the newly-enrolled flex rate customers will benefit. While Peoples claims that the inclusion of flex rate customers on its system – customers it already provides service to at tariffed rates – results in lower rates for ratepayers, the other Joint Petitioners charged with representing the interests of such ratepayers are silent on any resulting benefits. Peoples M.B. at 97. As a result, there is little evidence to support that expanding Peoples' flex rate authority will actually benefit Peoples' ratepayers, instead of shifting the risk of recovery of the difference between competitive and tariffed rates on to captive customers.

The evidence presented against the Non-Unanimous Settlement's competitive discount tariff revision is of substantially greater weight than the factual averments made by Peoples in support of the revision. *See* Peoples M.B. at 97 (averring that “the current political and environmental landscapes are pushing consumers into electrification” is sufficient justification for shifting revenue risk to captive customers.). Therefore, the weight of the evidence demonstrates that offering electricity as a competitive alternative fuel source without restriction would result in potentially discriminatory, unjust, and unreasonable rates. Nothing in the Joint Petition explains why this term is in the public interest, a defect which is compounded by the lack of any demonstration that it is in the public interest found in the Statements in Support. The Joint

Petitioners have not met their burden of proof to show that these settlement terms are in the public interest or would result in just and reasonable rates and, therefore, these settlement terms should not be authorized.

V. CONCLUSION

The terms of Non-Unanimous Settlement may be a compromise for the parties who joined the agreement but are inadequate on their face and are not supported by substantial evidence. The Joint Petitioners' failure to support the Non-Unanimous Settlement from an evidentiary standpoint is further compounded because they also have not demonstrated that the terms are in the public interest. As explained above, several of the terms have no supporting basis whatsoever from parties other than Peoples. The arguments provided in the attached Statements in Support are broad, vague, aspirational and lacking a basis in the evidentiary record – and, to the extent Peoples relied upon its Main Brief to articulate such arguments, Peoples' Main Brief is similarly lacking – to support the terms of the Non-Unanimous Settlement. The Joint Petitioners rely extensively on the mere existence of a settlement to support the Non-Unanimous Settlement, without rising to meet the evidentiary burden placed on the Joint Petitioners.¹² The parties' agreement to stop litigating because it suited their needs does not *ipso facto* render the dispute resolved, as the agreement is not one between private parties. Instead, the Commission must find that the agreement is in the public interest and supported by reliable record evidence.

Absent the support of substantial evidence, the Non-Unanimous Settlement cannot be in the public interest or result in just and reasonable rates. The OCA's proposals for the issues

¹² Notably, the fact of a settlement may be in the public interest to the extent it reduces the litigation cost to ratepayers of continued litigation. Ratepayers save little litigation cost in this proceeding due to the Non-Unanimous Settlement, as litigation continued through the Reply Brief date, and critical issues remain fully contested. The possibility of appellate action on critical issues remains. Accordingly, the OCA submits that ratepayers benefit little from the fact of the Non-Unanimous Settlement, and reliance on the Non-Unanimous Settlement's existence provides little weight to the Joint Petitioners' support for the Non-Unanimous Settlement. More is, and must be, required to conclude that a Non-Unanimous Settlement is in the public interest than the mere fact of its existence.

contested above and contained in full in its Main and Reply Briefs, are supported by substantial evidence and should be accepted in lieu of adoption of the Non-Unanimous Settlement. As such, the OCA respectfully requests that the Joint Petition for Non-Unanimous Settlement be denied and for the reasons outlined here and its Main and Reply Briefs, that the Commission adopt the litigation position of the OCA.

Respectfully submitted,

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