

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 Reply Brief in this matter. Please note that the **CONFIDENTIAL** version of OCA's Reply Brief will only be sent to the parties that have executed the non-disclosure agreement as indicated on the Certificate of Service. The **CONFIDENTIAL** version of the OCA's Reply Brief will be e-filed using the Public Utility Commission's Share Point file process.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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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 Reply Brief, 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 :

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

A. The Office of Consumer Advocate Is Statutorily Required to Protect Consumers from Peoples' Unjust and Unreasonable Rate Proposals.

The Office of Consumer Advocate (OCA) is a statutory advocate with the authority and duty to represent the interest of consumers as a party before the Pennsylvania Public Utility Commission (Commission) in public utility rate requests. 71 P.S. § 309-4. The OCA's interest in this case is to ensure that the public – who ultimately pays the revenue requirement to the utility – is paying enough, but no more than is necessary, to ensure that service remains adequate, reliable, and safe while allowing the utility to have the opportunity to recover its costs and earn a fair rate of return on its investments. As set forth in this Reply Brief, regardless of whether they are considered in the context of Peoples' litigation position or in the context of the Non-Unanimous Settlement it now advances, Peoples' rate request and attendant proposals are not supported by substantial evidence. Instead, the record in this case proves that granting Peoples' requests would be inconsistent with the obligation to ensure that consumers pay no more than necessary for adequate, reliable and safe service. Granting Peoples' requests – including its updated position taken in the non-unanimous settlement – would needlessly compromise affordability and result in unjust and unreasonable rates. The OCA has a statutory duty to oppose such outcomes and this Reply Brief is offered in support of that duty.

B. Statement of the Case

At the outset of its Main Brief, Peoples Natural Gas Company LLC (Peoples or the Company) indicates that “certain of the parties” were unable to reach a non-unanimous settlement of all issues.” Peoples M.B. at 1. The Office of Consumer Advocate (OCA) did not join the Non-Unanimous Settlement because doing so would have been unjustifiable. Peoples has failed to produce substantial evidence in this case to justify approval of either (1) the \$156 million in

additional annual revenue that it requested in this case or (2) the \$93 million in additional annual revenue that it has agreed to accept as part of its Non-Unanimous Settlement. The OCA could not join a settlement that is wholly unsupported in the record and which, among other things, unjustly awards Peoples with far more revenue than necessary to provide safe, adequate, and reliable service at the expense of ratepayers.

While Peoples claims that the Non-Unanimous Settlement contains “compromises” on issues that include revenue requirement and rates increase, rates design and allocation, and authorization to implement a Weather Normalization Adjustment (WNA), the OCA avers that there are actually few compromises contained there, as many of the things that Peoples agreed to were positions that it took at various stages of its case, and that, regardless of whether compromises were made, they are not supported by substantial evidence in this case. As the OCA has demonstrated in its Main Brief, Peoples failed to support its rate request and attendant proposals with substantial evidence. While the Non-Unanimous Settlement will impose less harm upon ratepayers than Peoples’ original rate requests, the appropriate standard in this case is not “it could have been worse.” As the OCA explains in its Comments in Opposition to the Non-Unanimous Settlement,¹ the “compromise” that Peoples reached with several of the parties other than OCA² is truly a compromise of ratepayers’ interests. Accordingly, Peoples not only failed to support its litigation position, but it also failed to support its Non-Unanimous Settlement. As outlined further

¹ The OCA’s Comments in Opposition to the Non-Unanimous Settlement (Comments) are filed simultaneously with this Reply Brief. For purposes of this Reply Brief, the OCA will address Peoples’ litigation position where Peoples did so in its Main Brief, but where Peoples’ Main Brief relied upon the settlement, the OCA will necessarily respond in kind.

² These parties include the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Small Business Advocate (“OSBA”), the Peoples Industrial Intervenors (“PII”), and the Pennsylvania Independent Oil & Gas Association (“PIOGA”). Several parties to the case did not join the settlement but agreed not to oppose it.

below and in its Main Brief, the position that strikes the most appropriate balance in this proceeding and is supported by substantial evidence is that advanced by the OCA.

C. Procedural History³

The OCA incorporates, by reference, the Procedural History section of its Main Brief and now addresses only procedural developments that extend beyond those already identified. On the same date that OCA submitted its Main Brief, May 30, 2024, Peoples submitted the following documents: (1) a Main Brief; (2) a Joint Petition for Approval of Non-Unanimous Settlement (Non-Unanimous Settlement)⁴; (3) a Present Revenue Stipulation offered by Peoples; and (4) a Low-Income Stipulation jointly offered by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Pennsylvania Weatherization Providers Task Force (PWPTF).

For purposes of procedural clarity, the OCA does not oppose the Low-Income Stipulation. From a procedural perspective, it is important to understand that the OCA's non-opposition to the Low-Income Stipulation should not be construed as support that it is somehow sufficient to remedy the defects of Peoples' litigation position or still extant in the Non-Unanimous Settlement. Additionally, the OCA takes no position on Peoples' last-minute Present Revenue Stipulation, as consistent with many procedural underpinnings of this case, Peoples has provided the update in a time and manner that has not permitted the OCA to adequately consider and address it. While the OCA certainly will not oppose Peoples' seeking less revenue than its unsupported, as-filed position, the OCA will also not attempt to reconfigure its of-record position to accommodate

³ In the interest of brevity, the OCA presents a very brief and relevant procedural history.

⁴ The parties joining the Non-Unanimous Settlement, the "Joint Petitioners" include Peoples, the Bureau of Investigation and Enforcement (I&E); the Office of Small Business Advocate (OSBA); Peoples Industrial Intervenor (PII) and the Pennsylvania Independent Oil & Gas Association (PIOGA).

Peoples' untimely Present Revenue Stipulation. Most importantly, OCA's positions and adjustments continue to apply irrespective of Peoples' Present Rate Revenue Stipulation.

The OCA's Reply Brief addresses Peoples' Main Brief, and it limits arguments against the Non-Unanimous Settlement only to where it was relied upon in Peoples' Main Brief and, therefore, warrants a response here. Otherwise, the OCA confines its opposition to the Non-Unanimous Settlement to its Comments in Opposition to the Non-Unanimous Settlement which are submitted simultaneous to the OCA's Reply Brief. In accordance with the procedural schedule established in this proceeding, the OCA now submits this Reply Brief in support of its litigation position.

D. Legal Standards

1. Utility Monopoly Regulation

In its Main Brief, the OCA explained the reality that Peoples is a utility provider with an exclusive monopoly franchise. While Peoples has not acknowledged its monopoly status, and the fact that customers who reside in its service territory must buy natural gas from Peoples if they want natural gas service, this is a critically important fact. The public relies on the Commission to exercise the restraint that would ordinarily be exercised by the competitive market to ensure that Peoples is not extracting excessive profit from captive customers. It is with this lens that the Commission must view the record in this case, including certain parties' efforts to undercut Commission scrutiny through a non-unanimous settlement.

2. Burden of Proof⁵

Both the OCA and Peoples agree on an important element of the applicable burden of proof in this case: Peoples bears the full burden of proof to establish the justness and reasonableness of every element of its requested rate increase. See OCA M.B. at 5; Peoples M.B. at 6 (quoting

⁵ The OCA included a comprehensive explanation of all applicable burdens of proof in its Main Brief and while it is incorporated here, the OCA will not reiterate it here.

66 Pa. C.S. § 315(a)). Additionally, both OCA and Peoples agree that the evidence necessary to meet Peoples' burden must be substantial. OCA M.B. at 5; Peoples M.B. at 6; *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. Ct. 1980); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (*Lansberry*).

Thus, on paper, Peoples agrees that the burden is not on the OCA to prove that Peoples' proposed rates are unjust, unreasonable, or not in the public interest. Indeed, Pennsylvania law requires only that the OCA show how Peoples failed to meet its burden of proof. While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only shift the burden of going forward to prevail. The burden of proof will not shift to an intervener that is challenging the requested rate increase. *Pa. P.U.C. v City of Bethlehem*, 2011 Pa. PUC LEXIS 190,*11 (2011). The distinction is vital here where, in many respects, despite its acknowledgment of its substantial burden of proof, Peoples seeks to shift its burden to the OCA. The OCA highlights these areas throughout its Reply Brief, but all of Peoples' attempts to shift it do not change the fact that it has failed to satisfy its statutory burden.

Finally, because Peoples' now offers a Non-Unanimous Settlement in this case, which it invokes selectively throughout its Main Brief, it is important to note that Peoples is not somehow absolved of meeting any burden in this case simply due to the existence of a Non-Unanimous Settlement. On the contrary, the proposed Non-Unanimous Settlement must also be supported by substantial evidence consistent with statutory requirements. *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002). For a Commission decision to be supported by substantial evidence, it must be supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922 (Pa. Cmwlth. 1975).

II. SUMMARY OF ARGUMENT

As the OCA maintains the positions outlined in the Summary of the Argument Section of its Main Brief⁶, the OCA incorporates that section here. Nothing contained in either Peoples' Main Brief or its Non-Unanimous Settlement warrant any change because, in both cases, Peoples has failed to provide substantial evidence to support its positions.

III. OVERALL POSITION ON RATE CASE

Peoples' request for an additional \$156 million in annual revenue, later reduced to \$154 million,⁷ and now at \$93 million under the terms of its Non-Unanimous Settlement, all still far exceed the amount of revenue necessary for it to provide safe, reliable, and adequate service at just and reasonable rates to its 700,000 customers in Southwestern Pennsylvania. In the record and in its Main Brief, the OCA has demonstrated that Peoples could provide safe and adequate service at just and reasonable rates with a revenue increase of no more than \$13 million. By adopting the OCA's recommended just and reasonable rate of return and capital structure for Peoples, ratepayers would save \$136.19 million annually from Peoples as-filed position, all of which would be unjustifiable revenue for Peoples. The fact that Peoples' now also asks the Commission to approve a Non-Unanimous Settlement that limits its rate increase to \$93 million in additional annual revenue may impose less harm upon ratepayers, but it still imposes harm upon consumers because it allows Peoples to collect an unjustified, unsubstantiated increase of \$80 million more than Peoples requires (\$93 million less \$13 million) to provide safe and adequate service at just and reasonable rates.

Peoples' Main Brief showcases its sense of entitlement to spend ratepayer money without appropriate accountability. At the outset of its Main Brief, Peoples criticizes the OCA's

⁶ OCA M.B. at 7.

⁷ Peoples Present Rate Revenue Stipulation, ¶ 4.

recommended return on equity (ROE) as being below the Commission's DSIC ROE of 10.15% so as to suggest that it is somehow entitled to the DSIC ROE by virtue of filing a rate case. *See* Peoples M.B. at 8. As discussed more thoroughly in Section VIII, Peoples is not entitled to the DSIC ROE simply by virtue of filing this rate case, and the OCA's recommendation is not flawed for being less than 10.15%. Nor is Peoples entitled to recovery of its claimed \$1,462,407 of pipeline replacement costs caused directly by its negligence during an overpressurization event in Robinson Township on April 29, 2020; yet Peoples seeks to impose these costs upon ratepayers. Peoples also is not entitled to impose \$6,755,185 of blanket adjustments imposed by unsupported five-year averaging of expenses embedded with cost impact of the pandemic-era and over \$7 million of unsupported general inflation adjustments supported by little more than claims that costs are generally projected to increase.

Perhaps Peoples' entitlement is best exemplified in the fact that it unabashedly seeks to continue to spend consumers' utility payments for purposes that so far exceed the context of utility service that they now include sponsoring professional sports teams such as professional sporting events (e.g. the Pittsburgh Steelers and the Pittsburgh Penguins). The Commission should reject any notion that Peoples is somehow entitled to spend ratepayers money in such ways. If Peoples wants to sponsor sports teams, its shareholders should pay for it, not the public.

Additionally, whether in the context of supporting its unsupported litigation position or in the context of supporting its unsupported Non-Unanimous Settlement, Peoples Main Brief showcases its reliance upon other utilities to support its WNA proposal instead of evidence to meet its own burden of proof for those proposals. Consistent with its practice throughout this case, Peoples Main Brief again relies upon the fact that other NGDCs in Pennsylvania have WNA mechanisms in place as a basis to approve its WNA proposal. While it is undisputed that WNAs

have been put into effect by four NGDCs in Pennsylvania, the Commission should reject any notion that the “everybody else is doing it” standard has any place in evaluating just and reasonable rates.

The OCA’s recommendation should be adopted to both protect consumer interests and to provide Peoples with the revenue necessary to provide safe, reliable, and adequate service at just and reasonable rates.

IV. RATE BASE

A. Plant Additions

In its Main Brief, Peoples continues to paint with a broad brush in an attempt to support estimated cost increases for capital expenditures, and it continues to fail to support those increases with substantial evidence. Although Peoples mischaracterizes the OCA’s position to reject \$27,819,503 of projected gas plant in service (GPIS) as unreasonable for application in a FPFTY, in actuality, the OCA’s recommendations are wholly appropriate because they remove unsubstantiated inflation factors from Peoples’ rate base. Importantly, the OCA has not challenged Peoples’ capital expense projections or claim, other than where Peoples has inflated them with unsubstantiated inflation expense adjustments. Specifically, Peoples’ claims are embedded with inflation factors of 2.31% in its FTY and an additional 2.4% in its FPFTY for LTIIP capital expenditures. OCA St. 2 at 8. For its general plant expenditures, Peoples built-in inflation factors of 4% in its FTY and 3.5% in its FPFTY. *Id.* For its mainline extension program, Peoples used an inflation factor of 3.5% in its FPFTY. *Id.* Peoples has not substantiated that these inflation factors are targeted or specific to the costs that it anticipates for each of the referenced programs.

Peoples attempts to refute the OCA’s adjustments by generally claiming that Peoples’ cost of replacing pipelines has been “increasing consistently” but in doing so, Peoples actually supports the OCA’s position that relying upon one-size-fits-all inflation adjustments to estimate the cost of

additional plant is problematic. *See* Peoples M.B. at 11. To be sure, Peoples highlights that the costs per mile of replacing pipelines have increased by approximately 4% per year between 2016 and 2019, and then grew to an average annual compound growth rate of approximately 17% during the period of 2021 to 2022. *Id.* Peoples own testimony attributes much of the 2021 to 2022 costs increases as resulting from a tighter labor market and inflation related to the pandemic. Peoples St. 5 at 7.

Significantly, Peoples' witness Wachter testified that the "Great Resignation" imposed by the pandemic impacted workforce vacancy levels only temporarily, and in a way that "was an anomaly and does not represent the future." Peoples St. 2-R at 17. Reliance upon inflation adjustments that are embedded with pandemic-related assumptions, which Peoples dismisses in other contexts of convenience, provides an unjust and unreasonable basis for establishing Peoples' claims. Regarding inflation claims extending beyond the labor market, those cannot be adequately, nor accurately gauged because, by design, Peoples has categorically prevented their verification. Specifically, instead of breaking out those costs by type or category and tying them to specific expenses such as materials and other specifically incurred costs, Peoples lumps them together and requires the Commission to assume that unquantified inflation assumptions will materialize. OCA St. 2SR at 13-14. The OCA submits that the Commission should reject this approach because it is antithetical to establishing just and reasonable rates.

Admittedly, Peoples itself envisions a scenario where its projected increases do not materialize, as it indicates that in such an event, it would use excess funds to replace additional facilities in the FPFTY. Peoples M.B. at 11. In an apparent attempt to assuage concerns about over recovery, Peoples relies on the argument that "we can always find something to spend the money on!" Peoples asserts other alleged safeguards through its acquiescence to I&E's reporting

requirement recommendation, by which it will report its actual FPFTY plant additions after the end of the test year, and the existence of DSIC recovery parameters as offering “multiple protections” if projections do not materialize. *Id.* at 11-12. The Commission should reject any notion that these are adequate, and ratepayers should not be required to pay for Peoples’ speculation. Ratepayers will not be able to get back over-recovered costs that will result if Peoples unsupported inflationary adjustments do not materialize. OCA St. 2SR at 4-5. Conversely, if Peoples somehow incurs more inflationary costs than it is permitted to recover in this case, it certainly has an accessible recourse, because it already has a plan to file another base rate case within two years. *See* Peoples St. No. 2-R at 45.

Additionally, the Commission should reject Peoples’ attempts to dismiss the OCA’s recommended adjustments to inflated GPIS claim by couching OCA witness Mugrace’s recommendations as applying an inappropriate standard. Peoples M.B. at 12. Peoples’ position ignores clear precedent to the contrary, as the Commission has repeatedly required specificity by the utility when using an inflation factor, and the Commission has disallowed inflation factors that are too speculative in nature. *Pa. PUC v. Phila. Elec. Co.*, 58 Pa. P.U.C. 7 (1983) (*PECO 1983*); *Nat’l Fuel Gas Dist. Corp. v. Pa. PUC*, 677 A.2d 861 (Pa. Cmwlth. 1986) (*NFG 1986*). Most recently, in the 2021 Aqua water base rate case, the Commission stated, “allowing Aqua to apply a general inflation adjustment to a block of expenses could incentivize less accurate tracking of expenses and a less rigorous approach to controlling costs for those expenses.” *Pa. PUC v Aqua Pa. Water Co.*, 2022 Pa. PUC LEXIS 161, *50-51. (Order entered May 16, 2022) (*Aqua 2022*). Though Peoples’ attempts to distinguish its inflation adjustments by referring to them as a five-year averages, its practice of applying that average as a wholesale determinate to all GPIS is controlling here.

Beyond precedent, and specific to Peoples' claims in this case, Peoples application of the adjustments without any breakdown of what costs are included or why the five-year average is appropriate for each category of costs operates as a de facto general inflation adjustment and not as substantiated cost increases. By failing to establish a factual or evidentiary basis for the actual, specific inflation factors utilized, Peoples should not be able to recover such costs, as it bears the burden of proof. 66 Pa. C.S. § 315(e). Accordingly, the Commission should adopt the OCA's downward adjustment of \$27,819,503 in order to protect ratepayers from unwarranted costs.

B. Robinson Township Facilities

In its Main Brief, the OCA provided a thorough explanation of the overpressurization event that underlies Peoples' improper attempt to recover \$1,462,407 of pipeline replacement costs caused directly by its negligence on April 29, 2020. OCA M.B. at 25-26. Peoples Main Brief inaccurately characterizes the OCA's position as proposing an adjustment because the Commission's "Bureau of Safety"⁸ required Peoples to replace pipelines in connection with the resolution of an over-pressure issue which damaged some customers' facilities. Peoples M.B. at 12. The Commission should agree that *Peoples' negligent conduct* was the direct cause of the need to replace the pipeline underlying the \$1,462,407, and that it would be unjust and unreasonable to permit Peoples to recover such costs from ratepayers. OCA St. 2SR at 6-7. Ratepayers should not pay for Peoples' negligence.

It is undisputed that, but for the overpressurization event, Peoples would not have replaced the pipeline at issue, and that it would have safely remained in service. Peoples St. No. 5-R at 8-9; OCA Exh. DM-SR-38. Peoples has also admitted that, but for the overpressurization incident, the pipeline replacement would not have been accelerated. OCA Exh. DM-SR-38, p. 3 of 3. It is

⁸ The OCA interprets this designation as being intended to refer to the Pipeline Safety Division of the Commission's Bureau of Investigation and Enforcement.

true that I&E's Safety Division directed Peoples to "accelerate replacement of assets that were *affected by the overpressure incident*"; therefore, Peoples' decision to replace the pipeline was either made with a determination that the pipeline was affected by the over pressurization incident or it was made prematurely. In either case, the underlying costs in the amount of \$1,462,407 should not be recoverable from ratepayers. OCA M.B. at 27. Peoples' Main Brief ignores these realities. Instead, Peoples merely asserts that it would have used the money for other pipeline replacement if not used for the replacement at issue here. This argument reveals that negligence-related replacement subsumed resources that should have been devoted to an appropriate ratepayer use. Additionally, Peoples claims for the first-time, outside the confines of the record of this case, that it would have replaced the subject pipelines irrespective of the incident "in the relatively near future." Peoples M.B. at 13. This statement should be disregarded as it is extra-record. To these ends, Peoples has failed to meet that burden of proving that it is entitled to recover the pipeline replacement costs that have directly resulted from the Robinson incident, and the request for rate base inclusion of \$1,462,407 for replacement of the Robinson assets should be denied.⁹

D. Act 40 Adjustment

Peoples' opposition to the OCA's recommendation that it be required to commit 50% of its consolidated tax expense adjustment, or \$27,460, to utility working capital is without merit. In its Main Brief, Peoples continues its theme of relying upon other utilities to support its claims by arguing that the Commission has accepted UGI's position that it ought to be able to use consolidating tax savings for any general corporate purpose. Peoples M.B. at 14-15. In its

⁹ The OCA notes that if the costs of replaced pipeline were permitted to be included in Peoples' rate base, it would produce the contrived result of compelling ratepayers to pay for the replacement of the property, along with a shareholder return on the value of that property, even though Peoples' negligence caused the damage necessitating the replacement.

argument resting upon the appeal of the UGI case,¹⁰ Peoples makes much of the fact that OCA's opposition to UGI's use of consolidated tax savings for general purposes was denied by the Commission and that the denial was affirmed by the Commonwealth court; however, Peoples inaccurately claims that the OCA has not provided any basis to depart from that decision here. *Id.* at 15.

Indeed, Peoples is different from UGI because Peoples' spending raised material issues in this case. In this case, Peoples' use of funds for general corporate purposes demonstrably extends into areas that are far outside the scope of providing utility service, as they veer into spending over \$1 million annually in sponsoring Pittsburgh-based professional sports teams. *Id.* at 36. The OCA is unaware of any claims that UGI's general corporate purpose spending extended in the realm of items that include professional sports sponsorship, and that distinction provides a basis to depart from the UGI decision here. Peoples' liberal interpretation of general corporate purposes is not reasonable. While it is true that under Act 40 of 2016, codified at Section 1301.1 of the Code, Peoples may use 50% of excess rates collected for the purpose of paying income tax for "general corporate purposes," Peoples should dedicate the additional funding towards a corporate purpose which benefits ratepayers. Under the facts specific to this case, requiring Peoples to provide a specific designation for the use of the \$27,460 collected which specifically benefits ratepayers is just and reasonable. On the facts of this case, Peoples refusal to provide an identifiable basis for use of the \$27,460 warrants adoption of the OCA's adjustment.

E. Depreciation Issues

Nothing contained in Peoples' Main Brief warrants any change in the OCA's position. As the OCA has supported in the sections above, the Commission should grant the OCA's reductions

¹⁰ Commonwealth Court. *McCloskey v. Pa. PUC*, 225 A.3d 192, 210-211 (Pa. Cmwlth. 2020).

in gross plant in service of (\$29,282,008); accordingly, OCA witness Mugrace's recommended adjustment to Peoples' claimed depreciation reserve of \$409,497 should be granted as well. OCA Exh. DM-6.

F. Cash Working Capital

Nothing contained in Peoples' Main Brief warrants any change in the OCA's position. The OCA continues to recommend an adjustment of (\$1,139,713) to the Company's cash working capital request, for a total of \$35,117,204. OCA Exh. DM-SR-7. This amount does not include the Act 40 adjustment, described above, of (\$27,460) to Peoples' working capital. The total OCA adjustment to Peoples' cash working capital is (\$1,167,173). OCA Exh. DM-SR-3.

G. Deferred Taxes

Nothing contained in Peoples' Main Brief warrants any change in the OCA's position. The OCA continues to recommend that the Company's accumulated deferred income tax (ADIT) balance be adjusted by (\$85,995) for a total ADIT balance of (\$3,146,849). OCA Exh. DM-SR-8.

H. Conclusion

The OCA continues to recommend an overall adjustment to Peoples' rate base balance of (\$30,772,687) from its claimed FPFTY rate base balance of \$5,587,906,895.¹¹ OCA Exh. DM-SR-3. Nothing in Peoples Main Brief changes the fact that Peoples has not met its burden of proving the justness and reasonableness the plant claimed in rate base and all estimations or adjustments resulting from its use of a FPFTY. 66 Pa. C.S. § 315(a), (e). The Company's request to include unsubstantiated inflation projections and inappropriate costs related to negligence in its rate base balance are antithetical to just and reasonable rates. Accordingly, the Commission should accept the OCA's adjustments.

¹¹ The OCA's adjustments to Peoples' rate base balance result in an overall adjustment of (\$29,691,505) to Peoples' total net gas plant in service, for an OCA recommended net plant in service balance of \$4,101,942,724.

V. REVENUES

The OCA did not offer adjustments to the Company's claimed operating revenue at present rates, which, as recognized by OCA witness Mugrace, the Company claimed in the amount of \$833,215,510.¹² OCA St. 2 at 16.

VI. EXPENSES

The Commission should adopt all of the OCA's adjustments set forth in its Main Brief. See OCA M.B. at 31-32. Peoples has offered no arguments, nor produced substantial evidence, that warrant departure from the OCA's recommended adjustments. Accordingly, the OCA recommends that \$20,679,612 of the Company's claimed expenses be disallowed, comprised of a downward adjustment of O&M expenses by \$17,551,873, for a total O&M expense of \$206,331,194. Adoption of each of the adjustments identified below will ensure that ratepayers are not forced to pay unjust and unreasonable rates to gain access to essential utility service, and that Peoples will have sufficient operating revenue to fulfill its obligations.

A. Updates to Original Filing

In its Main Brief, Peoples argues that the OCA failed to recognize the \$996,345 of "updates" to adjustment that it claims warrant recognition. Peoples M.B. at 16-17. Peoples is correct that the OCA did not adjust its recommendations to reflect Peoples' untimely updates. When Peoples claims that it is "normal practice" in a base rate case for a utility to include updates to its claim, it absolves itself of providing untimely and incomplete information to the OCA and then attempting to shift its burden. Peoples claims that because the "updates" were provided to parties on March 13, parties had "ample time to ask discovery regarding these updates." Peoples

¹² Mr. Mugrace identified Peoples' Company Exhibit No. 2 Schedule No. 4 page 2 of 7. As his source for Peoples' claimed present rate revenue. While Mr. Mugrace adjusted Peoples' claimed revenue requirement of \$156,016,012 for its FPFTY as indicated herein, he did not adjust Peoples' the present rate revenue component of Peoples' operating revenue claims,

M.B. at 17. Accepting Peoples' line of argument here would require agreement that when Peoples issued a discovery response disclosing the need for an update on March 13, the OCA had an obligation to use the discovery process to refute the update. This is nonsensical.

As stated in OCA's Main Brief, Peoples did not provide adequate evidence to explain why it did not utilize its updated figures at the time of filing or how it arrived upon its updated calculations. OCA St. 2SR at 11, 28-29. Where a utility fails to provide an explanation for updated expense claims and fails to provide evidence in support of its updated claims, the utility's updated request should be given little weight. *See, e.g., Aqua 2022* at *59 (Aqua's mid-litigation request for increase insurance claim expense based on updated experienced costs rejected as unsupported).

C. Five-Year Average Increases

Contrary to the assertions made in Peoples' Main Brief, the OCA does not confuse the five-year average increases proposed by the Company with a blanket inflation adjustment. Peoples M.B. at 19.

As the OCA previously explained, costs do not change proportionately or evenly across the board over time, and Peoples cannot predict how costs will fluctuate with any certainty. OCA St. 2SR at 13. Peoples failed to provide evidence to support why a five-year annualization period was appropriate, or why it expects to experience the same cost increases by the end of the FPFTY as it has experienced, on average, during the past five years. *Id.* While Peoples' Main Brief criticizes the OCA for challenging Peoples' five-year average methodology by inaccurately claiming that the OCA is limiting the effectiveness of the FTY and the FPFTY, it provides no discernable basis to its chosen methodology. Peoples M.B. at 19-20. Contrary to Peoples' argument, the OCA's challenges to Peoples' unsupported blanket adjustments does not deprive or limit Peoples' use of a FTY or a FPFTY. Rather, Peoples must meet its burden of proving with substantial evidence that its projections are reasonable. 66 Pa.C.S. § 315(e); *Popowsky v. Pa. PUC*,

674 A.2d 1149, 1154 (Pa. Cmwlth. 1996) (*LP Water*) (internal citations omitted) (it is well within the discretion of the Commission to exclude expenses as unreasonable); *see generally McCloskey v. Pa. PUC*, 225 A.3d 192 (Pa. Cmmw. Ct. 2020). According to People’s rationale, any projection that a utility offers in the FPFTY must be adopted, but this would lead to an absurd result as it would remove the discretion of the Commission to examine the evidence of record and determine whether projections are reasonable and supported by substantial evidence.

Peoples simply has failed to meet its burden of proof to demonstrate that its estimates for expenses in the FTY and FPFTY are reasonable or accurate. 66 Pa. C.S. § 315(e). Peoples has relied on historical information that (1) is not representative of the economic conditions that are predicted to exist in the FPFTY; (2) does not distinguish between anticipated changes in costs within a particular expense; and (3) does not identify how or why the proportions of costs within an expense will change over time. For these reasons, the OCA recommends disallowing Peoples’ claimed expense increases that utilize historical averaging to estimate future expenses, resulting in an adjustment of (\$6,755,185) to Peoples’ total claimed revenue requirement.

D. Inflation Adjustments

Peoples’ Main Brief relies solely upon the notion that it has only applied “general inflation adjustments” to a limited category of expenses as a basis for approving its claims. Peoples M.B. at 20. According to Peoples, these claims are limited to Injuries and Damages (\$150,236 adjustment) and Advertising (\$86,937 adjustment) for which it has claimed a Consumer Price Index (CPI based adjustment of 3.2%). *Id.* While Peoples is correct that OCA opposes each of the referenced adjustments, it is incorrect that its general inflation claims are limited to the categories of Injuries and Damages and Advertising. As set forth in the OCA’s Main Brief, Peoples made inflation-based adjustments to fourteen categories of expenses, ranging from utility and fuel expenses to multiple categories of outside services. The chart below demonstrates the inaccuracy

of Peoples’ claims that only two categories of expenses are adjusted for general inflation and that adjustments were limited to 3.2%:

Inflation Related Adjustments				
Cost	Company Claim	Inflation Factor	OCA Adjustment	Total Allowance
Outside Services – Contracted	\$ 28,657,932	3.75%	\$ (1,940,335.00)	\$ 26,717,597
Outside Services – IT	\$ 10,223,964	2.39%	\$ (442,315.00)	\$ 9,781,649
Outside Services – A&G	\$ 3,383,833	7.00%	\$ (428,262.00)	\$ 2,955,571
Corporate Insurance	\$ 9,080,331	13.10%	\$ (1,648,544.35)	\$ 7,431,787
Injuries and Damages	\$ 2,460,710	3.20%	\$ (150,236.67)	\$ 2,310,473
Travel	\$ 1,014,712	4.40%	\$ (83,695.00)	\$ 101,924
Company Memberships	\$ 832,200	2.18%	\$ (35,067.00)	\$ 584,930
Licenses & Permits	\$ 746,068	3.62%	\$ (68,644.00)	\$ 677,424
Utilities & Fuels - Company Operations	\$ 2,949,856	3.05%	\$ (172,240.00)	\$ 2,777,616
Advertising	\$ 1,423,934	3.20%	\$ (86,938.00)	\$ 1,336,996
Fleet	\$ 1,170,486	3.20%	\$ (71,376.00)	\$ 1,099,110
Materials & Supplies	\$ 11,848,248	2.94%	\$ (794,686.00)	\$ 11,053,561
Other O&M	\$ 23,696,895	2.94%	\$ (889,533.00)	\$ 21,921,854
Payment Processing	\$ 2,015,819	7.82%	\$ (219,720.40)	\$ 1,796,099
Total	\$ 99,504,988		\$ (7,031,592)	\$ 92,473,396

OCA Exh. DM-SR-10; Peoples St. 2-R at 11:15.

As demonstrated above, Peoples’ inflationary adjustments extend far beyond a \$150,236 Injuries and Damages adjustment and a \$86,937 Advertising adjustment, and inflation factors extend far in excess of 3.2%.

Although Peoples’ sole basis for supporting its unsupported general inflation adjustment is the claimed limited extent of them, which OCA refutes above, the OCA also incorporates the rationale for denying these adjustments as more fully set forth in its case and in its Main Brief. OCA M.B. at 35-37. As the party with the burden of proof, Peoples must provide evidence to ensure rates based on claimed expenses are just and reasonable. 66 Pa. C.S. §§ 315(e), 1301. It

failed to do so and, as a result, all inflationary adjustments should be disallowed. The Company's claimed revenue requirement should be adjusted by (\$7,031,592).

E. Corporate Insurance

Contrary to Peoples' position, the Commission should accept an adjustment to Peoples' claimed corporate insurance expense of (\$1,648,544), for a total of \$7,431,787. *See* Peoples M.B. at 21; OCA Exh. DM-SR-20. Peoples is correct that OCA's disallowance of projected costs increases, which OCA calculates as a 13.1% increase in premiums, is predicated upon the determination that the projected increases are speculative. *See* Peoples M.B. at 21, citing to OCA St. No. 2, pp. 38-39; OCA St. No. 2SR, p. 19. Acceptance of Peoples' claims would require the OCA to agree that cost increases that Peoples experienced during the pandemic must be imputed to the future. The OCA rejects such assumptions, as the Commission should, because there is no substantial evidence that the past will be prologue for these claims. Significantly, Peoples' estimates are presumptive, not rooted in substantial industry forecasts for increases in insurance premiums, and prone to drastic change within the near future. OCA St. 2 at 39.

The extent of support that Peoples provides is limited to the context of general claims that "insurance costs have not stabilized" and that it provided evidence from third-party insurance brokers to support the lack of stabilization. Peoples M.B. at 21. OCA witness Murgace accurately described Peoples claims here as "feedback" information, meaning that Peoples based its projected increase on the information provided by its insurance brokers, as opposed to renewal agreements, contracts, or purchase orders which indicate actual costs. OCA St. 2SR at 19. On these facts, Peoples has failed to substantiate that pandemic-era insurance premiums will prevail into its future contracts; accordingly, its claimed insurance expense should be adjusted by (\$1,648,544).

F. Labor/Vacancy Expense

In its Main Brief, Peoples accurately indicates that I&E proposed a \$2,272,848 labor expense adjustment and that the OCA proposed to reduce labor expenses by \$1,742,699, but the remainder of its claims are inaccurate. *See* Peoples M.B. at 22-23. Peoples argues that both I&E and OCA's labor adjustments should be denied because Peoples hired 52 new employees since its rate case was filed and because the OCA allegedly double-counted 8 vacant positions that were already included in Peoples' claim. The OCA has addressed these matters by way of a combination of its surrebuttal testimony and in its Main Brief, and neither of Peoples' claims bear out.

Accepting for the sake of argument that Peoples has hired 52 employees since it filed its rate case on December 29, 2023, this is not determinative. In this case, Mr. Mugrace used a vacancy rate ratio because the number of vacant full time employee positions has fluctuated during the course of the proceeding, and the Company has not supplied a vacancy credit for the number of vacant positions it anticipates will remain unfilled or would result from retirements and terminations by the end of the FPFTY. OCA St. 2 at 26. The Commission has previously accepted OCA adjustments premised on use of a vacancy rate ratio. *See, e.g.,* PGW 2023 at 59; *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2010-2215623, 2011 Pa. PUC LEXIS 185 (Order Oct. 14, 2011) (*Columbia 2011*).

Importantly, the OCA's vacancy rate ratio is based upon actual data provided by Peoples, providing that it expected an average of 2.7% of its full-time employee positions would be empty in 2024. *Id.* The vacancy rate ratio was multiplied by Peoples witness Wachter's annualized FTY labor amount of \$64,552,792 to reach Mr. Mugrace's adjustment of \$1,742,925 to Peoples' labor expense, adjusted downward to indicate Mr. Mugrace's expectation that Peoples, on average, will experience vacancies in 2.7% of its full-time employee positions. OCA Exh. DM-11. Peoples did not provide sufficient evidence to establish that it will experience less than a 2.7% vacancy rate by

the end of the FPFTY, and it provided no basis upon which the Commission could determine that Peoples will maintain a 0% vacancy rate. Peoples' claim that it added 52 employees is simply irrelevant. OCA St. 2SR at 10-11.

G. Incentive Compensation

The OCA fully addressed in its Main Brief why Peoples is not entitled to ratepayer funding for its incentive compensation claims related to its Short Term Incentive Program and to its Diversity, Equity and Inclusion incentive compensation costs. See OCA M.B. at 39-42. The OCA will not repeat those arguments here, but instead will focus on the arguments advanced by Peoples' Main Brief. The OCA incorporates its analysis here and it stands by the recommended adjustment of (BEGIN CONFIDENTIAL) [REDACTED] (END CONFIDENTIAL) to Peoples' claimed expense for an incentive program the Company has implemented for its employees, for a total allowance of (BEGIN CONFIDENTIAL) [REDACTED] (END CONFIDENTIAL). OCA Exh. DM-SR-12.

1. Peoples Is Not Entitled to Recover STIP Costs that Have No Nexus to Ratepayer Benefits

Peoples argues that most utilities in Pennsylvania offer incentive compensation and that it too must offer incentive compensation to attract employees. See Peoples M.B. at 23-24. The OCA has not challenged all of Peoples' incentive compensation, only those claims that are tied exclusively to shareholders' benefits. The lack of ratepayer benefits for the disallowed claims are evident in the fact that key financial performance metrics identified in the program include (BEGIN CONFIDENTIAL) [REDACTED]

[REDACTED]

¹³ The source for this information is Peoples' Confidential Volume 12, Ex. 19, RR-27, Attachment B, p. 8 of 12.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (END
CONFIDENTIAL).

Additionally, Peoples claims that it relies upon unbiased reviews and surveys such as Saralry.com and Willis Towers Watson is of no consequence as to whether the STI compensation levels are tied to ratepayer benefits. See Peoples M.B. at 24. So too is Peoples' claim that the OCA's adjustments are somehow invalid because the OCA has not expressly claimed that compensation levels are too high. *Id.* The OCA does not need to make this showing where the metrics of measurement have no nexus to ratepayer benefits. The OCA previously established that the majority of the Company's financial metrics for awarding the incentive are not tied to cost efficiencies. (BEGIN CONFIDENTIAL) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (END

CONFIDENTIAL). Peoples has not contested the OCA's position on this data, and the OCA's adjustments should be upheld.

2. DEI Incentive Costs Are Wholly Unsubstantiated

At the outset, Peoples' attempt to support its unsupported DEI incentive program costs on the basis of generalization and mischaracterization of the OCA's position should be rejected. *See* Peoples M.B. at 25-27. The OCA's recommendation to disallow incentive compensation claims purported to be related to DEI goals was made because Peoples did not identify any DEI goals, targets or metrics to support any claimed costs. Despite claims to the contrary in Peoples' Main

Brief, the OCA does recognize value in promoting DEI goals and it stands by the comments it submitted in the Commission’s Diversity Policy Statement proceeding. These things can be and are true at the same time that it is true that Peoples failed to support its DEI-based claims, which ought to be denied for lack of support.

As stated in the OCA’s Main Brief, Peoples bears the burden of proving that its proposed expense is prudent and reasonable before it can recover the cost of that expense from ratepayers.

66 Pa. C.S. § 315. (BEGIN CONFIDENTIAL) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (END CONFIDENTIAL)

As a result, Peoples has failed to meet its burden of proof regard to the categories Mr. Mugrace recommends disallowing. Peoples fails to address the OCA’s actual basis for denying it substantiated claim but that does not change the fact that Peoples is, the evidence weighs against permitting to recover the costs of DEI-based short-term incentive programs.

H. Employee Expenses

In its Main Brief, the OCA explained that it recommends an adjustment of (\$527,144) to Peoples’ proposed benefits compensation expense for a total benefits expense of \$20,458,479. OCA M.B. at 43. In totality, OCA witness Mugrace recommended this reduction due to his recommended adjustment to labor expense; Peoples determined their claimed benefits compensation expense by multiplying their labor expense by 30.21%. *Id.* As such, Mr. Mugrace multiplied his adjusted labor expense balance by 30.21% to reach the adjusted benefits

compensation expense. Peoples failed to address the OCA's adjustments here in its Main Brief and it continues to fail to offer support for disallowed claims.

Peoples did attempt to respond to OCA's recommendation for an additional adjustment of (\$254,437) in expenses for Employee Service and Safety Award and Employee Events; however, Peoples again failed to establish a nexus to ratepayer benefits for its claims here as well. *See* Peoples M.B. at 27. In the record of this case, OCA witness Mugrace correctly indicated that costs Peoples attempted to include here, including team lunches, the Polar Plunge event, and an event at Lerner Raceway had no nexus to ratepayer benefits. OCA St. 2SR at 20. Mr. Mugrace explained that it is imprudent to require ratepayers to pay for costs through their utility bills, where the costs are so far outside of the spectrum of utility service that they extend to employees attending events at a raceway. *Id.* at 21. In its Main Brief, Peoples generally claims that the events promote retention, reduce absenteeism, and encourage employees to perform their duties safety. Peoples M.B. at 27-28. However, like the record in this case, Peoples' Main Brief fails to tie these general claims to any statistics, metrics, reports, or actual proof of any kind. Instead of offering some type of substantiation beyond general statements, Peoples falsely claims that the OCA does not recognize retention benefits and workplace safety. In fact, the OCA does recognize these benefits, but it cannot recommend that Peoples be compensated for claimed costs that have not been demonstrated to further retention and safety goals. The Commission should adopt the OCA's recommended adjustments to protect ratepayers from paying unsubstantiated costs.

I. Materials & Supplies

Nothing in Peoples' Main Brief causes the OCA to change its recommended adjustment of (\$794,687) to the Company's claimed materials and supplies expenses, for a total allowance of \$11,053,561. OCA Exh. DM-28. As explained more thoroughly in its Main Brief, Peoples has not

provided evidence to support the accuracy of its inflation adjustment estimates, and the inflation adjustment should be removed, resulting in an overall adjustment of (\$794,687). OCA M.B. at 43.

J. Pension Expense

The OCA maintains its recommendation for the normalization of the Company's anticipated pension expense over the next five years, for an annual pension expense of \$2,867,584. OCA St. 2 at 30. OCA's recommendation is appropriate due to the high level of annual fluctuation in pension expenses, from \$560,190 in 2020 to \$5,408,063 in 2022. *Id.* OCA witness Mugarce calculated his proposed pension expense by averaging the Company's pension expense between 2018 and 2022. *Id.* In its Main Brief, the OCA cited to PGW's recent base rate case in 2023, where the Commission has previously recognized that normalization adjustments are made to stabilize fluctuations in events that are unusual and which would not be reasonably expected to recur in the future. OCA M.B. at 44. In its Main Brief, Peoples argues that its pension funding approach has changed since Peoples was acquired by Essential, making inclusion of costs from the two years prior to the acquisition unreasonable given the demonstrated changes. Peoples M.B. at 29. Yet, by making this argument, Peoples proves OCA's point: Peoples' significant pension funding changes that result from a one-time occurrence, the Essential acquisition, are precisely the type of unusual costs that ought to be normalized. For this reason, and the reasons outlined in OCA's case and Main Brief, the OCA maintains its recommendation that the Company's claimed pension expense be adjusted by (\$2,802,416).

K. Post-Retirement Other Than Pensions (PBOP)

Nothing in Peoples Main Brief causes the OCA to depart from the recommendations it made in its Main Brief. OCA M.B. at 45. The OCA continues to recommend that Peoples' PBOP expense be adjusted by \$148,250 for a balance of \$2,562,291 for the reasons set forth in the OCA's Main Brief. The OCA has explained above that Peoples' untimely update to PBOP, made for the

first time rebuttal testimony, was not substantiated and therefore the OCA rejects Peoples' characterization that its adjustment now somehow represents a decrease to Peoples' claim. *See* Peoples M.B. at 30.

L. Rate Case Expenses

In its Main Brief, Peoples attempts to refute the OCA's recommended rate case expense adjustment, which is calculated in a manner consistent with both Commission precedent and Peoples historic rate case filing frequency, but its claims are without merit. More specifically, the OCA recommended that the Company's claimed rate case expense be normalized over the next three years, for an annual rate case expense of \$687,333, an annual adjustment of (\$343,667). OCA St. 2 at 53. Mr. Mugrace's recommendation is based in the Company's historical filing frequency of three years over its previous five rate cases, as set forth in its Main Brief. The OCA's Main Brief also provides numerous citations to precedent in which the Commission has consistently relied on the historical filing frequency of a utility to determine the length of time over which its rate case expense will be normalized. OCA M.B. at 45-46.

In response, Peoples claims that the UGI Electric rate case and the 2020 Citizens Electric base rate case order support the notion that its asserted filing frequency of two years is a more appropriate measure of filing frequency than its historically calculated frequency. Peoples M.B. at 31-32. According to Peoples, departure from its historical filing frequency and use of a claimed two-year normalization period of rate case expense is justified based on LTIP expenditures alone. Peoples M.B. at 33. In making this argument, Peoples effectively asks the Commission to pretend that it does not have access to DSIC funding, while at the same time asking the Commission to approve a Non-Unanimous Settlement that permits Peoples to include eligible plant additions in its DSIC as early as, or prior to, October 31, 2025. *Joint Petition for Non-Unanimous Settlement* at ¶ 7. Simply put, Peoples' reliance upon LTIP projections as a basis to depart from its historical

rate case filing frequency is unsupported in this respect, and in the other respects already set forth in OCA's Main Brief. The Commission should accept OCA's adjustment to Peoples' rate case expense, as it conforms with Commission precedent, acknowledges Peoples' access to DSIC funding, and appropriately reduces the annual normalized rate case expense by \$343,667.

M. Travel, Meals, and Entertainment Expense

Nothing in Peoples' Main Brief refutes the validity of the OCA recommended adjustment to remove the 4.4% inflation estimate for travel, meals, and entertainment expense, resulting in an initial adjustment of (\$83,695). Additionally, the OCA's recommended removal of entertainment expenses, for a second adjustment of (\$829,093), is also warranted because Peoples continues to fail to provide viable bases for how its claimed entertainment expenses are reasonable to pass on to ratepayers. In its Main Brief, Peoples simply claims that employee events that include tailgating and baseball game attendance, are associated with an employee picnic. Peoples M.B. at 33. Peoples makes additional claims sponsorship of sports teams and related costs are "used for employee recognition and other such business purposes." *Id.*

OCA's Main Brief correctly indicates that ratepayers draw no benefit from Peoples' employees attending sporting events, picnics, or leadership training, or from Peoples' sports sponsorships. OCA M.B. at 48. Peoples' Main Brief fails to identify any nexus between such entertainment expenses and ratepayers' quality of service, customer service, or reliability. The Commission should reject any notion that spending ratepayers' money on sponsoring sports teams or holding tailgate events is a reasonable and prudently incurred expense eligible for recovery by a regulated public utility in Pennsylvania.

Peoples also continues to offer no response to Mr. Mugrace's testimony that the Company's claimed travel expenses, outside of being described as "valid," are actually connected to the provision of utility service. *See* Peoples St. 2R at 31-32. As such, Peoples has not

substantiated their claim for their travel or travel-related expenses. OCA St. 2SR at 22. Accordingly, the OCA's recommendation to disallow \$912,788 of unsubstantiated expense claims should be accepted.

O. Company Memberships

In its Main Brief, Peoples seeks to challenge the OCA's recommended adjustment of \$247,270 to the Company's claimed membership expenses, but its response does not address the deficiencies described in the OCA's Main Brief. At the outset, Peoples fails to acknowledge and respond to the fact that part of the OCA's adjustment was predicated upon the removal of Peoples' unsupported 2.18% inflation adjustment from the claimed expense; as identified *supra* in Section VI.D. OCA St. 2 at 42.

Under the Code, utilities are not permitted to recover the costs of "membership fees, dues or charges to fraternal, social or sports clubs or organizations." 66 Pa. C.S. § 1316.1. Peoples' customers see no benefit from the Company's participation in these organizations, as they are related to civic causes or lobbying; as a result, the Company should not be able to recover the costs of memberships which reflect its corporate citizenship. In an attempt to defend its claims, Peoples' Main Brief highlights that Peoples, and not its customers, reap the benefits of membership dollars: "almost all utilities in Pennsylvania are part of the Energy Association which collaborates on issue before the Commission, providing a common response on policy issues such as new regulations." Peoples M.B. at 38-39. Absent from this claim is any indication of how ratepayers benefit from paying Energy Association dues. Additionally, Peoples claims that Curate Solution helps companies keep track of legislative changes, Chambers of Commerce foster economic develop for the Company's customers, and the Women's Business Enterprise Council supports Peoples supply chain diversity efforts. *Id.* at 38-39. None of the generalities that Peoples offers point to actual demonstrated value to Peoples' customers and there is no *direct* benefit to ratepayers. Therefore,

the OCA maintains that the Commission should adjust Peoples' membership expenses by downward by \$247,270.

Q. Other O&M

OCA continues to recommend an adjustment of (\$1,775,041) to the Company's proposed Other O&M expenses. This adjustment has two components: (1) removal of an unsupported 2.94% inflationary adjustment; and (2) disallowance of costs associated with incentive compensation. Both components are set forth more fully in the OCA's Main Brief. OCA M.B. at 50-51. As Peoples has presented no basis for the OCA to depart from its adjustments, the OCA's position stands and it should be adopted.

R. Payment Processing

Despite Peoples' claims to the contrary, the OCA's 50% reduction of claimed payment processing expenses is not "simply made up." Peoples M.B. at 40. While the OCA supports extension of payment processing options to Peoples' customers, Peoples claims that the cost to administer its service contracts will increase 7.82% year over year in its FTY and FPFTY, plus an additional 10% increase following the expiration of its initial service contract in February 2025 is not rooted in any contractual or other basis. OCA St. 2 at 51. Such costs are speculative and are not substantiated. Simply put, Peoples has not provided data sufficient to support the claimed increase in costs over time. OCA St. 2 at 51. The OCA's position is that Peoples should update these expense numbers in its next rate case at which point a more accurate frame of reference will be established. There is also no support for how many PGD customers will avail themselves of the payment options that underlie these costs, and the OCA notes that the PGD customer count is approximately ten times lower than that of the PNGD. OSBA St. 1 at 8-9. On these facts, the OCA's 50% disallowance is reasonable and should be adopted.

S. Uncollectible Accounts

The OCA continues to recommend, without change, that the Company's uncollectible accounts expense should be set at 2.2% of the Commission-approved revenue requirement. OCA St. 2 at 54. Peoples has currently proposed a 2.2% uncollectible rate for residential customers, without adjustment for commercial and industrial write-offs. *Id.* Based on the OCA's recommended revenue requirement increase of \$12,925,540 multiplied by the Company's 2.20% uncollectible account rate to arrive at a recommended uncollectible account expense of \$284,362. OCA Exh. DM-SR-33.

T. Depreciation Expense

As a result of the OCA's recommended disallowance to a portion of Peoples' gross plant in service, as provided above in Sections IV.A and IV.B, the OCA recommends an adjustment of (\$727,743) to the Company's claimed depreciation expense. The OCA fully explains the basis for and calculation of these claims more fully in its Main Brief. OCA M.B. at 52. Peoples fails to address the OCA's recommended disallowance beyond a footnote alleging a calculation error that OCA witness Mugrace has refuted¹⁴, and claiming that the GPIS adjustment that underlie the OCA's adjustments should be rejected. Peoples M.B. at 15, footnote 1. Peoples' claims are without merit and the OCA's recommended adjustment should be adopted.

VII. TAXES

A. Income Tax

The OCA maintains its position that Peoples proposed income tax expense of (\$59,295,394) should be adjusted to by (\$30,246,391) for a total income tax expense allowance of (\$89,541,785). While the OCA made no adjustments to how Peoples calculated its federal or state

¹⁴ See OCA St. 2SR at 31.

income taxes, Peoples' decreased revenue requirement resulting from the OCA's overall recommendations required OCA witness Mugrace to adjust the income taxes to reflect the reduced income. OCA M.B. at 53.

B. Taxes Other Than Income Tax

The OCA maintains its recommendation for an adjustment of (\$417,240) to the Company's claimed expense for taxes other than income tax in the amount of \$15,353,107, for an allowance of \$14,935,867. As more fully explained in the OCA's Main Brief, OCA witness Mugrace's recommendation for these adjustments is based in his adjustments to the labor expense, STI expense, and gross plant in service balance. As a result, Mr. Mugrace adjusted Peoples' payroll tax by (\$389,156), the unemployment tax by (\$22,563), and property tax by (\$5,581). OCA M.B. at 43; OCA Exh. DM-SR-36.

Peoples' Main Brief simply opposes OCA's underlying adjustments and claims that OCA witness Mugrace made a calculation error. Peoples M.B. at 54. The OCA has supported its underlying adjustments in this case, in its Main Brief, and in pertinent sections of this Reply Brief, so Peoples' claims to the contrary should be rejected. Additionally, OCA witness Mugrace acknowledged and corrected a property tax calculation error in his Surrebuttal Testimony, so Peoples' attempt to resurrect it now as a basis to deny the OCA's adjustment is not viable. See OCA St. 2SR at 31.

VIII. RATE OF RETURN

A. Introduction

The Commission should reject Peoples' proposed ROE of 11.75% because it is grossly excessive and unsupported. Mr. Moul erroneously claims that "my proposed rate of return is commensurate with returns available on investments having corresponding risks." Peoples M.B. at 43. As discussed in the OCA Main Brief, and as should be immediately apparent, an 11.75%

ROE for one of the largest regulated natural gas distribution company in Pennsylvania with a captive customer base is unreasonably high and unsustainable. *See* OCA M.B. at 61-82. The cost of equity for the overall stock market is 9% according to Kroll's, and Kroll's cost of equity includes unregulated companies in the S&P 500 as opposed to regulated monopoly utilities with lower risk. OCA St. 3SR at 10. The Commission should accept the OCA's fully supported 8.02% ROE as it represents a balance between the interests of shareholders and consumers by allowing Peoples to earn a fair rate of return for its shareholders, while not punishing its captive consumers by forcing them to pay more to fund an excessive ROE.

B. Capital Structure

Peoples does not use its actual capital structure for its claimed capital structure in this proceeding. Peoples states that Mr. Moul explained that Peoples' capital structure should reflect the *projected* amounts of debt (45.33%) and equity (54.67%) at September 30, 2025, which is the end of the FPFTY of this case. Peoples M.B. at 44. Peoples states that OCA witness Rothschild proposed a hypothetical capital structure of 50% debt and 50% equity based upon the average of the capital structure ratios of his proxy group of gas companies. Peoples M.B. at 45.

Peoples incorrectly places the burden of proof on the OCA to justify Peoples claimed capital structure. Peoples states "Mr. Rothschild has not demonstrated that Peoples [sic] capital structure ratio is outside the range of capital structures employed by barometer group companies. As a result, Mr. Rothschild did not establish that Peoples' actual capital structure is abnormal." Peoples M.B. at 45. Peoples goes on to state that the Commission has "practice and decisions that reject the use of a hypothetical capital structure in these circumstances." Peoples M.B. at 45 *citing PUC v. Columbia Water Co.*, 2024 PA. PUC LEXIS 23, *43 (Order Jan. 18, 2024) (*Columbia 2024*); *Pa. PUC v. UGI*, Docket No. R-2017-2460058, Order (Oct. 25, 2018). However, this is a misstatement of the standard the Commission outlined in the Columbia 2024 case, which states:

“Absent a finding by the Commission that a utility’s actual capital structure is atypical **or** too heavily weighted on either the debt or equity side, we would not normally exercise our discretion with regard to implementing a hypothetical capital structure.” *Columbia 2024* at *43 (emphasis added) The full standard articulated in *Columbia 2024* is more consistent with the holding of the Commonwealth Court:

Where a utility’s actual capital structure is too heavily weighted on either the debt or equity side, the commission, which is responsible for determining a capital structure which allocates the cost of debt and equity in their proper proportions, **must make adjustments to the utility’s capital structure.**

Carnegie Natural Gas Co. v. Pa. PUC, 433 A.2d 938, 940 (Pa. Cmwlth. 1981) (citations omitted) (emphasis added). Therefore, under the correct standard, the Commission must make adjustments to the utility’s capital structure where it is too heavily weighted toward debt or equity. The Commission can utilize a hypothetical capital structure for ratemaking purposes when the utility’s actual capital structure is “unreasonable or uneconomical when balancing the goals of safety, prudent management, and economy.” *Pa. PUC v. Carnegie Natural Gas Co.*, 54 Pa. PUC 381, 393 (1980), *aff’d* by *Carnegie*.

As shown in the OCA’s Main Brief, the capital structure proposed by Peoples is inappropriate and inconsistent with Pennsylvania case law. See OCA M.B. at 57-61. OCA witness Rothschild testified that there is no reason he is aware of for Peoples to have a significantly higher common equity ratio than its ultimate parent company, Essential Utilities Inc., which has non-utility operations. OCA M.B. at 59; OCA St. 3 at 78-79.

Assigning a total Company capital structure of 50% equity and 50% debt for ratemaking purposes would move the Company’s capital structure to a reasonable structure and balance the needs of investors with the interests of consumers.

C. Debt Cost Rate

There is no dispute regarding Peoples' cost of debt.

D. Return on Common Equity

1. Barometer Group

Peoples argues that its barometer group should be accepted because the Commission uses the same barometer group in determining the DSIC earnings cap. Peoples M.B. at 46. The Commission's DSIC earnings cap, however, is not the subject of this proceeding and is in no way a guidepost for determining ROE in a base rate case. The Commission has recently disagreed with utilities' attempt to use the DSIC return on equity as a benchmark for setting a return on equity in a base rate proceeding. *Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R-2021-3027385, R-2021-3027386 (Order entered May 12, 2022) at 178 ("Further, we note the DSIC ROE is unlike a ROE set in a base rate proceeding. The DSIC ROE is determined by the Commission on a quarterly basis and is set per industry. As such, it is not company specific."). Peoples' attempt to use the DSIC ROE as a barometer for setting ROE specific to Peoples is unreasonable and contrary to Commission precedent.

2. DCF

Peoples inaccurately claims that "Mr. Rothschild uses a retention growth model which he admits the Commission has never used." Peoples M.B. at 47. Not only is there no citation to Mr. Rothschild's testimony to support this alleged claim by OCA witness Rothschild, Peoples' claim that the Commission has never used a retention growth model is simply false. The Commission has adopted DCFs which utilized a retention rate and stated as follows:

The DCF methodology is not without its infirmities. The market price of a stock reflects both the current and future investor expectations regarding growth in earnings and hence dividends. Therefore, a separate consideration of growth rates, either in earnings, dividends, or book value reflective of earnings retention, could result in the duplication of a growth estimate which is already reflected, in part at

least, in market price. Moreover, market price will normally reflect present inflation and an assumption regarding future inflation.

...

Mr. Brennan did not consider the growth rate indicated by an earnings retention rate. We believe that his omission is significant, for we cannot merely assume that the past will repeat itself in the future or that the investor necessarily expects that it will. Consequently, we place more reliance upon our comparison with Mr. Wilson's derived growth rates in evaluating Dr. Varo's conclusion. We find that Dr. Varo's growth range [utilizing a retention rate] is reasonable, and encompasses Mr. Miller's conclusions, once we have removed the Value Line projection, which we believe has been given too much weight by Mr. Miller, if it is worthy of consideration at all.

Pa. PUC v. Columbia Gas of Pa., Inc., 1984 Pa. PUC LEXIS 25, *144-145, 154-155 (Order entered August 27, 1984).

Peoples' argument that OCA witness Rothschild advocated for "a proposed shift in the Commission's practice of calculating the ROE using the DCF model" is highly misleading. Peoples M.B. at 47. As discussed in the OCA's Main Brief and in Mr. Rothschild's testimony, OCA witness Rothschild applied a DCF analysis with a CAPM analysis as a check on reasonableness and to ensure that the Commission is able to consider how inflation and interest rates are impacting Peoples cost of equity. OCA M.B. at 33, 71; OCA St. 3 at 10. OCA witness Rothschild did not propose a shift in the Commission's practice of calculating ROE using solely the DCF model.

Similarly, Peoples mischaracterizes Mr. Rothschild's testimony by stating that "he rejects the Commission's use of analysts' projections to determine the DCF growth rate." Peoples M.B. at 47. To the contrary, OCA witness Rothschild testified "there are numerous mathematical issues with relying **solely** on analysts' projections of future growth as the growth component of a DCF model." OCA St. 3SR at 12 (emphasis added). Additionally, OCA witness Rothschild clearly

testified that he relied on analyst projections in his DCF as follows: “I do use Value Line and Zacks’ analyst forecasts to estimate the market-based cost of equity in Discounted Cash Flow (DCF) analysis. However, I do not use them mechanically and I go to great lengths to distill the sustainable growth component to ensure that it is in line with investors’ long-term expectations” OCA St. 3 at 18. Analyst projections were a component of Mr. Rothschild’s DCF but, appropriately, were not the sole component in determining growth.

Additionally, Peoples erroneously states that Mr. Rothschild calculated his retention growth rates “based on his belief that stock prices above book value indicate returns in excess of the cost of equity.” Peoples M.B. at 48.¹⁵ Peoples sets up a strawman argument that “nearly all stocks sell at market prices above book value, Mr. Rothschild’s premise would mean that nearly all companies earn more than the cost of capital.” Peoples M.B. at 48. Peoples goes on to cite to Commission precedent rejecting the contention that ROEs should be reduced to lower stock prices. Peoples M.B. at 18 (internal citations omitted). To be clear, OCA witness Rothschild did not testify that stock prices above book value indicate excess returns or that ROEs should be reduced to lower utility stock prices.

Instead, Mr. Rothschild’s position is that exclusive use of analysts’ earnings per share growth rate in the constant growth DCF formula is inappropriate alone. Accordingly, Mr. Rothschild used a retention rate to eliminate the mathematical error caused by inconsistency between the expectations for earnings per share growth and dividends per share growth. See OCA M.B. at 66-67; OCA St. 3 at 53. Mr. Rothschild testified that it is not appropriate to mechanically use analyst earnings per share growth rate forecasts in a constant growth DCF model because it does not ensure that the mathematical relationship between earnings, dividends, book value and

¹⁵ The OCA notes that while Peoples cites to OCA St. 3R at 16-18 as support for this claim, Mr. Rothschild’s testimony is 12-pages long.

stock price are respected. OCA M.B. at 67; OCA St. 3SR at 11. If a utility company is experiencing a short-term period of high earnings growth because they are recovering from a period of low earnings, for example, using analyst 5-year earnings per share growth rate forecasts in a DCF model will overstate the COE because these growth rates are not sustainable. *Id.* Mr. Rothschild's position is that the company's relatively high growth rate will not continue indefinitely. *Id.* Peoples' attempt to distort Mr. Rothschild's position and well-supported analysis is without merit.

3. CAPM

Similar to its approach with the DCF, Peoples merely stated that "Mr. Moul provided a CAPM analysis under the standard CAPM approach" but provides no argument or support for why Mr. Moul's methodology is accurate or reliable. *See* Peoples M.B. at 49. This "standard approach" produced a CAPM result of 12.07%. Peoples M.B. at 49. It is important to note that, despite Peoples' CAPM including a size adjustment to account for Peoples' alleged small size, Peoples merely mentions that a size adjustment was included in a footnote without any support as to why a size adjustment for Peoples, the largest Natural Gas Distribution Company in the Commonwealth of Pennsylvania, is reasonable. *See* Peoples M.B. at 49, n., 13. Additionally, Mr. Moul's CAPM analysis significantly and inaccurately overstates Peoples' cost of equity due to an overstatement of the historical risk premium by over 200 basis points. OCA M.B. at 76-77. Mr. Moul's CAPM approach is anything but "standard" and should be rejected.

4. Risk Premium

Mr. Moul's market risk premium of 6.5% is excessively high. *See* Peoples M.B. at 49-50. OCA witness Rothschild noted that Kroll's equity risk premium analyses recently found that equity risk premium is 5.5%. OCA St. 3SR at 35. OCA witness Rothschild further noted that 5.5% equity risk premium calculations by Kroll are in comparison to U.S. Treasury bonds, not the corporate bond yields used in Mr. Moul's analysis. OCA St. 3SR at 35. Since corporate bond yields are

higher than U.S. Treasury bonds, Mr. Moul's equity risk premium would be expected to be lower than those calculated by Kroll. *Id.* Instead, Mr. Moul's 6.50% is significantly higher. *Id.* Therefore, the results of his own source indicate that his 11.50% COE result is excessive. *Id.*

5. Comparable Earnings

Peoples states that Mr. Moul provided a comparable earnings analysis, asserts that the comparable earnings analysis is used to "consider the standard in Bluefield", and that it produced a cost of equity result of 12.07%. Peoples M.B. at 50. The comparable earnings approach, however, is inappropriate as investors are not able to earn the return on book equity figures that are used in the comparable earnings approach. OCA St. 3 at 36. Mr. Moul's comparable earnings analysis does not satisfy the comparability standard established in *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*). The legal standard set by the United States Supreme Court requires that "[t]he return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks." *Id.* *Bluefield* concludes that the utility has "no constitutional rights to profits." *Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n of W.Va.*, 262 U.S. 679 (1923) (*Bluefield*). The United States Supreme Court stated as follows:

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to **maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.**

Id. at 693.

Investors are not able to earn the return on book equity unless the market-to-book ratios of these companies are the same. OCA St. 3SR at 36. Mr. Moul has not demonstrated, and the Company has not even argued, that the market-to-book ratios of the companies that Mr. Moul uses in his analysis are anywhere near equal. *Id.* Mr. Moul's comparable earnings analysis, which produces a cost of equity result in excess of 12%, should be disregarded.

6. Management Performance

Peoples is requesting a 25-basis point management performance adder to its high proposed return on equity to arrive at an 11.75% ROE. Peoples M.B. at 50. As a justification for this additional cost to ratepayers, Peoples reasons for its request for a management adder are its consolidation of the operations of its systems, its reductions in leaks, Peoples' decision to not file a rate case for five years, and its customers service, as discussed by Peoples President Huwar. Peoples M.B. at 51. As discussed in the OCA's Main Brief, the Company's performance in customer service does not warrant adding an additional 25 basis points to Peoples' return on equity. OCA M.B. at 80-85. At the public input hearings, which Mr. Moul did not attend, customers testified that Peoples' service was problematic in several aspects, including insufficient customer service hours for customers to speak to a live representative, inability to get answers to billing questions, unaffordable rates, and confusion caused by the notice Peoples issued advising customers of the increase for this case. OCA M.B. at 80-81. Additionally, consolidating the operations of Peoples' divisions does not indicate superior management performance warranting an addition to ROE. Similarly, waiting five years to file a base rate case is no reason to charge ratepayers more for an additional management adder. Moreover, while pipeline repair and replacement is a critical safety undertaking, the provision of safe service and repairs are part of Peoples' existing legal duties required under the Public Utility Code. *See* 66 Pa. C.S. § 1501 ("Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public."). Doing what one is legally required to do is not exemplary, it is expected.

Moreover, the evidence in this case shows that the Management Performance adder is arbitrary. There is no mathematical basis or formula that Mr. Moul utilized to determine that 25-basis points should be added to Peoples ROE due to alleged superior management performance. The use of 25-basis points specifically for Peoples is arbitrary and unsupported, both in Peoples' Main Brief and in Mr. Moul's testimonies. Instead, Mr. Moul based his determination entirely on the testimony of Peoples' President, Mr. Huwar. Peoples St. 13R at 46-47.

Peoples does not claim that Mr. Moul performed an independent analysis of Peoples' management or even a claim that Mr. Moul reviewed Peoples' management audits at any point. In fact, Peoples witness Moul consistently recommends adjustments for management performance. OCA M.B. at 80; OCA St. 3SR at 37. Since 2018, Mr. Moul has recommended management performance adders for 18 of the 21 Pennsylvania public utility cases in which he provided expert testimony. *Id.* In context, Mr. Moul considers that over 85% of Pennsylvania public utilities that hire Mr. Moul have exemplary management performance. For the reasons discussed herein, and in the OCA's Main Brief, Mr. Moul's management adder request should be denied.

E. Conclusion as to Rate of Return

Peoples' proposed 11.75% ROE is grossly excessive, not in the public interest, and not supported by substantial evidence. Instead, Peoples wants the Commission to accept an objectively high ROE without even providing substantive arguments as to why Peoples' proposed ROE is reasonable. Peoples witness Moul routinely used inputs in his calculations that increase the resultant ROE. *See* OCA M.B. at 65-85. Peoples does not provide support for its DCF in its Main Brief beyond stating that Mr. Moul performed a DCF and providing the results. In addition to using a narrow approach in calculating the DCF that only takes into account analyst expectations for earnings per share over five years, the DCF calculated by Mr. Moul contained a leverage adjustment, for which there is no substantive argument by Peoples. While Peoples claims the

CAPM is “standard”, Mr. Moul’s CAPM includes an arbitrary size adjustment to account for Peoples “small size” despite the fact that Peoples is the largest natural gas distribution company in the Commonwealth. Mr. Moul’s risk premium analysis utilizes a risk premium that is 100 basis points over Kroll’s risk premium analysis. Moreover, Peoples request for a 25 basis point management adder is arbitrary and not based on any independent evaluation. Additionally, the critiques that Peoples has towards OCA witness Rothschild are either misleading or entirely inaccurate. Peoples excessively high ROE of 11.75% should be rejected by the Commission as it is unduly burdensome to Peoples’ customers.

IX. REVENUE ALLOCATION AND RATE DESIGN¹⁶

A. Introduction

Peoples’ Main Brief argues that cost allocation studies require a considerable amount of judgment and are often described as more of an art than a science. Peoples M.B. at 52. In this vein, Peoples argues that the Commission should accept the proposals advanced in the Non-Unanimous Settlement because they represent a compromise of all parties’ positions, including the OCA positions, and therefore adequately consider all classes and impacts as appropriate. *Id.* at 52-53. According to Peoples, the purposed compromise of all parties’ positions culminates in a balance of all parties’ revenue allocation proposals that should be approved. *Id.* At 53.

The decision of Peoples and other parties to compromise does not mean that the decision they reached is appropriate under applicable legal standards. At the outset, Peoples’ compromise is built, in part, with the inclusion of a Minimum System/Design Day class cost of service study (CCOSS) method that inappropriately allocates the costs of distribution mains. *See Id.* at 52. Beyond this, as explained below, the proposal is unsupported in multiple respects, each of which

¹⁶ Because Peoples confines its arguments in this section to advancing the terms of the Joint Petition, the OCA responds to these in kind.

warrant denial. The OCA's proposed revenue allocation and rate design maintain a cost-of-service basis, without attempting to unreasonably cross-subsidize classes, while satisfying the Commission's stated goals of gradualism, affordability, and incentivizing conservation. The Joint Petitioners' proposals contained in the Non-Unanimous Settlement fail to meet this standard and should be denied.

B. Cost of Service

Peoples' Main Brief correctly summarizes the law governing cost of service; however, the Non-Unanimous Settlement is inconsistent with the *Lloyd* standard. See Peoples M.B. at 53, citing *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) appeal denied, 591 Pa. 676, 916 A.2d 1104 (2007) (*Lloyd*). Peoples recognizes that the *Lloyd* standard is that a proposed revenue allocation will only be found to be reasonable where it moves distribution rates for each class closer to the full cost of providing, but then it asks the Commission to divert from that standard by approving a Non-Unanimous Settlement with rates that offend this standard. See Peoples M.B. at 53-54.

Specifically, while the cost of service determinations of the Non-Unanimous Settlement adopt, in part, OCA and I&E's well-supported peak and average (P&A) methodology, they also rely upon the inappropriate Minimum System/Design Day methodology advanced by other parties, including Peoples. The peak and average method considers the costs associated with building out design day infrastructure, as well as the everyday cost of service, without relying on subjective, hypothetical methodologies that unnecessarily penalize customer classes with high density, such as the methods relied on by the Company, PII, and the OSBA. OCA St. 4SR at 2.

Incorporating the minimum system methodology into the Joint Petition's cost of service determinations means that inappropriate main costs will still be assigned to customers. See OCA M.B. at 91-93 (explaining that the minimum system methodology's allocation of main costs is

inappropriate because high-density, lower-use customers are assigned costs which are disproportionate to the cost burden they actually place on the system).

Additionally, 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., Pa. PUC v. Columbia Gas of Pa., Inc.*, R-2020-3018835 (Order Feb. 19, 2021) (*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). Through the Non-Unanimous Settlement, Peoples asks the Commission to depart from such precedent, in the name of compromise. The Commission should reject the use of the minimum system capacity, even if its impact is diluted through the Joint-Petition's Frankenstein-like cost of service methodology and rely entirely upon the P&A average method that OCA set forth in this case.

C. Revenue Allocation

Peoples claims that the Joint Petition adopts a revenue allocation that is a reasonable compromise because it averages OCA, I&E, OSBA's and the Company's position, and that it gave considerable weight to the P&A methodology. Peoples M.B. at 56. On the basis of this compromise alone, Peoples avers that the Joint Petition's allocation provisions should be approved. Peoples M.B. at 57. Peoples failed to support its position on revenue allocation in its Main Brief and instead chose to rely upon its Non-Unanimous Settlement. The OCA fully addressed revenue allocation issues in its Main Brief and will not repeat them here for sake of brevity. OCA Main Brief at 94-98. As for the same flaws contained in the Non-Unanimous Settlement, please refer to the OCA's Comments in Opposition to Settlement. OCA Comments at 18-21.

D. Rate Design

In its Main Brief, Peoples offers no support for the Joint Petition's rate design proposal other than a general assertion that it "carefully considered impacts to each for the PNGD and the

PGD to “minimize disparate impacts.” Peoples M.B. at 58. Peoples presents no analysis to support its claim. Peoples’ representations are simply without merit. The OCA fully addressed rate design issues in its Main Brief and will not repeat them here for sake of brevity. OCA M.B. at 98-107. As for the same flaws contained in the Non-Unanimous Settlement, please refer to the OCA’s Comments in Opposition to Settlement. OCA Comments at 21-25.

E. Bill Impacts

The OCA’s bill impact analysis is provided in Appendix A of its Main Brief, consisting of Tables VIIIA and VIIIB.

F. Summary and Alternatives

The proposed revenue allocation and rate design under the Non-Unanimous Settlement may be more reasonable than those the Joint Petitioners advanced in this case, but “less unreasonable than before” is not the appropriate standard for approval. The Commission should reject the Joint Petitioners’ unsupported proposals and approve the OCA’s cost-of-service study, revenue allocation, and rate design because they are supported by the evidence of record. The OCA’s proposals are set forth are attached to its Main Brief as Appendix A, which include Tables VIIA and VIIB (the OCA’s full revenue allocation proposal)¹⁷ and Tables VIIIA and VIIIB, (the OCA’s rate design proposal, including rate impacts for revenue at present rates). The OCA’s recommendations would result in just and reasonable rates, as they comply with the Commission’s stated policies and precedent and are supported by evidence of record.

¹⁷ OCA Appendix A, Table VIIA includes the OCA’s proposed revenue allocation at the OCA’s recommended revenue requirement. OCA Appendix A, Table VIIB includes the OCA’s proposed revenue allocation at Peoples’ recommended revenue requirement.

X. WEATHER NORMALIZATION ADJUSTMENT

A. Peoples' Fails to Meet the Burden of Proof for its Modified WNA.¹⁸

Peoples' Main Brief argues for the approval of its WNA as it now exists under the terms of the Non-Unanimous Settlement, but those terms do not remedy the defects identified in the OCA's Main Brief¹⁹ or convert the WNA into a just and reasonable rate. The Non-Unanimous Settlement terms, which is now Peoples' litigation position based on its Main Brief, include the following modifications to Peoples' originally-filed proposal:

1. Peoples will display WNA charges or credits as a separate line item on customers' bills;
2. The WNA will include a 3% deadband;
3. The WNA will be performed on a bills rendered basis;
4. The WNA adjustment for bills rendered in May will not exceed 100% of the billed distribution amount for that same period; and
5. The Company will file an annual report with the Commission by September 1 for the 12-month period ending June of the same year. The report will include (a) monthly WNA billed revenue; (b) monthly actual and normal HDD data; and (c) the number of customers and bill impacts by class in billing periods where the NHDD/AHDD exceeded 1.5

Peoples M.B. at 59.

As a threshold matter, there is no substantial evidence that any of the above modifications protect consumers. As the OCA thoroughly explained in its Main Brief, the 3% deadband concession that Peoples made to close its settlement deal with I&E has not been developed in the record and there is no demonstration that a 3% deadband converts the WNA into a just and reasonable rate. OCA M.B. at 120. Although Peoples asserts in its Main Brief that the WNA should

¹⁸ The OCA addressed the WNA on the same basis that Peoples' presented it in its Main brief, which is in the context of the Non-Unanimous Settlement Provisions.

¹⁹ OCA M.B. at 108-122.

be adopted because other NGDCs have implemented a WNA with a 3% deadband, they provide no evidence that a 3% deadband would be effective in protecting consumers or even in meeting their objectives. The OCA outlined the flip-flip that Peoples did on this issue in its Main Brief. OCA M.B. at 120. To be sure, the faulty logic of Peoples' reliance upon other utilities to support its WNA is akin to arguing that a revenue requirement determination made in a Columbia Gas rate case ought to automatically entitle Peoples to the same level of revenue that Columbia Gas received. OCA St. 4R at 23. Peoples has not refuted this point.

Peoples did not provide the OCA with any information about the existence of Modification No. 3, above, until after 1 p.m. on May 30, the same date that the OCA was required to submit its Main Brief. Because of the late timing, the OCA was deprived of the opportunity to review or address Modification No. 3 in its Main Brief. Modification No. 3 indicates that the WNA adjustment for bills rendered in May will not exceed 100% of the billed distribution amount for that same period. Peoples M.B. at 59. As the OCA will explain more thoroughly below, while the origin of this term appears to be an OSBA position that Peoples previously disavowed and now resurrects at the eleventh hour, there is no record evidence of how it would work, the impact it would have, or any substantial evidence that it somehow converts the WNA into a just and reasonable rate.

B. Peoples Ignores Section 1330's Just and Reasonable Rate Requirement.

While Peoples couches its WNA as “permitted by statute”, Peoples M.B. at 60, it omits critical information about the statute that permits authorization of alternative ratemaking mechanisms: Section 1330 requires that any resulting rates must be just and reasonable. Specifically, the General Assembly expressly addressed Section 1330 in the context the fact that “it is in the public interest for the Commission to approve just and reasonable rates and rate mechanisms. . . .” 66 Pa. C.S. § 1330 (a)(1). Nothing in Section 1330 limits the Commission's

authority, nor does it abdicate the Commission's authority to set just and reasonable rates for Peoples simply by virtue of that fact that Peoples points to Section 1330.

To determine "just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose" of the Commission's policy and the policy laid out in Section 1330, the Commission developed 14 factors it considers in a policy statement. 52 Pa. Code § 69.3302(a).²⁰ As the OCA has demonstrated in the record and as it summarized in its Main Brief, all applicable factors weigh against approval of the WNA and Peoples has failed to provide that it would produce just and reasonable rates. OCA Exh. DE-1; OCA M.B. at 109-118. Accordingly, while a WNA proposal may be authorized for the Commission's approval pending consideration of the applicable policy factors and applicable standards, *Peoples'* WNA is not authorized by statute and it fails the just and reasonable ratemaking test.

C. Peoples' WNA Is Adverse to the Public Interest and it Should Be Denied.

After spending almost the entirety of this case arguing that the WNA is anticipated to be revenue neutral, and that customers are just as likely to receive a bill credit as a bill charge if the WNA were approved, Peoples' Main Brief makes an abrupt departure from that position. Peoples now argues that significant warming trends necessitate that a natural gas distribution company must have a WNA "to have a reasonable chance to recover its revenues. . . ." Peoples M.B. at 60. Peoples also makes the claim that it lost over \$40 million due to warmer weather last year, which it cannot recover like other NGDCs in Pennsylvania may do. *Id.* In making these claims, Peoples contradicts the record of this case and, as such, its claims should be given no weight.

During virtually the entire record phase of this case, until the evidentiary hearing on May 9, Peoples' position on warming trends and the revenue impact of the WNA contrasted with the

²⁰ The 14-question test is analyzed in full in OCA Exh. DE-1, and is incorporated herein by reference.

position it now makes it its Main Brief. As an example, in its Rebuttal Testimony, Peoples admonished the testimony of a public input witness who expressed concerns about the reality of warmer weather trends and the billing impact of the WNA by claiming that “over a length of time the total weather related cumulative impact is expected to be zero or near zero.” Peoples St. No. 3-SR at 11. Additionally, Peoples witness Zarumba argued that the cumulative impact of the WNA over a seven-year timeline proves that it would be minimal. Using data extending from 2016 through 2022, which is the only comprehensive time period Peoples analyzed for this case, Mr. Zarumba argues that the WNA charge would have resulted in only \$9.9 million in higher revenue charges over seven years. OCA St. 15-RJ at 4. Thus, Peoples inconsistent claims about warming trends will prevail and that it lost \$40 million in revenue in 2023²¹ directly contradict Mr. Zarumba’s claims of a de minimis impact and the purported “net zero” impact. Thus, Peoples novel claims should be given little to no weight and they are insufficient to support approval of the WNA.

Likewise, Peoples claims that the WNA benefits ratepayers through normalized costs is also unproven. Peoples M.B. at 61. Peoples offered no proof of any customer interest in having a WNA applied to their bill for cost normalization. To the contrary, Peoples’ witness Scanlon admitted during the evidentiary hearing that Peoples had not presented any survey results to indicate that its own customers are interested in having a WNA mechanism for purposes of receiving bill that reflect normalized weather conditions. Tr. at 332. On the other hand, during the public input hearings held in this case, several customers testified that they did not believe they would benefit from having a WNA applied to their bills. Tr. at 48-50; Tr. at 2-14-222. Peoples’ uniformed claims about customer benefits should be disregarded because they have no evidentiary support.

²¹ OCA witness Johnson was asked to accept Peoples’ claim that it lost \$40 million in revenue in 2023 based upon weather. In response, Mr. Johnson answered “that’s what the Company said.” Tr. at 410.

Finally, though Peoples reasserts its faulty claim again in its Main Brief, there is no underlying support for its claim that all of the NGDCs in witness Moul’s proxy group have WNA mechanisms in order to mitigate weather-related impacts on revenue. Peoples M.B. at 61. The record in this case already indicates that such claims do not bear out. Mr. Moul claimed a “common characteristic” of most of his proxy group is that they have “rate stabilization mechanisms” like weather normalization, decoupling, and infrastructure riders. Peoples St. 13 at 9. However, a deeper dive into Mr. Moul’s claim revealed that Mr. Moul’s analysis of WNAs for his proxy group companies was limited to the Forms 10-K reported by each company online. Importantly, Mr. Moul’s analysis did not include any underlying comparative risk analysis into how each “WNA” type mechanism was calculated or the specific details of how those mechanisms compare to Peoples existing DSIC or WNA. OCA St. 3 at 49. Thus, Mr. Moul’s assertions should be given no weight.

D. The Record Evidence Warrants Denial of Peoples’ WNA.

1. The OCA Accurately Asserts that the WNA Is Unjust and Unreasonable.

Consistent with the claim Peoples has primarily relied upon to support its WNA, Peoples’ Main Brief again relies upon the fact that other NGDCs in Pennsylvania have WNA mechanisms in place. Peoples M.B. at 61. It is undisputed that WNAs have been put into effect by four NGDCs in Pennsylvania: the Philadelphia Gas Works, UGI Utilities, Inc., National Fuel Gas Company, and Columbia Gas of Pennsylvania. However, the Commission’s decision to authorize WNAs for other NGDCs does not mean that Peoples has met its burden of proof in this case that the proposed WNA would result in just and reasonable rates. 66 Pa. C.S. §§ 315(a), 1301, 1330. The Commission should not permit Peoples to be absolved of its burden of proof to support the WNA by merely pointing to the other utilities. The fallacy of permitting Peoples to rely upon other utilities to support its own WNA proposal is heightened when Peoples sought to distinguish itself

from those utilities by presenting 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.

The Commission’s obligation to give due consideration to consumers’ interests requires much more than the regulatorily-equivalent claim of “everyone else is doing it.” Peoples has not offered much beyond this claim, and to the limited extent that it has supported any proposal, it supported a WNA proposal that looks very different than the one it acquiesced to offering in the Non-Unanimous Settlement. As indicated in the OCA’s Comments in Opposition to Settlement, the newfound “consumer protections” included in the Non-Unanimous Settlement are insufficient to cure the many defects the OCA identified in this case, and they do not support any determination that the WNA is in the public interest or that it will produce just and reasonable rates. OCA Comments at 27-28.

2. Customers Will Be Harmed By The WNA

In an attempt to refute the OCA’s well-founded and record-supported concerns regarding the customer harm that the WNA will cause to ratepayers, Peoples makes two primary claims in its Main Brief. First, Peoples claims that weather-related risk is shared symmetrically between customers and Peoples. Additionally, Peoples claims that the OCA fails to acknowledge the newly-added “guardrails.” Peoples M.B. at 63. Neither of these claims are accurate or sufficient to support Peoples’ unsupported WNA.

First, Peoples’ claim that weather-related risk is shared symmetrically between customers and Peoples contradicts the claim Peoples made three pages earlier in its Main Brief when it claimed the historical, significant warming trend require an NGDC to have a WNA in order to have a reasonable chance to recover revenue. Peoples M.B. at 60-63. There is no record support for any notion that customers would pay less with a WNA mechanism in place. 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 would have been 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 study, the result is clear: the WNA is a rate which causes rate harm to captive customers in the short- and long-term.

Finally, Peoples' eleventh-hour concessions to I&E's demand that it implement a 3% deadband for the WNA and the OSBA's demand that it limit May WNA adjustments to no more than 100% of the billed distribution amount are not supported as viable consumer protections. I&E never produced any calculation, analysis or evidence of how applying a 3% deadband is a reasonable customer protection. OCA St. 4 at 24. I&E admitted that the sole support for its 3% recommendation was not based upon anything other than a 2021 Columbia Gas Order that determined that 3% represented normal weather in that case. I&E St. 3SR at 13. For its part, because Peoples' position has been that the 3% deadband negated the purpose of the WNA and rendered it less effective, it too failed to provide any underlying support or analysis to demonstrate how the 3% deadband would protect customers from the unjust and unreasonable WNA. *See* Peoples St. No. 3-R at 6; Peoples St. No. 15 at 7, Tr. at 322-24; Tr. at 345. No record support exists.

Additionally, no substantial evidence exists to demonstrate that Peoples' agreement to limit May WNA adjustments to no more than 100% of the billed distribution amount is a viable protection for consumers. No party provided an analysis to demonstrate whether or how the 100% limitation imposed only for May would protect customers from WNA-injected cost increases. The Commission should take little solace in a cap that permits Peoples to increase customer bills up to

100% more 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, where 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 best way for the Commission to protect consumers from the WNA is to not implement the WNA.

3. Peoples' Claims that it Will Educate Customers Are Too Little, Too Late.

Peoples attempts to dismiss the OCA's concerns that customer will not understand the WNA by claiming that "utility rates in general are not easy to understand" and that it will train its employees and provide explanatory education materials once the WNA is approved. Peoples M.B. at 64. Peoples' position is essentially that utility rates are complex anyway and that they will eventually get around to designing some talking points once the WNA is approved. Peoples' failure to adequately acknowledge the extreme complexity of the WNA and to articulate any details of how it will combat the complexity through customer education is dismissive, at best.

The record in this case reveals the complexity customers will face in navigating the WNA portion of their bills, including a customer's perspective, which Peoples ignores. Peoples customer Mr. Nicholas Hoffman testified that the calculation of the WNA is complex and that a customer would have a difficult time verifying the accuracy of the charge or credit. Exh. N-H #1 at 2. To be sure, the WNA calculation is complex with inputs that include technical terms not likely to be known to the average consumer such as normal heating degree days, actual heating degree days, a customers' total monthly Mcf consumption, the customer's baseload Mcf consumption, and the Company's distribution charge. Tr at 331-332.

Customers are also likely to be confused by the difference between their billed metered usage and their WNA usage. Peoples' distribution charge is billed "per MCF," meaning that customers can directly compare their metered usage to the overall distribution charge. OCA St. 5 at 26. However, under Peoples' proposal, the MCF usage indicated in the WNA charge will differ from the actual metered MCF usage because the WNA does not apply to weather insensitive usage, which will lead to customer confusion. Peoples never disputed these concerns raised by the OCA, and its answer was that customers will pore over the Company's tariff and other filings to identify how the WNA is calculated on their bill when the bill arrives. Tr. 336-337. Now Peoples supplements its position to add that utility rates in general are not easy to understand. Peoples M.B. at 64. If the Commission approves the WNA, it will guarantee that Peoples' rate become even harder to understand, and Peoples' lack of concern and planning guarantees this outcome.

4. Risk-Shifting Permitted by the WNA Can Impact Peoples' Cost Control Incentives

Despite Peoples' claims, rejection of the WNA will better incent Peoples' management to address its business risk and control costs. Importantly, the OCA has never alleged that Peoples can control the weather, although Peoples raises weather control as a strawman argument. *See* Peoples M.B. at 65. By limiting its response to the context of controlling the weather, Peoples seeks to sidestep the actual claims that the OCA advanced. As explained in OCA's Main Brief, it is indisputable that Peoples WNA is a rate requested to guarantee its profit in the face of warming weather and earn at a revenue requirement set by a self-determined higher number of heating degree days. While it is indisputable that Peoples cannot control the weather, that Peoples would unilaterally determine what constitutes "normal" weather and then rely upon such determination to adjust customers' bills to collect more revenue from customers when consumers do not consume

as much gas as Peoples expect them to consume due to warmer weather is not reasonable and only serves to enrich Peoples at the expense of ratepayers.

Instead of responding to risk management and cost control claims, and the others more fully set forth in the OCA's Main Brief, Peoples raised a strawman argument about controlling the weather. In actuality, mechanisms like the WNA have the effect of decoupling a utility's expenses from their revenues and permit the utility to earn revenue in excess of its authorized level of expenses. This is particularly true here where Peoples already employs two alternative ratemaking mechanisms: the FPFTY it used to build its rate case and its DSIC. OCA St. 1 at 20. Peoples has failed to respond to these arguments.

5. Budget Billing Provides Customers with Bill Normalization.

Peoples' Main Brief argues that budget billing does not accomplish WNA goals because it does not address Peoples lost revenues resulting from warmer weather than normal and it does not credit customers for higher bills resulting from colder than normal weather. At the outset, the OCA agrees that budget billing options do not address Peoples claims for lost revenue. However, the OCA's position, argued throughout this case and its Main Brief, remains that it would be unjust and unreasonable to implement the WNA in this case, and inconsistent and contradictory claims of lost revenue do not cure the identified defects and are frankly irrelevant. The revenue lost because customers do not use gas during warmer than normal weather is not Peoples' to begin with, as Peoples is not entitled to a certain amount of money from each customer regardless of how much gas they use.

Instead, the OCA raised budget billing in response to Peoples' claims that the WNA stabilizes bills for customers. In that context, if Peoples seeks to reduce volatility in customer bills as a result of seasonal fluctuation in bills, then it can promote budget billing to its customers. The OCA is dubious of a scheme by the utility to increase bills in the winter during warmer months as

a means of leveling a bill. Surely, even Peoples does not think that customers will be disappointed if their bill is lower than they anticipated during a warmer than normal winter. Budget billing, on the other hand, is already available under the Commission's regulations and permits reconciliation of over- or under-billing, which the WNA does not, and specifically applies to heating customers, who are likely to experience the weather sensitivity upon which the WNA is based. OCA St. 6 at 64; 52 Pa. Code § 56.12(8). Peoples both admits that customers who wish to stabilize monthly bills can sign up to be enrolled in a budget billing program and that it has not conducted any survey of its customers to gauge their interest in having a WNA mechanism for purposes of receiving bills that reflect normalized weather conditions. Tr. at 325, 332. Finally, Peoples' argument that customers cannot receive a billing credit for colder than normal weather conditions through budget relies upon acceptance that the mechanism is being put in place to protect customers from colder than normal weather and the notion that customers would actually receive such credits and that they would perceive them as a benefit, and neither of those assumptions are supported in the record.

6. The WNA Will Discourage Energy Efficiency.

Peoples claims that the WNA will not discourage energy efficiency are divorced from the reality of price signaling. *See* Peoples M.B. at 66. As the OCA has explained, the Commission has long prioritized the importance of accurate price signaling when determining just and reasonable rates. *See, e.g., Pa. PUC v. PPL Electric Utils. Corp.*, Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757, *210 (Order Oct. 19, 2012) (placing sufficient revenue requirement in distribution rates to ensure customers receive accurate price signals and have control over their bills). Peoples' proposed WNA obscures those signals.

Peoples relies upon the WNA's application to only distribution charges to argue that energy efficiency will not be disincentivized. Peoples M.B. at 65. Yet, the fact that the WNA will only affect the distribution portion of a customer's bill ignores critical facts about the extent of impact

that the distribution charge has upon customers' bill. Of the \$6.3920²² PNGD customers would be charged monthly per MCF at the Company's proposed rates, \$5.3734²³ is considered the "delivery charge"; similarly, for PGD customers, \$5.4938²⁴ of the \$6.5124²⁵ per MCF charge is identified as "delivery charge." Peoples Exh. 14, App'x D at 3. Using the data Peoples provided reveals that the vast majority of the portion of a customer's bill which varies with usage – 84% for both service territories – is affected by the WNA. Because the WNA divorces the cost of service from the customer's ultimate bill, customers are less able to control their ultimate bill, which reduces consumer incentives to limit their consumption or improve their energy efficiency. This undermines factors 5 and 6 of the Commission's stated policy on alternative ratemaking. 52 Pa. Code § 69.3302(a).

7. The WNA Is Not Tied to Cost of Service.

Peoples mere assertion that the WNA is a cost of service ratemaking mechanism is wholly unsupported. *See* Peoples M.B. at 66. Regardless of whether the WNA is tied to Peoples' unilaterally determined weather-related revenue fluctuations, Peoples has not overcome the simple fact that the WNA is entirely disconnected from actual cost-causation. As OCA witness Evrard explained, the WNA is divorced from Peoples' cost of service because it tied to *not providing* service, as the WNA charge is assessed when warmer weather results in less gas service being provided. Peoples customer Hoffman explained this concept best at Peoples March 5 public input hearing when he posed the question of how it is reasonable to assess a WNA charge upon customers when Peoples will spend less on costs like infrastructure because they are providing less service and recouping a higher charge. Exh. N-H #1 at 3. The answer to Mr. Hoffman's question

²² Peoples Exh. 14, App'x D at 3, Column 14, Row "Total per MCF": \$6.3920.

²³ Peoples Exh. 14, App'x D at 3, Column 14, Row "Delivery Charge": \$5.3734.

²⁴ Peoples Exh. 14, App'x D at 3, Column 15, Row "Delivery Charge": \$5.4938.

²⁵ Peoples Exh. 14, App'x D at 3, Column 15, Row "Total per MCF": \$6.5124.

is that it is not reasonable to assess the WNA charge in this case, and the fact that the WNA is divorced from Peoples' cost of service is one of many reasons warranting its denial.

8. Conclusion to WNA Issues.

The last-minute modifications to the WNA in the Non-Unanimous Settlement does nothing to overcome the fact that the WNA still will not be a just and reasonable rate. Putting aside, *arguendo*, the unjustness and reasonableness of the WNA, Peoples' Main Brief and the Non-Unanimous Settlement completely ignore the interests of consumers. Such ignorance is best exemplified in the fact that neither Peoples, nor any other Joint Petitioner, has even acknowledged the proven and disproportionate impact that the WNA will have upon low-income customers. See OCA M.B. at 16. These realities include that any WNA adjustment will also apply to the cost of the CAP program recovered from non-CAP customers. As a consequence, non-CAP customers who are subject to the WNA will have to pay not only their own WNA adjustments, but also those of CAP customers. Peoples St. 3 at 17. Low-income customers will be more significantly harmed because they will be less likely to be in a position to reduce their overall natural gas usage through energy efficiency measures. OCA St. 6 at 61-64. No party contests these facts, and it is just one of many examples of the complete subordination of consumer interests in order to implement a WNA at all costs.

Peoples' Main Brief makes much of the fact that it has agreed to reflect WNA charges on customers' bills in a separate line item and that it accepted a 3% deadband, but these measures are inadequate to address consumer concerns. See Peoples M.B. at 67. Separately displaying an unjust and unreasonable charge on customers' bills and adopting a deadband that is solely supported by reference to a 2021 Columbia rate case that has no bearing here do not cure the many defects of Peoples WNA. In totality, Peoples has failed to support the WNA throughout this case because it failed to support its litigation proposal with substantial evidence. OCA M.B. at 108-122. Now, in

the Joint Petition, Peoples and all other Joint Petitioners, fail to meet the burden of proof that the WNA contained in the Non-Unanimous Settlement is in the public interest or would result in just and reasonable. 66 Pa. C.S. § 315(a), 332(a). Denial of Peoples' WNA is both warranted and necessary to protect consumers.

XI. LOW-INCOME CUSTOMER SERVICE ISSUES

Peoples continues to oppose the OCA's reasonable and appropriate recommendations that Peoples make several adjustments to its treatment of low-income customers, both confirmed low-income customers and unconfirmed low-income customers. Peoples M.B. at 76-89. At the outset, Peoples attempts to diminish the applicability of OCA's recommendations by characterizing them as more appropriate for review in a universal service stakeholder process. Peoples M.B. at 78. In making its dismissive claims, Peoples ignores precedent indicating that rates set in this proceeding must be just and reasonable, which requires balancing the interests of *all* consumers, including low-income, residential consumers, with the interests of the Company. *See, e.g., Pittsburgh v. Pa. PUC*, 126 A.2d 777, 784-85 (Pa. Super. Ct. 1956). As a policy matter, it is inconceivable that at the same time that Peoples seeks to impose a significant rate increase upon customers it summarily dismisses the bulk of the OCA's low-income recommendations.

The OCA's Main Brief identified and provided support for critical recommendations that Peoples ought to be compelled to adopt to protect vulnerable customers in its service territory. OCA M.B. at 126-136. These recommendations would require Peoples to do the following: (1) conduct a root cause analysis to address disproportionate disconnections; (2) conform its confirmation of low-income status to meet Commission regulations; (3) adopt additional customer contacts to ensure that low income customers have the opportunity to apply for CAP at critical junctures; (4) consider affordability prior to offering a payment arrangement; and (5) implement

speech analytics to better detect low-income customers. OCA M.B. at 126-136. The OCA submits that Peoples' opposition to these recommendations is unwarranted, especially when considered in the context of the rate ramifications of this case. Accordingly, the OCA urges the Commission to adopt each of its recommendation to mitigate the access to service barriers that Peoples' most vulnerable customers face, and which will likely be exacerbated as a direct result of this case.

XII. CUSTOMER/QUALITY OF SERVICE ISSUES

In its unreasonable dismissal of virtually all of OCA's customer service and quality of service recommendations, Peoples continues to fail to meet its burden of proof in this case. Peoples M.B. at 89-95. Service²⁶ must be adequate, efficient, safe, and reasonable, but as the OCA thoroughly explained in its Main Brief, absent adoption of the OCA's recommendations, Peoples fails to provide such service. *See* 66 Pa. C.S. § 1501; OCA M.B. at 136-146. In its Main Brief, the OCA fully supported recommendations for improvement in Peoples' quality of customer service and asks that they be imposed as conditions of any rate increase awarded to Peoples. These recommendations include the following: (1) the Commission should conduct an investigation into Peoples' practices of billing for non-basic service charges; (2) Peoples should be required to evaluate extending its live customer service hours beyond traditional business hours; (3) Peoples should be required to conduct a proper root cause analysis of complaints for purposes of tracking issues and implementing appropriate improvements; (4) Peoples should develop and improve training procedures to ensure compliance with regulations governing termination of service; and

²⁶ "Service" is used broadly and inclusively, and captures "any and all acts done, rendered, or performed" by public utilities. 66 Pa. C.S. § 102; *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75, 77 (Pa. Cmwlth. Ct. 1990). As such, all parts of a public utility's customer service must be adequate in order for the utility to comply with the requirements of Section 1501 of the Code, and "inappropriate and unreasonable treatment to customers can be interpreted as inadequate service." *See, e.g., Laura Andracchio Johnson and Charles Johnson v. Duquesne Light Co.*, Docket No. C-2022-3032695, 2023 PA. PUC LEXIS 343 at *17 (Order entered Dec. 21, 2023) (citing *Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Order entered May 9, 2011)).

(5) Peoples should correct policies and disclosures for its termination processes occurring in the context of the landlord-tenant arena; (6) and Peoples should better educate shopping customers who may be purchasing commodity from a third-party. OCA M.B. at 136-146.

For purposes of brevity, and because the OCA fully supported each recommendation in its Main Brief, the OCA will incorporate relevant portions of its Main Brief.

A. Non-Basic Services

Peoples' Main Brief fails to acknowledge the OCA's well-founded concerns about the customer confusion that its billing practices are likely to create by design. Peoples M.B. at 90-91. The OCA's Main Brief provides a comprehensive analysis of this issue, and support for the adoption of its recommendation that the Commission should conduct an investigation into Peoples' practices of billing for non-basic service charges. OCA M.B. at 138-140. Peoples has largely ignored the OCA's analysis in its summary dismissal of OCA's recommendations, but the OCA's substantiated concerns still exist and provide a basis for additional investigation. The OCA's recommendation should be adopted as a condition of any rate increase Peoples may receive.

B. Operational Issues

1. The Company Should Expand its Call Center Hours.

In the same Main Brief in which Peoples averred that it ought to be permitted to spend ratepayers' money on sponsoring Pittsburgh sports teams, to charge ratepayers for replacing infrastructure that its own negligence necessitated, and to be awarded a premium for management performance, Peoples also avers that it should not be required to expand its call center hours. *See* Peoples M.B. at 93. Peoples inaccurately claims that the OCA has not provided "any evidence whatsoever" as justification for why Peoples would need to expand its call center hours. *Id.* Peoples' obstinate refusal to evaluate an expansion of its call center hours, which are limited to

the times of 7:00 am to 5:00 pm, Monday through Friday, exemplifies the lack of priorities for which Peoples has continually demonstrated for consumers in this case.

In its Main Brief, Peoples attempts to diminish the call center limitations by characterizing the evidence in this case as being limited to one particular concern, and by claiming that Peoples had many points of contact with that specific customer. *Id.* Peoples' claims ignore the truth. The customer Peoples appears to be referencing is Mr. Krenitsky, who testified that he had difficulty getting a hold of assistance from Peoples due to their limited call center hours. Tr. 226. Regardless of whether Peoples has had other points of contact with Mr. Krenitsky, the issue Mr. Krenitsky raised extended beyond his own personal circumstances: he testified that people who work for a living during conventional business hours have a hard time reaching Peoples when they "shut down" the call center at 5 p.m. *Id.* In contrast, Mr. Krenitsky noted that another utility that serves him, Pennsylvania-American Water Company, maintained customer service hours until at least 7 p.m. *Id.* Thus, the issue Mr. Krenitsky raised was one of accessibility and Peoples' attempt to confine it to one particular customer concern mischaracterizes the access issue raised.

OCA witness Alexander recommended that Peoples conduct an evaluation of the potential for extending the call center hours to accommodate customers who are employed during normal business hours. Ms. Alexander also recommended that the evaluation should consider changes in staffing levels to reflect the volume of calls during the call center hours and implement extended business hours when the Company determines that this can be done with reasonable costs. OCA St. 5 at 34. Thus, the OCA's recommendation is very narrowly-tailored to enabling Peoples to determine whether an expansion of call center hours would be justified and to ensure that, if so, it could be done efficiently and at a reasonable cost. Accordingly, the OCA's recommendation should be adopted as a condition of any rate increase that Peoples is awarded.

2. The Company Must Improve its Complaint-Handling Process By Conducting a Root Cause Analysis.

Peoples summarily rejects OCA's recommendation for it to conduct a proper root cause analysis with respect to complaints because it alleges that it already includes such analyses in its extant processes and procedures; however, it fails to support this claim. *See* Peoples M.B. at 93. Despite its claims, Peoples does not conduct the type of root cause analysis that ought to underlie its complaint review process and does not adequately investigate its non-compliance with Commission regulations when handling consumer complaints. Evidence in this case supports the OCA's position.

Specifically, the Commission's Bureau of Consumer Services (BCS) reported the Company's number of verified infractions or confirmed "misapplication[s] or infringement[s] of a Commission regulation," such as those in Chapter 56, increased from 13 to 33 from 2022 to 2023. OCA St. 6 at 15. This is a significant increase. *Id.* Despite the increase, Peoples has not specifically indicated how its management investigated the increase in infractions or sought to respond to the increase by conducting a complaint analysis, or root cause analysis. *Id.* at 16. Such an increase and attendant lack of defined changes to address them prompted OCA witness Alexander to recommend that Peoples conduct a root cause analysis of its increased number of infractions. *Id.*

In its Main Brief, the OCA provided greater detail about the definition of and types of root cause analyses that would better inform Peoples' complaint handling procedures, and the OCA incorporates that discussion here, by reference. OCA M.B. at 128.

Peoples' unwillingness to fully and adequately investigate internal causes of non-compliance is confounding, especially in light of its claims that it is entitled to charge customers higher rates on the basis of claimed exemplary management performance. As such, the OCA

continues to recommend that Peoples conduct regular root cause analyses at intervals established by internal benchmarks, such as every three months or every five infractions, and commit to reducing infraction numbers to at or below 2022 levels. OCA St. 5 at 19-20. Peoples' claims that it already does these things as a course of business do not bear out with record evidence; however, assuming, *arguendo*, that it does any of them, its objections to reporting on the outcomes of such claimed efforts are wholly unsupported and inexplicable. Accordingly, the OCA's recommendation should be adopted as a condition of any rate increase that Peoples receives.

3. The Company's Training Regarding Termination Procedure Must Be Improved.

Peoples' Main Brief indicates that it now accepts OCA's recommendation to add explicit language to its training materials to specifically note the requirement to attempt personal contact immediately prior to actual terminations of service. Peoples M.B. at 94. Additionally, Peoples agrees to add express language to its training documentation concerning personal contact attempts within 90 days of a final Commission Order in this case. *Id.* The OCA accepts Peoples' commitment, which is consistent with the recommendations made by OCA witness Alexander, and avers that it is an important step for compliance with the Commission's regulations²⁷ and with ensuring that termination practice are consistent with consumers' rights and remedies. See OCA St. 5 at 20-24.

4. The Company Must Improve its Communication and Processes to Tenants in Terminated Shared Premises.

In its Main Brief, Peoples alleges that it aligned with most of the OCA's recommendations related to landlord-tenant matters in this case with the exception of the OCA's recommendation regarding protection from abuse orders (PFAs). Peoples M.B. at 95. By way of context, the OCA

²⁷ See 52 Pa. Code § 56.93, *Personal Contact*.

made the following recommendations with regard to how Peoples should adjust its communication practices and policies:

Peoples should allow tenants to affirmatively request that their personal information not be provided to the landlord/owner.

Peoples' policies and disclosures should reflect that landlords may not retaliate against their tenants for 1) the tenant exercising their right to pay the utility bill to continue service under the landlord's name, and 2) to recover this payment by deducting the payment from their rental payment.

Peoples should accept from tenants; medical certificates and protection from abuse orders, or court orders issued by a court of competent jurisdiction in the Commonwealth, which provide clear evidence of domestic abuse.

Peoples should not terminate a landlord/tenant account during the months of December through March for households with income at or below 250% of the federal poverty income guidelines.

OCA St. 5 at 25-26.

Peoples' asserts opposition only with respect to OCA's recommendation that Peoples should accept tenants' protection from abuse orders to protect the tenants' landlords from bills accrued by the tenants' abuser. Peoples M.B. at 95. Peoples argues that while it would accept the tenants' medical certificate, a PFA is "functionally different" because a tenant is not obligated to pay a utility bill in the name of their landlord. *Id.* Peoples has also argued that PFAs are applicable with respect to tenants' rights and therefore have no applicability to landlords. Peoples St. No. 16-R at 12. OCA witness Alexander argues that Peoples' flat-out refusal to provide such protections to tenants is not defensible, especially when Peoples is willing to provide medical emergency rights to a tenant in a manner that it will not extend to the realm of PFAs. Witness Alexander also explained that she is unaware of any lawful or regulatory basis for denying PFA rights to tenants and Peoples has not provide any such basis as part of its opposition, Accordingly, the Commission should approve the OCA's recommendation as a condition of any rate increase awarded to Peoples.

5. The OCA Supports the Company's Proposal to Eliminate Bill Payment Fees.

The OCA conceptually supports the inclusion of the cost of expanding transaction fee-free access to PGD customers in this proceeding. Where the OCA and Peoples diverge on this subject is only with respect to the recommended allowance for such costs. The OCA asserts its position on such costs above in Section VI.R.

6. The Company Should Expand its Education Efforts to Better Inform Consumers About Supplier Charges.

Peoples opposition to OCA's recommendations that it should better educate shopping consumers who purchase their commodity from a natural gas supplier (NGS) that they may be paying a higher rate than Peoples' default service rate is flawed in several respects. *See* Peoples M.B. at 95. In its Main Brief, Peoples alleges that (1) OCA's recommendations are unnecessary because Peoples does educate customers and identify the price to compare (PTC) on its bills ; (2) OCA offers no evidence that Peoples is out of compliance with the Commission's shopping regulations; and (3) that OCA has offered no evidence to suggest that Peoples has any control over customers' ability to shop. *Id.* at 96. Peoples' arguments here are largely predicated upon the notion that Peoples has not been proven to be out of compliance with any regulatory standards; however, Peoples not only mischaracterizes OCA's position, it appears to assert that absent violation of a regulatory standard, Peoples has no obligations at all with respect to customers who purchase commodity from NGSs. Peoples is wrong in each of these respects.

The OCA stands by both of its recommendations that (1) Peoples expand its customer education with regard to shopping for an NGS to ensure that customers are aware of the potential for increased bills or are aware of the length of their contract remaining; and (2) Peoples' bills should directly compare the commodity price a customer is paying with the price to compare on a side-to-side, apples-to-apples basis. OCA St. 5 at 31-32. While Peoples may be correct that the

OCA has not identified a regulatory requirement that explicitly requires Peoples to take these actions, it also conveniently ignores the correct context of the OCA's concerns. More specifically, the OCA cited the risk of uniformed shopping to all Peoples' customers that may be imposed in the form of high costs imposed by overdue bills, increased call center activity, payment arrangement, termination of service, and uncollectible expenses. OCA St. 5 at 31.

The OCA 's concerns are real and supported by facts in this case: of Peoples customers shopping as of December 2023, 99% were paying more than default service for their natural gas and 86% were paying *over twice* the price to compare for NGS service. OCA St. 5 at 30-31. Peoples has an obligation to mitigate such costs because they contribute to unaffordable bills for residential customers. *Id* at 31. The OCA's recommendations are geared towards ensuring that Peoples fulfills this obligation through increased education and transparency. Peoples mischaracterized the basis of the OCA's recommendations by omitting the critical fact that the recommendations are predicated on preventing higher costs to Peoples and its customers.

XIV. DISCOUNT RATES

A. Electricity as a Competitive Alternative

Peoples' Main Brief claims that its proposed tariff revisions for Rule 20 are neither inequitable nor discriminatory; however, these claims are not only unsupported in the record, they are also insufficient to provide a basis for expanding Peoples authority to offer discounted rates. Peoples M.B. at 96. The claims Peoples advanced in its Main Brief ignore that its proposal to revise Rule 20 is intended a vehicle to offer expanded discounted rates to consumer and industrial customers without a substantiated basis for such expansion. Importantly, by way of its existing Rule 20, Peoples already has sufficient authority to offer discount rates where a basis to do so is substantiated, and no viable reason for expansion of such authority has been identified.

Peoples' proposed revisions to Rule 20 would permit electricity to be considered a competitive alternative is made for purposes of negotiating discounted rates for commercial and industrial customers regardless of whether that customer was offered an electric flexed distribution rate in kind. Peoples' Main Brief fails to acknowledge that Peoples' existing tariff already extends the option of competitive rates to customers using more than 50,000 MCF per year when the customer can use an alternative fuel source, such as bypassing the Company's service lines to an interstate natural gas pipeline or a different natural gas delivery company. *See* Peoples Exh. 14, App'x A at 29. Moreover, under Peoples' existing tariff, electricity already qualifies as an alternative source of fuel for qualifying customers if an electric distribution company offers a "flex" rate to the customer. *Id.* Peoples' Main Brief also fails to support a need to revise Rule 20, as there has been no need demonstrated in the record of this case. Requiring Peoples to substantiate a viable basis for revising its tariff as proposed is essential, because negotiated discounted rates should be allowed only in a careful and limited manner since they pose a significant risk of undue price discrimination within Peoples' rate classes. OCA St. 4 at 47. Instead of identifying facts to prove that is somehow now necessary to remove the requirement for a customer to have a flex rate offer from electric distribution company as a condition of receiving a subsidized discount for gas service, Peoples makes general claims that do not bear out. *See* Peoples M.B. at 97.

First, Peoples claims that its proposal is intended to provide consumers with energy choice. *Id.* According to Peoples, the proposal to revise Rule 20 is intended to "provide current or future customers with an equal opportunity to maintain energy choice in a time where the current political and environmental, landscapes are pushing consumers into electrification." *Id.* Despite Peoples' policy claims, which the OCA submits are properly within the purview of the Commission outside the confines of a single natural gas utility's rate case, the mere possibility that an electric utility

might offer a flexed rate at some point is an insufficient basis for Peoples to discount its rates to that customer. Additionally, Peoples' claims ignore the fact that the Commission regulates both electric distribution and gas distribution utilities, and that the Commission must consider the impact on the customer base of both utilities. OCA St. 4 at 48. Peoples also fails to acknowledge that if it is allowed to offer a discounted rate in order to undercut the electric utility's full cost tariff, the electric utility may believe it has no other option than to seek authorization for its own flex rates.

Finally, Peoples claims that its proposal to revise Rule 20 is non-discriminatory are also without merit. Peoples M.B. at 96-97. In an attempt to prove that its proposal is non-discriminatory, Peoples points only to the fact the Rule 20 applies "only to a small number of eligible customers who but for a discount, would not choose to receive natural gas service from Peoples." Peoples M.B. at 97. Peoples also argues that the cost to serve the small number of impacted customers is less than the discounted revenue generated from those customers, meaning that they ultimately contribute millions of dollars of annual revenue to Peoples and offset costs and lower rates for other customers. *Id.* Peoples claims are of no value, because the OCA has not disputed Peoples claims about its *existing* tariff Rule 20. Peoples failed to address the OCA's real position here which is simply that Peoples has not demonstrated a need to revise Rule 20. To be sure, all of Peoples' claims about discount benefits are based upon Peoples' *existing tariff*. The OCA has not challenged Peoples' existing tariff Rule 20, and Peoples' claims about the benefits of its existing discounted rates are of no consequence here other than to demonstrate that they are already sufficient. The Commission should reject Peoples' request to expand its authority to offer discounted rates because the bases for its request are without merit and Peoples failed to meet its burden of proof.

XVI. CONCLUSION

In summary, Peoples has not met its burden of demonstrating the reasonableness of every element of its claims for rate base, expenses, rate of return, capital structure, revenue allocation, cost of service allocation, rate design, and alternative ratemaking. Accordingly, it is well within the discretion of the ALJ and the Commission to deny, and the ALJ and the Commission should deny, Peoples' ratemaking claims and requests in this proceeding that are challenged by the OCA and should adopt the OCA's fully substantiated recommendations related to such claims. The Commission should also adopt the OCA's recommendations relating to the improvement of Peoples' low-income customer assistance and customer service quality, as such recommendations are supported by substantial evidence of record, and they will ensure consumers' access to adequate and reasonable utility service.

Respectfully submitted,

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