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July 25, 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 Nos. R-2023-3044549

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceeding.

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

Respectfully submitted,

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Enclosures:
cc: The Honorable Mary D. Long (email only)
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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 Exceptions**,** 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 25th day of July 2024.

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Dated: July 25, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Administrative Proceedings

Regulations

I. INTRODUCTION AND OVERVIEW

On July 15, 2024, Administrative Law Judge Mary D. Long (ALJ) issued her Recommended Decision (Recommended Decision or RD). The OCA files these Exceptions.

In the Recommended Decision, the ALJ erred in recommending approval of a Joint Petition for Non-Unanimous Settlement (Non-Unanimous Settlement) without modification. OCA opposed the Joint Petition, which was supported by Peoples Natural Gas Company LLC (Peoples or the Company), 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"). The ALJ also recommended approval of a Low-Income Stipulation, which was jointly offered by Peoples, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Pennsylvania Weatherization Providers Task Force (PWPTF). The OCA does not oppose the Low-Income Stipulation and it does not form the basis for any of OCA's Exceptions.[1] Rather, the OCA's Exceptions are geared towards the errors in the RD, including the ALJ's decision to approve of the Non-Unanimous Settlement without making the specific findings of facts necessary to support the decision.

In her Recommended Decision, the ALJ recommends approval of a Non-Unanimous Settlement that, among other things, will provide Peoples with increased annual operating revenue in the amount of $93 million, permit Peoples to implement a Weather Normalization Mechanism for certain customers, implement a residential customer charge of $16.80 per month, and permit Peoples to expand Rule 20 of its tariff in order to extend competitive rate discounts to certain

[1] From a procedural perspective, it is important to under 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. OCA R.B. at 3.

customers who claim access to electricity as a competitive alternative. R.D. at 12-21. The OCA excepts to the approval of these terms, and others contained in the Non-Unanimous Settlement. Joint Petitioners have failed to both support the specific terms with substantial evidence and to prove the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations. Absent action by the Commission, Peoples' 700,000 customers in Southwestern Pennsylvania will be pay approximately $80 million more in rates than the OCA has demonstrated that Peoples will need to provide safe and adequate service at just and reasonable rates. OCA M.B. at 1; OCA M.B. at Appendix A. Additional detrimental and unsupported rate and service consequences are identified in the OCA's Exceptions.

Through her Recommended Decision, the ALJ approves the Joint Petition by approving a "black box" non-unanimous settlement without making specific findings of fact. The ALJ also errs by holding the Joint Petitioners only to a "public interest" burden that is inappropriate for a non-unanimous settlement, as it is a far lower burden of proof than the legally required "substantial evidence" burden. The lower standard was adopted in a Conclusion of Law included in the Recommended Decision: "The joint petitioners have the burden to provide that the settlement in the in public interest." R.D. at 86, COL 8. Additionally, throughout her R.D., the ALJ impermissibly shifted the burden to the OCA to overcome terms of the Non-Unanimous Settlement thereby vesting the agreement with some imprimatur of authority. Rather than point to substantial evidence in the record making specific findings, the ALJ accepted some parties' compromise and then impermissibly required the OCA to overcome that agreement. As OCA's Exceptions more fully explain, the ALJ erred in absolving the Joint Petitioners of their burden, as the proposed Non-Unanimous Settlement must also be supported by substantial evidence consistent with statutory requirements. 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. The OCA excepts where these standards have not been met.

II. LEGAL STANDARDS

Exception No. 1: The R.D. Fails to Identify any Findings of Fact that Form the Basis of its Recommendations

At the outset, the OCA recognizes that the Commission's regulations require excepting parties to identify the finding of fact or conclusion of law to which exception is taken, and to cite to the relevant pages of the underlying decision. 52 Pa. Code § 5.533 (b). While the OCA will identify conclusions of law where they form the basis for exception, and it will cite to the underlying pages of the ALJ's R.D., the OCA cannot identify any pertinent findings of fact because the Recommended Decision does not adopt any such findings. The ALJ erred in enshrining the Non-Unanimous Settlement with an aura of authority and she merely contrasted the Joint Petitioners' preferred outcome with the record developed by the OCA. In so doing, the ALJ erred in not pointing to any facts in the record supporting the Non-Unanimous Settlement by substantial evidence, indeed this may be because there are no facts in the record that support the outcome negotiated by the Joint Petitioners. Regardless, the ALJ's decision to issue an R.D. devoid of any findings of fact is a foundational error that renders that R.D. dispositive of nothing.

The OCA avers that the R.D. is deficient because it fails to identify the findings of fact that form the basis for its recommendations. The absence of any findings of fact is a consequential one because the Commission must make all findings of fact necessary to determine whether the rates are just and reasonable. *Barasch v. Pennsylvania Public Utility Commission,* 507 Pa. 496, 491 A.2d 94 (1985). Further, under the Administrative Agency Law, factfinders are required to include finings necessary to resolve the issues raised by the evidence and relevant to the decision; therefore, the deficient R.D. now leaves it to the Commission, as the ultimate factfinder, to identify

findings of fact in this case. See 2 Pa. C.S. § 507; *Scranton Garment Co. v. Workmen's Compensation Appeal Board*, 33 Pa. Commw. 190, 381 A.2d 210 (Pa. Cmwlth. 1977).

The absence of any findings of fact in the R.D. is fatal to the ALJ's conclusions of law because those conclusions become baseless without a factual predicate.[2] Throughout the RD, the ALJ summarized the relevant parties' positions and then reached a recommended conclusion that in her judgment the Non-Unanimous Settlement more reasonably resolved the issues than the positions of the OCA. While the OCA outlines more specifically in each of its other exceptions below why these decisions were incorrect, the ALJ committed a foundational error in not identifying the record evidence upon which she relied to make her recommendation.

As a consequence, the OCA is deprived of the ability to formulate a response to anything more than the general conclusions contained within the R.D.[3] The OCA excepts to the R.D.'s failure to identify any findings of fact that form the basis for the rejection of every factual position and legal or policy recommendation the OCA made in this case. The OCA respectfully avers that the Commission can give no weight to the conclusions contained in the R.D. as they are not supported by any findings of fact. Thus, in adjudicating the OCA's exceptions, the OCA submits that the Commission must point to record evidence and make specific findings based on the record to support its ultimate conclusion. It is insufficient, for the reasons outlined in the further exceptions below, for the Commission to merely point to the Joint Petitioners' resolution of the

[2] The absence of findings of fact to support the Recommended Decision was inconsistent with the ALJ's requirement that parties support their litigation positions with proposed findings of fact. To be sure, the OCA was required to submit proposed findings of fact with supporting citations to the record as part of the briefing requirements ordered in this docket. See *Interim Order on Briefs, Non-Unanimous Settlement and Closing of the Record*, p. 2, ¶3(b). The OCA complied with the ALJ's requirement, and its Main Brief included a comprehensive, detailed breakdown of 116 proposed findings of fact for the ALJ's consideration. See OCA M.B. at Appendix B. Peoples also submitted a Main Brief that contained 79 proposed findings of fact for the ALJ's consideration. Peoples M.B., Appendix B. In total, almost 200 findings of fact were proposed in this case, but the Recommended Decision did not identify any findings of fact it may have relied upon.

[3] The burden of OCA's task was further compounded by the fact that the OCA was provided with only 10 calendar days to prepare and file these Exceptions.

issues without identifying whether the record factually supports any of the outcomes Joint Petitioners proposed. The OCA respectfully requests that the Commission grant its exception by rejecting the R.D., and its unsupported conclusions of law.

Exception No. 2: Although the R.D. correctly states that the Joint Petitioners bear the burden of producing "substantial evidence" to meet their burden of proof for the Non-Unanimous Settlement, including that the resulting rates are just and reasonable, the R.D. erroneously applies a "public interest standard" that absolves the Joint Petitioners of that burden. R.D. at 8-9; R.D. at 86, COL #8.

In her R.D., the ALJ identifies the appropriate standard for approving the terms of non-unanimous settlements, which are the same for fully-contested cases: "the parties to the non-unanimous settlement must demonstrate that the proposed settlement is supported by substantial evidence and that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations." R.D. at 11, citing 66 Pa C.S. § 1301; *Pa. P.UC* v *Pike County Light & Power Co. – Elec.*, Docket No. R 2020-3022135 (Opinion and Order entered July 21, 2021); *Pa. PUC v. City of Bethlehem Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021) *PA. PUC v. Pennsylvania-American Water Co,* Docket No. R-2020-3019369 (Opinion and Order entered Feb. 25, 2021). As fully explained in the OCA's Reply Brief, the Joint Petitioners are not in any way absolved of this burden of proof simply due to the existence of a Non-Unanimous Settlement, as it must also be supported by substantial evidence consistent with statutory requirements. OCA R.B. at 5, quoting *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2002).

Yet, despite her acknowledgement of the Joint Petitioners' burden, the ALJ erroneously departs from applying it in her R.D. The ALJ's departure from the appropriate standard is best exemplified by the fact that the R.D. concludes, as a matter of law, that the "The joint petitioners have the burden to prove that the settlement in the in public interest." R.D. at 86, COL 8. The

ALJ's application of a "public interest" burden of proof is improper given the context of a non-unanimous settlement and it completely absolved the Joint Petitioners of their heavy burden to produce substantial evidence to support the Non-Unanimous Settlement, let alone to produce substantial evidence that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations. R.D. at 86, COL 8. To be sure, the ALJ has not made any findings of fact that the Non-Unanimous Settlement will produce just and reasonable rates, and the OCA submits that the record does not support such a finding. On the contrary, the R.D determined that the Joint Petitioners' $93 million revenue increase is reasonable because "the Joint Petitioners have sustained their burden that the compromise is in the public interest and should be approved." R.D. at 31. The ALJ points to no facts that support this conclusion perhaps because there are none. As the OCA's remaining exceptions demonstrate, in many respects, the R.D. not only relieves the Joint Petitioners of their burden, but it does so in ways that are contrary to the fully-litigated record in this case. Additionally, the R.D. appears to transfer an improper burden to the OCA to contest the purported benefits of the Non-Unanimous Settlement when those purported benefits lack any record support.

As a threshold matter, the Commission must reject the ALJ's application of a "public interest" burden of proof for the Joint Petitioners. Given that Peoples' general rate increase request will substantially affect the interests of consumers, the Commission must "consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers." OCA M.B. at 11, quoting 71 P.S. § 309-5. The Commission's duty is incompatible with permitting the application of a lesser burden of proof than legally required in this case. The OCA respectfully requests that the Commission grant its exception and reject the R.D.'s application of a lesser burden of proof for the Non-Unanimous Settlement.

Exception No. 3: The ALJ's Legal Standards and Conclusions of Law Give Undue Deference to the Non-Unanimous Settlement. R.D. at 10-11; COL 5; COL 6.

At the outset of the "Legal Standards for Settlements" section of the R.D., the ALJ points to the Commission's policy encouraging settlements, 52 Pa. Code § 5.231. R.D. at 10. Additionally, the R.D. identifies settlement benefits as including the savings of time and expense that parties must expend litigating a case, and conserving precious administrative resources. R.D. at 10. The ALJ also indicates that it is unusual for a proposed settlement in a general base rate case to be rejected, and that the Commission has not rejected or disfavored settlements because they are non-unanimous. R.D. at 11. The OCA avers that the Commission's policy of encouraging settlements, and the Commission's past practices for typically approving them, regardless of whether they are unanimous, are not appropriate legal standards in this case. To accept this approach would be to give the agreement of some of the parties to a proceeding the power to neuter a full scrutiny of the record and the requirement that the Commission base decisions in a rate case on record evidence, not mere acquiescence by some of the parties to a stipulated outcome. A non-unanimous settlement bears none of the hallmarks of a full settlement. It is not an agreement by all parties to resolve their differences by compromise. It does not save the expense or uncertainty of litigation because it must be fully litigated and could be appealed. It does not allow the parties that ability to set aside unresolved differences in a "black box." Indeed, much of the problem with the R.D., is that the ALJ treats the Non-Unanimous Settlement as if it were unanimous by giving full effect to its terms without citation to evidentiary support.

In truth, the Non-Unanimous Settlement has saved the parties no time or expense, it has been fully litigated, complete with an evidentiary hearing involving cross-examination of witnesses, and the submission of Main Brief, Reply Briefs, and now Exceptions. Litigation-related costs and resources will continue onward through the Commission's decision, and potentially

further on appeal; therefore, reliance upon any cost savings as a benefit of the Non-Unanimous Settlement is unsupported and it should not be considered as an operative legal standard. Thus, Conclusion of Law No. 6, which concludes that "Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding" is without support. This case is and was a fully-litigated proceeding.

III. REVENUE REQUIREMENT IN A NON-UNANIMOUS SETTLEMENT

Exception No. 4: The ALJ erred by relying upon a range of recommendations instead of substantial evidence in determining that the Joint Petition's $93 million revenue requirement is "in the public interest and should be approved." R.D. at 31-32.

For purposes of context, in the litigation phase of this case, Peoples proposed a revenue requirement of $156 million which it later reduced to $154 million in order to correct an error. Joint Petition at 6. The OCA proposed a revenue requirement of $13,018,740. OCA M.B. at Appendix A. I&E proposed a revenue requirement of $89.866 million. Joint Petition, Appendix F, p. 9. Although the R.D. fully sets forth the OCA's litigation position on Peoples' revenue requirement, it summarily rejects, without sufficient analysis, the OCA's position on the basis that the Joint Petition's revenue requirement "is well within the range of recommendations of Peoples, I&E, and OCA." R.D. at 32. The R.D. makes no finding about how the $93 million was derived, makes no ruling on what expense levels, ratemaking base, or rate of return was authorized. The R.D. indicates that each party's position was supported by expert testimony, and that each party presented arguments upon which reasonable minds could disagree. *Id*. Although the R.D. is devoid of any analysis of evidence presented or findings of fact from the record, it determines that OCA's evidence in support of a $13 million revenue increase is not sufficient to rebut the $93 million revenue increase advocated by the Joint Petitioners." *Id*.

The OCA does not need to rebut a $93 million revenue requirement stipulation by the Joint Petitioners, instead, as the proponent of the proposed increase, Peoples was required to show that

it was supported by substantial evidence. To be sure, the ALJ erred in absolving the Joint Petitioners of their burden, as 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). Unfortunately, the R.D. fails to identify any of the evidence the Joint Petitioners provided to support a $93 million revenue requirement, and the OCA is hard-pressed to find any in the record. Thus, the OCA is left to divine that the ALJ relied on the range of parties' litigated revenue requirements, which the OCA avers is an insufficient substitute for substantial evidence. The rationale of the R.D. is akin to saying that it is "close enough" to what was presented by the parties without making the requisite specific findings that are required when deciding a contested case.

While it may be true that $93 million is within "a reasonable range" of I&E's final litigation position, as asserted in I&E's Statement in Support of Settlement, that certainly is not true for the OCA's $13 million recommendation. See Joint Petition, Appendix F, p. 9. A range between two out of three litigated positions is not a substitute for substantial evidence that is required to support a rate increase The practical result is that consumer interests are not represented in the range, and permitting the range to serve as a defining metric will have a pervasive and detrimental impact upon consumers in future proceedings. The Commission should grant the OCA's exception by expressly rejecting the range of reasonableness standard employed in the R.D. because the "close enough" standard, predicated on the unsupported position of two parties to the complete exclusion

of the OCA's record-based position, is inconsistent with the substantial evidence standard that should have been applied.

Exception No. 5: The ALJ erred by adopting a $93 million revenue requirement because it provides Peoples with more revenue than the record supports.. RD at 31-32; OCA M.B. at Appendix A; OCA M.B. at 11, 17; OCA R.B. at 6; OCA CIOS[4] at 4, 7, and 13-14.

As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a). A public utility may obtain "a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment." *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*Lancaster 2002*). The ALJ errs in this case by approving a revenue increase that is approximately $80 million higher than the $13 million revenue increase that is supported by the record.

In its Main Brief, the OCA explained that Peoples' unjust and unreasonable rate increase request was driven by: (1) Peoples' unreasonable and excessive return on equity claim of 11.75%, which includes an unsupported 25 basis point adder for management performance, in addition to unnecessary size and leverage adjustments, and its claim for an equity-rich capital structure; (2) the unreasonable and unsupported inflationary factors upon which Peoples' rate base claims and expense claims rely; and (3) Peoples' request for authorization of a weather normalization adjustment (WNA) that will not benefit consumers or be consistent with the efficient consumption of utility service and that need not be granted for the Company to be able to provide adequate, safe, and reliable natural gas distribution service. OCA M.B. at 11. Though the Non-Unanimous Settlement decreases the harm from Peoples as-filed amount, the additional $80 million offered by the Non-Unanimous Settlement in excess of that which was supported by the record, is

[4] "CIOS" refers to the *OCA's Comments in Opposition to the Joint Petition for Approval of the Non-Uanimous Settlement* submitted in this docket on June 13, 2024.

excessive and unnecessary, and it still constitutes a substantial harm to Peoples' ratepayers by needlessly increasing rates beyond the level required by Peoples. The OCA's Main Brief contains a full discussion of this issue. OCA M.B. at 17-88.

The R.D. bought into a false binary of either accepting the Non-Unanimous Settlement or accepting the OCA's litigated case and the ALJ resolved this by accepting in full the Non-Unanimous Settlement without the requisite findings about whether it is supported by the record. This creates a legal conundrum because there can be nothing reasonable about a revenue requirement that relies on a "close enough" analysis as a proxy for actual evidence. Because the R.D. fails to identify the substantial evidence that supports adoption of a $93 million revenue increase – specifically, the R.D. does not address the Rate of Return or capital structure needed to achieve this dollar amount, does not address the expense and operations adjustments that the ALJ did or did not accept to arrive as this amount – as such the OCA's only recourse here is to reassert the adjustments and revenue recommendations set forth in its Main Brief contains a full discussion of this issue. OCA M.B. at 17-88. The OCA's Main Brief provides citations to the evidentiary record, as well as applicable citations to authorities to support all of its adjustments and recommendations.

The OCA's recommendations were made to protect consumers from paying unjust and unreasonable rates. As an example, the OCA argued for the removal of unreasonable plant addition costs from Peoples' rate base that no other party addressed, including Peoples' recovery of $1,462,407 that it expended to replace damaged steel pipelines resulting from its own negligence in Robinson Township. OCA M.B. at 26-27; OCA R.B. at 11-12. The OCA also recommended removal of the $27.8 million of unsupported inflation adjustments that Peoples embedded into its rate base claim. OCA M.B. at 24-25. The OCA also recommended $20.6 million of downward

adjustments to Peoples' unsupported expense claims in this case. OCA M.B. at 31-32. In yet another example of the types of claims that OCA challenged, Peoples made claims of over $1 million to recover expenses with sponsorship of professional sports teams such as the Pittsburgh Steelers and the Pittsburgh Pirates. Peoples M.B. at 36-37. Such claims not only fail to produce a quality of service, customer service or reliability benefit to ratepayers, but they are so far outside of the spectrum of public utility service that there is no nexus. OCA R.B. at 27. These are only examples of the types of claims that OCA challenged in this case. The R.D. recommends awarding Peoples with revenue that so far exceeds the $13 million increase supported in the record that at least some of these unsupported claims are now embedded in rates..

Additionally, the OCA recommended a market-based return on equity (ROE) of 8.02% for Peoples, based on a fully substantiated cost of capital analysis, and a hypothetical capital structure of 50% common equity and 50% debt for ratemaking purposes. Adoption of the OCA's recommendation on ROE alone would save consumers $136.19 million per year in rates, while still being adequate to enable Peoples to track essential capital and better align with the capital structure paradigm imposed by Peoples' corporate parent, Essential Utilities. OCA M.B. at 57-58. Importantly, the record that Joint Petitioner I&E built demonstrates that Peoples' equity-rich capital structure is costly to ratepayers, as I&E witness Spadaccio quantified the impact ratepayers would face if Peoples' capital structure prevails ratepayers would pay approximately an additional $17.9 million if Peoples' claimed capital structure is approved than they would under a 50/50 "optimal" capital structure. I&E St 2 at 13. Additionally, I&E demonstrated that Peoples' ROE was artificially inflated by unsupported leverage adjustment that would represent an unwarranted $41.7 million in annual rates to cover the cost of the inflated rate of return. *Id*. Although the Joint Petition does not identify an ROE or a capital structure for Peoples, it contemplates a revenue increase

much higher than justified by substantial evidence and the ALJ erred in recommending its approval on "black box" basis without identifying substantial evidence and record-based findings of fact to support it. The OCA respectfully requests that the Commission grant its exception and, in conjunction with record-based findings, reject the R.D.'s approval of the Non-Unanimous Settlement revenue increase of in the unsupported amount of $93 million.

Exception No. 6: The ALJ erred by permitting Peoples to support the Non-Unanimous Settlement by Improperly Relying Upon the DSIC ROE as a Defining Metric for Litigated Cases. OCA CIOS at 8; OCA R.B. at 7.

In this case, the ALJ approved the Non-Unanimous Settlement on a "black box basis" that adopts an overall revenue requirement without identification of each and every adjustment of the components of the rate filing. R.D. at 23. Despite this, as part of the Joint Petition, Peoples included a Statement in Support of Settlement that purports to support the $93 million revenue increase by claiming that the increase is per se reasonable because it aligns closely with "the current DSIC rate of 10.15%." According to Peoples, "the Commission often awards ROEs that are higher than the DSIC amount in litigated cases." *Joint Petition*, Appendix E, p. 5. As OCA explained in its Reply Brief, 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%. OCA R.B. at 7. I&E also offered evidence to refute use of the DSIC as a proper measurement of a utility's cost of equity in a rate proceeding, arguing that such claims in this case are inappropriate and not in the public interest. I&E St. 2 at 67.

To be sure, 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."). OCA R.B. at 34. Peoples' attempt to use the DSIC ROE as a barometer of reasonableness for the Joint Petition's revenue increase is both improper and contrary to Commission precedent. It is not at all clear from the record whether the ALJ relied on this statement, but it is clear from precedent that Peoples is incorrect in its assertion. The OCA respectfully requests that the Commission grant its exception by expressly rejecting any notion that a Peoples is entitled to a DSIC ROE as a course of business simply by virtue of filing a rate case.

Exception No. 7: The ALJ erred by imposing an improper burden upon the OCA to demonstrate that a black box settlement will not ensure that Peoples will prudently manage ratepayer funded resources. R.D. at 32.

The R.D. impermissibly shifted a burden to the OCA to overcome the seemingly impenetrable opacity of a black box settlement. Specifically, the ALJ determined:

> The evidence of OCA in support of a $13 million revenue increase is not sufficient to rebut the $93 million revenue increase advocated by the Joint Petitioners. OCA has not demonstrated that the lack of transparency necessitated by a black box agreement will not permit the Commission to ensure that Peoples will engage in prudent management of ratepayer funded resources.

R.D. at 32. The OCA excepts to this unsupported burden shifting. Putting aside the fact that the ALJ provides no authority to substantiate such a burden, if adopted, it would improperly convert the Joint Petitioners' burden of proof to a rebuttal presumption that the OCA or any other party challenging a non-unanimous settlement would be charged to overcome. In essence, the ALJ would require the OCA to demonstrate, by substantial evidence, that the Non-Unanimous Settlement rates agreed to are unjust and unreasonable, contrary to the public interest, and not in conformity with the Commission's orders and regulations. Not only would such a burden be wholly inappropriate, but it would be nearly impossible to meet in this case where the Joint Petition and its supporting statements lack supporting evidence to rebut as the Joint Petitioners simply agreed

to set aside their differences rather than resolve them through the introduction of supporting evidence. The OCA submits that the proper legal standard requires Peoples – and all of the other Joint Petitioners – to demonstrate by substantial evidence that that Non-Unanimous Settlement rates are just and reasonable and in the public interest. They have not carried this burden and the Commission should assess the record and make specific findings about each of the elements necessary to reach a required revenue requirement increase. The OCA respectfully requests that the Commission grant its exception by rejecting the R.D.'s burden-shifting provision that would require the OCA to rebut a black-box Non-Unanimous Settlement and, in conjunction with record-based findings, reject the R.D.'s approval of the Non-Unanimous Settlement revenue increase of in the unsupported amount of $93 million.

IV. DSIC

Exception No. 8: The ALJ erred by approving an unsupported settlement term that enables Peoples to improperly collect a DSIC prior to the end of its FPFTY on October 31, 2025. R.D. at 26-27; OCA CIOS at 15-16.

Although the record in this case makes no provision for it, and contains no discussion of it, the Non-Unanimous Settlement included a term indicating that Peoples is eligible to begin collecting a DSIC "once the total projected plant in service balance exceeds the level projected by the Company in this proceeding at October 31, 2025." Non-Unanimous Settlement ¶ 45. In its Comments in Opposition to the Non-Unanimous Settlement, the OCA objected to the term to the extent that it would permit Peoples to recover DSIC revenues prior to the end of the FPFTY, because by permitting the utility to recover on DSIC-eligible plant prior to the end of the FPFTY when it has reached a plant in service balance that it project will occur, the Commission would be disincentivizing the use of accurate projections for the plant the utility intends to place in service by the end of the FPFTY when setting rates. OCA CIOS at 16-17. The OCA averred that removing

the incentive for accurate projections is not in the public interest, would allow a utility to assess customers more money sooner, and would not result in just and reasonable rates. Additionally, the OCA indicated that no substantial evidence existed to support this term. *Id*. at 17.

In her R.D., the ALJ rejected the OCA's position by pointing to the Commission's Supplemental Implementation Order ("SIO") for the DSIC and indicating that the SIO did not appear to require that a specific date be reached. R.D. at 26-27. On this basis alone, absent any record support, the ALJ determined that the DSIC term "is consistent with the Supplemental Implementation Order and is reasonable." *Id*. at 27. The OCA agrees that the passage of the SIO the ALJ cited did not contain a requirement for identification of a specific date that triggers recovery of DSIC-eligible plant. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 at 13-14. However, the OCA disagrees that the lack of any express requirement in the SIO is determinative. Instead, what is determinative is that no Joint Petitioner has provided the basis for, let alone support for the need to recover DSIC revenues before the end of the FPFTY, and no substantial evidence exists to support this term. 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). There is no record basis that supports Peoples' need to project recovery of DSIC revenues before the end of the FPFTY irrespective of an express prohibition in the SIO. The OCA respectfully requests that the Commission grant its exception by expressly prohibiting Peoples from recovering on DSIC-eligible plant prior to the end of its FPFTY on October 31, 2025.

V. REVENUE ALLOCATION AND RATE DESIGN

Exception No. 9: The ALJ erred by approving the Non-Unanimous Settlement's revenue allocation proposal that it is contrary to Commission precedent and that inequitably allocates the cost of mains. R.D. at 33-40; OCA M.B. at 89-93; OCA R.B. at 43; OCA CIOS at 16-20.

In her R.D. the ALJ recommended approving the Joint Petition's cost allocation proposal that inappropriately distributes the costs of mains and would result in unjust and unreasonable rates. The R.D. correctly identifies that the Joint Petition's revenue allocation is the result of a "Frankenstein-like" methodology. R.D. at 40. To be sure, the Joint Petition's allocation is built upon the averaging of the Peak and Average method advocated by I&E and OCA, as well as a Minimum System/Design Day methodology relied upon by Peoples, and the "CD methodology" relied upon by OSBA. R.D. at 34; Joint Petition ¶ 62. In her approval of the Non-Unanimous Settlement's revenue allocation proposal, the ALJ relies heavily upon the fact that the underlying methodology is the result of a compromise between the Joint Petitioners. R.D. at 37. While it may be true that a compromise was reached amongst the Joint Petitioners, this does not convert the resulting revenue allocation into a just and reasonable allocation.

The ALJ recommends approval of the Joint Petitioner's allocation proposal despite acknowledging that only one of the included methodologies, the Peak and Average method, is the Commission's preferred method. R.D. at 40. Significantly, the Joint Petitioners' revenue allocation relies upon the incorporation of a customer component into the allocation of the cost of mains despite the fact that 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) 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). OCA. CIOS at 17-18. Regardless of the chosen

revenue requirement, the Joint Petitioners present no compelling reason to depart from the Commission precedent in this case, and no substantial evidence supporting a cost-causation basis is offered in support of the Joint Petition's allocation proposal, as the sole support appears to be that it represents a compromise.

Conversely, the OCA's recommended Peak and Average methodology for determining the cost of mains best addresses cost causation because it does not utilize a customer component to determine how the cost of distribution main are allocated across customer classes . OCA M.B. at 90-93. In the litigation phase of this case, I&E also recommended use of the peak and average method, and even in the Non-Unanimous Settlement, I&E identified its continued belief that Peak and Average is both consistent with Commission precedent and the most reasonable method of allocation. I&E St. 3 at 27; Joint Petition, Exhibit F at 15. The OCA agrees, as 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 like the other methods advocated by Peoples, Peoples Industrial Intervenors, and the OSBA. OCA M.B. at 89-90.

The OCA has demonstrated, but the R.D. fails to consider, the harm that the Joint Petition's revenue allocation proposal would needlessly inflict upon residential customers. The demonstrated harm includes that residential customers will now bear an additional 2.7%, or $16.5 million, of total revenues. CIOS 18. This revenue allocation evidences the detriment of including a customer component when allocating the cost of mains, as including a customer component allocates greater costs to higher-density, lower-usage customers than to lower-density, higher-usage customers. OCA St. 4R at 4.The fact that certain parties reached an agreement to propose an allocation that is embedded with improper methodologies in the spirit of compromise does not convert the resulting

allocation into a just and reasonable allocation. The record does not support the ALJ's approval of the Joint Petition's allocation provisions, and the OCA respectfully requests that the Commission grants its exception by rejecting the R.D.'s approval of the Non-Unanimous Settlement's revenue allocation terms.

Exception No. 10: The ALJ erred by approving a residential customer charge that is higher than the record supports. R.D. at 40-41; OCA M.B. at 98-106; OCA R.B. at 43-44; OCA CIOS at 20-23

The ALJ erred in recommending approval of the Non-Unanimous Settlement's residential customer charge of $16.80 because the OCA demonstrated that Peoples' cost of servicing residential customers is $9 per customer. OCA St. 4 at 34. As a result of its analysis, and in recognition of the Peoples Natural Gas Division's current customer charge of $14.50, the OCA reasonably recommended adoption of $14.50 customer charge for all of Peoples' residential customers. By doing this, OCA protects customers from unwarranted charges while still providing an additional $5.50 to Peoples in order to cover shared indirect costs. OCA M.B. at 98-99. OCA's recommendation also avoids unreasonable class cross-subsidization, and it is predicated upon the direct cost method of determining customer charged based on the cost of service, which the Commission has previously relied upon. OCA M.B. at 99; *See, e.g., Pa. PUC v. PPL Gas Utilities Corporation*, Docket No. R-00061398, 2007 Pa. PUC LEXIS 2 at *210 (Order entered Feb. 8, 2007).

In her R.D. the ALJ's rationale for approving the Joint Petition's recommended residential customer charge appears to be mostly limited to the fact that the $16.80 charge proposed by the Joint Petitioners represents "an appropriate compromise of each party's litigation position" and that it should be approved on that basis. R.D. at 41. The R.D. also indicates that "[c]oupled with the other terms of the Joint Petition and the Low-Income Stipulation" the result are reasonable and in the public interest. *Id*. The OCA submits that such rationale is wholly incompatible with

requiring the Joint Petitioners to meet their burden of proving that a $16.80 customer charge is supported by substantial evidence and that it is just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations.

A closer look at the Non-Unanimous Settlement's $16.80 residential customer charge reveals that it includes costs which more appropriately vary with demand, including the cost of mains, than the number of customers. *See Columbia 2021* at 264 (adopting the Recommend Decision's rejection of a proposed customer charge increase where the customer charge included the cost of mains under the Company's proposed, and rejected, CCOSS). The Non-Unanimous Settlement provides no evidentiary or legal basis for its rate design, and none is included in the Statements in Support or in Peoples' Main Brief, other than I&E's recognition that the customer charge represents a scale-back of its initial proposal of $20.00. Joint Petition, Appendix F at 15. However, I&E's residential customer charge recommendation improperly included administrative and general expenses, which are inappropriate, as such costs are not chargeable directly to any particular customer class, but are indirectly incurred by *all* customer classes, not just residential customers. OCA St. 4R at 17-18. In essence, the scrutiny that the Commission requires be offered with respect to inclusion of indirect customer costs in customer charges – in this case, all those costs in excess of $9.00 – is not satisfied under the terms of the Non-Unanimous Settlement. *See* 66 Pa. C.S. § 315(a), 332(a); *City of Bethlehem* at 13 (finding the proponents of a non-unanimous settlement petition jointly bear the burden of proof to show the petition would result in just and reasonable rates and is in the public interest). OCA M.B. at 21-22.

The ALJ's recommendation to adopt the Joint Petition's recommended customer charge of $16.80 should be rejected. Evidence in this case supports adoption of the OCA's recommended $14.50 customer charge, but support for the $16.80 customer charge is apparently limited to the

fact that it was a compromise. A $16.80 residential customer charge is unsupported, unjust, and unreasonable in this case, and the OCA respectfully requests that the Commission grant its exception by rejecting the R.D.'s approval of it.

VI. WEATHER NORMALIZATION ADJUSTMENT

Exception No. 11: The ALJ erred by recommending approval of Peoples' WNA despite substantial evidence that it would not produce just and reasonable rates. R.D. at 43-46; OCA M.B. at 108-126; OCA R.B. at 47-57; OCA CIOS at 24-28.

In her Recommended Decision, the ALJ recommended that Peoples' WNA be approved as modified by the non-Unanimous Settlement. R.D. at 46. As part of her determination, the ALJ errs in several respects. At the outset, the ALJ errs by misconstruing the OCA's primary argument against the WNA as being "that customers will be harmed because global weather continues to result in reduced usage." R.D. at 46. Additionally, the ALJ erred by broadly concluding that OCA's arguments against the WNA settlement term "are arguments that can be made in opposition to *any* WNA." *Id*. The ALJ misstates OCA's position in each of these respects, as OCA's primary argument against the WNA is that Peoples has failed to provide substantial evidence that the WNA is a just and reasonable rate, and the Non-Unanimous Settlement terms do not remedy the defects. OCA R.B. at 50-53; OCA CIOS at 27-28. Additionally, the OCA's arguments are specific to Peoples' WNA proposal, data provided from Peoples, and the record evidence in this case; therefore, they cannot simply be applied to any WNA proposal.

The R.D. omits the critical context for the authorization of any alternative ratemaking mechanism. R.D. at 46. Authorization of alternative ratemaking proposals is not simply granted as a matter of course, as the Public Utility Code requires that any resulting rates – even if proposed as alternatives to traditional ratemaking -- 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). The record in this case does not support such a determination for the WNA, despite the Non-Unanimous Settlement. To be sure, the Joint Petitioners must show that the WNA will *both* be in the public interest *and* will result in just and reasonable rates. *Pa. PUC v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256 at 13, 33 (Order entered April 15, 2021). They have shown neither. OCA CIOS at 24. Instead, the record in this case proved that Peoples' WNA would be an unjust and unreasonable rate on several bases that will not be cured by the Non-Uanimous Settlement, negating any need to move to a public interest inquiry (but it would fail there too).

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 factor it considers in a policy statement. 52 Pa. Code § 69.3302(a). The OCA provided a record that reviewed the WNA under all under factors. OCA Exh. DE-1. Under those factors, Peoples' proposed WNA would not result in just and reasonable rates .OCA M.B. at 109-110. The factors can generally be grouped into four distinct categories: cost-of-service, customer legibility, impact on low-income customers, and impact on customer conservation incentives. 52 Pa. Code § 69.3302. While no one factor is dispositive, the totality of all factors materially relevant to Peoples' proposed WNA weigh against its authorization and implementation. *Id*. at 110. Although the OCA recognizes that the WNA now proposed in the Non-Unanimous Settlement marginally differs from that which was proposed in the litigation phase of this case, none of terms cure the defects identified in the OCA's analysis below. OCA R.B. at 45-50; OCA CIOS at 26-28.

A. The manner in which Peoples decouples cost of service from consumption will make it more challenging for customers to estimate their monthly bills. (OCA M.B. at 110-112; OCA R.B. at 56-58.

The WNA undermines cost of service considerations by decoupling cost from consumption in a manner that will make it more difficult for customers to estimate their monthly bills, especially given that the WNA charge or credit does not respond to changes in weather as a customer experiences those changes. 52 Pa. Code § 69.3302(a)(8). Peoples has proposed that 5,341 heating degree days (HDDs) be used as the "normal" number of HDDs (NHDDs) each month; Peoples has proposed that its NHDD number will not be "rolling," meaning that it will automatically adjust month-to-month or year-to-year. OCA Exh. DM-39 at 42. If a customer experiences an atypically warm February, they may anticipate the following March and April to be warm as well; however, under the Company's proposal, the WNA factor would not adjust for a warmer spring than anticipated following a warmer winter than anticipated. *Id.*

Under Peoples' WNA proposal, customers will be paying based upon Peoples' predetermined "normal" that is set based on a historic period, which is entirely separated from the experienced changes in weather the customer and the region are experiencing. This could impact a customer's ability to understand month-over-month changes in billing, which should be decreasing due to warmer weather and less gas usage but would not be decreasing due to increasing WNA charges that are meant to keep the Company whole. In turn, this would impact a customer's ability to accurately predict and budget for what their natural gas bill will actually be. OCA M.B. at 111-112.

Despite its claims, Peoples has failed to produce evidence that its customers will benefit from a reduction in seasonal bill volatility. Peoples admits that customers who wish to stabilize monthly bills can sign up to be enrolled in a budget billing program. Peoples also admits that is 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. Thus, as designed, Peoples' WNA proposal decouples cost of service from consumption in a manner that has no proven benefit to consumers. While the ALJ failed to acknowledge the Commission's alternative ratemaking policy statement factors in her R.D., Peoples' proposed WNA should not be granted, because it is not supported by cost-of-service principles, which are an important consideration under the Commission's policy statement factors 1, 3, 4, and 14. 52 Pa. Code § 69.3302(a).

B. As structured, Peoples' WNA disincentivizes conservation. OCA M.B. at 112-114; OCA R.B. at 55-56.

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. Although the WNA will only affect the distribution portion of a customer's bill, and not the commodity portion of the bill, is insufficient to indicate that the WNA will not have a chilling effect on customer conservation. OCA St. 1SR at 10. OCA's review of Peoples' filing demonstrated that the majority of the portion of a customer's bill which varies with usage is affected by the WNA.[5] Peoples Exh. 14, App'x D at 3. Peoples' customer Lou Ann Byrnes perfectly described this reality in her public input testimony by offering her perspective that the WNA is unfair to customer who are penalized for using less gas. Tr. 214. This result undermines factors 5 and 6 of the Commission's stated policy on alternative

[5] In its Main Brief, the OCA provided evidence that the delivery charge portion of a residential customer's bill would be approximately 84% of their total variable distribution rate under Peoples' proposed tariff to be effective February 27, 2024, included as Appendix D to Exhibit 17 of the Company's filing. OCA M.B. at 113. If the Gas Cost Adjustment credit is removed from the "Total per MCF" rate included in the Appendix, as Peoples indicated it should be on page 48 of its Reply Brief – without providing updated information on the components of customers' "Total per MCF" rate which will be in effect at the conclusion of this proceeding – the delivery charge portion of customers' variable rate is approximately 53% of the charge. With an annual usage of 80 MCF, a customer's monthly bill subject to WNA adjustment would be approximately 40% of a PNGD or PGD customer's total bill, excluding the gas cost adjustment credit. Exh. 14, App'x D at 3. This is a substantial portion of customers' bills.

ratemaking. 52 Pa. Code § 69.3302(a). OCA M.B. at 113-114. The R.D. failed to acknowledge these factors, but they still weigh against the WNA.

C. Peoples' WNA is not understandable for customers. OCA M.B. at 114-116; OCA R.B. at 52-53.

From the outset of this case, Peoples failed to provide customers with an adequate notice of the WNA proposal. OCA Exh. BA-6. Specifically, the Company's notice stated: "The WNA would adjust certain customers' bills to reflect normalized weather conditions." *Id.* This is notice of nothing. Real people leading real lives cannot contextualize what any of this means, as the notice does not indicate which customers would be affected, how the adjustments would be made to the bill, or what "normalized weather conditions" actually means. The notice does not indicate how customers should anticipate their bills would be affected, how to budget for the WNA, or whether the WNA was considered when calculating the noticed rate impact. It was not considered. OCA M.B. at 115.

The lack of specificity in Peoples' noticing has been further compounded by the fact that its 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 customer's total monthly Mcf consumption, the customer's baseload Mcf consumption, and the Company's distribution charge. *Id*. The best way to understand such complexity is to review the proposed tariff that Peoples submitted for the WNA as shown on Peoples' redlined tariff, Joint Petition, Appendix A, Supplemental No. 2 to Gas-PA PUC NO 48, First Revised Page No. 79: "The WNA will be applied to service rendered October 1st through May 31st and shall be calculated on a customer account specific basis in accordance with the formula below:

> WNBM = BLMM+ [(NHDD +/- (NHDD x 3%)) /AHDD) x (AMUM-BLMM)]
> WNAM = WNBM – AMUM
> WNAM = WNAC x Distribution Charge"

Despite the clear complexity ratepayers will surely face in navigating the algebraic equation above, Peoples takes a cavalier approach to such concerns. Peoples' of-record position is that customers can access Peoples tariff to see the calculation because it "is no different than any other rate component that the Company has." Tr. at 337. However, the WNA is not like every other rate component that Peoples has in place, because it causes changes in a customer's bill based on a factor that they cannot control – weather – and the complexity of the calculation is unparalleled. OCA M.B. at 115.

Further, if the customer does not have access to the differential between the portion of their bill determined by actual usage as compared to the Company's hypothetical usage, then the customer cannot verify the accuracy of their bill. It is unreasonable to expect, as the Company does, that a residential customer will pore over the Company's tariff and other filings to identify how the WNA is calculated on their bill when, under the Commission's regulations require bills to permit a customer to verify the accuracy of their bill. OCA St. 5 at 26; *see also* Tr. 336-337. The ALJ's R.D. absolves Peoples of any burden to support that the WNA will be understandable to consumers, indeed, this perhaps because there is nothing in the record to support this idea and Peoples has failed to produce substantial evidence that customers will understand the WNA.

D. Peoples' WNA disproportionately impacts low-income customers in both design and in impact calculations. OCA M.B. at 116-118.

At the outset, the proposed WNA will apply to confirmed low-income customers enrolled in Peoples' customer assistance program (CAP), though CAP customers will only be charged their percentage of income payment under. OCA St. 6 at 60. As a result, the amount of any WNA adjustment will also apply to the cost of the CAP program recovered from non-CAP customers; in other words, 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. This double-recovery is

inequitable and a flaw in the Company's WNA proposal. If the Company excluded CAP customers from the customer classes to whom or to which the WNA would apply, then there would be no double-recovery of WNA charges from non-CAP customers through the universal services rider. OCA M.B. at 116-117. However, Peoples chose to include CAP customers and the Non-Unanimous Settlement does not modify that inclusion. Thus, the Non-Unanimous Settlement fails to address the clear harm that will flow from the decision to charge CAP customers a WNA by ignoring this issue entirely. The R.D. errs by ignoring that the proposed WNA design has a disproportionate, negative impact on Peoples' low-income customers. 52 Pa. Code § 69.3302(a)(7). The ALJ's R.D. absolves Peoples and all Joint Petitioners of any burden to support that the WNA will not be harmful to low-income customers, and the record demonstrates that the opposite is true

In summary, the ALJ erred by failing to address the substantial record evidence demonstrating that the WNA would produce unjust and unreasonable rates under the Commission's alternative ratemaking policy factors. As explained above, the record demonstrates that that the totality of factors materially relevant to Peoples' proposed WNA weigh against its authorization and implementation. The record demonstrates that the WNA will make it more challenging for customers to estimate their monthly bills, disincentive conservation, cause customer confusion, and disproportionally impact low-income customers by its design and calculation.. Finally, although the OCA recognizes that the WNA now proposed in the Non-Unanimous Settlement marginally differs from that which was proposed in the litigation phase of this case, none of terms cure the defects identified by OCA.

The defects OCA identified were not addressed in the R.D. Instead, the ALJ erred by absolving the Joint Petitioners of bearing their burden to prove that the WNA is supported by

substantial evidence and that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations. The Joint Petitioners have not met their burden and the Commission should grant the OCA's exception and reject the WNA.

Exception No. 12: The ALJ erred in approving a WNA in the wake of vastly conflicting information about how it will impact customers. OCA R.B. at 48.

Peoples' contradictions about the WNA's impact exist within the record, and while they were not acknowledged in the R.D., they fly in the face of any determination that the WNA is a just and reasonable rate that ought to be approved in this case. Data submitted by Peoples supports the conclusion that, over the past seven years, the WNA would have resulted in a net collection of an additional $9.9 million from customers as a result of WNA charges on monthly bills. OCA St. 4SR at 23. Despite the data presented in its analysis that over a 7-year period, customers would pay an additional $9.9 million in WNA charges, Peoples also offered testimony that "over a length of time", which is unspecified, the total weather-related cumulative impact of the WNA is expected to be zero or near zero. Peoples St. No. 3-R at 11. In yet a third, and vastly conflicting statement contained in its Main Brief, Peoples asserted that "last year alone, the Company lost over $40 million due to warmer than normal weather, and is not able to recoup those losses because it does not have a WNA . . . ." Peoples M.B. at 61. Therefore, Peoples apparently contemplates an annual WNA impact ranging from zero to $40 million.

Aside from the contradictory claims surrounding the amount of WNA charges Peoples' ratepayers may face, Peoples also provides information in a manner that artificially diminishes the true impact customers would have experienced with a WNA charge on a month to month basis. First, Peoples analysis did not consider the WNA's monthly impact on customers, as it presented only an annual impact analysis Tr. at 350. Peoples' annual impact analysis, which concluded that 99.93% of the time, "the WNA worked as intended and without unusual results" relied upon a very

selective definition of "unusual results." Tr. at 351. More specifically, Peoples defined an "unusual result" as "one in which the bills revealed an increase of above 100 percent." Id.

Using its own selectively-determined definition of an "unusual result" Peoples presented testimony that, over the past seven years, had the WNA been in effect, only 0.07% of all monthly bills (18,233 of 26,047,142 bills) issued by Peoples would have been increased by at least 100% as a result of the WNA. OCA St. 4SR at 24. Peoples also presented testimony that 2.6% of all monthly bills issued during the month of May 2018 (12,700 of 482,435 bills) would have been increased by at least 100%. *Id.* The average nominal increase to the bills included in the 0.07% identified by Peoples was $82.27 – this is no small sum. Tr. 353. Peoples did not identify the number of bills that would have been increased by less than 100%, so that number remains unknown. Therefore, Peoples' assertion that only .07% of customers' bills would have experienced unusual results from implementation of the WNA is contradictory in the sense that it requires the Commission to agree that any customer's bill increase at 99.9% or below is not an unusual result.

The widely conflicting impact claims Peoples presents hardly support any finding that the WNA would be a just and reasonable rate, let alone substantial evidence that it would be so. The ALJ erred in determining otherwise. The Commission should grant the OCA's exception to protect ratepayers from the unjust and unreasonable rate outcome that would be imposed by granting the WNA based upon the conflicting record Peoples built in this case and grant the OCA's exception.

Exception No. 13: The R.D. improperly relies upon the Commission's prior approval of WNA mechanisms for other utilities as a basis for approving Peoples' WNA. R.D. at 46; OCA M.B. at 119-122; OCA R.B. at 49-50.

In her R.D. the ALJ relies heavily upon the approval of the other gas utilities' proposals to operate as a basis for approving a WNA for Peoples, as follows: "As the WNA in the Joint Petition is consistent with WNAs that the Commission has approved for other gas utilities, I recommend that the Commission approve the WNA in the Joint Petition." R.D. at 46. The OCA avers that

reliance upon the other utilities to support Peoples' WNA is wholly inappropriate and fully inconsistent with holding the Joint Petitioners to their burden of proving, by substantial evidence, and that WNA proposed *in this case* is just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations.

Because Peoples too relied heavily upon other utilities in this case to meet its own burden in this case, the OCA has addressed the impropriety of doing so throughout this case. OCA M.B. at 119-120. 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 faulty logic of such a position 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. No. 4R at 23. The Commission should not permit Peoples to avoid its burden of proof to support the WNA by merely pointing to the other utilities. The OCA submits that the Commission's obligation to give due consideration to consumers' interests requires much more than the regulatory-equivalent claim of "everyone else is doing it." Sheer entitlement is not a viable basis for setting rates.

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 rates has not been satisfied. 66 Pa. C.S. § 315(a), 332(a). The Joint Petitioners must show that the WNA will *both* be in the public interest *and* will result in just and reasonable rates. *City of Bethlehem* at 13, 33. They have shown neither.

Beyond offending the appropriate burden of proof, reliance upon other utilities' WNAs ignores that Peoples itself has presented evidence that it does not have the "same customer profile, weather, and more" as other NGDCs in Pennsylvania. Peoples St. 3R at 13:16-17. The R.D. acknowledges that these differences are part of the record. R.D. at 44. Still, the R.D. relies upon utilities with differing customer profiles and weather patterns to support implementing a WNA designed by Peoples, for Peoples' customers in Peoples' service territory by claiming that "there is no evidence to conclude that Peoples is significantly unique from other gas utilities in neighboring regions." R.D. at 46. Not only does the ALJ's conclusion disregard the clear fact that OCA has no burden of proving that differences exist between the WNA proposed by Peoples in its rate case, and approved WNA mechanisms of other utilities that are not part of Peoples' rate case, but it is also inaccurate. Peoples itself has admitted that some differences exist in weather, heating degree days, and delivery rates. Peoples St. 3R at 13:16-17. The Commission should reject the R.D.'s reliance upon other utilities to absolve Peoples of its burden of proof in this case, which has not been met, and grant the OCA's exception.

Exception No. 14: The ALJ erred in approving the WNA as modified by the Joint Petition because Peoples created a record that refutes the value of implementing that WNA. OCA M.B. at 124, OCA R.B. at 47-49.

Peoples created a record that completely contradicts the value of the WNA proposal that the ALJ recommended be approved. More specifically, during almost the entirety of this proceeding, until the day before the evidentiary hearing when it submitted its rejoinder testimony, Peoples vehemently opposed implementing the WNA with a deadband to limit customer bill impact for small changes in weather. In its opposition to instituting a deadband, Peoples explained that a deadband would reduce the effectiveness of the WNA, and therefore, its value to both the Company and customers. Peoples St. 15 at 57. Peoples argued that "the deadband negates the purpose of the WNA mechanism." Peoples St. No. 3-R at 6. Despite asserting that a deadband

negates the very purpose of the WNA and reduces its value, in her Rejoinder Testimony, Peoples witness Scanlon proposed a 3% deadband without rescinding prior criticism. Peoples St. 3-RJ at 3. At the evidentiary hearings, Ms. Scanlon's contradictory deadband positions were not reconciled. Tr. at 321-323. Additionally, during the hearing, Peoples' witness Zarumba stood by his original opinion that a deadband would reduce the effectiveness of the WNA and its value to Peoples and its customers. Tr. at 344-345.

As a result, Peoples' representations made in the Non-Unanimous Settlement averring that implementing a WNA with a 3% deadband benefits both customers and Peoples completely conflict with the record that Peoples created and there is no substantial evidence to support any just and reasonable rate determination under such facts. See Non-Unanimous Settlement, Appendix E at 8. Accordingly, the ALJ erred by approving the WNA term, which is not only unsupported by substantial evidence and refuted directly by Peoples in the record. The Commission should protect ratepayers from the unjust and unreasonable rate outcome that would be imposed by granting the WNA based upon the contradictory record Peoples built in this case and grant the OCA's exception.

VII. COMPETITIVE RATE DISCOUNTS

Exception No. 15: The R.D. errs in approving the Joint Petition's unsupported competitive rate discounts by misconstruing OCA's opposition as "insufficient generalized concerns." R.D. at 48-51.

As established in Exception No. 2, the Joint Petitioners have the burden to demonstrate that the proposed Non-Unanimous Settlement is supported by substantial evidence and that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations." R.D. at 11, citing 66 Pa C.S. § 1301; *Pike County; City of Bethlehem Water; Pennsylvania-American Water Co*. Despite this, the ALJ rejects the OCA's position against the unsupported competitive rate discount terms contained in the Joint Petition by determining that

the OCA's concerns regarding them "are not sufficiently specific to recommend that the Commission reject this settlement term." R.D. at 51. The OCA excepts both to the improper burden shift embedded in the ALJ's determination and to any implication that the competitive rate discounts would produce just and reasonable rates because there is no supporting evidence.

Peoples' proposed revisions to Rule 20 would permit electricity to be considered a competitive alternative 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 *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 *alread*y qualifies as an alternative source of fuel for qualifying customers if an electric distribution company offers a "flex" rate to the customer. *Id.* People has failed to demonstrate any need to revise and expand Rule 20, and 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.

In actuality, Peoples' claims regarding Rule 20 modifications are insufficiently specific because 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. These claims include a claimed need to provide consumers with energy choice in the wake of political and environmental need changes that are pushing

customers into electrification. OCA R.B. at 68. While Peoples has not substantiated a viable basis for expanding its competitive discount access, the OCA has identified well-founded concerns regarding the proposed expansion creating undue price competition between electric and gas utilities, inequities for residential customers, and negatively impacting the Commission's ability to set and maintain critical price protection for captive customers. OCA M.B. at 148-151. Accordingly, the OCA has identified specific concerns and supported them in the record. On the other hand, the only Joint Petitioner to discuss offering electricity as a competitive alternative in all circumstances is Peoples; I&E, OSBA, PII, and PIOGA do not offer support to this tariff provision, specifically, in their Statements in Support. OCA CIOS at 31. No substantial evidence supports approval of Peoples' proposal to amend Rule 20 of its tariff as requested, and the OCA respectfully requests that the Commission grants its exception by rejecting the R.D.'s approval of this unsupported term of the Non-Unanimous Settlement.

VIII. CUSTOMER SERVICE ISSUES

Exception No. 16: The R.D. misconstrues the basis for OCA's recommendation that Peoples should conduct an evaluation of the potential to expand its call center hours. R.D. at 67-68; OCA M.B. at 140-141; OCA R.B. at 60-61.

In her Recommended Decision, the ALJ indicated that "based on the testimony of one witness during the public input hearings" the OCA alleges that limiting call center assistance to traditional business hours prevents many customers from being able to contact Peoples. R.D. at 68. The ALJ determined that the consumer who expressed the call center concern has many points of contact with Peoples over several months and that he eventually obtained assistance to address his concerns. By erroneously limiting the full bases of OCA's recommendation, the ALJ reached an erroneous conclusion that fails to consider the full record.

The referenced Peoples' customer, Mr. Krenitsky, testified that he had difficulty getting customer service assistance from Peoples due to their limited call center hours. Tr. 226. Peoples operates its call center from 7:00 am to 5:00 pm, Monday through Friday. OCA St. 5 at 34. 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 peoples who work for a living have a hard time reaching Peoples when they "shut down" the call center at 5 p.m. Tr. at 226. 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 extending beyond his own personal situation.

Beyond Mr. Krenitsky's public input testimony, OCA expert witness Barbara Alexander testified regarding the limitations that Peoples imposed on live customer service hours after her review of Peoples' website. In Ms. Alexander's expert opinion, by limiting live customer service hours to "traditional business hours" of 7 a.m. through 5 p.m. Monday through Friday, as identified on Peoples' website, Peoples imposes a barrier upon access to customer service. OCA St. 5 at 34. Additionally, OCA witness David Evrard testified that public policy goals are best served when Peoples' employees make time to hear and respond to customer concerns. OCA St.1SR at 13-14. Witness Evrard testified about call center access in the context of his concerns about Peoples' insufficiently specific notice of rate increases, which directed customers to call Peoples if they were uncertain about which level of division-dependent increase would apply to them. OCA St.1 at 14. The OCA submits that Mr. Evard correctly identified that aside from imposing an improper burden upon customers to determine which level of increase Peoples proposed for them, its limited call center hours imposed yet another obstacle to customers' access to critical information. *Id.*

Thus, the R.D.'s assertion that OCA's recommendation was limited to a single, resolved customer concern is inaccurate and inconsistent with the record.

As established in the OCA's Main Brief, in setting just and reasonable rates, the Commission must consider the efficiency, effectiveness and adequacy of service of each utility. OCA M.B. at 137, citing 66 Pa. C.S. § 523. Additionally, the Commission is empowered to order improvements to service as a condition of any rate increase. See OCA M.B. at 127, quoting *Pa. PUC v. Pa. Gas & Water Co.*, 74 PUR4th 238, 244-45 (1986) (*PG&W 1986*); *Pa. PUC v. Phila. Gas Works*, 2000 Pa. PUC LEXIS 876, *41-44 (Order Nov. 22, 2000) (*PGW 2000*). A utility's ability to hear and respond to customer concerns is a critical component of providing adequate and reasonable utility service. OCA St. 1SR at 14. Thus, the OCA's recommendation is 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. OCA R.B. at 61; OCA St. 5 at 34. The Commission should grant the OCA's exception and compel Peoples to conduct an evaluation to inform a determination of whether it is providing adequate service to consumers within the limited live call center hours currently available.

IX. PROTECTIONS FOR VULNERABLE CUSTOMERS

Exception No. 17: The ALJ erred in determining that the OCA must prove that Peoples engaged in explicit discrimination as a condition of requiring Peoples to conduct a root cause analysis regarding termination of black households. R.D. at 76-77; OCA M.B. at 128-129; OCA R.B. at 58-59.

In her Recommended Decision, the ALJ rejected the OCA's recommendation that Peoples conduct a root cause analysis to determine why there are a disproportionate number of terminations for nonpayment in the portions of the Company's service territory with the highest proportions of Black households. R.D. at 76. According to the R.D., while addressing the root cause of poverty in certain communities and demographics is important, "absent proof of explicit discrimination, it

is not the role of the Commission to impose this task upon a single public utility in the context of a base rate proceeding." R.D. at 77. The ALJ imposed a standard that does not exist under the law because the OCA did not prove that the disproportionate number of terminations for Black households was the result of explicit discrimination. The OCA excepts to the ALJ's rejection. The ALJ failed to properly recognize that the data was specific to Peoples as being beyond the proper scope of the Commission's review in this rate case, and because it imposes an unsupported burden upon the OCA. The practical result of the R.D. is that will ensure that the basis for Peoples' disproportionate terminations cannot be evaluated.

Importantly, the OCA's recommendation is based upon OCA witness Colton's review of Peoples' termination data that revealed that in the 40 zip codes within Peoples' service territory that contain the greatest proportion of Black householders, customers are terminated for nonpayment at a greater rate than in other portions of the Company's service territory. OCA St. 6 at 22; OCA M.B. at 128. Of particular concern is that there has been no evidence to indicate that there is a greater concentration of low-income customers in these 40 zip codes, which may otherwise have explained the disproportionately high rate of terminations in these areas. *Id*. The OCA has never claimed – not does it suspect – that these facts are the result of intentional discrimination but the fact remains that there is disproportionate number of disconnections in the zip codes with the greatest proportion of Black householders and the Company's claim that its process is "color-blind" does not alleviate the conclusions that must be drawn from the data presented by Mr. Colton. Peoples St. 16-RJ at 3. The OCA submits that Peoples should conduct a root cause analysis to determine *why* there is a connection between higher levels of termination and a higher presence of Black householders to ensure that there is no portion of Peoples' termination process which may be compromised by unintended and implicit biases. OCA St. 6 at

22; OCA M.B. at 129. The R.D. errs by inserting an unsupported "explicit discrimination" requirement that does not appear to be grounded in statute or regulation.

Significantly, the OCA's recommendation was made in the context of ensuring that Peoples is meeting its obligation to provide adequate, efficient, safe, and reasonable service to all its customers as required by the Code. 66 Pa. C.S. § 1501; OCA M.B. at 127-128. The OCA is not alleging that Peoples' terminations are targeted or that discriminatory affects are intentional; however, such allegations should not be predicate to determining whether Peoples is providing reasonable service to all customers. Additionally, because the record in this case contains a review of Peoples' termination data and it demonstrates that a disproportionate number of terminations for nonpayment is occurring in the portions of Peoples' service territory with the highest proportions of Black households, it is well within the Commission's authority, in this rate case, to require Peoples to conduct a root cause evaluation. OCA M.B. at 128-129. The R.D.'s conclusion to the contrary is erroneous and it should be rejected. The Commission should grant the OCA's exception to ensure that the root cause of Peoples' disproportionate termination levels is identified.

Exception No. 18: The ALJ erred by rejecting the OCA's recommendation for Peoples to make targeted education efforts at designated milestones of vulnerability. R.D. at **78-79; OCA M.B. at 130-133; OCA R.B. at 58-59.**

In her R.D., the ALJ correctly identifies OCA's recommendation that Peoples should undertake targeted education efforts during the following contacts: with customers who are likely payment challenged or low income to improve enrollment in CAP: (1) prior to termination; (2) during the cold weather survey; and (3) when requesting a cash security deposit. R.D. at 78; OCA M.B. at 130-134. The OCA set forth clear and adequate bases for each of these recommendations in its Main Brief. OCA M.B. at 129-134. Further, Peoples has not disputed that the cost of providing additional notice to potentially CAP-eligible customers would likely be insignificant, due to the relatively low cost of providing notice to confirmed low-income customers at present

rates – approximately $25,000 in 2023 – and would likely be offset by additional revenues under Peoples' CAP program. OCA St. 6SR at 3, 4. Increasing the number of opportunities to educate customers on Peoples' CAP is more likely to result in a greater proportion of eligible customers being enrolled and meet the Commission's policy goals with regard to CAPs, maximizing the number of customers receiving affordable bills they can pay regularly and in full.

However, the ALJ accepts Peoples' claims that the OCA's recommendations are unnecessary because Peoples provides ample notice of the ability to apply for CAP and it stays disconnection activities when customers are enrolling. R.D. at 79. The OCA excepts to the ALJ's determination because the record reveals a clear need for Peoples to increase CAP outreach. Specifically, Peoples has identified that it has 51,072 confirmed low-income customers, only 57% of them, or 29,091 customers, are enrolled in CAP. OCA St. 6; OC M.B. at 131. Of even further concern is that the Commission's Bureau of Consumer Service ("BCS") estimates a larger gap in CAP enrollment statistics for Peoples. Significantly, BCS estimates that Peoples has a total of 146,971 low-income customers, meaning that approximately 95,899, or 65%, of Peoples' customers may be low-income but not confirmed low-income, with only 20% of all potential low-income customers being enrolled in CAP. The ALJ's conclusion that Peoples' existing efforts are already adequate does not comport with Peoples' CAP enrollment data extant in the record.

Importantly, the Commission has recently recognized the need for greater customer outreach, including advising consumers of the opportunity to enroll in low-income assistance program in the context of the Pennsylvania American Water Company's recent rate case. *Pa. P.U.C. v. Pennsylvania American Water Company*, Docket Nos. R-2023-3043189, et al, Opinion and Order at 352-353 (entered on July 22, 2024)("2023 PAWC Order"). In its 2023 PAWC Order, the Commission noted that PAWC's customer service programs were undersubscribed, and the

OCA submits that undersubscription is a record-supported fact for Peoples. Accordingly, as the OCA submits that Peoples' customers stand to face a significant rate increase as a result of this case, and the need for increasing CAP outreach as recommended by the OCA is supported by substantial evidence, the Commission should grant the OCA's exception and require Peoples to provide the additional, targeted CAP outreach at the recommended milestones of vulnerability.

X. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, as well as the OCA's Comments in Opposition to the Non-Unanimous Settlement, the OCA respectfully requests that the Commission grant the OCA's Exceptions and adopt the OCA's positions as discussed above.

Respectfully submitted,

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