



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 30, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v.
Peoples Natural Gas Company LLC – Base Rate Case
Docket No. R-2023-3044549
I&E Replies to Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Replies of the Bureau of Investigation and Enforcement to the Exceptions of the Office of Consumer Advocate the above-referenced proceeding.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott B. Granger'. The signature is written in a cursive, flowing style.

Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov

SBG/ac
Enclosure

cc: Administrative Law Judge Mary D. Long (via email – malong@pa.gov)
Jordan Van Order (via email – jvanorder@pa.gov)
Marc Hoffer (via email – mhoffer@pa.gov)
Vanessa Johns (via email – vanjohns@pa.gov)
Office of Special Assistants (via email – ra-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE EXCEPTIONS OF
THE OFFICE OF CONSUMER ADVOCATE**

Scott B. Granger
Senior Prosecutor
PA Attorney ID No. 63641

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: July 30, 2024

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. REPLIES TO EXCEPTIONS..... 2

A. LEGAL STANDARDS 2

I&E’s Reply to the OCA’s Exception Nos. 1, 2 and 3: 2

B. REVENUE REQUIREMENT IN A NON-UNANIMOUS SETTLEMENT... 3

I&E’s Reply to the OCA’s Exceptions Nos. 4, 5, 6 and 7: 3

C. DSIC 4

I&E’s Reply to the OCA’s Exception No. 8. 4

D. REVENUE ALLOCATION AND RATE DESIGN 5

I&E’s Reply to the OCA’s Exception Nos. 9 and 10. 5

E. WEATHER NORMALIZATION ADJUSTMENT 6

I&E’s Reply to the OCA’s Exception Nos. 11, 12, 13, and 14. 6

F. COMPETITIVE RATE DISCOUNTS..... 6

I&E’s Reply to the OCA’s Exception No. 15. 6

G. CUSTOMER SERVICE ISSUES 7

I&E’s Reply to the OCA’s Exception No. 16. 7

H. PROTECTIONS FOR VULNERABLE CUSTOMERS..... 8

I&E’s Reply to the OCA’s Exception Nos. 17 and 18. 8

III. CONCLUSION..... 8

I. INTRODUCTION

On July 15, 2024, Administrative Law Judge Mary D. Long (“ALJ Long” or the “ALJ”) issued her Recommended Decision (“RD”) regarding Peoples Natural Gas Company LLC’s (“Peoples” or “Company”) request for a base rate increase calculated to produce \$156 million in additional annual revenues. In response, the Office of Consumer Advocate (the “OCA”) filed Exceptions (“OCA Exceptions” or “Exceptions”) to the ALJ’s RD taking exception to various recommended decisions in relation to the ALJ’s acceptance of the Joint Petition for Non-Unanimous Settlement (“Joint Petition”) entered into by Peoples, the Bureau of Investigation and Enforcement (“I&E), the Office of Small Business Advocate (“OSBA”), Peoples Industrial Intervenors (“PII”), and the Pennsylvania Independent Oil & Gas Association (“PIOGA”). Peoples, I&E, the OSBA, PII, and PIOGA all filed Statements in Support of the Joint Petition. Additionally, Peoples, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Pennsylvania Weatherization Providers Task Force (“PWPTF”) filed a Low-Income Stipulation.

I&E now files these Replies to the Exceptions of the OCA (“I&E Replies”) in support of the ALJ’s RD, the Joint Petition, and I&E’s Statement in Support of Joint Petition for Approval of Non-Unanimous Settlement (“Statement in Support”) filed with and attached to the Joint Petition on May 30, 2024. I&E’s Statement in Support identified I&E’s eight (8) pieces of testimony and six (6) exhibits that were admitted into the record in this proceeding. I&E’s Statement in Support also included Appendix A – Rate Comparison by Customer Class; Appendix B – Rate Tables; and Appendix C – Proposed Findings of Facts, Conclusions of Law, and Suggested Ordering Paragraphs.

While exceptions by their very nature are a challenge to a recommended decision issued by an administrative law judge, the OCA Exceptions appear to limit their critique of the ALJ's RD to the four corners of the RD. Many times, the OCA Exceptions fail to recognize the extensive body of record evidence that was submitted by the various parties through direct, rebuttal and surrebuttal testimony as well as the supporting exhibits.

II. REPLIES TO EXCEPTIONS

A. LEGAL STANDARDS

I&E's Reply to the OCA's Exception Nos. 1, 2 and 3:

The OCA's exceptions numbers 1, 2 and 3 all pertain to the legal standards section of the ALJ's Recommended Decision and will be addressed cumulatively herein. The OCA argues that the ALJ failed to identify any pertinent findings of fact to support her R.D. The OCA then argues that while the ALJ correctly stated that the parties to a non-unanimous settlement must demonstrate that the 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, the OCA gets side tracked by the ALJ's inclusion of the statement that the joint petitioners have the burden to prove the settlement is in the public interest. Finally, the OCA argues that the ALJ gave undue deference to the non-unanimous settlement.

I&E disagrees with the OCA's assertions in its Exception Nos. 1, 2 and 3. I&E supports the legal standards set forth the ALJ's RD as proper, comprehensive, and supported by the case law cited in the RD.¹ As the OCA admits, the ALJ correctly stated the legal

¹ See RD at pp. 8-11.

standard for approving non-unanimous settlements.² Further, the ALJ's RD spells out the legal standards that are applicable to all of the issues presented in this proceeding and the OCA's exceptions attempting to cherry pick a single legal standard for attack should be denied. Additionally, the ALJ discussed the substantial evidence submitted into the record by the various parties throughout her RD and gave equal consideration to all positions presented by all parties ultimately agreeing with many of the consensus positions set for in the Joint Petition.³ The ALJ's agreement with many of the consensus positions in the Joint Petition, in and of itself, is not evidence of giving undue deference, but rather, is evidence of arriving at well-reasoned conclusions and recommendations. Therefore, the ALJ's thorough, well-reasoned recommended decision should be affirmed and the OCA Exceptions Nos. 1, 2 and 3 should be denied.

B. REVENUE REQUIREMENT IN A NON-UNANIMOUS SETTLEMENT

I&E's Reply to the OCA's Exceptions Nos. 4, 5, 6 and 7:

The OCA, in its Exception Nos. 4, 5, 6 and 7 argues that the ALJ erred in approving the revenue requirement agreed to in the non-unanimous settlement. The OCA alleges the ALJ did not rely on substantial evidence; that the adopted \$93 million revenue requirement increase was more than the record supported; that the support proffered by Peoples to support the increase was somehow improper; and, that the ALJ somehow imposed an improper burden on the OCA regarding the "black box" settlement.

I&E disagrees with the OCA's allegations in OCA Exceptions Nos. 4, 5, 6 and 7. The ALJ's RD contains a comprehensive discussion of the revenue requirement agreed to in the

² RD at p. 11, fn. 46.

³ RD at pp. 4-89.

Joint Petition.⁴ The ALJ's discussion contains many references to the substantial evidence submitted into the record by the parties⁵ including the testimony and exhibits entered by I&E witnesses.⁶ Further, I&E submitted extensive testimony and exhibits into the record regarding the overall revenue requirement.⁷ I&E also submitted Appendices A, B, and C attached to its Statement in Support regarding the overall revenue requirement recommended in the Joint Petition.⁸ The record evidence clearly establishes support for the settled upon \$93 million increase in revenue. Further, the ALJ properly found that the OCA's attacks on the black box settlement are misguided.⁹ Therefore, the ALJ's thorough, well-reasoned recommended decision should be affirmed and the OCA Exception Nos. 4, 5, 6, and 7 should be denied.

C. DSIC

I&E's Reply to the OCA's Exception No. 8.

In its Exception No. 8, the OCA argues that the ALJ erred by approving a settlement term that enables Peoples to collect a DSIC prior to the end of its FPFTY on October 31, 2025.

I&E disagrees with the OCA's assertions in its OCA Exception No. 8.¹⁰ The ALJ addressed this specific issue in her RD and properly concluded that paragraph 45 of the Joint Petition is consistent with the DSIC Supplemental Implementation Order and that there is no

⁴ RD at pp. 21-32.

⁵ RD at p. 32.

⁶ RD at p. 24, fn. 56. *See also* I&E Statement in Support, p. 6.

⁷ I&E Statement in Support, pp. 6, 8-12.

⁸ I&E Statement in Support, p. 2.

⁹ RD at p. 32.

¹⁰ I&E Statement in Support, pp. 8-9.

support for the OCA position.¹¹ Therefore, the ALJ's Recommended Decision should be affirmed, and the OCA's Exception No. 8 should be denied.

D. REVENUE ALLOCATION AND RATE DESIGN

I&E's Reply to the OCA's Exception Nos. 9 and 10.

The OCA argues in its Exceptions Nos. 9 and 10 that the ALJ erred in approving a revenue allocation proposal that inequitably allocates the cost of mains; and, erred by approving a residential customer charge that is allegedly higher than the record supports.

I&E disagrees with the OCA's assertions in its OCA Exception Nos. 9 and 10. The ALJ engaged in a comprehensive review of the various positions proffered regarding the cost-of-service methodologies presented in this proceeding as they relate to revenue allocation and rate design.¹² I&E submitted extensive testimony and exhibits regarding revenue allocation and rate design.¹³ Further, I&E's Statement in Support and the attached Appendices support the Joint Petition and the ALJ's RD.¹⁴ The ALJ carefully considered the OCA's arguments.¹⁵ Ultimately the ALJ found that the customer charges and scale back included in the Joint Petition represent an appropriate compromise of each party's litigation position.¹⁶ The ALJ's recommendation is properly based on the record evidence presented. Therefore, the ALJ's Recommended Decision should be affirmed and the OCA's Exceptions Nos. 9 and 10 should be denied.

¹¹ RD at pp. 26-27.

¹² RD at pp. 33-41.

¹³ I&E Statement in Support pp. 6, 14-16.

¹⁴ See I&E Statement in Support, pp. 2, 14-16, Appendix A, B, and C.

¹⁵ RD at pp. 38-41.

¹⁶ RD at p. 41.

E. WEATHER NORMALIZATION ADJUSTMENT

I&E's Reply to the OCA's Exception Nos. 11, 12, 13, and 14.

In its Exceptions Nos. 11, 12, 13 and 14, the OCA argues that the ALJ erred by approving the Peoples' WNA alleging among other things that the WNA would not produce just and reasonable rates; would disincentivize conservation; was not understandable to customers; disproportionately impacts low-income customers; its impact on customers is unclear; relied on the Commission's prior approval of WNAs for other utilities; and, approved the WNA as modified by the parties agreement in the Joint Petition.

I&E disagrees with the OCA's assertions in its Exceptions Nos. 11, 12, 13 and 14. The ALJ conducted a thorough review of all of the parties' positions regarding the proposed WNA.¹⁷ The ALJ recognized the Pennsylvania statute that authorizes alternative rate making methodologies.¹⁸ The ALJ properly recognized that the Commission has already approved several WNA's with the 3% deadband.¹⁹ Further, the ALJ acknowledged I&E's extensive testimony regarding the proposed WNA and the already approved WNAs.²⁰ The ALJ's recommendation is properly based on the record evidence presented. Therefore, the ALJ's recommended decision should be affirmed and the OCA's Exceptions Nos. 11, 12, 13 and 14 should be denied.

F. COMPETITIVE RATE DISCOUNTS

I&E's Reply to the OCA's Exception No. 15.

The OCA argued in Exception No. 15 that the ALJ erred when approving the

¹⁷ RD at pp. 42-46.

¹⁸ RD at p. 46.

¹⁹ RD at p. 46.

²⁰ RD at p. 43. *See also* I&E Statement in Support, pp. 6, 17-19.

competitive rate discounts as agreed to by the parties to the Joint Petition because the ALJ allegedly misconstrued the OCA's opposition as "insufficient generalized concerns."

I&E disagrees with the OCA's allegations in its Exception No. 15. The ALJ conducted a thorough review of the record evidence presented by the parties²¹ including I&E's extensive testimony.²² Further, the ALJ went beyond the OCA's "generalized concerns" and discussed the OCA's specific concern that Peoples' captive customers might be placed at risk of bearing revenue shortfalls.²³ The ALJ properly concluded that with "the adoption of the Equitable base rate terms requiring detailed reporting and providing these reports to the statutory advocates, there is sufficient protection in place to protect the public at this time."²⁴ The ALJ's recommendation is properly based on the record evidence presented. Therefore, the ALJ's recommended decision should be affirmed and the OCA's Exception No. 15 should be denied.

G. CUSTOMER SERVICE ISSUES

I&E's Reply to the OCA's Exception No. 16.

In its Exception No. 16, the OCA argues that the ALJ allegedly misconstrues the basis for the OCA's recommendation regarding expanding call center hours.

I&E disagrees with the assertions made by the OCA in its Exception No. 16. The ALJ properly considered the record evidence presented by the witness at the public input hearing and Peoples' response thereto in its surrebuttal testimony.²⁵ Therefore, the ALJ's

²¹ RD at pp. 48-51.

²² RD at pp. 49-50. *See also* I&E Statement in Support, pp. 23-25.

²³ RD at pp. 50-51.

²⁴ RD at p. 51.

²⁵ RD at pp. 67-68.

recommended decision should be affirmed and the OCA's Exception No. 16 should be denied.

H. PROTECTIONS FOR VULNERABLE CUSTOMERS

I&E's Reply to the OCA's Exception Nos. 17 and 18.

The OCA alleges in its Exceptions Nos. 17 and 18 that the ALJ erred in determining that, to support its allegations, the OCA prove that Peoples engaged in explicit discrimination; and by rejecting the OCA's recommendation for targeted education efforts.

I&E disagrees with the OCA's assertions in its Exceptions Nos. 17 and 18. The ALJ entertained the OCA's assertions which on their face appear to be allegations²⁶ and considered Peoples' response.²⁷ The ALJ properly concluded that it is not the role of the Commission to impose a root cause analysis task upon a single public utility absent proof of explicit discrimination.²⁸ Further, the ALJ properly concluded that any issue regarding Peoples' low-income confirmation procedures and targeted education efforts are fully addressed by the procedures Peoples has in place and were adequately addressed in the provisions in the Low-Income Stipulation.²⁹ Therefore, the ALJ's Recommended Decision should be affirmed and the OCA's Exception Nos. 17 and 18 should be denied.

III. CONCLUSION

The substantial evidence presented by I&E, Peoples and the parties to the Joint Petition demonstrates that the ALJ's recommendation to adopt the Joint Petition for Non-

²⁶ RD at p. 76.

²⁷ RD at p. 77.

²⁸ RD at p. 77.

²⁹ RD at pp. 77-80.

Unanimous Settlement in full and without modification is proper. The ALJ's RD is just and reasonable and is supported by substantial record evidence.

For the reasons stated above, as well as in I&E's extensive testimony, exhibits, and Statement in Support, I&E respectfully submits the OCA failed to present evidence sufficient to support its claims that the ALJ's RD is improper, unjust and unreasonable. Therefore, the OCA's Exceptions Nos. 1 through 18 should be denied.

Finally, I&E urges the Commission to adopt the Administrative Law Judge's well-reasoned recommendations set forth in the July 15, 2024 Recommended Decision. The ALJ's recommendations are just, reasonable, and proper.

Respectfully submitted,



Scott B. Granger
Senior Prosecutor
PA Attorney ID No. 63641

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

Dated: July 30, 2024

Joseph L. Vullo, Esq.
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@bvrrlaw.com
*Counsel for Pennsylvania Weatherization
Providers Task Force*

Aaron Rothschild
Rothschild Financial Consulting
15 Lake Road
Ridgefield, CT 06877
OCAPNG2023BRC@paoca.org
Consultant for OCA

John Sweet, Esq.
Ria M. Pereira, Esq.
Elizabeth R. Marx, Esq.
Lauren N. Berman, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Roger Colton
Fisher, Sheehan & Colton
34 Warwick Road
Belmont, MA 02478-2841
OCAPNG2023BRC@paoca.org
Consultant for OCA

Charis Mincavage, Esq.
Adeolu A. Bakare, Esq.
Kenneth R. Stark, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
kstark@mcneeslaw.com
Counsel for PII

Dante Mugrace
PCMG and Associates
90 Moonlight Court
Toms River, NJ 08753
OCAPNG2023BRC@paoca.org
Consultant for OCA

Clarence Johnson
CJ Energy
3707 Robinson Avenue
Austin, TX 78722
OCAPNG2023BRC@paoca.org
Consultant for OCA

David Evrard
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
OCAPNG2023BRC@paoca.org
Consultant for OCA

Barbara Alexander
Barbara Alexander Consulting LLC
44 Beech Street
Hallowell, ME 04347
OCAPNG2023BRC@paoca.org
Consultant for OCA

Mark Ewen
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
mde@indecon.com
Witness for OSBA

Robert D. Knecht
Industrial Economics Incorporated
5 Plymouth Road
Lexington, MA 02421
rdk@indecon.com
Witness for OSBA



Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov