



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
M-2011-2157542

June 30, 2011

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission Prosecutory Staff v.
The Peoples Natural Gas Company, LLC
Docket Number: M-2011-2157542

Dear Secretary Chiavetta:

Enclosed for filing, pursuant to the Commission's Order entered June 10, 2011, in the above-docketed matter, are comments of the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff to the Opinion and Order entered June 10, 2011.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler
Assistant Counsel

Enclosures

cc: Per Certificate of Service
Johnnie Simms, Director, OTS
Cheryl Walker Davis, Director, OSA
William R. Lloyd, Jr., Director, OSBA

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, LAW BUREAU :
PROSECUTORY STAFF :**

DOCKET NO. M-2011-2157542

v. :

**THE PEOPLES NATURAL GAS :
COMPANY, LLC :**

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**COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
LAW BUREAU PROSECUTORY STAFF
TO THE OPINION AND ORDER ENTERED JUNE 10, 2011**

During the period of February 2009 to April 2009 and November 2009 to January 2010, a group of four neighboring residential customers in Altoona, Pennsylvania experienced periodic, unscheduled natural gas outages during periods of cold weather. Each time the Company was advised of and responded to one of these service outages, water was generally found in the meter or the customer's service line, the water was drained and service restored. Yet, rather than get to the bottom of the problem, the Company repeatedly took the same corrective action in a total of twenty-seven service visits which resulted in twenty-two findings of water in the meter or service line and eighteen meter changes. All the while, the Company failed to address the underlying condition. Finally, in December 2009, ten months after the initial incidents were reported

to the Company, the Company determined that the source of the water was a leak in the main gas line serving the affected customers. Repair of the natural gas pipeline was completed in late January 2010.

On March 14, 2011, following an investigation by the Commission's Law Bureau Prosecutory Staff (Prosecutory Staff), a Settlement Agreement (Settlement) was filed with the Commission by Peoples Natural Gas Company LLC (Peoples or Company) f/k/a The Peoples Natural Gas Company d/b/a Dominion Peoples and Prosecutory Staff.

By *Opinion and Order entered June 10, 2011 (June 10 Order)*, the Commission refrained from issuing a decision on the merits of the proposed Settlement Agreement and, consistent with Section 3.113(b)(3) of the Commission's regulations, 52 Pa. Code § 3.113(b)(3), ordered that the *Opinion and Order*, together with the attached Settlement Agreement, be entered for comments. The June 10 Order with the attached Settlement Agreement was served on the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff. Comments were to be filed within twenty (20) days of the date of entry of the June 10 Order, or by June 30, 2011.

The Settlement provides, among other things, for a civil penalty of \$20,000 to be assessed against the Company. In a separate Statement of Commissioner Tyrone J. Christy to the June 10 Order, the Commissioner requests that "parties submitting comments in this proceeding address the appropriateness of directing Peoples to contribute \$20,000 to its Hardship Fund rather than pay a \$20,000 civil penalty." Statement of Commissioner Tyrone J. Christy. In response to the Commissioner's

request, Prosecutory Staff files these comments and submits that to replace the agreed to civil penalty payment with a fund contribution would *not* be appropriate.

In the instant matter, the Commission's Gas Safety Division, pursuant to its authority to enforce federal gas pipeline safety regulations, uncovered what it contended to be certain violations of state and federal gas safety regulations. In matters involving a gas outage –especially in colder weather where the natural gas serves as the primary source of heat for the customer - it is imperative that the utility take all reasonable steps to ensure that similar incidents do not occur. The peril of gas safety violations can result in not merely inconvenience, but serious property damage or destruction, or worse – the loss of life. In order for the regulator's remedial efforts to have the proper effect in its effort to eliminate or at least minimize such dangers, it is Prosecutory Staff's position that such remedies must, to some extent, penalize the offending company. This is clearly accomplished by the payment of a fine or civil penalty to the Commonwealth since such a payment results in a loss of revenue to the company that would otherwise be distributed to its shareholders. This loss to its bottom line is intended to encourage the offending company to conduct its operations in a more prudent manner.

Prosecutory Staff respectfully submits that, by comparison, the payment of a contribution directly into a company's community assistance program such as Peoples' Hardship Fund frustrates this curative effort because such a payment will not result in any actual loss of revenue to the company. Instead, a company's mere bookkeeping entry transferring funds into its own community assistance program will likely result in a reduction of the company's otherwise uncollectible accounts, with the result that the

company will merely be “paying itself” the penalty amount. In so doing, both the curative and punitive effects of the penalty payment are eliminated. Under such a scenario, there is absolutely no incentive for the company to improve regulatory compliance or for the company’s shareholders to insist that a better job be done.

The Statement of Commissioner Tyrone J. Christy is accompanied by a memorandum prepared by Renardo L. Hicks in his capacity as Chairman of the Commission’s Consumer Advisory Council (“CAC Memo”). The CAC Chairman submits that since settlements “explicitly include ‘no finding or admission or wrongdoing’...there is no legal basis upon which to impose a civil penalty.” CAC Memo at 2. He continues that, in his opinion, directing settlement funds to low income and universal service programs in non-litigated proceedings is “more equitable.” *Id.*

While directing contributions to low income customer assistance programs may appear to be a noble cause, pragmatically, such actions provide neither the curative nor punitive effect that matters of gas safety critically deserve. Those who support the idea that *all* settlement payments be in the form of low income program contributions rather than civil penalties paid to the Commonwealth’s General Fund ignore the preeminent fact that gas safety violations are very serious and are uniquely set apart in Chapter 33 of the Pennsylvania Code, specifically at 66 Pa. C.S. § 3301 which illustrates the severity of these violations. While Section 3301(a) recognizes a maximum fine of \$1,000 per violation, a regulatory misstep for a gas pipeline safety regulation set out in Section 3301(c) nets a penalty of up to \$10,000 for each violation for each day it persists – ten times the penalty of a non-gas safety violation. Consistent with this

acknowledgement of the severity of gas pipeline safety violations, settlement terms that include monetary fines similar in form, albeit significantly lesser in scale, to a civil penalty imposed for a violation supported by record evidence in an evidentiary proceeding, bring to light the severity of even a gas safety violation that is alleged and *ultimately and amicably resolved*.

The “legal basis” upon which to impose a monetary payment, whether referred to as a civil penalty or a civil settlement amount, lies in the Commission’s power to review and approve a settlement agreement, the terms of which have been amicably entered into by the parties. A monetary payment which mirrors a Section 3301 civil penalty stresses the understanding of the settling parties that violations to state and federal gas pipeline safety regulations – whether proved *or* alleged – warrant curative and punitive measures that may indeed trump what may be considered an “equitable” solution to a more common regulatory violation. Prosecutory Staff submits that it is critical to the public interest to ensure that companies and their shareholders pay very close attention to gas safety. Taking money from dividends accomplishes this. Having a company contribute to itself does not.

For the reasons set forth above, Prosecutory Staff respectfully requests that this Commission continue its recent trend of adopting settlements that include payments of

finances or civil penalties and not direct that such payments be paid instead as fund contributions.

Respectfully Submitted,



Michael L. Swindler
Prosecuting Attorney
Law Bureau Prosecutory Staff



Wayne T. Scott
First Deputy Chief Counsel
Pennsylvania Public Utility Commission

June 30, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Comments of the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff, upon the persons listed and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Notification by first class mail addressed as follows:

Office of Consumer Advocate
PA Office of Consumer Advocate
5th Floor Forum Place
555 Walnut Street
Harrisburg, PA 17101

William H. Roberts II, Esquire
Peoples Natural Gas Company, LLC
375 N. Shore Drive, Suite 600
Pittsburgh, PA 15212

Office Of Small Business
Suite 1101
Commerce Building
300 North Second Street
Harrisburg, PA 17101



Michael L. Swindler
Assistant Counsel
(Counsel for Pa. Public Utility
Commission)

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: June 30, 2011

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