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May 31, 2012

By Overnight Delivery

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

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MAY 31 2012

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Re: Docket No. M-2012-2293611
Implementation of Act 11 of 2012

Dear Secretary Chiavetta:

Please accept the enclosed original and three copies of the Joint Comments of Peoples Natural Gas Company LLC and Peoples TWP LLC in the above-referenced proceeding. In accordance with the Tentative Implementation Order entered in this matter on May 11, 2012, I have also served a copy of these comments via email to the Commission's Act 11 Resource Account at ra-Act11@pa.gov and provided a copy electronically in Word-compatible format to David Screven, dscreven@pa.gov, Louise Fink Smith, finksmith@pa.gov, in the Commission's Law Bureau, and Erin Laudenslager, elaudensla@pa.gov, in the Commission's Bureau of Technical Services.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

established certain requirements for DSIC approval. The Implementation Order summarized and in some cases interpreted those requirements, invited interested parties to comment on the interpretations, and proposed, in accordance with 66 Pa.C.S. § 1353(b)(1), a form of tariff to serve as the model for tariff filings by utilities petitioning to implement a DSIC.

II. COMMENTS

The Companies appreciate the opportunity to comment on the proposed procedures, guidelines and model tariff. The Companies in large part support the procedures, guidelines and model tariff proposed by the Commission and commend the Commission for its quick action in initiating procedures to implement Act 11 in a manner that carries out the intention and purpose of the Act – that is, to provide an accelerated procedure for utilities to recover distribution system improvement costs in order to encourage utilities to make system improvements. In the following pages, we offer comments on some specific subjects addressed in the Implementation Order. The Companies are also members of the Energy Association of Pennsylvania (“EAP”) and endorse EAP’s comments filed in this proceeding.

1. Components of the Long-Term Infrastructure Improvement Plan.

In pages 7–10 of the Implementation Order the Commission sets forth the expected components of the long-term implementation plan that is required by § 1352 in order for a utility to be eligible for a DSIC. Section 1352 itself sets forth six required components, which the Implementation Order picks up and cites at page 8. The Implementation Order then additionally requires that the long-term infrastructure improvement plan include a review of “all distribution plant, including its age, functionalities, reliability and performance.” It is not clear whether this intends that NGDCs address all *eligible*

distribution plant, including the eligible plant not being replaced during the term of the long-term plan, or all distribution plant generally, including ineligible plant.

The Commission, therefore, should clarify this, and the Companies recommend that the Commission make clear that it is requiring a review of all *eligible* distribution plant rather than all distribution plant. There is no basis in the Act or any ratemaking rationale for including a review of non-eligible plant in the proceeding to review the long-term plan being submitted for DSIC purposes. NGDCs are not required to otherwise obtain Commission approval as a condition of undertaking the replacement of non-DSIC-eligible plant, and it makes no sense to bog down the proceedings for DSIC approval with the inclusion of a review of planned plant replacements that otherwise would not be before the Commission for review.¹

2. Review of the Long-Term Plan and DSIC Petition.

The Companies agree with the rest of the Commission's analysis on pages 8–10 of the Implementation Order of what must be included in the long-term plan, when utilities can begin filing long-term plans, and the proposed treatment of proprietary and confidential and/or Confidential Security Information that is filed with the long-term plan. The discussion on page 10 regarding timing for the filing shows that the Commission recognizes the potential for the filings of long-term plans, and of the DSIC petitions themselves, to stack up and affect the efficient administration of the Commission's business.

¹ The Commission asked in the Implementation Order how a utility will comply with section 59.38 of the Commission's regulations while implementing the long-term plan. The only connection that Companies see between section 59.38 and the long-term plan is that the long-term plan will provide advance notice of projects involving eligible distribution plant that might otherwise not be reported until at least 30 days prior to the beginning of work. The Companies anticipate complying with section 59.38 in the same way they always have.

The Companies support the Commission's conclusion on page 10 that utilities may file for approval of the long-term plan before the earliest filing date for the DSIC petition. The Companies also suggest that the Commission go further to eliminate potential, extended delays in initiating the DSIC program by establishing standard review and approval periods for long-term plans, DSIC petitions, and combined filings of long-term plans and DSIC petitions. The standard periods should vary for consideration of long-term plans and DSIC petitions that are not referred to the Office of Administrative Law Judges (OALJ) and for long-term plans and DSIC petitions that are referred to the OALJ for hearing and decision, with the latter having a longer standard period.

In all cases, however, the Commission should carry out the clear intent of the statute that the utility be permitted to recover the fixed cost of eligible property that has been placed in service during the three-month period ending one month prior to the effective date of the utility's DSIC. Section 1353(b)(1)(ii) requires the utility to state the effective date of the DSIC in the utility's petition for DSIC approval. This will be frustrated, however, if the DSIC filing (either with or without the long-term plan) is reviewed over an indeterminate, extended period.

As noted on page 10 of the Implementation Order, Section 1353(a) provides that the petition for DSIC approval must contain the initial tariff; testimony, affidavits, exhibits or other support; long-term infrastructure plan; certification that a rate case has been filed with the past 5 years; and any other information required by the Commission. Clearly, the long-term plan is the biggest part of these requirements, and if the utility has obtained approval of its long-term plan prior to filing the petition for approval of the DSIC, it would seem reasonable for the petition to be acted upon expeditiously.

3. Inclusion of Account Numbers in Model Tariff.

On page 12 of the Implementation Order the Commission states that the model tariff includes a provision for account numbers because of the specificity that account numbers provides and invites further comment on this and on the model tariff generally. The Companies do not believe that the inclusion of account numbers is necessary, but if account numbers are to be listed in the tariff, then the account numbers of all eligible property need to be listed. In addition to the accounts listed in Section 1.B. on page 2 of Appendix A to the Implementation Order under the heading NATURAL GAS DISTRIBUTION COMPANIES AND CITY NATURAL GAS DISTRIBUTION OPERATIONS, the Commission should add to the model tariff the accounts listed below in italicized font but recognize that eligible property may not be limited to these specific accounts. These accounts will also include capitalized costs of eligible property included in the Companies' respective distribution systems, as that term is defined in the Act, in functional categories other than distribution, which in the Companies' cases would include but not necessarily be limited to, transmission, gathering, and storage functions in addition to accounts where "other related capitalized costs" may be recorded.

- Piping (*accounts 376, 367, 332 and 353*)
- Couplings (*accounts 376, 367, 332 and 353*)
- Gas services lines (account 380) and insulated and non-insulated fittings (account 380)
- Valves (*accounts 376, 367, 332 and 353*)
- Excess flow valves (*accounts 376, 367, 332 and 353*)
- Risers (*accounts 376, 369, 334 and 355*)

- Meter bars (accounts 382, 369, 334 and 355)
- Meters (accounts 381, 369, 334 and 355)

4. Computation of DSIC.

The Commission invited comments on whether a stipulated cost of equity from a settled rate case, agreed to or unopposed by all parties, can be used in the § 1357(b)(2) cost of equity determination. The issue arises over the meaning of the words “fully litigated base rate proceeding” as used in that section of the Act. The Commission concluded in the Implementation Order that a full or partial settlement of a base rate case would not qualify as a fully litigated base rate proceeding.

The Companies submit that such a literal interpretation of these words produces a result that is neither reasonable nor consistent with the purposes of the Act. Taken to the extreme, one could argue that these words require, in order for an equity return from a base rate case to be used in the determination of the DSIC, that the parties to a base rate case litigate, and require the ALJ and ultimately the Commission, every component of the utility’s revenue requirement.² Obviously, that could not have been the General Assembly’s intention with regard to this section of the Act.

The Companies submit that a reasonable interpretation of the term “fully litigated base rate proceeding” is one that has been properly noticed, has active participation by state advocates, Staff and others which participation includes the discovery process and the filing of testimony, and results in either a decision by the ALJ and ultimately the

² Issues to be litigated in a base rate case are not established by law or Commission regulation. Rather, litigated issues are established by the intervening parties in the case. For example, the utility’s requested postage expense level would become a litigated issue only if other rate case participants disagree with the as-filed level of expense and choose to make it an issue. If the parties choose not to make the level of postage expense an issue, it is effectively settled, but does that mean that the issue was not fully litigated and that the rate case itself was not fully litigated? The Companies believe that such an interpretation would be patently unreasonable, but it demonstrates the need to interpret this language rather than applying it literally.

Commission on the reasonable equity return after that issue is litigated or results in a settlement that expressly sets forth an agreed-upon equity return. In the case of a settlement, the settled equity return must still be supported by record evidence that would have been sufficient to support a decision by the Commission itself.³ Such a process would provide full due process to all stakeholders, be transparent, and would be consistent with Commission policy supporting settlements. This process would also preserve, in part, what has been an efficient and useful tool in resolving rate cases – the “black box” settlement, where parties can agree upon a revenue requirement without agreeing upon the individual components making up that revenue requirement. There is no good reason for denying rate case parties the use of this tool to resolve the case when the goal is just to make sure that the equity return has been fully vetted.

Also in the subject matter of computation of the DSIC, the Commission invited further comment on page 16 of the Implementation Order whether items other than accumulated depreciation associated with eligible property (e.g., accumulated deferred income taxes, working capital and taxes associated with eligible property) should be factored into the DSIC computation. The Companies agree with the conclusion in Implementation Order that these other items are unnecessary complications to the DSIC. Section 1357(b) is specifically prescriptive with regard to the depreciation calculation, and there is no provision for deviating from the prescribed calculation.

The Commission also invited comments on whether the projected revenue approach to account for seasonality of some utilities’ revenue streams is consistent with the Act. The Companies support the Commission’s proposal to permit utilities to opt to

³ The Companies submit that parties’ prepared testimony addressing the return on equity would satisfy this requirement.

determine quarterly revenues on the basis of one-fourth of projected annual revenues and submits that this method is fully consistent with the Act. Without such an adjustment, a utility with a very seasonal revenue stream would face the very real possibility of not recovering the costs of eligible property additions in seasons of low revenues by exceeding the DSIC cap. A fair reading of §§1357 and 1358 leads to the conclusion that the DSIC is intended to be a steady charge that could gradually increase quarterly until it reaches a level equal to 5% of the applicable distribution charge, and, not to be forgotten, with the overriding goal of providing a means for the timely recovery of distribution system improvement costs. A wildly fluctuating DSIC would not permit recovery of those costs and would certainly be inconsistent with the Act.

WHEREFORE, the Companies respectfully request that the Commission accept these Comments and give them due consideration in this proceeding.

Respectfully submitted,

PEOPLES NATURAL GAS COMPANY
LLC

PEOPLES TWP LLC

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**PA PUBLIC UTILITY COMMISSION
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Dated: May 31, 2012

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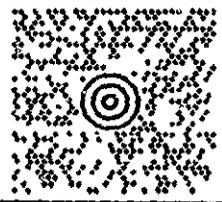
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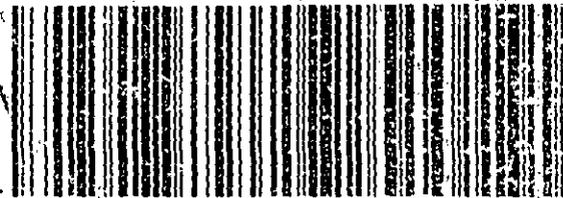
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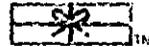


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