



PEOPLES NATURAL GAS



PEOPLES TWP

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**Via Overnight Delivery**

December 3, 2013

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

Re: Review of Long-Term Infrastructure Improvement Plan  
Docket No. L-2012-2317274

Dear Secretary Chiavetta:

Please accept the enclosed Joint Comments of Peoples Natural Gas Company LLC and Peoples TWP LLC in the above-referenced proceeding. I have also served a copy of these comments via email to David Screven, [dscreven@pa.gov](mailto:dscreven@pa.gov), in the Commission's Law Bureau

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (412) 208-6527.

Very truly yours,

Attorney for Peoples TWP LLC and  
Peoples Natural Gas Company LLC

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Review of Long-Term Infrastructure  
Improvement Plan

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Docket No. L-2012-2317274

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JOINT COMMENTS OF PEOPLES NATURAL GAS COMPANY LLC  
AND PEOPLES TWP LLC

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I. INTRODUCTION

Peoples Natural Gas Company LLC (“Peoples”) and Peoples TWP LLC (“Peoples TWP”) (sometimes hereinafter collectively referred to as the “Companies”) submit these Joint Comments in the matter of the Public Utility Commission’s (“Commission”) proposed rule (“Proposed Rule”) to establish the procedures and criteria for the filing and subsequent periodic review of long-term infrastructure improvement plans (“LTIPs”). The Proposed Rule was promulgated by Proposed Rulemaking Order entered in this docket on March 14, 2013, (the “Order”) and published in the *Pennsylvania Bulletin* on October 19, 2013.

The Proposed Rule would add a new Chapter 121 to the Commission’s regulations at Title 52 of the Pennsylvania Code. Chapter 121 would establish the procedures and criteria for the filing and subsequent periodic review of LTIPs. The filing and approval of a LTIP is a precondition to a utility receiving approval to implement a Distribution Service Improvement Charge (“DSIC”), a new ratemaking tool that provides accelerated recovery of investment costs incurred in undertaking accelerated replacement of infrastructure.

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The Companies are generally supportive of the Proposed Rule but suggest that it should be revised in certain sections where the Proposed Rule imposes obligations on utilities beyond the requirements of the DSIC statute (66 Pa.C.S. §§ 308; 1307, 1311, 1327 and 1350-1360) and seeks to implement new requirements and impose new but unnecessary penalties. The Companies also recommend revision or deletion of a number of other sections of the Proposed Rule that contain provisions that are inconsistent with the DSIC statute or beyond the scope of a LTIP.

## II. COMMENTS

### **A. The Proposed Rule provisions at Section 121.8 that would penalize utilities that implement accelerated infrastructure replacement programs and then change their plans should be deleted.**

Without doubt, the DSIC legislation has been very positive for the utility industry. In an era of widespread interest in the replacement of societal infrastructure, both the General Assembly and the Commission have taken decisive action to encourage the acceleration of the replacement of utility infrastructure in the Commonwealth, and that action has had positive effects. At least seven Pennsylvania utilities have filed LTIPs and have commenced or continued accelerated infrastructure replacement programs. In addition, just last month Moody's Investors Service affirmed the Baa3 senior secured rating of the securities of Peoples' direct parent company, PNG Companies LLC, stating that the rating is underpinned in part by the credit supportive regulatory framework under which the group operates.

With this background, the Companies are concerned that the Proposed Rule seems to retreat from the prevailing theme of reducing regulatory and cost recovery barriers to encourage investment in utility infrastructure replacement. In particular, Section 121.8 of the Proposed Rule imposes new regulatory risks on utilities that undertake accelerated infrastructure replacement, opt for cost recovery through the DSIC process, but then change their infrastructure

replacement plans, for even the most valid reasons. The effect is the creation of new regulatory barrier that discourages infrastructure investment.

The Companies believe that there is nothing in the DSIC legislation to indicate a legislative intent to subject utilities to enforcement complaints by statutory advocates and other interested parties and to subject utilities to civil penalties for non-compliance with an approved DSIC, which proposed Section 121.8 would do. To the contrary, section 1352(b)(2) of the DSIC statute, 66 Pa.C.S. § 1352(b)(2) provides only that:

The regulations shall ensure that a distribution system improvement charge shall terminate if the Commission determines that the utility is not in compliance with the approved plan.

Certainly, unexcused material noncompliance with the as-filed LTIIP should carry the risk of non-recovery through DSIC of investment costs for otherwise eligible DSIC property, but the Proposed Rule goes way beyond this and without explanation. If a utility has accelerated its infrastructure replacement, only not to the extent anticipated in its LTIIP, there has still been a public benefit, and it makes no sense to penalize the utility. Even if the utility has not accelerated its infrastructure replacement, it is difficult to envision what public harm has occurred to justify a civil penalty - if the failure to accelerate infrastructure improvement was intended to be a punishable offense, then the implementation of a LTIIP would have been mandatory rather than voluntary.

The Commission should be concerned that this section will discourage utilities from filing LTIIPs and taking advantage of the benefits of the DSIC process in order to accelerate the replacement of their infrastructure. The explanatory text of the Order provides no justification for this section. The Commission, therefore, should not implement any such penal provisions in

its final rule. The Companies suggest the following language as a substitute for section 121.8 of the Proposed Rule:

**§121.8. Noncompliance with LTIP.**

If the Commission determines, after notice and hearing, that a utility is not in material compliance with its Commission-approved LTIP, the Commission shall terminate the utility's DSIC. Compliance with the LTIP shall be evaluated on a multi-year basis over the life of the plan. Construction expenditure variations in individual years and minor changes or deviations from the Commission-approved LTIP may not be the basis for termination of the DSIC.

**B. Section 121.3(a) should be revised to eliminate the mandatory filing of a LTIP.**

In what seems likely to be inadvertent requirement, the initial clause of Section 121.3(a) could be interpreted to require all utilities to file LTIPs. The clause states: "An LTIP shall be filed by a utility and shall include the following elements[.]" The DSIC statute makes the filing of an LTIP optional - it does not require it. Nothing in the explanatory text indicates a different intent. It, therefore, appears that the Commission does not intend for this section to require the filing of an LTIP, so the Companies suggest the following revision to Section 121.3(a): "An LTIP ~~shall be~~ filed by a utility ~~and~~ shall include the following elements[.]"

**C. Section 121.3(a)(9) should be deleted because it requires the preparation and filing of information beyond the scope of an LTIP.**

Section 1352 of the DSIC statute creates the LTIP. It provides in subsection (a) that a utility must submit a long-term infrastructure improvement plan in order to be eligible to recover costs through a DSIC, and it specifies seven (7) things that an LTIP shall include, the first six (6) of which are incorporated in the Proposed Rule as 121.3(a)(1) – (6).<sup>1</sup>

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<sup>1</sup> The seventh required component of an LTIP is somewhat of a misfit in § 1352(a) in that it seems to be less a component of an LTIP and more of a standard that an LTIP must satisfy. It states: "If the plan is not adequate and

The Proposed Rule adds at section 121.3(a) the following additional elements, not included in § 1352 of the DSIC statute, as additional required components of an LTIIP:

- (7) A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner.
- (8) A description of a utility's outreach and coordination activities with other utilities, PennDOT and local governments regarding their planned maintenance/construction projects and roadways that may be impacted by the plan.
- (9) For a natural gas distribution company, a description of the plan to address damage prevention, corrosion control, emergency response times, and identification of the NGDC's critical valves.

The Commission discussed these additional elements in the explanatory text at pages 4 – 5 of the Order. The workforce management and training program requirement implements section 1359 of the DSIC statute, 66 Pa.C.S. § 1359, and was discussed in the Final Implementation Order at pages 17-18. The requirement to describe the utility's outreach and coordination activities with other utilities, PennDOT and local governments was not included in the Final Implementation Order but reflects concerns expressed by utilities that their ability to keep projected construction schedules and budgets will be impacted by these named entities. The requirement for a natural gas distribution utility to describe its plan to address damage prevention, corrosion control, emergency response times, and identification of the NGDC's critical valves is new and, according to the explanatory text, is intended as a substitute for the proposed rule promulgated at Docket No. M-2011-2271982.

There is no current Commission requirement for a NGDC to prepare a plan to address damage prevention, corrosion control, emergency response times, and identification of the NGDC's critical valves. These matters may be addressed in a NGDC's integrity management plan ("IM

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sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the commission shall order a new or revised plan." The Proposed Rule addresses this in Section 121.4.

Plan”) developed under its Distribution Integrity Management Program (“DIMP”), but even in the IM Plan, if each of these matters is addressed, it is as part of the overall IM Plan, and not as a separate plan within the IM plan. If NGDCs are to be required to prepare such plans, that proposal should be the subject of its own rulemaking proceeding. One of the prevalent comments in Docket No. M-2011-2271982 was that the proposed Pipeline Replacement and Performance Plan requirements were vague and without factual support. Shoehorning some of the same requirements into this proposed rule does not cure this shortcoming. Contrary to the assertion at page 4 of the explanatory text in the Order, the information to be submitted under proposed rule 121.3(a)(9) is not duplicative of LTIP process. Rather, it is beyond the scope of a NGDC’s LTIP, and subsection 121.3(a)(9) should be deleted in the final rule.

**D. Section 121.4(a) should be revised to eliminate the requirement to serve a copy of the LTIP on all parties in the utility’s most recent rate case.**

Section 121.4(a) of the Proposed Rule requires a utility to serve copies of its filed LTIP on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties in the utility’s most recent base rate case. While the requirement to serve copies of filings on the public advocates is common, a requirement to serve a filing in a new docket on parties to the utility’s last rate case is certainly unusual, if it exists at all in other rules. Since an LTIP is not related to a utility’s most recent base rate case, a requirement to serve a copy of an LTIP filing on parties to the most recent base rate case appears to be without reason, would create inconvenience if those parties have no interest in the LTIP, and creates unnecessary work and expense for the utility in that case. If a party to the most recent base rate case has a legal interest in the LTIP filing, it can intervene in the LTIP proceeding and obtain a copy of the filing from the utility.

- E. Section 121.4(f) should be revised to permit the utility to withdraw its LTIP if the Commission determines that the LTIP does not satisfy applicable requirements.**

Section 121.4(f) states that if the Commission determines that the utility's filed LTIP does not accelerate or maintain an accelerated rate of infrastructure replacement and is insufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the Commission will order the utility to file a new or revised LTIP. The Companies suggest that it would be reasonable that the utility also have the option to withdraw the LTIP and not go forward with implementation or continuance of a DSIC. The Companies, therefore, recommend that Section 121.4(f) be revised as follows:

- (f) If the plan does not meet the above criteria, the Commission will order the utility to file a new or revised LTIP. In the alternative, the utility may withdraw the LTIP.

- F. Section 121.5(c) should be revised so that it applies only to a utility that intends to continue its DSIC.**

Section 121.5(c) of the Proposed Rule addresses procedures when a utility's current LTIP is expiring. As drafted, the Proposed Rule appears to make the filing of a new LTIP mandatory. The Companies suggest that this section be revised to make it clear that a utility may choose not to file a new LTIP. Such a revision would be consistent with the Companies suggested revisions to Sections 121.3(a) and 121.4(f) of the Proposed Rule to give effect to voluntariness of both the filing of an LTIP and the utilization of a DSIC for future cost recovery. The Companies suggest the following revision to this section:

- (c) A utility that desires to recover costs of new investment through its DSIC shall file a new LTIP with the Commission at least 120 days prior to the expiration



of a currently-effective LTIP. The new LTIP shall contain the elements set forth in subsection 121.3(a) above.

This revision would allow a utility to continue to recover through its DSIC the investment costs related to infrastructure improvements made during the term of the expiring LTIP but would not allow a utility to recover future investment costs related to future infrastructure improvements if it does not file a new LTIP.

**G. The Commission should consider deleting the requirement under Section 121.6(b)(3) to file system reliability data for the prior 5 years as not related to the AAO plan, but at minimum, the Commission should clarify what system reliability data is required.**

The obvious purpose of Section 121.6(b) is to implement the requirement of §1356 of the DSIC statute. Section 1356 requires a utility with an approved DSIC to file an AAO plan and requires the AAO plan to include a description of the eligible property repaired, improved and replaced in the prior 12 months pursuant to the utility's LTIP and prior year's AAO plan. Section 1356 also requires the AAO plan to include a detailed description of all facilities to be improved in the upcoming 12 months. Section 1356 requires nothing else.

Proposed Rule Section 121.6 adds substantial requirements to what Section 1356 requires. Section 121.6(b)(3) states that an AAO plan shall include system reliability data for the prior 5 years. Section 1356, however, does not require or even mention system reliability data. In fact, system reliability data is not mentioned anywhere in the DSIC statute. Similarly, there is no discussion of system reliability data in the explanatory text of the Proposed Rule. Thus, there is no apparent reason for the requirement to include system reliability data for the prior 5 years in the AAO plan. The Companies suggest that the requirement to file system reliability data is beyond the scope of the AAO plan and the LTIP and should be deleted from Section 121.6(b) in the final

rule. At minimum, the Commission should explain how system reliability data relates to the AAO plan and then clarify what system reliability data should be included with the AAO plan filing.

### III. CONCLUSION

The Companies are members of the Energy Association of Pennsylvania ("EAP") and endorse EAP's comments filed in this proceeding.

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

Respectfully submitted,

PEOPLES NATURAL GAS COMPANY  
LLC

PEOPLES TWP LLC

By: William H. Roberts II

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Dated: December 3, 2013

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