**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al. : R-2013-2350914

Office of Small Business Advocate : C-2013-2354071

Daniel Killmeyer : C-2013-2355180

Office of Consumer Advocate : C-2013-2355226

:

v. :

:

Peoples Natural Gas Company LLC :

**PREHEARING ORDER SETTING LITIGATION SCHEDULE**

**AND CONSOLIDATING COMPLAINTS**

On March 1, 2013, Peoples Natural Gas Company LLC (Peoples or Company) made its Purchased Gas Cost (PGC) pre-filing with the Pennsylvania Public Utility Commission (Commission) pursuant to Section 1307(f) of the Public Utility Code, 66 Pa. C.S. §1307(f) and the Commission’s regulations at 52 Pa. Code §53.64.

On March 13, 2013, the Commission’s Bureau of Investigation and Enforcement (I&E or BI&E) filed a Notice of Appearance. On March 20, 2013, the Office of Small Business Advocate (OSBA) filed a Formal Complaint at Docket No. C-2013-2354071. On March 25, 2013, Daniel Killmeyer (Individual Complainant, Complainant Killmeyer, or Mr. Killmeyer) filed a Formal Complaint at Docket No. C-2013-2355180. On March 29, 2013, the Office of Consumer Advocate (OCA) filed a Notice of Appearance and Formal Complaint at Docket No. C-2013-2355226.

On April 1, 2013, Peoples filed with the Commission Supplement No. 16 to Peoples Tariff Gas – Pa. P.U.C. No. 45 (Supplement No. 16) reflecting actual and projected changes in natural gas costs and other tariff changes. Supplement No. 16 was filed with an issue date of April 1, 2013 and an effective date of October 1, 2013. The Company also filed direct testimony and exhibits in support of Supplement No. 16.

By Prehearing Conference Order dated April 2, 2013, the parties were notified that the proceeding was assigned to Administrative Law Judges Conrad A. Johnson and Jeffrey Watson (ALJs or Presiding ALJs) for a telephonic prehearing conference conducted from the Commission’s Pittsburgh Hearing Room on April 11, 2013. Harrisburg parties were directed to report to the Commission’s Harrisburg Hearing Room and Pittsburgh area parties were invited to participate from the Pittsburgh Hearing Room. The Prehearing Conference Order directed, inter alia, the parties to file Prehearing Memoranda before 3:00 p.m. on April 9, 2013. All parties with the exception of Complainant Daniel Killmeyer filed Prehearing Memoranda. Also on April 2, 2013, a notice was issued by the Commission scheduling a prehearing conference before the ALJs at 1:30 p.m. on April 11, 2013.[[1]](#footnote-1)

The conference convened as scheduled on April 11, 2013, with the Company and statutory parties, OCA, OSBA and I&E, attending in the Commission’s Harrisburg Hearing Room and the ALJs presiding by telephone from the Commission’s Pittsburgh Hearing Room.

Daniel Killmeyer did not attend the conference. This Order, inter alia, memorializes the matters decided and agreed upon by the parties attending the conference.

**Litigation Schedule**

The parties agree upon the following litigation schedule:

|  |  |
| --- | --- |
| Date | Event |
| April 11, 2013 | Prehearing Conference |
| May 8, 2013 by Noon | Service of Written Direct Testimony of All Other Parties |
| May 24, 2013 | Service of Written Rebuttal Testimony |
| May 31, 2013 | Service of Written Surrebuttal Testimony |
| June 5-6, 2013 | Technical Evidentiary Hearings in Harrisburg (including Oral Rejoinder Testimony) |
| June 20, 2013 | Main Briefs |
| July 2, 2013 | Filing and Service of Reply Briefs or Submission of Joint Settlement Petition Executed By Representatives of All Parties, Together With All Parties’ Statements In Support of Settlement |

For parties accepting electronic service, the documents described in the litigation schedule referenced above shall be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. Hard copies will follow by first class mail. Peoples, I&E, OCA and OSBA have agreed to accept service of documents electronically. For parties not accepting electronic service and not located in Harrisburg, documents are due in hand on the following business day.

Any party wishing to submit written testimony (pursuant to 52 Pa. Code §5.412(f)) is advised to comply with the Commission’s requirement concerning the electronic filing of written testimony as specified in the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973. Furthermore, the parties are reminded that parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa. Code §5.412(f), shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding (unless such time period is otherwise modified by the presiding officer), to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding. In addition to the testimony that is electronically submitted to the Commission either by eFiling or by the submission of a CD to the Secretary’s Bureau, parties must continue to submit two copies of such testimony to the court reporter at the hearing on this matter.

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa. Code §5.412. Written testimony must be accompanied by all exhibits to which it relates. The above-stated dates are in-hand dates for service on the parties and the Presiding ALJs. The parties and the Presiding ALJs agree to accept email transmission of such material, so long as the subject email is received by the time set forth above and on the date due, and provided the email is followed the next business day by sending a hard copy of the same material via first class mail postage prepaid to the parties designated on the Full Service List attached to this Order as Appendix B. The email addresses of the Presiding ALJs are: [cojohnson@pa.gov](mailto:cojohnson@pa.gov) and [jeffwatson@pa.gov](mailto:jeffwatson@pa.gov). The Presiding ALJs will not accept facsimile transmissions greater than ten pages in length without prior authorization. If in doubt, please call their office (412‑565-3550).

Hearings will begin promptly at **10:00 a.m.** each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings.

**Parties**

Peoples, I&E, OCA, OSBA and Daniel Killmeyer are parties to this proceeding. The parties are directed to monitor filings with the Commission’s Secretary’s Bureau and advise the undersigned of any additional formal complaints filed after the date of this Order.

**Full Service List and Limited Service List**

Parties who did not attend the prehearing conference will be included on the Limited Service List for this case. Each party appearing on the Limited Service List will not be required to file and serve any documents in this case and the parties on the Full Service List will not be required to serve copies of their documents on those parties on the Limited Service List. Parties on the Limited Service List will receive copies of all Orders, Hearing Notices, proposed settlement documents, the Recommended Decision and the Commission’s Decision. The following Complainant shall be placed on the Limited Service List: Daniel Killmeyer. The Limited Service List for this proceeding is attached hereto as Appendix A and made a part of this Order.

All parties who attended the prehearing conference will be included on the Full Service List for this case since no attendees opted for a lesser degree of participation. Each party appearing on the Full Service Listmust serve a copy of every document it files in this case, including, but not limited to discovery requests, motions, testimony, and briefs on every other party on the Full Service List in accordance with the schedule established at the prehearing conference. In addition, every document filed must be served on both Presiding ALJs. Discovery requests and responses are not to be served on the Presiding ALJs unless attached to a motion to compel. The following parties are on the Full Service List for this proceeding: Peoples, I&E, OCA, and OSBA. The Full Service List for this proceeding is attached hereto as Appendix B and made a part of this Order.

Any party may send to the Presiding ALJs, and copied to all parties, a letter requesting to be moved from either the Full Service List to the Limited Service List, or to be moved from the Limited Service List to the Full Service List. Upon the receipt of such a request, the Presiding ALJs will issue an Order revising the Service Lists for this case. Such changes will be effective as of the date of the Order and will not apply to any document filed and served prior to the date of that Order.

Service of all documents upon the parties may be made by electronic mail delivery on the due date as satisfying the in-hand requirement, provided that such documents are served upon the parties by hard copy delivery by first class mail.

In addition, the OSBA has requested and the parties have agreed that all parties, with the exception of I&E, shall serve copies of all documents, including discovery, testimony and briefs, upon OSBA witness Brian Kalcic, simultaneously with service upon the OSBA. Accordingly, the parties shall comply with this request of OSBA.

**Public Input Hearings**

At present there are no Public Input Hearings scheduled and no party has requested a Public Input Hearing.

## Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

## Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa. Code §5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa. Code §§5.321, *et* *seq*. The parties must not send the Presiding ALJs discovery material or cover letters, unless attached to a motion to compel. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, the Presiding ALJs will contact the parties and direct them to pursue informal discovery.

The parties have reached an agreement regarding a modification of the Commission’s procedures for formal discovery. With the agreement of all parties attending the prehearing conference, that request is hereby granted. Therefore, the following modified discovery procedure applies to this case:

1. Written interrogatories propounded after noon on a Friday or the business day before a state-recognized holiday shall be deemed served on the following business day.
2. After May 3, 2013, answers to written interrogatories shall be served in-hand within five (5) calendar days of service of interrogatories.
3. Objections to interrogatories shall be communicated orally within three (3) calendar days of service. Unresolved objections must be served upon the Presiding ALJs in writing within five (5) calendar days of service of the interrogatories.
4. Motions to dismiss objections and/or direct the answering of interrogatories (motions to compel) must be filed within three (3) calendar days of service of the written objections.
5. Answers to motions to dismiss objections and/or direct the answering of interrogatories must be filed within three (3) calendar days of service of such motions.
6. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days of service.
7. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the requests.

With the agreement of all parties attending the prehearing conference, the request to approve the discovery proposal, as set forth above, is hereby granted. With regard to service of discovery, Peoples has indicated that it has established a discovery virtual data room for use by other parties’ counsel and experts. Due to the use of a virtual data room, Peoples has indicated that it intends to provide electronic service of discovery to the parties via PDF of the cover letter only to inform the parties that new responses are available in the virtual data room. Peoples will also serve the parties with the requested number of hard copies via first class mail. Peoples requested, and no party attending the conference objected to Peoples’ request, that discovery responses served by other parties be served via electronic mail with PDF’s of the responses so that Peoples may post them in the virtual data room.

**Settlement and Stipulations**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. Submission of a Joint Settlement Petition executed by representatives of all parties, together with all parties’ Statements In Support of Settlement, proposed conclusions of law and proposed ordering paragraphs, must be filed with the Secretary for the Commission and received in-hand by the Presiding ALJs no later than the close of business on July 2, 2013.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa. Code §§5.76 & 5.243.

**Briefs and Reply Briefs**

The parties must comply with 52 Pa. Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs.[[2]](#footnote-2) Briefs must include proposed Findings of Fact, with citations to the record, and proposed Conclusions of Law. Page limitations on briefs will be discussed on or before the last day of hearing. Where possible, the parties shall submit to each of the Presiding ALJs one hard copy of their briefs and one copy by email. The electronic version of a brief must be prepared on an IBM compatible system in Microsoft Office Word 2010 format or in an earlier version of this software application. If in doubt, please call the office of the Presiding ALJs for clarification.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.



Dated: April 19, 2013

Jeffrey Watson

Administrative Law Judge

**R-2013-2350914, C-2013-2354071, C-2013-2355180, & C-2013-2355226 – PUC, ET AL V. PEOPLES NATURAL GAS COMPANY LLC**

**LIMITED SERVICE LIST**

***Revised 4/2/13***

MICHAEL W GANG ESQUIRE

ANTHONY D KANAGY ESQUIRE

ANDREW S TUBBS ESQUIREPOST & SHELL PC17 NORTH SECOND STREET

12TH FLOORHARRISBURG PA 17101-1601**717.731.1970**

mgang@postshell.com

akanagy@postshell.com

atubbs@postshell.com

RICHARD KANASKIE ESQUIRECARRIE B WRIGHT ESQUIRE

PA PUC BUREAU OF INVESTIGATION

& ENFORCEMENT LEGAL TECHNICALPO BOX 3265

400 NORTH STREETHARRISBURG PA 17105-3265**717.783.6184**rkanaskie@pa.gov

carwright@pa.gov

ARON J BEATTY ESQUIRE

BRANDON J PIERCE ESQUIRE

OFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101-1923**717.783.5048**ABeatty@paoca.org

BPierce@paoca.org

ELIZABETH ROSE TRISCARI ESQUIREOFFICE OF SMALL BUSINESS ADVOCATESUITE 1102300 NORTH SECOND STREET

HARRISBURG PA 17101**717.783.2525**

etriscari@pa.gov

DANIEL KILLMEYER

184 MCKAY ROAD

SAXONBURG PA 16056

**724.352.5029**

**R-2013-2350914, C-2013-2354071, C-2013-2355180, & C-2013-2355226 – PUC, ET AL V. PEOPLES NATURAL GAS COMPANY LLC**

**FULL SERVICE LIST**

***Revised 4/2/13***

MICHAEL W GANG ESQUIRE

ANTHONY D KANAGY ESQUIRE

ANDREW S TUBBS ESQUIREPOST & SHELL PC17 NORTH SECOND STREET

12TH FLOORHARRISBURG PA 17101-1601**717.731.1970**

mgang@postshell.com

akanagy@postshell.com

atubbs@postshell.com

RICHARD KANASKIE ESQUIRECARRIE B WRIGHT ESQUIRE

PA PUC BUREAU OF INVESTIGATION

& ENFORCEMENT LEGAL TECHNICALPO BOX 3265

400 NORTH STREETHARRISBURG PA 17105-3265**717.783.6184**rkanaskie@pa.gov

carwright@pa.gov

ARON J BEATTY ESQUIRE

BRANDON J PIERCE ESQUIRE

OFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101-1923**717.783.5048**ABeatty@paoca.org

BPierce@paoca.org

ELIZABETH ROSE TRISCARI ESQUIREOFFICE OF SMALL BUSINESS ADVOCATESUITE 1102300 NORTH SECOND STREET

HARRISBURG PA 17101**717.783.2525**

etriscari@pa.gov

1. The Hearing Notice and Prehearing Conference Order were sent to Daniel Killmeyer on April 2, 2013, by first class mail, at the address listed on his Formal Complaint, and were not returned as undelivered by the Postal Authorities. Daniel Killmeyer did not attend the prehearing conference on April 11, 2013. [↑](#footnote-ref-1)
2. In a Secretarial Letter dated August 16, 2012, the Commission announced that it is temporarily waiving certain regulations. By this letter the Commission eliminated the requirement to file nine additional paper copies, beyond a signed original, of both briefs and reply briefs. [↑](#footnote-ref-2)