

Ruth Nettles

080318-GU

From: Ansley Watson, JR. [AW@macfar.com]
Sent: Friday, February 05, 2010 11:34 AM
To: Filings@psc.state.fl.us
Cc: Kandi Floyd; jmcwhirter@mac-law.com; Caroline Klancke; Katherine Fleming; Binswanger, Lewis M.; AFollmer@usg.com; Charles Rehwinkel
Subject: Docket No. 080318-GU
Attachments: 080318 - Joint Motion w Stipulation & Settlement.pdf

- a. Ansley Watson, Jr.
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- b. Docket No. 080318-GU – Petition for rate increase by Peoples Gas System
- c. Peoples Gas System, Office of Public Counsel and Florida Industrial Gas Users
- d. Fifteen (15) pages
- e. The attached document is the Joint Motion (of Peoples Gas System, the Office of Public Counsel and Florida Industrial Gas Users) for Approval of Stipulation and Settlement, with the Stipulation and Settlement attached.

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DOCUMENT NUMBER-DATE

00821 FEB-5 2010

FPSC-COMMISSION OF PUBLIC SERVICE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by)
Peoples Gas System.)
_____)

DOCKET NO. 080318-GU
Filed: 2-5-10

**JOINT MOTION FOR APPROVAL
OF STIPULATION AND SETTLEMENT**

Peoples Gas System, the Citizens of the State of Florida, and the Florida Industrial Gas Users (collectively, the "Parties"), through their respective undersigned counsel, respectfully move the Commission for entry of an order approving the attached Stipulation and Settlement as full and complete resolution of the only matters remaining pending in this docket.

DATED as of the 5th day of February, 2010.

Respectfully submitted,

PEOPLES GAS SYSTEM

Macfarlane Ferguson & McMullen
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P. O. Box 1531
Tampa, Florida 33601-1531

By: 

Ansley Watson, Jr.

OFFICE OF PUBLIC COUNSEL

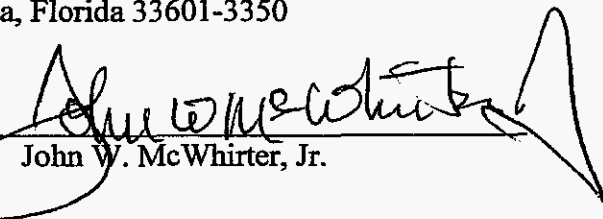
c/o The Florida Legislature
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By: 

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FLORIDA INDUSTRIAL GAS USERS

McWhirter Law Firm
P. O. Box 3350
Tampa, Florida 33601-3350

By: 

John W. McWhirter, Jr.

DOCUMENT NUMBER-DATE

00821 FEB-5-10

FPSC-COMMISSION OFFICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Joint Motion for Approval of Stipulation and Settlement (together with the attached Stipulation and Settlement) has been furnished electronically and by U. S. Mail this 5th day of February, 2010, to the following:


Caroline M. Klancke, Esquire
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Florida Public Service Commission
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Tallahassee, Florida 32399-0850

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Ms. Annette Follmer
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P. O. Box 806278
125 S. Franklin Street
Chicago, Illinois 60680-4124



Ansley Watson, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by)
Peoples Gas System.)
_____)

DOCKET NO. 080318-GU
Filed: 2-5-10

STIPULATION AND SETTLEMENT

WHEREAS, pursuant to its petition filed August 11, 2008, Peoples Gas System ("Peoples" or the "Company") sought an increase in its rates and charges sufficient to generate approximately \$26.5 million in additional gross annual revenues;

WHEREAS, the Office of Public Counsel ("OPC") and the Florida Industrial Gas Users ("FIGU") intervened, and have signed this Stipulation and Settlement (unless the context clearly requires otherwise, the term "Party" or "Parties" as used herein means a signatory to this Stipulation and Settlement);

WHEREAS, following extensive discovery by Commission Staff and OPC, customer service hearings in six cities, and a final hearing in Tallahassee, the Commission entered its Order No. PSC-09-0411-FOF-GU (the "Order") on June 9, 2009;

WHEREAS, the Order authorized Peoples to adjust its rates and charges to produce additional gross annual revenues of \$19,152,365 based on a projected test year ending December 31, 2009, and a mid-point return on common equity of 10.75%;

WHEREAS, on June 24, 2009, Peoples filed a Motion for Reconsideration of the Order (the "Motion for Reconsideration") seeking reconsideration by the Commission of the Order because the Order's calculation of the weighted average cost of capital appeared to violate the normalization rules under former Section 167(1) and Section 168(i)(9)(B) of the Internal Revenue Code (the "Code") and Sections 1.167(1)-1(a) and 1.167(a)-11(b)(6) of the Income Tax Regulations;

DOCUMENT NUMBER: 080318-GU

00821 FEB-5 2010

FLORIDA PUBLIC SERVICE COMMISSION

WHEREAS, the Code and Income Tax Regulations require a taxpayer to use a normalization method of accounting with respect to “public utility property” (as defined in the Code and Income Tax Regulations);

WHEREAS, subsection (i)(9)(A) of Code Section 168 provides that in order to use a normalization method of accounting with respect to any public utility property, the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes. This section further provides that if the amount allowable as a deduction under the Code with respect to such property differs from the amount that would be allowable as a deduction under the Code using the method used to compute regulated tax expense described above, the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference. Because, for tax purposes, Peoples uses accelerated methods of depreciation, and uses the straight-line method prescribed by the Commission for ratemaking purposes, adjustments to the reserve for deferred taxes must be made in order for Peoples to use a normalization method of accounting.

WHEREAS, Subsection (i)(9)(B) of Code Section 168 provides that the requirements of subparagraph (A) described above are not met if the taxpayer, for ratemaking purposes, uses a procedure or adjustment that is inconsistent with the requirements of subparagraph (A). It also provides that the procedures or adjustments that are considered to be inconsistent shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer’s tax expense, depreciation expense, or reserve for deferred taxes unless such estimate

or projection is also used, for ratemaking purposes, with respect to the other two such items and with respect to the rate base.

WHEREAS, pursuant to Income Tax Regulation §1.167(l)-1(b), property is “public utility property” during any period in which it is used predominantly in the trade or business of the furnishing or sale of, among other things, gas through a local distribution system;

WHEREAS, on page 19 of the Order, the Commission accurately describes normalization and the penalty for violating the Code’s normalization requirements, which is the loss of the utility’s ability to claim accelerated depreciation for income tax purposes on all assets as of the violation date and on subsequent asset additions;

WHEREAS, the Commission Staff’s recommendation on Peoples’ Motion for Reconsideration was deferred from consideration by the Commission at its August 18, 2009 agenda conference for the purpose of permitting informal discussions among the Parties and the Commission Staff regarding the Code’s normalization requirements and the adjustments to the calculation of Peoples’ weighted average cost of capital in the Order sought by the Motion for Reconsideration; and

WHEREAS, the Parties have met on several occasions, exchanged information, and reached agreement regarding the disposition of the issues raised by the Motion for Reconsideration.

NOW, THEREFORE, in consideration of the forgoing recitals (which are incorporated herein) and the covenants contained herein, the Parties hereby stipulate and agree as follows:

1. Although not referenced in Peoples’ Motion for Reconsideration, during the Commission Staff’s analysis of the motion, it was discovered that an error had been made in the calculation of the amount of the adjustment to the depreciation reserve account for the cost of

removal. The correct amount of the adjustment to the depreciation reserve account for the 2009 test year should have been \$1,590,741 instead of the \$795,371 reflected in the Order. As a result of this error, the amount of rate base reflected in the Order was overstated by \$795,370. The Parties agree that this error should be corrected through a reduction to rate base in the amount of \$795,370. The amount of deferred taxes associated with the correct amount of the adjustment for cost of removal is \$613,628.

2. In the Minimum Filing Requirements (“MFRs”) that accompanied the filing of its petition, Peoples made an adjustment to remove the non-utility portion of common plant, with consistent adjustments to the associated depreciation expense and accumulated depreciation. Peoples did not, however, adjust the deferred taxes associated with the non-utility portion of common plant removed from rate base. While the adjustments were calculated in accordance with the final order in Peoples’ last rate case,¹ the failure to adjust the associated deferred taxes in the reconciliation of the rate base to the capital structure would result in a violation of the Code’s normalization requirements because each of the four categories of plant adjusted is “public utility property” as defined in the Code. The Parties agree that deferred taxes should be reduced by \$26,439 (as calculated on Schedule A to this Stipulation and Settlement) in order to avoid a potential violation of the Code’s normalization requirements.

3. In the Order, the Commission reduced projected test year Plant-In-Service (*i.e.*, rate base) by \$1,959,308 and related depreciation expense by \$113,640. It did not adjust the associated deferred tax component of the capital structure. The Parties agree that deferred taxes

¹ The Parties agree that the deferred taxes associated with the non-utility portion of the common plant items removed from rate base must be removed from the deferred taxes component of the capital structure in order to avoid a potential violation of the Code’s normalization requirements, with the remainder being removed from the common equity component of the capital structure. *See: In re: Application for rate increase by GTE FLORIDA INCORPORATED*, Order No. PSC-93-0108-FOF-TL, Docket No 920188-TL.

should be reduced by \$15,872 (as calculated on Schedule B to this Stipulation and Settlement) in order to avoid a potential violation of the Code's normalization requirements.

4. In the MFRs that accompanied its petition, Peoples made an adjustment for an acquisition adjustment that was on the books of West Florida Natural Gas Company when West Florida was merged into Peoples in 1997. Although the acquisition adjustment was removed from rate base, the deferred taxes associated with the adjustment were not removed from Peoples' capital structure when it was reconciled with rate base. The acquisition adjustment resulted from Martin's acquisition of West Florida's gas utility plant assets in 1984. The acquisition adjustment was amortized by West Florida after 1984 over a 37-year life for the property involved, and Peoples has continued such amortization since its acquisition of West Florida via the 1997 merger. The deferred taxes associated with the acquisition adjustment arose because the assets giving rise to the acquisition adjustment were written off for tax purposes over a shorter period (10 years). The Parties agree that, because the assets giving rise to the acquisition adjustment are "public utility property" as defined in the Code and Income Tax Regulations, deferred taxes should be reduced by \$371,477 (as calculated on Schedule C to this Stipulation and Settlement) in order to avoid a potential violation of the Code's normalization requirements.

5. In the Order, the Commission increased off-system sales ("OSS") from \$500,000 to \$2,000,000, and increased taxes other than income by \$7,500 for the related regulatory assessment fees. Order, page 21. Many of the projections in Peoples' filing were adjusted during the course of the proceeding that resulted in the Order. Peoples did not file the Motion for Reconsideration for the purpose of obtaining rate relief in addition to that awarded by the Order, but only to correct the potential violations of the Code's normalization requirements, and

such corrections will be made upon the Commission's approval of this Stipulation and Settlement. In recognition of Peoples' intent, and in order to avoid the expense to Peoples associated with a further change in rates by maintaining the level of the operating revenue increase awarded by the Order, the Parties agree that (i) OSS should be increased by \$1,568,676 instead of by \$1,500,000 as stated in the Order and (ii) taxes other than income should be increased by \$7,843 instead of by \$7,500 as stated in the Order for the related regulatory assessment fees, thereby increasing Peoples' achieved net operating income for the projected test year to \$36,063,515 (instead of the \$36,019,112 reflected in the Order). The net operating income deficiency would thereby remain the same as that reflected in the Order and, when expanded by the net operating income multiplier, would yield the operating revenue increase of \$19,152,365 awarded by the Order.

6. As set forth in paragraphs 1 through 5 above, the Parties agree that the final order should be modified:

- a. by reducing rate base in the amount of \$795,370 to correct the error in the calculation of the amount of the adjustment to the depreciation reserve account for the cost of removal (as described in paragraph 1 above);
- b. by reducing the deferred taxes component of the capital structure by the sum of the reductions described in paragraphs 1 through 4 above (\$1,027,416);
- c. by revising the "Staff Adjusted" 13-Month Average Capital Structure for the projected test year set forth on page 57 of the Order (Schedule 2 to the Order) as set forth on Schedule D to this Stipulation and Settlement, resulting in an overall weighted average cost of capital of 8.52%;
- d. by increasing OSS by \$1,568,676 instead of by \$1,500,000 as stated in the

Order and taxes other than income by \$7,843 instead of by \$7,500 as stated in the Order (for the related regulatory assessment fees); and

e. by revising the "Commission Adjusted" Revenue Requirements Calculation on page 60 of the Order (Schedule 5 to the Order) as set forth on Schedule E to this Stipulation and Settlement, thereby maintaining the Operating Revenue Increase approved by the Order at an increase of \$19,152,365.

7. This Stipulation and Settlement is contingent on approval in its entirety by the Commission, and is intended to resolve the only remaining issues in this docket. By agreeing to the provisions of this Stipulation and Settlement, except as set forth herein, the Parties do not intend to make any change to positions taken in this docket or in any other dockets, present or future. Rather, this Stipulation and Settlement is a product of compromise and is based solely on the factual circumstances of this case. The Parties therefore do not intend that this Stipulation and Settlement or the Order approving it shall be used or cited as precedent. This docket shall be closed effective as of the date the Commission order approving this Stipulation and Settlement becomes final.


8. Each Party to this Stipulation and Settlement agrees to endorse and support this Stipulation and Settlement before the Commission and any other administrative or judicial tribunal, and in any other forum.

9. This Stipulation and Settlement may be executed in counterpart originals, and a facsimile or electronically scanned version of an original signature shall be deemed an original.

IN WITNESS WHEREOF, the Parties to this Stipulation and Settlement have caused their respective duly authorized representatives in the captioned docket to execute this Stipulation and Settlement as of the 5th day of February, 2010.

PEOPLES GAS SYSTEM

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Tampa, Florida 33601-1531

By: 
Ansley Watson, Jr.

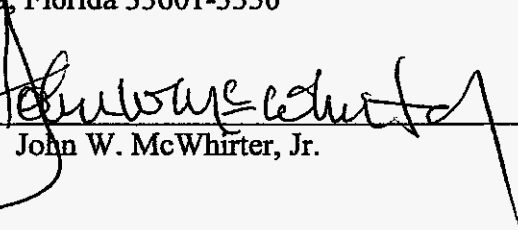
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By: 
Charles J. Rehwinkel

FLORIDA INDUSTRIAL GAS USERS

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P. O. Box 3350
Tampa, Florida 33601-3350

By: 
John W. McWhirter, Jr.

Plant Account	Description	(1) 13 mo. Avg. Non-Utility Plant	(2) 13 mo. Avg. Non-Utility Book Depr	(3) % Plant Depr	(4) Remaining Book Basis	(5) Book Life	(6) x (3) Book Life Depr	(7) Tax Life	Tax Remaining Life	ADIT	
303.01	Customized Software	\$ 71,569	\$ 61,701	86%	\$ 9,868	15	13	3	0	\$ 3,807	(4) x 38.575% (Note)
374	Land and Land Rights	3,785	3,018	80%	767	Not Depreciated	0	Not Depreciated	0	296	(4) x 38.575% (Note)
375	Structures and Improvements	239,640	49,700	21%	189,940	40	8	20	12	21,716	calc below
391.01	Computer Equipment	11,750	10,141	86%	1,609	8	7	5	0	621	(4) x 38.575% (Note)
		<u>\$ 326,744</u>	<u>\$ 124,560</u>		<u>\$ 202,184</u>					<u>\$ 26,439</u>	
	Source:	MFR G-1, page 18	MFR G-1, page 22	calc	calc	2008 Depr. Study	calc	IRC 167 and 188	calc		

375 Structures and Improvements Detail

Book Basis	239,640	See above
Tax Depr Rate	44.231%	----->
Accum Tax Depr	<u>105,995</u>	
Accum Tax Depr	105,995	
Accum Book Depr	<u>49,700</u>	See above
Timing Diff	<u>56,295</u>	
Timing Diff	56,295	
ADIT Rate	<u>38.575%</u>	Note
ADIT	<u>21,716</u>	

Tax Depreciation on 20 year life	
Year 1	3.750%
Year 2	7.219%
Year 3	6.877%
Year 4	6.177%
Year 5	5.713%
Year 6	5.285%
Year 7	4.888%
Year 8	4.522%
	44.231%

Source: Revenue Procedure 87-57

Note: 38.575% tax rate is in Order No. PSC-08-0411-POF-GU, page 57

PEOPLES GAS SYSTEM
DOCKET NO. 080318-GU
ADIT RELATED TO STAFF ADJUSTMENTS TO RATE BASE FOR PLANT IN SERVICE

	2009	Temporary Difference	Source
Booked Depreciation Expense	\$ 113,640	\$ 113,640 [1]	<i>Order No. PSC-09-0411-FOF-GU, page 9</i>
Tax Basis	3,918,616		<i>Order No. PSC-09-0411-FOF-GU, page 9</i>
Tax Rate Year 1 (15 year life)	5.00%		<i>Revenue Procedure 87-57</i>
Tax Depreciation Expense	<u>195,931</u>	<u>195,931</u> [2]	
Temporary Difference		82,291 [1] - [2] = [3]	
Rate		<u>38.575%</u> [4]	<i>Order No. PSC-09-0411-FOF-GU, page 57</i>
Annual Deferred Income Taxes		<u>31,744</u> [3] x [4] = [5]	
		<u>/12</u> [6]	
Monthly ADIT		\$ 2,645 [5] / [6]	
December-08	\$ -	\$ -	
January-09	2,645	2,645	
February-09	2,645	5,291	
March-09	2,645	7,936	
April-09	2,645	10,581	
May-09	2,645	13,227	
June-09	2,645	15,872	
July-09	2,645	18,517	
August-09	2,645	21,162	
September-09	2,645	23,808	
October-09	2,645	26,453	
November-09	2,645	29,098	
December-09	2,645	<u>31,744</u>	
Subtotal	\$	<u>\$ 206,334</u>	
		<u>/13</u>	
13- month average deferred income taxes	\$	\$ 15,872	

PEOPLES GAS SYSTEM
DOCKET NO. 080318-GU
WEST FLORIDA NATURAL GAS ACQUISITION ADJUSTMENT

A	Remove WFNG Acquisition Adjustment (original cost)	\$2,947,000	MFR G-1, p. 4, line 1
B	Remove associated accumulated depreciation	1,984,000	MFR G-1, p. 4, line 6
C	Net book value of acquisition adjustment plant removed	963,000	A-B
D	Consolidated tax rate	<u>.38575</u>	
	Deferred income taxes	\$ 371,477	CxD

PEOPLES GAS SYSTEM
DOCKET NO. 080318-GU
13-MONTH AVERAGE CAPITAL STRUCTURE
DECEMBER 2009 TEST YEAR

SCHEDULE D

Company As Filed

	(\$) Company Adjusted	Ratio	Cost Rate	Weighted Cost
Common Equity	\$273,561,565	48.54%	11.50%	5.58%
Long-term Debt	222,773,987	39.53%	7.20%	2.85%
Short-term Debt	3,456,397	0.61%	4.50%	0.03%
Preferred Stock	0	0.00%	0.00%	0.00%
Customer Deposits	36,128,943	6.41%	6.65%	0.43%
Deferred Income Taxes	27,670,682	4.91%	0.00%	0.00%
Tax Credits - Zero Cost	7,862	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	0	0.00%	0.00%	0.00%
Total	\$563,599,436	100.00%		8.88%

Equity Ratio 54.74%

Staff Adjusted (Schedule 2 to the Order)

	(\$) Amount	(\$) Specific Adjustments	(\$) Pro Rata Adjustments	(\$) Commission Adjusted	Ratio	Cost Rate	Weighted Cost
Common Equity	\$273,561,565	\$0	(\$1,507,778)	\$272,053,789	48.61%	10.75%	5.21%
Long-term Debt	\$222,773,987	0	(\$1,227,853)	221,546,134	39.50%	7.20%	2.84%
Short-term Debt	\$3,456,397	0	(\$19,050)	3,437,347	0.61%	3.02%	0.02%
Preferred Stock	\$0	0	0	0	0.00%	0.00%	0.00%
Customer Deposits	\$36,128,943	0	0	36,128,943	6.44%	6.65%	0.43%
Deferred Income Taxes	\$27,670,682	0	0	27,670,682	4.93%	0.00%	0.00%
Tax Credits - Zero Cost	\$7,862	0	0	7,862	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	\$0	0	0	0	0.00%	0.00%	0.00%
Total	\$563,599,436	\$0	(\$2,754,679)	\$560,844,757	100.00%		8.50%

Equity Ratio 54.74% 54.74%

Staff Adjusted with Error Corrected

	(\$) Amount	(\$) Specific Adjustments	(\$) Pro Rata Adjustments	(\$) Commission Adjusted	Ratio	Cost Rate	Weighted Cost
Common Equity	\$272,053,789	\$0	(\$435,348)	\$271,618,443	48.50%	10.75%	5.21%
Long-term Debt	\$221,546,134	0	(\$354,523)	221,191,611	39.50%	7.20%	2.84%
Short-term Debt	\$3,437,347	0	(\$5,501)	3,431,846	0.61%	3.02%	0.02%
Preferred Stock	\$0	0	0	0	0.00%	0.00%	0.00%
Customer Deposits	\$36,128,943	0	0	36,128,943	6.45%	6.65%	0.43%
Deferred Income Taxes	\$27,670,682	0	0	27,670,682	4.94%	0.00%	0.00%
Tax Credits - Zero Cost	\$7,862	0	0	7,862	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	\$0	0	0	0	0.00%	0.00%	0.00%
Total	\$560,844,757	\$0	(\$795,370)	\$560,049,387	100.00%		8.50%

Equity Ratio 54.74% 54.74%

**Adjusted to Address
Normalization Requirements**

	(\$) Amount	(\$) Specific Adjustments	(\$) Pro Rata Adjustments	(\$) Adjusted per Motion	Ratio	Cost Rate	Weighted Cost
Common Equity	\$271,618,443	\$26,439	\$547,886	\$272,192,767	48.60%	10.75%	5.22%
Long-term Debt	221,191,811	0	448,169	221,837,780	39.57%	7.20%	2.85%
Short-term Debt	3,431,846	0	6,922	3,438,768	0.61%	3.02%	0.02%
Preferred Stock	0	0	0	0	0.00%	0.00%	0.00%
Customer Deposits	36,128,943	0	0	36,128,943	6.45%	6.65%	0.43%
Deferred Income Taxes	27,670,682	(26,439)	(1,000,977)	26,643,266	4.78%	0.00%	0.00%
Tax Credits - Zero Cost	7,862	0	0	7,862	0.00%	0.00%	0.00%
Tax Credits - Weighted Cost	0	0	0	0	0.00%	9.11%	0.00%
Total	\$560,049,387	\$0	\$0	\$560,049,387	100.00%		8.52%

Equity Ratio 54.74% 54.74%

Interest Synchronization

	(\$) Adjustment Amount	(\$) Cost Rate	(\$) Effect on Interest Exp.	(\$) Tax Rate	(\$) Effect on Income Tax
Dollar Amount Change					
Long-term Debt	\$91,646	7.20%	\$6,599	38.575%	(\$2,545)
Short-term Debt	1,422	3.02%	43	38.575%	(17)
Customer Deposits	0	6.65%	0	38.575%	0
Total					(\$2,562)

SCHEDULE E

PEOPLES GAS SYSTEM
DOCKET NO.080318-GU
DECEMBER 2009 PROJECTED TEST YEAR
REVENUE REQUIREMENTS CALCULATION

Line No	As Filed	Commission Adjusted	Adjusted to Address Normalization Requirements
1 Rate Base	\$563,599,436	\$560,844,757	\$560,049,387
2 Overall Rate of Return	8.88%	8.50%	8.52%
3 Required Net Operating Income (1)x(2)	50,060,255	47,671,804	47,716,208
4 Achieved Net Operating Income	33,944,697	36,019,112	36,063,515
5 Net Operating Income Deficiency (3)-(4)	16,115,558	11,652,692	11,652,693
6 Net Operating Income Multiplier	1.64360	1.64360	1.64360
7 Operating Revenue Increase (5)x(6)	<u>\$26,488,091</u>	<u>\$19,152,365</u>	<u>\$19,152,366</u>
8 Change in Revenue Requirements			<u>\$1</u>

Calculation of Revised Net Operating Income:

Commission Adjusted NOI	\$36,060,953
Interest Synchronization change	2,562
NOI Adjusted per Motion	<u>\$36,063,515</u>