



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Matthew L. Garber
Direct Dial: 717.237.5270
Fax: 717.237.5300
mgarber@mcneeslaw.com

May 29, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Pennsylvania PUC v. Duquesne Light Company;
Docket No. R-2018-3000124; C-2018-3001713**


Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission please find Duquesne Industrial Intervenors' ("DI") Brief in Support of the Petition of Peoples Natural Gas Company LLC for Interlocutory Review in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Matthew L. Garber

Counsel to the Duquesne Industrial Intervenors

Enclosures

c: Administrative Law Judge Katrina L. Dunderdale (via E-Mail and First-Class Mail)
Certificate of Service

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell PC
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
akanagy@postschell.com
Counsel for Duquesne Light Company

David T. Fisfis, Esquire
Tishekia E. Williams, Esquire
Michael Zimmerman, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
DFisfis@duqlight.com
twilliams@duqlight.com
mzimmerman@duqlight.com
Counsel for Duquesne Light Company

Emily M. Farah, Esquire
Duquesne Light Company
411 Seventh Avenue, 15-7
Pittsburgh, PA 15219
efarah@duqlight.com
Counsel for Duquesne Light Company

Phillip D. Demanchick, Esquire
David T. Evrard, Esquire
Aron Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101
pdemanchick@paoca.org
devrard@paoca.org
ABeatty@paoca.org
Counsel for Office of Consumer Advocate

Daniel G. Asmus, Esquire
John R. Evans
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
dasmus@pa.gov
jorevan@pa.gov
Counsel for Office of Small Business Advocate

Gina I. Miller, Esquire
John M. Coogan, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2 West
Harrisburg, PA 17120
ginmiller@pa.gov
jcoogan@pa.gov
Counsel for Bureau of Investigation & Enforcement

Joseph L. Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@aol.com
Counsel for Community Action Association of Pennsylvania

Scott J. Rubin, Esquire
330 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com
Counsel for International Brotherhood of Electrical Workers Local 29

Patrick M. Cicero, Esquire
Kadeem G. Morris, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
pciceropulp@palegalaid.net
kmorrispulp@palegalaid.net
emarxpulp@palegalaid.net
Counsel for CAUSE-PA

David P. Zambito, Esq.
Jonathan P. Nase, Esq.
Cozen O'Connor
17 North 2nd Street, 14th Floor
Harrisburg, PA 17101
Counsel for People's Natural Gas
dzambito@cozen.com
jnase@cozen.com

Jason Dolby
409 Anawanda Avenue
Pittsburgh, PA 15228
jayjay890@gmail.com

William H. Roberts, II, Esq.
PNG Companies, LLC
375 North Shore Drive
Pittsburgh, PA 15212
Counsel for People's Natural Gas
William.h.robertsii@peoples-gas.com

Mark C. Szybist, Esq.
1152 15th St. NW, Suite 300
Washington, DC 20005
mszybist@nrdc.org
Counsel for Natural Resources Defense Council

Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
adecusatis@morganlewis.com
Counsel for Duquesne Light Company

Barry A. Naum, Esq.
Derrick Price Williamson, Esq.
Spilman Thomas & Battle PLLC
1100 Bent Creek Blvd, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com
dwilliamson@spilmanlaw.com
Counsel for Wal-Mart Stores East, LP and Sam's East, Inc.

Renardo L. Hicks, Esq.
Dilworth Paxson LLP
Fulton Bank Building
2 North 2nd Street, Suite 1101
Harrisburg, PA 17101
rhicks@dilworthlaw.com
Counsel for ChargePoint Inc.

VIA E-MAIL

Joseph O. Minott, Esq.
Logan Welde, Esq.
joe_minott@cleanair.org
lwelde@cleanair.org
Counsel for Clean Air Council

VIA FIRST-CLASS MAIL

James Fedell
2009 Forge Drive
Aliquippa, PA 15001

Sharon E. Webb
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

C. James Davis, Director
Duquesne Light Company
411 7th Avenue
Mail Drop 15-5
Pittsburgh, PA 15219



Matthew L. Garber

Counsel to the Duquesne Industrial Intervenors

Dated this 29th day of May, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3000124
Office of Consumer Advocate	:	C-2018-3001029
Jason Dolby	:	C-2018-3001074
Peoples Natural Gas Company LLC	:	C-2018-3001152
James Fedell	:	C-2018-3001473
Office of Small Business Advocate	:	C-2018-3001566
Duquesne Industrial Intervenors	:	C-2018-3001713
	:	
v.	:	
	:	
Duquesne Light Company	:	
1308(d) Proceeding	:	

**BRIEF OF THE DUQUESNE INDUSTRIAL INTERVENORS
IN SUPPORT OF THE PETITION OF
PEOPLES NATURAL GAS COMPANY LLC
FOR INTERLOCUTORY REVIEW**

University of Pittsburgh
United States Steel Corporation

Duquesne University
Linde Energy Services, Inc.

Pamela C. Polacek (Pa. I.D. No. 78276)
Matthew L. Garber (Pa. I.D. No. 322855)
McNEES WALLACE & NURICK LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mcneeslaw.com
mgarber@mcneeslaw.com

Counsel to the Duquesne Industrial Intervenors

Dated: May 29, 2018

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND	1
III. ARGUMENTS.....	1
A. Given Peoples’ current work with customers that are considering or pursuing Combined Heat and Power (“CHP”) in Duquesne’s territory, it is in the public interest for the Commission to hear Peoples’ concerns regarding the proposed rates, terms, and conditions (including interconnection requirements) for Rider 16.....	2
B. Viewed in a light most favorable to the non-moving party, Peoples has standing under Pennsylvania Supreme Court precedent to participate in all aspects of this proceeding.....	2
C. As a participant in the Duquesne Light rate case, Peoples should be permitted to provide testimony and briefing on all matters of the rate case. .	4
D. Review on an expedited basis is appropriate.....	4
IV. CONCLUSION	6

I. INTRODUCTION

On May 22, 2018, Administrative Law Judge (“ALJ”) Katrina L. Dunderdale issued an Interim Order granting Duquesne Light Company’s (“Duquesne Light”) Motion for Partial Judgment on the Pleadings (“Interim Order”) in the above-docketed proceeding. The Interim Order precludes Peoples Natural Gas Company LLC (“Peoples”) from contesting Tariff Rider No. 16 (“Rider 16”) in Duquesne Light’s above-docketed rate case before the Pennsylvania Public Utility Commission (“PUC” or “Commission”).

On May 22, 2018, Peoples filed a Petition of Peoples Natural Gas Company LLC For Interlocutory Review and Answer to Material Question on an Expedited Basis (“Petition for Interlocutory Review”).

The Duquesne Industrial Intervenors (“DII”) file this brief in support (“DII Brief”) of Peoples’ Petition for Interlocutory Review. DII respectfully submits that Peoples should not be precluded from contesting Rider 16.

II. BACKGROUND

In her Interim Order, ALJ Dunderdale provided a thorough description of the procedural history of this proceeding. That description is incorporated herein by reference.

III. ARGUMENTS

Peoples’ Petition for Interlocutory Review should be granted by the Commission because:

- (a) it is in the public interest for the Commission to hear Peoples’ concerns about Rider 16;
- (b) viewed in a light most favorable to the non-moving party, Peoples has standing under Pennsylvania Supreme Court precedent to participate in all aspects of this proceeding; and
- (c) because all issues in this rate case are interrelated, it is impractical to restrict a party from providing testimony on one particular component thereof. Additionally, (d) Peoples’ Petition for Interlocutory Review should be approved by the Commission on an expedited basis.

A. Given Peoples’ current work with customers that are considering or pursuing Combined Heat and Power (“CHP”) in Duquesne’s territory, it is in the public interest for the Commission to hear Peoples’ concerns regarding the proposed rates, terms, and conditions (including interconnection requirements) for Rider 16.

Peoples stands in a unique position regarding Rider 16, particularly relating to CHP projects. As a natural gas utility, Peoples is directly involved in assisting its customers in creating these projects. As a result, Peoples has access to numerous formal and informal analyses undertaken by its customers when considering whether to pursue CHP.

Under Commission regulations, a petitioner may intervene in a Commission proceeding if it holds an “interest of such nature that participation of the petitioner may be in the public interest.”¹

There is no doubt that development of cost-effective CHP projects is in the public interest. The Commission recently released a *Final Policy Statement on Combined Heat and Power* after a long period of investigation (“CHP Policy Statement”).² The CHP Policy Statement encouraged the development of CHP projects in Pennsylvania and identified impediments to such projects, including the high cost of backup power. As a natural gas utility involved in the development of CHP projects, Peoples’ comments and participation on Rider 16 is in the public interest. Peoples should be permitted to address Rider 16 in this proceeding.

B. Viewed in a light most favorable to the non-moving party, Peoples has standing under Pennsylvania Supreme Court precedent to participate in all aspects of this proceeding.

Under long-established precedent articulated in *William Penn Parking Garage, Inc. v. City of Pittsburgh* and subsequent cases, to possess standing, a “plaintiff . . . must allege and prove an interest in the outcome of the suit which surpasses ‘the common interest of all citizens in procuring

¹ 52 Pa.Code § 5.72(a)(3).

² Docket No. M-2016-2530484 (Order entered April 5, 2018).

obedience to the law.”³ Specifically, a litigant’s interest must “be, at least, substantial, direct, and immediate.”⁴ Viewed in a light most favorable to the non-moving party, Peoples’ interest in the rates, terms, and conditions for Rider 16 is substantial, direct, and immediate.

As accurately described by ALJ Dunderdale in the Interim Order, a substantial interest “means the litigant must have some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.”⁵ Clearly, Peoples stands in a unique category as the regulated gas supplier for many of Duquesne Light’s customers – including its current and future CHP customers. Peoples may increase its gas throughput if more CHP projects are pursued by Duquesne’s customers. Therefore, as a certificated provider of natural gas utility service in the region, Peoples is directly impacted by Duquesne’s pricing and policies affecting CHP. Peoples’ interest is not abstract, nor is it remote.

Peoples’ interest is also direct. The Interim Order defines the “direct” requirement to “simply mean[] the person claiming to be aggrieved must show causation of harm to his/her/its interest as a matter of which he/she/it complains.”⁶ In rejecting Peoples’ standing on this basis, the Interim Order indicates that Peoples’ *interests* are not at stake. DII respectfully disagrees with this analysis. Peoples is a current customer of Duquesne Light who *has invested in the development of CHP projects*. Under the standard articulated by the Interim Order, Peoples’ interests are clearly harmed by more than doubling the per-kWh back-up prices for CHP projects.

³ *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269, 280-281 (Pa. 1975).

⁴ *Upper Bucks County Vocational-Technical Sch. Educ. Asso v. Upper Bucks County Vocational-Technical Sch. Joint Comm.*, 474 A.2d 1120, 1122 (Pa. 1984).

⁵ Interim Order at 7.

⁶ *Id.*

Finally, Peoples' interest is immediate. In *William Penn*, the Pennsylvania Supreme Court stated that "the interest must be immediate and pecuniary and not a remote consequence."⁷ When viewed in a light most favorable to the non-moving party, Peoples projects, goals, and expenditures may be immediately altered if Duquesne Light's proposed Rider 16 changes are approved. Whether Peoples directly owns an existing CHP project cannot be the sole determiner of the immediacy of the interest. Peoples will be significantly affected.

C. As a participant in the Duquesne Light rate case, Peoples should be permitted to provide testimony and briefing on all matters of the rate case.

All projected revenues and costs in a rate case have a bearing on the final results of the rate case. Here, Duquesne Light seeks to increase various customer costs to meet its proposed total revenue requirement. However, the Interim Order has the effect of barring Peoples from addressing one component of many interrelated components. As a litigant with standing in this proceeding, it is both impractical and unfair to prevent a party such as Peoples from addressing an issue that is inherently connected to all other issues in the rate case.

D. Review on an expedited basis is appropriate.

DII urges the Commission to act on an expedited basis. Due to Duquesne Light's intent to more than double its rates under Rider 16, there will likely be significant interest in this part of its Tariff. If the Commission does not expedite its review of the Petition for Interlocutory Review, there is a substantial likelihood that the evidentiary record or briefing will need to be reopened at a later date. This would create additional costs for ratepayers, the Commission, and all parties interested in Rider 16 (including DII). It is to the benefit of all parties, including ratepayers bearing

⁷ *Wm. Penn*, 346 A.2d at 280 (quoting *Keystone Raceway Corp. v. State Harness Racing Commission*, 173 A.2d 97, 100 (Pa. 1961)).

the cost of the rate case and those paying attorneys and consultants to participate in this proceeding, for the Commission to have a definitive determination as soon as practicable. DII therefore respectfully requests the Commission to act on the Petition for Interlocutory Review on an expedited basis.

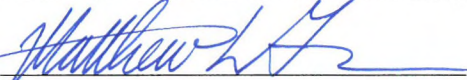
IV. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission:

- (a) approve Peoples' Petition for Interlocutory Review;
- (b) reverse the Interim Order granting partial summary judgment to Duquesne Light;
and
- (c) rule on an expedited basis.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. No. 78276)
Matthew L. Garber (Pa. I.D. No. 322855)
McNEES WALLACE & NURICK LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mcneeslaw.com
mgarber@mcneeslaw.com

Counsel to the Duquesne Industrial Intervenors

Dated: May 29, 2018