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May 31, 2018

VIA eFILING

Rosemary Chiavetta, Secretary
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**Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket Nos. R-2018-3000124 and C-2018-3001152**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding is the **Brief of Duquesne Light Company in Opposition to Peoples Natural Gas Company LLC's Petition for Interlocutory Review and Answer to Material Question.**

Copies are being served upon the persons listed on the enclosed Certificate of Service in the manner set forth therein.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Anthony C. DeCusatis

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket Nos. R-2018-3000124
	:	C-2018-3001152
DUQUESNE LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **Brief of Duquesne Light Company in Opposition to Peoples Natural Gas Company LLC's Petition for Interlocutory Review and Answer to Material Question** have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

DUQUESNE LIGHT COMPANY

:
:
:
:
:
:

**Docket Nos. R-2018-3000124
C-2018-3001152**

**BRIEF OF DUQUESNE LIGHT COMPANY
IN OPPOSITION TO PEOPLES NATURAL GAS COMPANY LLC'S PETITION FOR
INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION**

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I. INTRODUCTION AND OVERVIEW

This proceeding is a general base rate case that Duquesne Light Company (“DLC” or “Company”) initiated on March 28, 2018 by filing Supplement No. 174 to its Electric Service Tariff together with extensive supporting information, including the written direct testimony of fifteen witnesses and their accompanying exhibits.

DLC’s Electric Service Tariff includes Rider No. 16, which applies to the provision of back-up electric distribution service to non-utility generating facilities. DLC’s existing Rider No. 16 has been reviewed and approved by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”). In order to avoid the intra-class and inter-class subsidies that would arise from the introduction of additional customer-owned generation eligible for Back-Up Service under Rider No. 16 in its current form, the Company included in Supplement No. 174 proposed changes to Rider No. 16 to clarify its existing terms and to increase the distribution charge for “Back-Up Service” (as defined in the rider). The proposed increase in the charge for Back-Up Service was supported by a fully-allocated class cost of service study submitted with DLC’s supporting data.

On April 10, 2018, Peoples Natural Gas Company LLC (“PNG”)¹ filed a Complaint against DLC’s rate filing, which the Commission docketed at C-2018-3001152. Paragraph No. 8 of PNG’s Complaint contains a broadly-stated averment that DLC’s proposed rates “may be unlawfully discriminatory, in violation of the [Pennsylvania Public Utility] Code . . . and may otherwise be contrary to sound ratemaking principles and public policy.”

However, the true focus of PNG’s alleged interest was expressed in Paragraph Nos. 10-13 of its Complaint, which address Rider No. 16’s possible impact on a particular form of non-utility

¹ PNG is a public utility that furnishes natural gas distribution service to customers located within its authorized service area in western Pennsylvania. PNG’s service area overlaps portions of DLC’s certificated service territory.

generation, namely, combined heat and power (“CHP”) projects. PNG stated further that its interest in Rider No. 16 is largely a function of its proposal, currently pending before the Commission at another docket, for pre-approval to expend up to \$17.5 million to subsidize customer-owned, gas-fueled CHP projects across its service territory, including projects that would interconnect with DLC’s distribution system, and to recover those expenditures from its captive gas distribution customers.²

The gravamen of PNG’s averments is that the proposed changes to Rider No. 16 would “negatively impact Peoples’ pursuit of distributed generation” (Paragraph No 10); would “discourage the development of CHP projects in Duquesne Light’s service territory” (Paragraph No. 11) and are “excessive and inconsistent with the Commission’s policy of encouraging CHP projects, such as those Peoples is trying to develop” (Paragraph No. 12). Peoples also avers that the “interconnection rules” in Rider No. 16 establish a “process” that is “cumbersome and lengthy” and, therefore, allegedly “discourages CHP and other distributed generation projects” (Paragraph No. 13).³

PNG’s Complaint does not aver that PNG owns any “non-utility generating facilities,” which are the only form of behind-the-meter generation eligible for Back-Up Service under Rider No. 16. Indeed, such an averment would contain an internal contradiction because generation owned by PNG would necessarily be utility generating facilities and therefore, not eligible for Rider No. 16.⁴ Instead, PNG avers that it “has existing customers currently using distributed

² *Petition of Peoples Natural Gas Company LLC for Approval of Its Energy Efficiency and Conservation Plan*, Docket No. M-2017-2640306 (Filed Dec. 27, 2018). See Complaint ¶ 9.

³ PNG did not identify any elements of DLC’s “process” that are alleged to be “cumbersome and lengthy.”

⁴ Rider No. 16 is titled: “Service to Non-Utility Generating Facilities.” The opening paragraph of Rider No. 16 provides that it “applies to non-utility generating facilities including, but not limited to cogeneration and small power production facilities that are qualified in accord with Part 292 of Chapter I, Code of Federal Regulations

generation” and that it “is currently pursuing additional distributed generation projects throughout Duquesne Light’s certificated service area”⁵ Notably, as the averments of Paragraph No. 9 of the Complaint underscore, the entities whose “projects” Peoples contends it is “pursuing” are large, sophisticated enterprises with the requisite business acumen to assess the economics of CHP or other distributed generation and the expertise, resources and motivation to pursue their own interests in this case. In fact, the one DLC customer that actually receives Back-Up Service under Rider No. 16 is a Complainant in this proceeding.⁶

On May 1, 2018, DLC filed a Motion for Partial Judgment on the Pleadings requesting entry of a judgment that PNG does not have standing to contest the terms of Rider No. 16 for Back-Up Service to non-utility generating facilities. In fact, as clearly evidenced by averments in Paragraph Nos. 9-13 and 15 of the Complaint, PNG is seeking to assert the interests of third-parties who have the opportunity to participate to protect their own interests. Pennsylvania’s appellate courts have held that efforts such as PNG’s to bootstrap standing by asserting the interests of others who can participate in their own right is not permissible and warrants summary dismissal of a complainant’s claims: “A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard.”⁷

DLC’s Motion was very limited in scope. Notably, DLC explicitly stated that it was *not* contesting PNG’s right to participate in this case to raise issues that legitimately, directly, and immediately affect PNG in its capacity as a customer of DLC.⁸ Such issues do not, however,

(quality facility). Electric energy will be delivered to a non-utility generating facility in accord with the following: [the balance of Rider No. 16’s terms are set forth thereafter].”

⁵ Complaint ¶ 9.

⁶ Duquesne Industrial Intervenors’ Amended Complaint filed May 21, 2018 at Docket No. C-2018-30001713.

⁷ *Mid-Atlantic Power Supply Ass’n. v. Pa. P.U.C.*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

⁸ See Motion for Partial Judgment on the Pleadings, p. 2 n.3, and ¶ 17.

include those pertaining to the current or proposed terms of Rider No. 16 and related matters, such as interconnection requirements for non-utility generation.

On May 11, 2018, PNG filed an Answer to DLC’s Motion. PNG was unable to distinguish the appellate court precedent holding that standing cannot be manufactured by seeking to vindicate the rights of third parties (notably, *Mid-Atlantic Power Supply Ass’n.*, *supra*, is not mentioned in PNG’s Answer). Instead, PNG’s Answer made an improper *de facto* amendment to its Complaint by asserting that, when the Complaint said PNG was “currently pursuing additional distributed generation projects . . . including projects with universities, health care systems, manufacturing facilities, residential apartment complexes and government buildings”⁹, what it really meant was that “some of these projects” would “be owned by Peoples.”¹⁰ Significantly, PNG did not address whether regulatory filings or approvals would be needed for PNG, which is certificated as a gas utility, to own electric generating facilities that serve third-parties – particularly because PNG apparently plans to include its investment in such facilities in its rate base.

On May 22, 2018, Administrative Law Judge Katrina L. Dunderdale (“ALJ”) issued her Interim Order Granting Respondent’s Motion for Partial Judgment on the Pleadings. The ALJ wisely discounted the improper *de facto* amendment to its Complaint that PNG attempted in its Answer. Focusing upon the “well-pleaded facts” within the four corners of PNG’s Complaint, the ALJ reached the reasonable conclusion, which is fully supported by the applicable law, that “there is insufficient basis to provide an opportunity to Peoples to proceed with its formal complaint as it relates to Tariff Rider No. 16.”¹¹ Specifically, the ALJ found:

⁹ Complaint ¶ 9.

¹⁰ PNG Answer, p. 4, subparagraph a.

¹¹ Importantly, the ALJ acknowledged that PNG remained a party to the case and, as such, could raise issues that were legitimately within its zone of interest as a customer of DLC. Interim Order, p. 6.

Applying these criteria, one can see more clearly that Peoples' interest as an owner of a CHP enterprise is not at risk *because Peoples does not currently own a CHP project*. Peoples' investment as an owner in a CHP enterprise is not an immediate risk. Peoples may have invested sums of money to investigate and prepare to own a CHP enterprise, *but it does not currently have an ownership interest, according to its formal complaint*. If Peoples were to own a CHP enterprise, then Peoples could experience an adverse impact as a direct result from the proposed action of Duquesne Light, but that factual scenario was not alleged by Peoples.¹²

On May 22, 2018, PNG filed a Petition for Interlocutory Review of the Interim Order and asked for expedited consideration. In comparison to the Commission's treatment of DLC's Petition for Interlocutory Review of the Initial Decision barring DLC (a customer of PNG) from participating *in any capacity in Petition of Peoples Natural Gas Company LLC for Approval of Its Energy Efficiency and Conservation Plan* (the "PNG EEC Proceeding")¹³, the Commission promptly issued a Secretarial Letter imposing a shortened schedule for briefing on PNG's Petition.¹⁴

The DLC and PNG Petitions for Interlocutory Review involve the same parties, present issues of "standing" that implicate a common body of legal authorities, and should be addressed concurrently. Consequently, DLC is filing contemporaneously with this Brief a Motion for Simultaneous Consideration asking the Commission to consider DLC's Petition for Interlocutory Review in the PNG EEC Proceeding filed on April 30, 2018, at the same time it considers PNG's Petition for Interlocutory Review in this case, which was filed on May 22, 2018. Considering the Petitions together will advance administrative efficiency by determining, at one time, the scope of

¹² Interim Order, p. 6 (emphasis added). The Administrative Law Judge did not need to address the further issue that Rider No. 16 is available only to "non-utility generating facilities" because she found that PNG did not own a "CHP project."

¹³ Shortly after DLC's Petition for Interlocutory Review was filed, a Secretarial Letter was issued waiving the otherwise applicable requirement that the PUC act on that Petition within 30 days of receipt. 52 Pa. Code § 5.303(a).

¹⁴ Briefs were originally due on May 29, 2018. However, by Secretarial Letter dated May 29, 2018, the Commission granted DLC's request to extend the deadline to May 31, 2018.

participation of DLC and PNG in each respective proceeding. Because of the procedural posture of both proceedings (and, in particular, the fact that the evidentiary hearing in the PNG EEC Proceeding has already taken place), these issues should be resolved as soon as possible.

Finally, in the late afternoon of Friday, May 25, 2018, exactly *zero* business days before the original due date for filing briefs on PNG’s Petition for Interlocutory Review, PNG filed an “Amended Formal Complaint” (“Amended Complaint”). Apparently, at some time between filing its original Complaint on April 10, 2018 and May 25, 2018 – and only after the Administrative Law Judge issued the Interim Order finding that PNG did not have standing to challenge Rider No. 16 because “Peoples does not currently own a CHP project” – PNG’s amnesia inexplicably lifted and it recalled, according to untested averments in its Amended Complaint, that it was in the midst of a major construction project at its “Etna field shop” *and* that it had, all along, been planning, as part of that project, to install a “35 kW reciprocating engine combined heat and power (‘CHP’) project.”¹⁵

Significantly, PNG did not even notify DLC (as required by DLC’s tariff) that it intends to install generation to run in parallel with DLC’s distribution system until an hour or two before filing its Amended Complaint. PNG’s sudden epiphany is also noteworthy given PNG’s *own* evidence in its pending PNG EEC Proceeding that a CHP project had to be at least *ten times larger* than “35 kW” to be “cost-effective.”¹⁶ Moreover, and most importantly, although the Amended Complaint asserts that “Peoples will require Back-Up Service from Duquesne pursuant to Rider 16 for electricity during maintenance an unplanned outages,”¹⁷ PNG cannot explain how a rider

¹⁵ Amended Complaint ¶ 11.

¹⁶ Peoples Natural Gas Exhibit No. 1 (Peoples Natural Gas Company LLC Energy Efficiency and Conservation Plan), p. 50. It remains unknown whether PNG intends to ask its customers to pay for the planned 35 kW CHP project as a prudent expenditure given that its own evidence shows that a facility of that size is not “cost-effective.”

¹⁷ Amended Complaint ¶ 11.

that, by its express terms, applies only to “non-utility generating facilities” may be invoked to provide Back-Up Service to a *utility* generating facility. Accordingly, after all of its position changes, culminating in the Amended Complaint’s revelation that PNG will allegedly “own” a CHP project, PNG still has not set forth a valid basis for the Commission to find that it has standing to address Rider No. 16 in this case and, therefore, the Interim Order should be affirmed.

In summary, the planned project PNG decided to spring on the parties and the Commission at the last minute does not satisfy the clearly-stated availability criterion for service under Rider 16. The Commission should ignore PNG’s Amended Complaint for that reason alone. Moreover, it would be improper for the Commission to rely on averments in an Amended Complaint before DLC has had an opportunity to file an Answer or other responsive pleading. Finally, before the Commission gives any credence to the arguments and representations offered by PNG, DLC urges the Commission to review and carefully consider the progression of PNG’s averments in this case thus far:

- First, PNG filed a Complaint that, based on any fair reading of its plain language, conceded that PNG was intervening to pursue its interest in increasing gas sales to potential CHP customers “including projects with universities, health care systems, manufacturing facilities, residential apartment complexes and government buildings.”¹⁸ PNG’s Complaint did not state that PNG planned to have any ownership interest in these projects. In short, PNG was pursuing a gas marketing program. As the averments of PNG’s Complaint clearly showed, PNG was not asserting an interest as a customer or potential customer served under Rider No. 16. Instead, it was asserting only an indirect and non-immediate interest as the self-

¹⁸ Complaint ¶ 9.

appointed representative of others who could participate in their own right – an interest both the Commission and the Commonwealth Court have held is insufficient to confer standing.¹⁹

- Second, when the legal insufficiency of PNG’s averments was identified in DLC’s Motion for Partial Judgment on the Pleadings, PNG responded, in its Answer, with a *de facto* amendment of its Complaint that, under any fair reading of its plain language, indicated that PNG was developing plans to “own” CHP projects, presumably in rate base, that would furnish service *to third-parties*, such as those it hoped to incentivize with customer-funded subsidies it asked the Commission to approve in the PNG EEC Proceeding.
- Third, the ALJ issued her Interim Order granting DLC’s Motion and finding that “Peoples does not currently own a CHP project” and “it does not currently have an ownership interest, according to its formal complaint.” Three days later, and after PNG filed its Petition for Interlocutory Review, PNG filed a conveniently-timed (for PNG) Amended Complaint describing a CHP “project” it did not see fit to reveal until after the ALJ granted DLC’s Motion and found that PNG did not have standing to address Rider No. 16 issues. PNG’s untested averments allege that it has *all along* been working assiduously to build a CHP facility as part of a long-planned “field shop” project; the project has, apparently, already been designed and engineered; and the project is allegedly so far along that PNG is *actually constructing* it, as purportedly evidenced by photographs showing a graded, but largely empty and

¹⁹ See DLC’s Motion for Partial Judgment on the Pleadings, pp. 1-2 and 9-16, which reviews the relevant decisions and explains why they support DLC’s Motion. The authorities discussed in DLC’s Motion also fully support the Interim Order. Given the page limitation on this Brief, DLC urges the Commission to review its Motion, which provides additional support for the ALJ’s decision.

generic-looking, plot of ground.²⁰ According to PNG, it has made so much progress that it can confidently assure the Commission that it will “occupy” the currently non-existent building and start running the promised but, only recently-revealed, 35 kW “CHP” facility (without specifying a use for the waste heat/thermal energy that would qualify the facility as a “CHP” project), “by the end of 2018.”²¹

It is critically important that the Commission appreciate the significance of PNG’s averments as they evolved over each stage of its submissions, as summarized above. While none of PNG’s averments furnish a valid basis for overturning the Interim Order, they raise a host of issues about PNG’s plans, clearly signaled in its pleadings, to “own” generating facilities that will furnish generation service to third-parties.²²

PNG’s plan to “own” third-party generation projects has major implications for, and is highly relevant to, PNG’s pending request for approval of a \$17.5 million CHP customer-funded subsidy plan in the PNG EEC Proceeding. For example, does PNG intend to seek recovery from captive gas distribution customers of a return on, and a return of, its investment in PNG-owned projects that serve third-parties? Alternatively, does PNG envision that PNG-owned third-party

²⁰ Amended Complaint ¶ 11.

²¹ *Id.*

²² See PNG Answer, p. 4, subparagraph a., where PNG refers to Paragraph No. 9 of its original Complaint, which states: “Peoples . . . is currently pursuing additional distributed generation projects throughout Duquesne Light’s certificated service territory – including projects with universities, health care systems, manufacturing facilities, residential apartment complexes and government buildings.” Then, PNG’s Answer states further: “Contrary to Duquesne’s assertions, some of these projects are anticipated to be owned by Peoples – as stated in Peoples’ Complaint.” In short, the antecedent for “some of these projects” is the list of third-party applications referenced in Paragraph No. 9 of PNG’s original Complaint. This factual averment was reinforced by PNG’s averment at page 6, subparagraph f., of its Answer: “Furthermore, Peoples is pursuing a variety of distributed generation projects, some of which will *not* be owned by Peoples.” The “variety” of distribution projects undoubtedly encompasses the kinds of third-party applications recited in Paragraph No. 9 of PNG’s original Complaint and repeated in Paragraph No. 12 of its Amended Complaint. A “variety” of projects obviously means many more than just the project PNG may be building for its own use, and the choice of that word only makes sense by reference to the multiple third-party applications (“universities, health care systems, manufacturing facilities” etc.) previously catalogued in PNG’s Complaint.

projects will be built as part of a non-regulated business line it will run in parallel with its regulated operations and staff with utility employees? If so, how would PNG plan to address the affiliated interest/cross-subsidization issues its recently-revealed business plan would create? And, could PNG-owned projects qualify for “incentives” under PNG’s own proposed EEC Plan?

The issues identified above are only some of those raised by averments PNG made in its various submissions in this case thus far. All such issues could be explored as part of the PNG EEC Proceeding if the Commission grants DLC’s Petition for Interlocutory Review in that proceeding, answers DLC’s material questions in the affirmative, and orders a new procedural schedule be established that, after adequate notice is given to PNG’s customers, allows DLC and other interested parties the full and fair opportunity to be heard that due process requires. These entirely new issues have arisen only now because of the evolving averments that PNG has made in successive pleadings in an attempt to overcome controlling legal precedent holding that it does not have standing to contest Rider No. 16 based on the averments in its original Complaint. Because PNG failed to disclose its intentions until now, the important issues outlined above (and several more that flow from them) could not be addressed in the PNG EEC Proceeding up to this point. These material omissions by PNG in the PNG EEC Proceeding – which would never have seen the light of day absent PNG’s evolving averments attempting to sidestep the significant standing issues identified in DLC’s Motion for Partial Judgment on the Pleadings – is another critically important reason that the Commission should consider DLC’s Petition for Interlocutory Review in conjunction with PNG’s Petition for Interlocutory Review and promptly grant DLC’s Petition.

II. THE INTERIM ORDER PROPERLY APPLIED CONTROLLING COMMISSION AND APPELLATE COURT PRECEDENT TO THE “WELL-PLEADED STATEMENTS OF FACT” IN PNG’S COMPLAINT AND SHOULD BE AFFIRMED

In her Interim Order (p. 6) the ALJ stated the standard for granting a Motion for Judgment on the Pleadings and noted that she and the Commission “must accept as true all *well-pleaded statements of fact* of the non-moving party.”²³ In other words, the ALJ had to decide DLC’s Motion based on what PNG said in its original Complaint. That is what she did.

After DLC filed its Motion and pointed out that blackletter law did not support PNG’s claim that it could challenge Rider No. 16 by asserting the rights of third-parties or by asserting attenuated interests that are neither “direct” nor immediate,”²⁴ PNG tried to use its Answer to the Motion to torture the language of its original Complaint into saying that PNG would, in fact, own and operate non-utility generation that qualified for Back-Up Service under Rider No. 16. However, as explained in Section I, *supra*, that is certainly not what PNG’s Complaint said – as PNG conceded by filing an Amended Complaint, after filing its Petition for Interlocutory Review, to try, belatedly and still unsuccessfully, to remedy the flaws in its case. Furthermore, PNG-owned generation, by definition, cannot satisfy Rider No. 16’s availability criterion – Rider No. 16 only applies to “non-utility generating facilities.”

Based on the averments of PNG’s Complaint, the ALJ concluded that PNG does not have standing to challenge Rider No. 16. PNG’s standing claim is based on an attenuated chain of alleged causal links that purport to connect Rider No. 16’s impact on the economic analysis of

²³ *Id.* (emphasis added).

²⁴ *See* Motion for Partial Judgment on the Pleadings, pp. 11-16.

potential customer-generators contemplating the installation of CHP²⁵ to PNG's economic interest in increasing its throughput and achieving attendant increases in its gas sales and net income – net income that PNG will pocket between base rate cases. In short, PNG sought standing in this case to promote and advance its gas marketing and revenue-enhancement plan.²⁶ PNG's gas marketing efforts – which, if approved in the PNG EEC Proceeding, will socialize the costs of its CHP subsidies among its captive gas customers while privatizing the profits enabled by those expenditures – cannot form a legitimate basis for PNG to challenge Rider No. 16 under any circumstances. Moreover, PNG certainly should not be afforded standing to challenge Rider No. 16 when it cannot even satisfy that rider's availability criterion.

Peoples' situation is comparable to that of a vendor to a manufacturing facility who seeks to intervene in a utility rate case to contest the electric rates charged to the manufacturer on the grounds that lower electric rates could cause the manufacturer to increase its capacity (or its utilization of existing capacity) and, therefore, use more of what the vendor sells. There is no authority for allowing such an indirect, non-immediate, "one-off" interest to confer standing on a complainant. Indeed, as explained in DLC's Motion,²⁷ there is substantial legal authority from an analogous factual scenario holding that such an interest is neither direct nor immediate and, therefore, is inadequate to establish standing. In *Municipal Auth. Of the Borough of West View v. Pennsylvania-American Water Co.*,²⁸ the Commission addressed standing under circumstances

²⁵ See PNG's Answer, p. 7, subparagraph j.: "Contesting a public utility's proposed rate increase is an expensive proposition. For most businesses using or contemplating a CHP project, it is cheaper and easier to simply 'pull the plug' on a CHP project than fighting Duquesne's rate increase."

²⁶ See e.g., PNG's Answer, p. 7, subparagraph h.: "Peoples is developing CHP and other distributed generation projects that will result in the increased sale of natural gas by Peoples."

²⁷ Motion for Partial Judgment on the Pleadings, pp. 12-16.

²⁸ Docket No. C-2010-2153062, 2010 Pa. PUC LEXIS 322 *8 (July 15, 2010).

comparable to those presented by PNG's Complaint.²⁹ In that case, the Commission applied well-established legal principles³⁰ in holding that standing cannot be conferred to vindicate the rights of third-parties:

[T]he complainant must establish that its alleged injury follows so closely from the action complained of, and is so closely aligned with the zone of protection afforded by the legal authority on which it relies, that it, rather than another, is the proper party to initiate a justiciable controversy.

The Commission's decision was affirmed by the Commonwealth Court, which held that the relationship of "wholesaler" to "retailer" – i.e., the economic interest a seller (such as a seller of gas service) has to a buyer (such as a prospective CHP project) is not legally sufficient to establish the seller's standing to challenge a utility rate charged to the buyer:

Here, the immediate consequence of PAWC's use of its Rider DRS was Evans City's selection of PAWC over Cranberry Township and Adams Township. A more remote consequence was the Authority's loss of potential additional business with either Cranberry Township or Adams Township. This loss – akin to a wholesaler's loss when its retail customer loses a contract – is one step too far removed from the impact of PAWC's conduct to meet the immediacy requirement for standing. Inasmuch as the Authority's loss of potential additional business was not an immediate consequence of PAWC's use of its Rider DRS, the PUC did not err in concluding that the Authority lacked standing in this case.³¹

²⁹ In that proceeding, the Municipal Authority of the Borough of West View ("West View") filed a complaint contesting the lawfulness of Pennsylvania-American Water Company's ("PAWC") Rider DRS. That Rider allowed PAWC to "flex" its tariff rates, within floor and ceiling levels, to acquire or retain customer load that otherwise would be lost to a viable competitive alternative the prospective customer would choose in place of service from PAWC. PAWC used Rider DRS to furnish service to the Borough of Evans City ("Evans City") by "flexing" its rate below the rates of two municipal water systems (Cranberry and Adams Townships) that had offered to serve Evans City. West View furnished the water supply to those two systems. West View filed a complaint challenging the lawfulness of Rider DRS and claimed standing on the grounds that, absent Rider DRS, either Cranberry or Adams Township would have secured Evans City's business and West View, as a result, would have increased its water sales to that supplier.

³⁰ See *Mid-Atlantic Power Supply Ass'n v. Pa. P.U.C.*, *supra*.

³¹ *Municipal Auth. Of the Borough of West View v. Pa. P.U.C.*, 31 A.3d 929, 933-934 (Pa. Cmwlth. 2012)(footnote omitted).

Granting PNG standing to challenge Rider No. 16 in this case would mark a major deviation from prior Commission practice and precedent and would likely release a cascade of attempts to force the Commission to adjudicate controversies by parties with attenuated and, under controlling authority, legally insufficient, interests in an attempt to invoke the Commission's jurisdiction. Moreover, a real party in interest, namely, the one customer currently served on Rider No. 16 is already a party in this case.³² Accordingly, PNG's participation in this case to challenge Rider No. 16 is neither necessary nor proper.

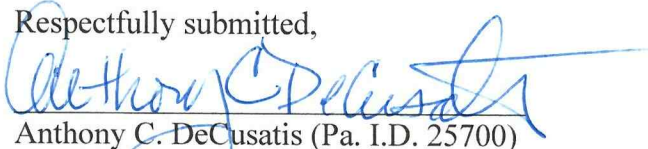
III. CONCLUSION

For all the foregoing reasons, DLC requests that the Commission: (1) consider PNG's Petition for Interlocutory Review in this case only when, at the same time, it considers DLC's Petition for Interlocutory Review filed on April 29, 2018 in the PNG EEC Proceeding at Docket No. M-2017-2640306; and (2) deny PNG's request for review of the Interim Order issued on

³² Duquesne Industrial Intervenors' Amended Complaint, *supra*.

May 2, 2018 or, if the Commission elects to answer the material question posed by PNG, answer that question in the negative and affirm the Interim Order in this case.

Respectfully submitted,



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Dated: May 31, 2018

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