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May 16, 2019

**VIA ELECTRONIC FILING**

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

**RE: Pennsylvania Public Utility Commission v. Peoples Natural Gas Company, LLC**  
**Docket No. R-2018-3006818**

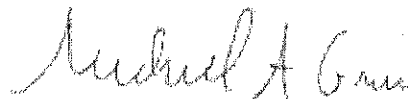
Dear Secretary Chiavetta:

Enclosed for filing please find Duquesne Light Company's Answer to Peoples Natural Gas Company's Motion to Compel in the above-referenced matter.

Copies of this filing have been served in accordance with the attached Certificate of Service. Should you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Administrative Law Judge Joel Cheskis  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :  
: :  
: :  
v. : Docket No. R-2018-3006818  
: :  
: :  
Peoples Natural Gas Company, LLC :  
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**DUQUESNE LIGHT COMPANY’S ANSWER TO MOTION TO COMPEL**

Duquesne Light Company (“Duquesne Light”) hereby submits this Answer to the Motion to Dismiss Objections and Compel Answers to Discovery filed by Peoples Natural Gas Company, LLC (“Peoples”) in the above-referenced matter. For the reasons set forth below, Duquesne Light respectfully requests that the Deputy Chief Administrative Law Judge (“DCALJ”) Joel Cheskis deny Peoples’ Motion.

**I. Introduction and Overview of Issues:**

1. On May 2, 2019, Peoples served Duquesne Light with its Set I Discovery Requests in the above-referenced matter.
2. Peoples’ Set I Discovery Requests consisted of 15 questions, related to:
  - a. Various advertising and sponsorship expenses incurred by Duquesne Light between 2014 and 2019, and whether Duquesne Light claimed such expenses in Duquesne Light’s last base rate case (Peoples I-1 to I-6);
  - b. The ownership of Duquesne Light, transfers of control and changes in voting interests of Duquesne Light, and whether any synergies and savings were realized from such matters (Peoples I-7);

- c. Duquesne Light tariff provisions related to priority of curtailment and restoration of service to other public utilities (Peoples I-8 to I-9);
- d. Duquesne Light tariff provisions related to “flexing” of Duquesne Light’s distribution rates, and whether any “claims” were made by Duquesne Light for recovery of discounts related to flexing of distribution rates in its last base rate case (Peoples I-10 to I-12);
- e. Duquesne Light’s attempts to acquire or otherwise enter into a public-private partnership with the Pittsburgh Water and Sewer Authority (“PWSA”) (Peoples I-13);
- f. The Fully Projected Future Test Year utilized by Duquesne Light in its last base rate proceeding (Peoples I-14); and
- g. Any claims of declining consumption in Duquesne Light’s last base rate case associated with combined heat and power projects (Peoples I-15).

3. On May 6, 2019, counsel for Duquesne Light contacted Peoples’ counsel to orally convey Duquesne Light’s objections to the Set I Discovery Requests.

4. On May 7, 2019, served its Objections to Peoples Set I Discovery Requests, and served a copy of DCALJ Cheskis as directed by the Procedural Order in this matter.

5. Duquesne objected to all 15 of the Discovery Requests; however, Duquesne indicated that notwithstanding the Objections, it would provide a response to Discovery Requests I-8,9,10,11,12, 14 and 15.

6. On Friday May 10, 2019, Peoples filed its Motion to Compel, and served a copy of its Motion via electronic mail on Duquesne Light at 4:00 p.m.<sup>1</sup>

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<sup>1</sup> According to the Procedural Order issued in this proceeding, any discovery or discovery related motions served after noon on a Friday are to be considered served on the next business day.

7. On May 13, 2019, Duquesne Light served its Answers to Peoples Discovery Requests I-8,9,10,11,12, 14 and 15.

8. On May 14, 2019, Peoples served its Set II Discovery Requests on Duquesne, consisting of 8 questions related entirely to Duquesne Light's rates, revenues, and programs under various Duquesne Light tariff schedules and riders.

## **II. Legal Standard**

9. Under the Commission's regulation at 52 Pa. Code §5.321, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

10. In order to determine relevance, it must first be determined if the inference sought to be raised by the evidence bears upon the issue in the case, and second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975).

## **III. Peoples Discovery Requests are Not Relevant to this Proceeding and are Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.**

### **A. Discovery Requests I- 1 through 6**

11. Peoples' first six Discovery Requests seek information from Duquesne Light about certain categories of Duquesne Light's advertising and sponsorship expenses, and whether or not Duquesne Light claimed those expenses in its last base rate case.

12. Duquesne objected to these Discovery Requests on the grounds that they were not reasonably calculated to lead to the discovery of admissible evidence and were outside the scope of this proceeding.

13. The subject of this proceeding is Peoples' proposed rates and tariffs, not Duquesne Light's rates or expenses. Information related to Duquesne Light's advertising and sponsorship expenses and whether they were claimed in Duquesne Light's last rate case, therefore, cannot be relevant to the disposition of this proceeding. The reasonableness of Duquesne Light's rates are not at issue in this proceeding, and the only company whose expenses and revenues are at issue is Peoples.

14. Notably, Peoples was an active party to Duquesne Light's last base rate case at Docket Nos. R-2018-3000124 et al. Therefore, to the extent that Peoples desired to examine Duquesne Light's advertising expenses and how they were treated for ratemaking purposes, Peoples had the full ability to seek such information in Duquesne Light's rate case.

15. As justification for the relevancy of Peoples Discovery Request I-1 through 6 in the current proceeding, Peoples points to portions of Direct Testimonies submitted by Duquesne Light witnesses C. James Davis and Cynthia Menhorn, in which they observe that Peoples' sports sponsorship costs should not be recovered from customers.

16. Peoples argues that these witnesses' credibility will be impeached if it is demonstrated that Duquesne Light included in its rates expenses that are similar to the expenses that Peoples is claiming in the current rate case.

17. Peoples' argument fails, for several reasons.

18. First, Peoples' argument is based on the premise that Duquesne Light sought to recover advertising and sponsorship expenses from customers in its last rate case. There is nothing in the record to suggest that this is the case, and Peoples' requests are nothing more than fishing

expeditions. Furthermore, Duquesne Light's last rate case resulted in a settlement, which Peoples did not oppose and which was approved by the Commission. The issue of advertising expenses was not mentioned or addressed at all in the context of the settlement.

19. Secondly, Peoples' attempt to insert the issue of Duquesne Light's historical expenses into Peoples' base rate case would stretch the scope of this proceeding to absurd dimensions. This proceeding is solely about the reasonableness of Peoples' proposed natural gas distribution rates and tariffs. To attempt to inject expense information from an intervenor party into this proceeding serves only to distract and divert attention from Peoples' own rate request.

20. Peoples' argument that advertising expense information is relevant to impeach Duquesne Light's witnesses is not a valid justification to expand the scope of the proceeding to include scrutiny of Duquesne Light's historical expenses. To the extent that Peoples disagrees with Duquesne Light's witnesses' opinions about the recoverability of Peoples' claimed sports sponsorship expenses, Peoples has the ability to present its own rebuttal testimony to respond to those opinions. There is no need to unduly expand the scope of this proceeding to bring Duquesne's rates – which were approved by the Commission without any reference to advertising expenses – into this already complex proceeding.

21. Thirdly, even if Duquesne Light's expenses were relevant to this proceeding, Peoples' Discovery Requests go far beyond the types of expenses that Duquesne Light's witnesses address in their direct testimony. The Discovery Requests purport to inquire about all of Duquesne Light's advertising expenses (see Discovery Requests 5 and 6; Motion to Compel ¶ 29 (“This interrogatory is intended to obtain information about all activities and expenses of Duquesne that could be construed as ‘advertising’”) (emphasis added)). However, Mr. Davis's and Ms. Menhorn's discussion of Peoples' advertising expenses was limited to the issue of Peoples' sports sponsorships. Duquesne Light's witnesses did not raise issues related to Peoples' advertising or educational

expenses generally in their direct testimony.<sup>2</sup> These Discovery Requests would therefore be out of scope even if Duquesne Light's expenses were a proper subject of discovery. However, in the interest of compromise, Duquesne Light is willing to withdraw its objection to Discovery Request I-2, which requests information about Duquesne Light's sports sponsorships, and provide response to that Discovery Request.

22. Finally, even if Peoples' rationale for seeking this information was valid, Peoples' requests are wildly overbroad. Peoples has requested for information about Duquesne Light's historical advertising and sponsorship expenses for a span of 5 years. This goes far beyond what would be examined in Duquesne Light's last base rate case, which utilized a fully projected future test year of 1/1/2019 through 12/31/2019.

23. In short, the information requested by Peoples in Discovery Requests 1-6 is completely outside the scope of this proceeding, it is plainly overbroad and bears no relationship to Peoples' justification for obtaining it, and Peoples has other methods available to impeach the credibility or contest the conclusions of Duquesne Light's witnesses.

**B. Discovery Request I-7**

24. Peoples Discovery Request No. 7 seeks information regarding Duquesne Light's ownership, voting interest, historical transfer of control applications, and purported savings or synergies from any such transfer of control.

25. Duquesne Light objected to Discovery Request No. 7 for the same reasons as set forth above, i.e., that it was not reasonably calculated to lead to the discovery of admissible evidence and were outside the scope of this proceeding, that information related to Duquesne

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<sup>2</sup> Peoples' Motion to Compel misstates this fact, instead asserting that these Discovery Requests concern expenses that are "virtually identical" or "very similar" to those that Mr. Davis and Ms. Menhorn criticize in their Direct Testimonies. Motion to Compel ¶¶ 13, 17, 21, 25, 29. Even a cursory review of Mr. Davis's and Ms. Menhorn's Direct Testimonies reveals this assertion to be false.

Light's ownership and historical transfers of control cannot be relevant to the disposition of this proceeding, and because Peoples had the full ability to seek such information in Duquesne Light's last rate case.

26. Peoples' justification for seeking this information is a single, short passage from the Direct Testimony of Duquesne Light witness C. James Davis, in which he observes that Peoples should be required to track any synergies related to Peoples' acquisition by Aqua as a regulatory liability to be dispositioned in its next rate case.<sup>3</sup>

27. Peoples asserts that information about Duquesne Light's handling of transfer of control synergies in its own rate cases could serve to impeach the credibility of Mr. Davis.

28. Peoples' argument for the relevancy of this requested information fails for many of the same reasons that it fails for Discovery Requests 1-6.

29. Again, the subject of this proceeding is Peoples' proposed rates and tariffs, not Duquesne Light's rates or expenses, and information related to historical "synergies" that Duquesne Light may have claimed in past rate cases has no bearing on the reasonableness of Peoples' proposed rates.

30. Peoples' attempted analogy between its current Aqua transaction and past Duquesne Light transfers of control is also misplaced. Duquesne Light has not undergone the type of acquisition that Peoples is undergoing currently, which is an acquisition/merger with another regulated Pennsylvania utility. Therefore, the types of synergies that are at issue in the Peoples/Aqua merger simply don't exist with respect to Duquesne Light.

31. Peoples' Discovery Request No. 7 is also overbroad and overly expansive insofar as it requests information covering a period of nearly 20 years. Even if synergies of savings in prior

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<sup>3</sup> Peoples' Motion here again mischaracterizes Mr. Davis's Direct Testimony, falsely stating that Mr. Davis "projected synergy savings associated with Aqua America, Inc.'s proposed acquisition of Peoples Natural Gas." Motion to Compel ¶ 32. Mr. Davis made no such projections, as is immediately apparent upon reviewing his Direct Testimony. Peoples' assertion is patently false.



Duquesne Light rate cases were relevant issues in the present case, that would not justify seeking the wide-ranging information about all aspects of Duquesne Light's ownership going back to the year 2000.

**C. Discovery Request I-13**

32. Peoples Discovery Request I-13 seeks information about Duquesne Light's attempts to acquire or otherwise enter into a public-private partnership with PWSA.

33. Duquesne Light objected to I-13 because it was not calculated to lead to the discovery of admissible evidence and it is outside the scope of this proceeding, which is solely about the reasonableness and appropriateness of Peoples' proposed rates and tariffs.

34. Peoples sole rationale for requesting the information was to determine whether or not Duquesne Light is a competitor of Peoples. See Peoples Motion, at Paragraph 37.

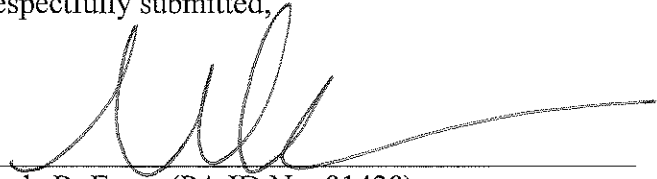
35. Whether or not Duquesne Light is a competitor of Peoples has no bearing whatsoever on the only issues that matter in this proceeding, which is the reasonableness of Peoples' proposed rates.

36. Peoples' argument about Duquesne Light's "competitor" status relate solely to Peoples' position regarding access to Confidential information by Duquesne Light employees.

37. That issue is now moot, as DCALJ Cheskis has already ruled that Duquesne Light is not a competitor of Peoples for the purposes of this proceeding. Accordingly, Peoples' sole justification for its Discovery Request I-13 has been found to be unfounded, and therefore, Duquesne's objection to I-13 is correct and should not be dismissed.

**WHEREFORE**, for the reasons set forth above, Duquesne Light Company respectfully requests Peoples Motion be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'LRE', written over a horizontal line.

Dated: May 16, 2019

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DATE: May 16, 2019