

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission :
:
v. :
:
Duquesne Light Company :

R-2010-2179522, *et al.*

**MOTION FOR LEAVE TO FILE A PETITION TO INTERVENE AND
PETITION TO INTERVENE OF
NRG ENERGY CENTER PITTSBURGH, LLC**

Pursuant to 52 Pa. Code §§ 5.71 *et seq.*, NRG Energy Center Pittsburgh, LLC (“NRGECP”) hereby petitions to intervene in the above-captioned proceeding. While it is uncertain whether the time to file petitions to intervene in this proceeding has passed, if it has passed, NRGECP respectfully moves for leave to intervene out of time.

As explained more fully below, until recently, NRGECP believed that its interests could be adequately represented by another ratepayer group – the Duquesne Industrial Intervenors (“DII”). The Duquesne Industrial Intervenors are parties to this proceeding and have filed a complaint. NRGECP recently concluded, however, that NRGECP has interests that, while similar in some respects, are distinct from those of DII. Since NRGECP’s interests cannot be adequately represented by DII or by any other party to this proceeding, NRGECP

hereby requests that it be allowed to independently intervene in this proceeding and be granted full party status.

Additional grounds for this motion and petition are as follows:

I. Facts Supporting Intervention

1. NRGECF is a certificated Pennsylvania public utility providing steam, hot water and chilled water service to the public in the 21st and 22nd wards in the City of Pittsburgh pursuant to certificates of public convenience at Docket Nos. A-130001 *et seq.* NRGECF is an indirect, wholly-owned subsidiary of NRG Thermal LLC, an NRG Energy Inc. company. Its principal place of business is 111 South Commons, Pittsburgh, PA 15212.

2. NRGECF is a customer of Duquesne Light Company (“Duquesne Light”) under Rate Class General Service Large (“GL”).

3. Serving more than 25 customer buildings, NRGECF provides both district heating and cooling services to a total of 6.3 million square feet of building space. NRGECF has a total capacity of 240 Mlb/hr of steam, 20.4 MMBtu/hr of hot water, and 12,580 tons of chilled water. It produces and distributes steam used for heating, domestic hot water, humidification and sterilization; NRGECF also provides hot water for space heating and domestic use and chilled water for air conditioning. NRGECF’s customers include: Allegheny General Hospital, Carnegie Science Center, Andy Warhol Museum, Community

College of Allegheny County, Children's Museum of Pittsburgh, Allegheny Center residential and commercial complex, and PNC Park, home of the Pittsburgh Pirates.

4. Duquesne proposes to increase electric distribution service revenue by \$87.3 million per year, which, according to the Testimony of Mr. Eichenmiller, would allow the Company an opportunity to earn an overall rate of return of 8.78% and an 11.25% return on common equity upon the distribution rate base of \$1.440 billion.¹ According to the testimony of Mr. Crowley, the total revenue requirement for the Pennsylvania jurisdiction is \$473.6 million.² The Company believes that the 11.25% return on equity is justified because of the Company's risk profile and the "exemplary performance" of the Company.³

5. Duquesne asserts that the proposed increase is necessary to improve the Company's system and its financial condition. Among other things, Duquesne asserts that its pension fund is significantly underfunded as a result of the recent downturn in the stock market. Duquesne allegedly is or will be required

¹ Duquesne Light Company Statement No. 1 at 8.

² Duquesne Light Company Statement No. 7 at 10.

³ Duquesne Light Company Statement No. 3 at 24.

to pay \$100 million dollars to the pension fund in the future test year alone in order to comply with the Pension Protection Act.⁴

6. If the Company's entire request is approved, the total bill for an average commercial customer using 10,000 kilowatt-hours per month would increase from \$1,000.75 to \$1,062.23 or 6.14% for a customer on POLR service. The total bill for an average industrial customer using 200,000 kilowatt-hours per month would increase from \$17,042.08 to \$17,549.80 or 2.98% for a customer on POLR service. Rates for customers served under the GL Rate Schedule, including NRGCEP, would increase by even higher percentages.

II. Grounds For Intervention

1. The Commission's rules provide that a party may intervene where: (a) the party has an interest in the proceeding which may be directly affected and which is not adequately represented by the existing parties, and as to which the party may be bound by the action of the Commission in the proceeding; or (b) participation of the party may be in the public interest. 52 Pa. Code § 5.72(a).

2. NRGCEP has a direct interest in the outcome of this proceeding. Not only is NRGCEP a Duquesne Light customer under Rate Class

⁴ Duquesne Light Company Statement No. 1 at 15.

GL, but NRGECPC also is a certificated Pennsylvania public utility that has an obligation to provide heating and cooling services to various customer buildings in downtown Pittsburgh. These buildings house entities that provide important community-based services, including Allegheny General Hospital, Carnegie Science Center, Andy Warhol Museum, Community College of Allegheny County, Children's Museum of Pittsburgh, Allegheny Center residential and commercial complex, and PNC Park. Therefore, NRGECPC is both a ratepayer and a utility service provider, furnishing essential services to a group of customers. NRGECPC's interests both as a customer and as a public utility will be directly affected by the Commission's decision on Duquesne Light's Application.

3. In this proceeding, NRGECPC's interests are not adequately represented by any other party. Until recently, NRGECPC believed its interests potentially could be represented by DII. NRGECPC, however, remains fully committed to market-based approaches. NRGECPC now realizes that NRGECPC has interests that, while similar in some respects, are distinct from those of DII. Since NRGECPC's interests cannot be represented and are not adequately represented by DII or any other party to this proceeding, NRGECPC requests that it be allowed to intervene independently and be granted full party status.

4. NRGECF is willing to accept the record as it now stands and is willing to accept the schedule agreed to by the parties and incorporated into the Commission's prehearing order.

5. A petition to intervene out-of-time may be granted upon the petitioner's showing of "good cause" for its failure to file the petition within the time set by the Commission for the filing of petitions to intervene. 52 Pa. Code § 5.74(a). Late intervention has been granted previously when: (1) the petitioner has a reasonable excuse for missing the initial due date; (2) the proceeding is contested at the time of the filing of a petition for intervention; (3) a grant of intervention will not delay the orderly progress of the case; and (4) the grant of intervention will not broaden significantly the issues or shift the burden of proof. *See, e.g., In re Pennsylvania-American Water Co.*, 2002 WL 1723685, 3 Pa PUC (2002) (*citing Re S.T.S. Motor Freight, Inc.*, 54 Pa PUC 343 (1980)).

6. While it is unclear to NRGECF whether this intervention petition is timely, if the Commission deems the petition to be untimely, the factors listed above militate in favor of allowing intervention. With respect to the first factor, as explained more fully herein, NRGECF only recently realized that its unique interests could not be adequately represented by any other party. Its need to intervene as an independent party therefore arose only within the last few days. As

to the second factor, Duquesne Light's Application is already being contested by various parties as of the date of NRGEC's intervention petition. With respect to the third factor, NRGEC is taking the record as it exists and is not asking for modification of the existing schedule. As a result, there will be no delay of the orderly progress of the case. As for the final factor, NRGEC's intervention will not broaden the issues significantly or shift the burden of proof. To some extent, NRGEC's interests in the proceeding overlap with the interests of existing parties. Also, regardless of NRGEC's participation as an intervenor, Duquesne Light will continue to bear the burden of proof.

III. Position of NRGEC

1. While NRGEC is concerned about various issues in this proceeding, it is most concerned about the impact of Proposed Supplement No. 35 on commercial and industrial rates. NRGEC is particularly concerned about the harmful effects on Rate Schedule GL.

2. NRGEC intends to actively participate in this proceeding on such matters that affect its interests as a customer of Duquesne Light and as a provider of heating and cooling services. Such participation may include the presentation of direct and/or rebuttal testimony, the cross-examination of witnesses presented by Duquesne Light and other parties to this proceeding, and the filing of briefs.

3. NRGCEP does not presently intend to file direct testimony on October 22, 2010.

4. NRGCEP continues to evaluate and refine its position in this case. NRGCEP expressly reserves the right to raise and to respond to any other issues as necessary and appropriate during the course of the proceeding.

IV. Counsel for NRGCEP

1. NRGCEP's attorneys in this proceeding are:

Christopher C. O'Hara
NRG Energy
211 Carnegie Center Drive
Princeton, NJ 08540
(609) 524-4601
chris.ohara@nrgenergy.com

Marc. D. Machlin
PEPPER HAMILTON LLP
600 14th Street, N.W., Suite 500
Washington, D.C. 20005
202.220.1439
machlinm@pepperlaw.com

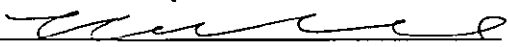
Brian P. Downey (PA Bar # 59891)
Michelle M. Skjoldal (PA Bar # 202084)
PEPPER HAMILTON LLP
100 Market Street
P.O. Box 1181
Harrisburg, PA 17108-1181
717.255.1192
717.255.1169
downeyb@pepperlaw.com
skjoldam@pepperlaw.com

WHEREFORE, for all of the foregoing reasons, NRGCEP respectfully requests that the Commission grant this motion and petition to intervene in the above-referenced proceeding and give NRGCEP full party status in this proceeding.

Respectfully submitted,

Christopher C. O'Hara
NRG Energy
211 Carnegie Center Drive
Princeton, NJ 08540
(609) 524-4601
chris.ohara@nrgenergy.com

Marc D. Machlin
PEPPER HAMILTON LLP
600 14th Street, N.W., Suite 500
Washington, D.C. 20005
202.220.1439
machlinm@pepperlaw.com


Brian P. Downey (PA Bar # 59891)
Michelle M. Skjoldal (PA Bar #
202084)
PEPPER HAMILTON LLP
100 Market Street
P.O. Box 1181
Harrisburg, PA 17108-1181
717.255.1192
717.255.1169
downeyb@pepperlaw.com
skjoldam@pepperlaw.com


Attorneys for NRG Energy Center Pittsburgh, LLC

Dated: October 21, 2010

VERIFICATION

I, Del B. Dausman, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 10/21/10



Del B. Dausman, PE, LEED AP

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of §1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Anthony D. Kanagy
Michael W. Gang
Post & Schell PC
17 North Second Street, 12th Fl.
Harrisburg, PA 17101-1601
akanagy@postschell.com
mgang@postschell.com

Charles Daniel Shields
Adeolu A. Bakare
Johnnie E. Simms
Office of Trial Staff
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Fl. West
P. O. Box 3265
Harrisburg, PA 17105-3265
chshields@state.pa.us
abakare@state.pa.us
josimms@state.pa.us

Candis A. Tunilo
Tanya J. McCloskey
David T. Evrard
Barrett C. Sheridan
Office of Consumer Advocate
Forum Place, 5th Fl.
555 Walnut Street
Harrisburg, PA 17101-1923
ctunilo@paoca.org
tmccloskey@paoca.org
devrard@paoca.org
bsheridan@paoca.org

Sharon E. Webb
Office of Small Business Advocate
Commerce Building, Ste. 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us

Pamela C. Polacek
Carl J. Zwick
McNees Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
ppolacek@mwn.com
czwick@mwn.com

Scott J. Rubin
Public Utility Consulting
333 Oak Lane
Bloomsburg, PA 17815
Scott.j.rubin@gmail.com

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Theodore D. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
info@citizenpower.com

Scott J. Rubin
International Brotherhood of Electrical
Workers, Local 29
333 Oak Lane
Bloomsburg, PA 17815
Scott.j.rubin@gmail.com

David B. MacGregor
Post & Schell PC
Four Penn Center
1600 JFK Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com

Gary A. Jack
Duquesne Light Company
411 Seventh Avenue, 16-1
Pittsburgh, PA 15219
gjack@duqlight.com

VIA FIRST-CLASS MAIL

Mary M. Chestnut
400 Center Manor Drive, Lot C-13
Monaca, PA 15016

Sarah Divilly
506 Stratmore Avenue
Pittsburgh, PA 15205

Charles P. Steiner, Jr.
704 Crystal Drive
Mt. Lebanon, PA 15228

Vicki Courie
4 Ogden Street
Carnegie, PA 15106

Donald W. Killmeyer
2850 Middletown Road
Pittsburgh, PA 15204-2455

Janet L. Vento
711 Southern Avenue
Penn Hills, PA 15235


Delores D. White
10139 Clair Avenue
Pittsburgh, PA 15235

Carolina Ursitti
853 Monaca Road
Monaca, PA 15061

Rebecca Nesret
5677 Hobart Street, Apt. 2
Pittsburgh, PA 15217

Marie Rubottom
1307 Lincoln Drive
Monaca, PA 15061

Date: October 21, 2010


Michelle M. Skjoldal