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File #: 152193

December 13, 2013

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company
Docket No. R-2013-2372129, et al.

Dear Secretary Chiavetta:

Enclosed please find the Petition of Duquesne Light Company for Interlocutory Review and Answer to Material Questions in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael W. Gang". The signature is written in a cursive style with a large, looping "G" at the end.

Michael W. Gang

MWG/skr
Enclosure

cc: Certificate of Service
Honorable Conrad A. Johnson

CERTIFICATE OF SERVICE

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

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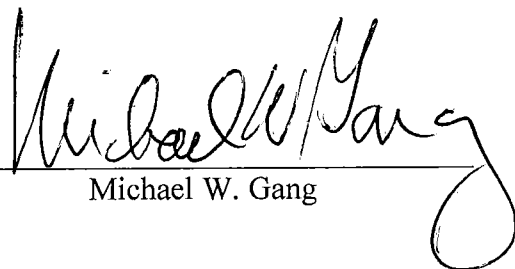
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Date: December 13, 2013


Michael W. Gang

beyond the scope of the PUC's jurisdiction. An order was issued on December 12, 2013, denying the POs.

II. MATERIAL QUESTIONS

4. Whether NRG's Complaint must be dismissed for failure to join the affected QFs as necessary and indispensable parties? *Suggested answer in the affirmative.*

5. Whether the PUC lacks authority to change the wholesale PURPA rate set forth in Rider No. 18? *Suggested answer in the affirmative.*

III. COMPELLING REASONS FOR INTERLOCUTORY REVIEW

6. It is well-settled that the failure to join an indispensable party is fatal to a cause of action.³ If the PUC were to grant the relief requested by NRG, the QFs still subject to the wholesale PURPA rate set forth in Rider No. 18 would be directly and materially affected. However, the QFs have not been joined as parties. Therefore, if the PUC grants the relief requested by NRG, the QFs will be materially harmed without being afforded any meaningful due process right to participate in this proceeding.

7. It is well-settled that the PUC lacks authority to regulate wholesale power supply agreements and that under PURPA the PUC cannot revisit or change QF rates once they are approved.⁴ Therefore, the relief requested by NRG clearly is beyond the PUC's authority.

8. The Order denying the POs failed to address and resolve these fundamental questions. If these issues are not resolved in the first instance, the parties will be forced to litigate issues that are beyond the PUC's authority, and the parties, at a minimum, would be

³ See, *Bucks County Servs. v. Phila. Parking Auth.*, 71 A.3d 379 (Pa. Cmwlth. 2013); *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (1975); *J3 Energy Group, Inc. v. West Penn Power Company*, Docket No. C-2011-2219920 (Oct. 31, 2013).

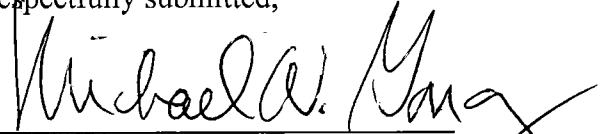
⁴ See *Freehold Cogeneration Assocs., L.P. v. Board of Regulatory Comm'rs*, 44 F.3d 1178, 1190 (3d Cir. 1995); *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 659 A.2d 1055, 1066 (Pa. Cmwlth. 1995), *affirmed by*, 535 Pa. 108, 634 A.2d 207 (1993); *Petition of Pennsylvania Electric Company Requesting Approval of Rate Recover, Under the Energy Cost Rate, for the Costs Proposed to be Paid Under an Agreement with Scrubgrass Power Corporation*, Docket NO. P-0870248, 1988 Pa. PUC LEXIS 101, 66 Pa. PUC 151 (January 21, 1988).

required to re-litigate these issues again with all necessary and indispensable parties.⁵ It would be a waste of both the PUC's and the parties' resources to litigate NRG's Complaint without joining all indispensable parties and deciding the scope of the PUC's jurisdiction in the first instance. As demonstrated by the procedural issues in this proceeding, these novel and complex issues simply cannot be adequately and fully examined and addressed within the nine-month suspension period for this proceeding.

IV. RELIEF REQUESTED

WHEREFORE, DLC respectfully requests that the PUC answer the material questions in the affirmative and direct that NRG's Complaint be (1) dismissed for lack of jurisdiction to grant the relief requested, (2) alternatively, dismissed without prejudice to refile and joining all necessary/indispensable parties, or (3) alternatively, sever the Complaint from the base rate case to that these issues may be fully addressed by all necessary parties.

Respectfully submitted,



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Date: December 13, 2013

Attorneys for Duquesne Light Company

⁵ See, e.g., *J3 Energy Group, Inc. v. West Penn Power Company*, Docket No. C-2011-2219920 (Oct. 31, 2013).