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December 16, 2013

VIA E-FILING


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

Re: Pennsylvania Public Utility Commission; Office of Consumer Advocate; Office of Small Business Advocate; Jacquelyn and Robert Miller; Gwendolyn L. LeVert; Duquesne Industrial Interveners; Aimee M. Dorsten; Connie Schiavo; NRG Power MidWest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC v. Duquesne Light Company; Docket Nos. R-2013-2372129; C-2013-2379084; C-2013-2380474; C-2013-2383835; C-2013-2383980; C-2013-2385292; C-2013-2386037; C-2013-2386284

Dear Secretary Chiavetta:

On behalf of Beaver Falls Municipal Authority, I have enclosed for electronic filing the Petition to Intervene of Beaver Falls Municipal Authority in the above-captioned consolidated matters. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



John F. Povilaitis

JFP/kra

Enclosure

cc: Administrative Law Judge Conrad A. Johnson (via email and hand delivery)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2013-2372129
Office of Consumer Advocate	:	C-2013-2379084
Office of Small Business Advocate	:	C-2013-2380474
Jacquelyn and Robert Miller	:	C-2013-2383835
Gwendolyn L. LeVert	:	C-2013-2383980
Duquesne Industrial Intervenors	:	C-2013-2385292
Aimee-Marie Dorsten	:	C-2013-2386037
Connie Schiavo	:	C-2013-2386284
NRG MidWest, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC	:	C-2013-2390562
v.	:	
Duquesne Light Company	:	

PETITION TO INTERVENE OF BEAVER FALLS MUNICIPAL AUTHORITY

**TO: ADMINISTRATIVE LAW JUDGE
CONRAD A. JOHNSON:**

The Beaver Falls Municipal Authority, by and through its attorneys, John A. Povilaitis, Alan M. Seltzer and Buchanan Ingersoll & Rooney, hereby files this Petition to Intervene (“Petition”) in the above-captioned matter pursuant to 52 Pa. Code § 5.71, et seq. and in connection therewith represent as follows:

I. INTRODUCTION

1. The Beaver Falls Municipal Authority (“Authority”) was established by an ordinance enacted by the City Council of Beaver Falls, Pennsylvania and was incorporated on July 3, 1940. The Authority now provides water services to 23 municipalities, including the City of Beaver Falls, the Boroughs of Big Beaver, Conway, Eastvale, East Rochester, Fallston, Freedom, Homewood, New Brighton, Patterson Heights, Rochester, Bridgewater, West Mayfield, and Zelienople and the Townships of Chippewa, Daugherty, New Sewickley, North Sewickley, Patterson, Pulaski, Rochester, South Beaver, and White. The Authority’s system

serves approximately 60 square miles or over 10 percent of the land area of Beaver County, and approximately 50,000 people, or nearly 25-30 percent of the County's population.

2. The names, addresses and telephone numbers of counsel for the Authority are:

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3. On February 28, 1985, the Authority entered into a negotiated power purchase agreement ("PPA") with Duquesne Light Company ("Duquesne") under which the Authority, among other things, agreed to sell and Duquesne agreed to purchase the output of two hydroelectric generating facilities of 2.5 megawatts each ("Facilities") owned and operated by the Authority. The Facility was and remains a "qualifying facility" under and in accordance with the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 61 U.S.C. §§ 824 *et seq.*¹

4. Under the PPA, Duquesne is obligated to, among other things, purchase the net electric energy produced by the Facility under and in accordance with the terms and conditions of Rider No. 18 of Duquesne's existing retail electric tariff ("Rider 18") on file with and approved by the Pennsylvania Public Utility Commission ("Commission").

5. In accordance with various Commission approvals relating to Duquesne's electric restructuring in the late 1990's, Duquesne auctioned to Orion Power Holdings, Inc. ("Orion") its

¹ Under PURPA, public utilities are required to purchase all electricity produced by independent power producers that obtain status as qualifying facilities. Electric utilities are required to purchase electricity from qualifying facilities at rates that are just and reasonable to the electric utility, in the public interest, and which do not discriminate against the qualifying facilities. 16 U.S.C. § 824a-3(b); 18 C.F.R. §§ 292.304(a)(1)(i), (ii).

generating assets in 2000 and, as part of that transaction, the PPA was assigned originally to Orion as the successful generation asset purchaser.

6. In order to effect the assignment of the PPA, Duquesne and Orion entered into a Revised QF Agency Agreement, which was approved by the FERC on March 8, 2001. *See* FERC Docket No. ER01-1138-000.

7. Through various subsequent transactions, NRG Power MidWest LP (“NRG MidWest”) assumed the obligations under the Revised QF Agency Agreement including, among other things, the obligation to purchase the net electric output of the Facility under the PPA from the Authority.

8. NRG MidWest has been operating under the Revised QF Agency Agreement, pursuant to which NRG MidWest has been paying a rate of six cents per kilowatt-hour for electric energy produced by the Facility.

9. On or about October 31, 2013, the Authority was served a copy of a Formal Complaint filed by NRG MidWest and related companies (“Formal Complaint”), NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC (collectively, the “NRG Companies”).

10. Among other things, the Formal Complaint asserts that Rider 18 may present an indirect form of rate discrimination benefitting certain customer-generators and, therefore, requests that the Commission ensure that Rider 18 is just, reasonable and non-discriminatory. (Formal Complaint, ¶¶ 13-15, 20).

11. Despite being a party to the PPA, the Authority was not named as a respondent or an indispensable party in the Formal Complaint. Nor is there any indication that Beaver Valley

Power Company, another qualifying facility operating pursuant to PURPA and Rider No. 18, was named as a respondent or indispensable party to the Formal Complaint.

12. It was not until the NRG Companies filed their testimony in this case that the Rider 18 references in the Formal Complaint relating to possible rate discrimination were intended to request that the rate for power purchased by NRG MidWest under the PPA be reduced from the current \$0.06/kWh. Up to that time, the Authority had taken no action to participate in or challenge the relief sought in this proceeding by the NRG Companies because it was not clear that any rights of the Authority were being challenged by the Formal Complaint.

13. On or about November 12, 2013, Duquesne filed Preliminary Objections to portions of the Formal Complaint which, if granted, would have obviated the need for the Authority to participate in this proceeding. However, in an order dated December 12, 2013², the ALJ denied Duquesne's preliminary objections and directed that the Formal Complaint proceed to hearing as scheduled on December 16, 2013.

14. The Authority is aware that Duquesne has taken two further actions to address the propriety of litigating some of the issues raised by the Formal Complaint at this stage of the base rate case proceeding. First, on December 13, 2013, Duquesne filed with the ALJ a Motion to Sever the Rider 18 portion of the Formal Complaint from the on-going Duquesne base rate proceeding. Second, on December 13, 2013, Duquesne also filed with the Commission a Petition for Interlocutory Review and Answer to Material Questions specifically relating to the ALJ's denial of Duquesne's Preliminary Objections relating to Rider 18 and its impacts on the PPA.

15. Neither of the pleadings specified in paragraph 14 above has been answered, let alone decided by the ALJ or the Commission, as applicable, and it is unlikely that either will be

² The December 12, 2013 order was entitled "Second Interim Order Denying Respondent Duquesne Light Company's Preliminary Objections to Complaint of NRG Power Midwest LP."

resolved prior to the hearings in this matter that are scheduled to commence on December 16, 2013.

16. Under the circumstances described above and given the uncertainty surrounding whether this proceeding will in fact attempt to modify the existing rates in the PPA, the Authority has no choice but to seek intervention in this proceeding at this juncture in order to protect its interests as the seller under the PPA to NRG MidWest, one of the complainants in this Formal Complaint.³ NRG MidWest is not a party to the PPA and it is not clear that it has legal standing and justification to modify the terms of the PPA.

II. ELIGIBILITY TO INTERVENE

17. A person or entity's eligibility to intervene in proceedings before this Commission is governed by the Commission's rules at 52 Pa. Code § 5.72. A proposed intervenor must demonstrate that it has a right to intervene or has an interest of such nature that intervention is necessary or appropriate to the proceeding. The requisite "right or interest" may be established by one of the following:

1. A right conferred by statute of the United States or the Commonwealth.
2. An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
3. Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa. Code § 5.72.

17. As discussed further below, the Authority has a direct interest in this proceeding that is not adequately represented by any other party.

³ The Authority's request to intervene in this proceeding is expressly without prejudice to -- and not a waiver of -- its right to assert that, among other things, the Commission lacks jurisdiction over the Formal Complaint's request to modify the currently effective rates applicable to the sale and purchase of net electric energy under the PPA.

III. THE AUTHORITY SATISFIES THE CRITERIA FOR INTERVENTION

18. As a party to the PPA, the Authority has an undeniable, substantial and material interest in the outcome of the Formal Complaint. Needless to say, any reduction in the price for net electric energy purchased by NRG MidWest could impact revenues paid to and received by the Authority. There is no question that the Authority satisfies the criteria for intervention specified in Pa. Code § 5.72.

19. Given the Authority's substantial interest in the Formal Complaint and PPA, it is clearly an indispensable party to any proceeding attempting to modify the terms of an agreement to which it is a party. *See, Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (1975) ("an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction").

20. To the best of the Authority's knowledge, no deadline for filing interventions has been established in this proceeding. Accordingly, this Petition is timely.

21. If, however, this Petition is considered for any reason to be untimely, it should be granted nevertheless because "good cause" exists for the Authority's timing for filing this pleading.

22. Pursuant to Section 5.74(a) of the Commission's regulations, 52 Pa. Code §5.74(a), a petition to intervene may be granted for good cause shown prior to the conclusion of evidentiary hearings. Such "good cause" exists here for several reasons. First, the hearings have not yet commenced in this proceeding, let alone concluded. Second, as noted above, at no time prior to the ALJ dismissing Duquesne's Preliminary Objections to the Formal Complaint on December 12, 2013 did the Authority know for certain that its interest could be adversely

impacted by the relief requested by the Formal Complaint. As noted above, the broad and ambiguous allegations in the Formal Complaint that Rider 18 was creating an indirect form of rate discrimination benefitting certain customer-generators, could not have placed the Authority on reasonable notice that NRG MidWest was seeking to reduce the prevailing rates in the PPA. Third, the public interest would clearly be served by allowing the party most directly impacted by the relief being requested in the Formal Complaint – the Authority – to participate actively in the proceeding. Finally, no party would be prejudiced by the Authority’s intervention. The Authority accepts the procedural schedule that has been set to date by the Administrative Law Judge and will only address prospective procedural issues that have or will be raised. Indeed, it is the Authority that would be prejudiced in this case by a denial of this Petition to Intervene given its undeniable interest under the very PPA sought to be modified in this proceeding. “Good cause” clearly supports the Authority’s intervention if the ALJ believes this Petition has been filed untimely, i.e., is beyond the time previously authorized for interventions. Granting this Petition will allow the Authority to be heard on important requests pending in this proceeding, but not yet resolved, such as Duquesne’s Motion to Sever the Rider 18 portion of the Formal Complaint from the on-going Duquesne base rate proceeding.

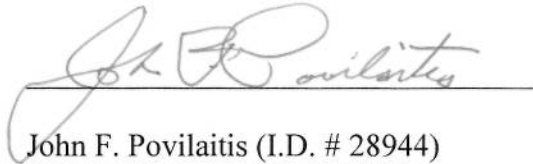
IV. CONCLUSION

23. The Authority is prepared to participate in this proceeding in a manner that is consistent with the need to protect its interests and does not unduly interfere with the prompt adjudication of the proceeding. No party will be prejudiced by the Authority’s intervention in this proceeding, and that intervention is meritorious because of its substantial, direct and material interest in the outcome of some of the issues raised by the Formal Complaint.

24. Accordingly, for the reasons specified above, the Authority requests that its Petition to Intervene in the above-referenced proceeding be granted.

Wherefore, the Beaver Falls Municipal Authority respectfully requests that its Petition to Intervene be granted and that the ALJ grant it such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John F. Povilaitis", is written over a horizontal line.

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Attorneys for the Beaver Falls Municipal Authority

Dated: December 16, 2013

VERIFICATION

I, Phillip J. Colavincenzo, Esquire, Solicitor for the Beaver Falls Municipal Authority, hereby verify that the information in the foregoing Petition to Intervene filed in Pa.P.U.C. *et al.*, v. Duquesne Light Company at Docket Nos. R-2013-2372129, *et al.* is true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.


Signature

Dated: December 16, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Office of Consumer Advocate	:	
Office of Small Business Advocate	:	Docket Nos. R-2013-2372129
Jacquelyn and Robert Miller	:	C-2013-2379084
Gwendolyn L. LeVert	:	C-2013-2380474
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Aimee M. Dorsten	:	C-2013-2383980
Connie Schiavo	:	C-2013-2385292
NRG Power Midwest LP,	:	C-2013-2386037
NRG Energy Center Pittsburgh LLC, and	:	C-2013-2386284
Reliant Energy Northeast LLC	:	
	:	
	:	
v.	:	
	:	
Duquesne Light Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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VIA FIRST CLASS MAIL ONLY

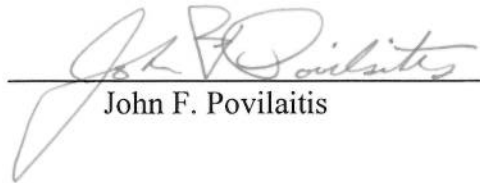
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