



May 31, 2018

VIA E-FILING

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

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

**BRIEF OF PEOPLES NATURAL GAS COMPANY LLC IN SUPPORT OF ITS  
PETITION FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL  
QUESTION ON AN EXPEDITED BASIS**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find the Brief of Peoples Natural Gas Company LLC in Support of its Petition for Interlocutory Review and Answer to Material Question on an Expedited Basis. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito  
Counsel for Peoples Natural Gas Company LLC

DPZ:kmg  
Enclosure

cc: Honorable Katrina L. Dunderdale  
Per Certificate of Service  
Lynda W. Petrichevich, Vice President Rates and Regulatory Affairs  
William H. Roberts, II, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Duquesne Light Company

Docket No. R-2018-3000124  
C-2018-3001152

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Brief in Support of Petition for Interlocutory Review and Answer to Material Question on an Expedited Basis, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: May 31, 2018



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
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**BRIEF OF PEOPLES NATURAL GAS COMPANY LLC  
IN SUPPORT OF ITS PETITION FOR INTERLOCUTORY  
REVIEW AND ANSWER TO MATERIAL QUESTION  
ON AN EXPEDITED BASIS**

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AND NOW COMES, Peoples Natural Gas Company LLC (“Peoples”), by and through its counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.302(b), to submit this brief in support of the Petition for Interlocutory Review and Answer to Material Question on an Expedited Basis (“Petition for Interlocutory Review”), filed by Peoples on May 22, 2018.<sup>1</sup> The Material Question presented is:

Does the Interim Order, dated May 22, 2018, err in granting the Motion for Partial Judgment on the Pleadings filed by Duquesne Light Company (“Duquesne”) on May 1, 2018 and precluding Peoples -- as a developer of Combined Heat and Power (“CHP”) projects -- from contesting, in Duquesne’s base rate proceeding, a proposed 220% increase in the rate for Back-Up Service for CHP projects?

Peoples respectfully submits that this question should be answered in the affirmative. Due to the time constraints imposed by this on-going base rate proceeding, Peoples also asks that the Commission grant this Petition and answer the Material Question as expeditiously as possible, via notational voting followed by ratification, so that Peoples may promptly resume its participation in this case with regard to the rate for Back-Up Service.

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<sup>1</sup> The Petition for Interlocutory Review was deposited with an overnight express delivery service on May 22, 2018. Consequently, May 22, 2018 is the date of filing. 52 Pa. Code § 1.11(a)(2).

## **I. PROCEDURAL HISTORY**

On March 28, 2018, Duquesne filed with the Commission, at Docket No. R-2018-3000124, Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24 (“Tariff Supplement”). The Tariff Supplement requested a general increase in electric distribution rates of approximately \$133.8 million and proposed various other changes to Duquesne’s tariff.

On April 10, 2018, Peoples filed the Formal Complaint of Peoples Natural Gas Company LLC to Proposed General Rate Increase (“Complaint”) against Duquesne’s proposed rate increase. As a customer of Duquesne, Peoples opposed Duquesne’s proposed rate increase because it may be: (1) unjust, unreasonable and in violation of law; (2) unlawfully discriminatory; and, (3) otherwise contrary to sound ratemaking principles and public policy. Complaint ¶¶ 1 and 8.

Peoples averred that it has existing customers currently using distributed generation and is currently pursuing additional distributed generation projects throughout Duquesne’s certificated service territory. Some of these distributed generation projects are combined heat and power (“CHP”) projects. Pursuant to Rider No. 16 – Service to Non-Utility Generating Facilities (“Rider 16”), Duquesne seeks to raise the rate for Back-Up Service for non-utility generating facilities from the current rate of \$2.50 per kW to \$8.00 per kW – an increase of 220%. In addition, Duquesne proposes to retain existing tariff language, which provides that customers who exceed their capacity reservation will be charged twice the applicable charge per kilowatt – an increase from \$5.00 per kW to \$16.00 per kW. Such an increase in the rate for Back-Up Service would have a significant adverse economic impact on Peoples because those rates would negatively impact Peoples’ pursuit of distributed generation projects, including CHP projects. Complaint ¶ 9-10.

Peoples also averred that Duquesne's proposed Rider 16 is inconsistent with the *Final Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (Final Policy Statement entered April 5, 2018) ("*Final Policy Statement*"), in which the Commission noted that one barrier to CHP development in Pennsylvania is the cost of purchasing back-up power during planned maintenance and unplanned downtime. Finally, Peoples averred that the interconnection rules contained in Rider 16 are so lengthy and cumbersome that they discourage CHP and other distributed generation projects. Complaint ¶¶ 11 and 13.

On May 1, 2018, Duquesne filed a Motion for Partial Judgment on the Pleadings, seeking a ruling that Peoples lacks standing to address any issues related to Rider 16 (which includes the rate for Back-Up Service). Peoples filed an Answer on May 11, 2018. On May 22, 2018, Administrative Law Judge Katrina L. Dunderdale (the "ALJ") issued an Interim Order Granting Respondent's Motion for Partial Judgment on the Pleadings ("Interim Order"), which precludes, in a general manner, Peoples from contesting Rider 16 on the basis that Peoples does not currently own a CHP enterprise. The Interim Order permits Peoples to remain in the case and pursue the other issues identified in its Complaint.

On May 22, 2018, Peoples filed its Petition for Interlocutory Review. Due to the compressed timeframe for litigating a rate case and the impact of the Interim Order (essentially putting Peoples "out of court" with regard to the Rider 16 issues), Peoples' Petition for Interlocutory Review requested that the deadline for filing briefs be shortened to May 25, 2018. The Commission, by Secretarial Letter dated May 24, 2018, required that briefs be filed by May 29, 2018.

Peoples' Petition for Interlocutory Review also requested that the Commission render a decision on the Petition expeditiously, so that Peoples does not forever miss the opportunity to conduct discovery and submit testimony according to the procedural schedule established for the

case. Because the setting of a just and reasonable rate for Back-Up Service involves cost of service and revenue allocation issues, a challenge to Rider 16 truly must be resolved in the context of a base rate proceeding and not a stand-alone complaint proceeding.

## **II. The Commission Should Answer the Material Question.**

Section 5.302(a) of the Commission's regulations provides:

During the course of a proceeding, a party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

52 Pa. Code § 5.302(a). Pursuant to Section 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

52 Pa. Code § 5.303.

The standards for interlocutory review are well-established. The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice -- that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 *et al.* (Order entered June 10, 1999); *Pa. Pub. Util. Comm'n v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985). Generally, petitions for interlocutory review are not favored, as the preferred approach is to permit proceedings to move forward in the



normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) p. 3.

In this case, there are two distinct reasons why the Commission should grant interlocutory review and answer the material question. First, the ALJ erred by issuing an Interim Order rather than an Initial or Recommended Decision, which would have given Peoples an immediate statutory right to file Exceptions. Duquesne filed a Motion for Partial Judgment on the Pleadings challenging Peoples' standing. Peoples responded by arguing that a party's standing is to be challenged by way of a Preliminary Objection, so Peoples urged the ALJ to treat the Motion as a Preliminary Objection. The ALJ ruled in that, since Duquesne only challenged Peoples' standing as to the Rider 16 issues in the case, Duquesne's filing should be treated as a Motion for Partial Judgment on the Pleadings.

The ALJ then granted the Motion for Partial Judgment on the Pleadings by way of an Interim Order. This was clear error because it contradicts the Commission's regulations concerning the form of decision to be rendered when an ALJ rules on a Motion for Judgment on the Pleadings. Specifically, 52 Pa. Code § 5.102(d)(3) states: "The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order." The Commission should rectify the ALJ's error by considering the instant Petition for Interlocutory Review.

Second, interlocutory review is necessary to prevent substantial prejudice to Peoples. The error and any prejudice flowing therefrom cannot be satisfactorily cured during the normal Commission review process. In the absence of interlocutory review, Peoples will be precluded

from challenging Rider 16 until this case comes to the Commission for review. By that point, Peoples will have forever missed the opportunity to conduct discovery and submit testimony into the record. Even if the Commission would conclude, during the normal review process, that the Interim Order is erroneous, the Commission could not rectify the error at that point due to the statutory timeframe for rendering a decision in a rate proceeding. According to the ALJ's Prehearing Order, non-company direct testimony is due June 25, 2018 and written rebuttal testimony is due July 23, 2018. Unless the Commission expeditiously reverses the ALJ's Interim Order, Peoples will suffer prejudice that cannot be reversed during the normal Commission review process because it will be precluded from pursuing issues related to Rider 16. Consequently, the Commission should grant interlocutory review and answer the material question.

### **III. The Commission Should Answer the Material Question in the Affirmative.**

The Material Question is:

Does the Interim Order, dated May 22, 2018, err in granting the Motion for Partial Judgment on the Pleadings filed by Duquesne Light Company ("Duquesne") on May 1, 2018 and precluding Peoples -- as a developer of Combined Heat and Power ("CHP") projects -- from contesting, in Duquesne's base rate proceeding, a proposed 220% increase in the rate for Back-Up Service for CHP projects?

The Commission should answer this question in the affirmative for several reasons.

Duquesne's Motion for Partial Judgment on the Pleadings alleges that Peoples' Complaint fails to establish Peoples' standing to raise issues pertaining to Rider 16.<sup>2</sup> To have standing to file

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<sup>2</sup> A party filing a motion for judgment on the pleadings may not rely on its own factual assertions, but must accept as true all well-pleaded, material facts of the non-moving party, as well as every inference fairly deducible from those facts. Duquesne improperly based its Motion for Partial Judgment on the Pleadings on extensive representations of fact that do not appear in Peoples' Complaint. For example, Duquesne cites the direct testimony of its witness Gorman. At this early stage in the proceeding, it would clearly be inappropriate for the Commission to base its decision on direct testimony that has not been subject to cross-examination nor admitted into the evidentiary record. In ruling on Duquesne's Motion for Partial Judgment on the Pleadings, the factual representations of Duquesne are irrelevant and should be ignored. The focus should instead be on the well-pleaded material facts contained in Peoples' Complaint and all inferences reasonably deducible from those facts. Duquesne has clearly disregarded the Commission's Rules of Practice and Procedure in this respect.

a complaint against the actions of a public utility, including a complaint against a proposed rate increase, the complainant must have a direct, immediate and substantial interest in the litigation. *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995), *appeal denied*, 544 Pa. 679, 678 A.2d 368 (1996). To be “direct,” a complainant must demonstrate “causation of the harm to his interest by the matter of which he complains.” *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195, 346 A.2d 269, 282 (1975) (plurality). To be “immediate,” the harm must be more than a mere “remote consequence.” *Id.* at 197, 346 A.2d at 283. Finally, to be “substantial,” there must be some “discernible adverse effect” beyond the general duty to comply with the law. *Id.* at 195, 346 A.2d at 282.

According to the ALJ:

Under 52 Pa. Code § 5.102(d)(1), motions for judgment on the pleadings are to be granted if all the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, as applicable, “show that there is no genuine issue as to a material fact and the moving party [Duquesne Light] is entitled to judgment as a matter of law.”

The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. It must accept as true all well-pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only in a case where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. Judgment on the pleadings should be entered only when the case is clear and free from doubt.

Interim Order pp. 5-6 (footnotes omitted).

Applying this standard, the ALJ concluded that Peoples’ Complaint failed to allege facts sufficient to establish standing to raise issues concerning Rider 16. She did not, however, find that Peoples lacks standing to participate in this proceeding. As stated previously, the Duquesne filed a Motion for *Partial* Judgment on the Pleadings. Interim Order p. 5. The ALJ granted this Motion

as filed -- she precluded Peoples from opposing Rider 16, *id.* p. 9, but did not dismiss Peoples as a party to the case.

Peoples respectfully submits this was clear error. Peoples' Complaint states at ¶ 8:

Peoples opposes Duquesne Light's proposed rate increase on the grounds that it may be unjust, unreasonable and in violation of the law, 66 Pa. C.S. § 1301 *et seq.* Peoples is also concerned that the proposed allocation of the revenue increase and proposed rate design may be unlawfully discriminatory, in violation of the Code, 66 Pa. C.S. §§ 1301 and 1304, and may otherwise be contrary to sound ratemaking principles and public policy.

Peoples respectfully submits that, as a customer of Duquesne, it has standing to pursue cost of service, revenue allocation, rate design, and return on equity issues -- even with respect to Rider 16.<sup>3</sup> It was clear error for the Interim Order, in a blanket and over-generalized fashion, to preclude Peoples from addressing Rider 16 issues. Consequently, Peoples has standing to pursue discovery and introduce testimony concerning Rider 16 in order to pursue its legitimate claims relating to general ratemaking issues such as cost of service, revenue allocation, rate design, and return on equity. In order to pursue its legitimate ratemaking claims, Peoples must have the ability to examine Duquesne's entire proposed tariff, not just portions of it.

Cost of service, revenue allocation, rate design, and return on equity issues cannot be segregated in the context of a base rate proceeding. Such issues are all inter-related. Indeed, Peoples should, as a matter of fairness and as a constitutional due process right, have the opportunity to be heard regarding Rider 16 -- even if Peoples were to take the position that it and other general service customers should bear more of the revenue burden in order to promote CHP projects as a matter of public interest. The Interim Order must be overturned because it has

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<sup>3</sup> By way of example, Peoples should not be precluded from pursuing return on equity issues because such issues directly impact Peoples' rates as a customer of Duquesne. If Duquesne is deliberately attempting to inhibit CHP projects in contravention of the Commission's *Final Policy Statement*, its return on equity should be set at the low end of the acceptable range.

proscriptively precluded a party from addressing an issue that is clearly intertwined with general rate case issues.

Moreover, the ALJ essentially took the position that a party cannot challenge a rate proposal unless and until it is receiving service pursuant to that specific tariffed rate. Peoples respectfully disagrees. Even though Peoples is not currently receiving service from Duquesne pursuant to Rider 16, Peoples has pleaded sufficient facts to establish that it has a direct, immediate, and substantial interest in that tariff.

Assuming as true the averments of Peoples' Complaint, as well as all reasonable inferences therefrom, Peoples has standing for the following reasons:

*a. Peoples is in the process of developing CHP projects that it will own.* Peoples is pursuing distributed generation projects that use natural gas to generate electricity, but will require Back-Up Service from Duquesne pursuant to Rider 16. Contrary to Duquesne's assertions, some of these projects are anticipated to be owned by Peoples -- as stated in Peoples' Complaint. Peoples Complaint ¶ 9 ("Peoples . . . is currently pursuing additional distributed generation projects throughout Duquesne Light's certificated service territory").<sup>4</sup>

Because Peoples is attempting to develop distributed generation projects by which it will be a customer of Duquesne receiving service through Rider 16, it has a direct, immediate and substantial interest in Duquesne's proposed increase in rates pursuant to Rider 16.<sup>5</sup> As the

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<sup>4</sup> Even if this averment was not deemed sufficient, the Interim Order should have -- at a minimum -- acknowledged that Peoples has the right under the Commission's Rules of Practice and Procedure to file an Amended Complaint to set forth more-specific facts regarding its interest. While Peoples believes that an Amended Complaint should not have been necessary, it exercised its right to file an Amended Complaint on May 25, 2018 -- as a precautionary measure -- and specifically averred that it is developing a CHP facility at its Etna field shop. The facility will be in service before the end of Duquesne's fully-projected future test year and will take service pursuant to Rider 16. Peoples Amended Complaint ¶ 11.

<sup>5</sup> Denial of participation by CHP developers in base rate cases would result in incomplete evidentiary records. Where -- as here -- a fully projected future test year ("FPFTY") is used, the parties, the Presiding Officer, and the Commission should all want to know what revenues and expenses are likely to be realized during the FPFTY. These projections should include revenues and expenses of CHP projects that come on-line during the FPFTY. The only meaningful way of developing such an evidentiary record is to allow participation by CHP developers; as CHP projects are often

Commission stated in its *Final Policy Statement*, the costs of purchasing back-up power during planned plant maintenance and unplanned downtime can be a barrier to CHP development. The Commission also noted that interconnection fees and procedures can be a barrier to CHP development. *Id.* p. 3. Duquesne's proposed changes in Rider 16 have a direct, immediate and substantial impact on Peoples because they affect the economic viability of the CHP and other distributed generation projects that Peoples is currently attempting to develop. Duquesne's proposed changes, if adopted, may render the projects uneconomic; thus causing Peoples to forfeit business opportunities and forego the investment that it has already made in pursuing the projects. Accordingly, Duquesne's proposed rate increase will have an immediate adverse economic impact on Peoples, even though Peoples is not yet a customer of Duquesne with respect to these projects.

*b. Peoples may lose sales from existing customers.* Peoples has customers that currently have distributed generation projects, including CHP projects. To the extent that Duquesne's proposed increase in rates, pursuant to Rider 16, causes Peoples' existing customers to switch (in part or in whole) from generating electricity using natural gas purchased from Peoples to purchasing electricity from Duquesne, Peoples suffers an immediate adverse economic impact as a direct result of the proposed rate increase.

In *Municipal Authority of Borough of West View v. Pennsylvania Public Utility Commission*, 41 A.3d 929 (2012) (*West View*), the Commonwealth Court of Pennsylvania ("Commonwealth Court") discussed its previous, unreported memorandum opinion in *Municipal Authority of the Township of Robinson v. Pennsylvania Public Utility Commission*, No. 2008 C.D. 2004 (Pa. Cmwlth. July 15, 2005) ("*MATR*"). The Commonwealth Court stated:

Nonetheless, the fact that the municipal authority in *MATR* actually lost a client due to the challenged actions of [the utility] in that case distinguishes it from the Authority in this case and *illustrates the type of direct and immediate interest that*

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treated as proprietary endeavors and not publicly-disclosed. CHP developer participation in rate cases should be encouraged; not discouraged.

*we would consider sufficient to confer standing to pursue the challenge that the Authority attempted to pursue before the PUC in this matter.*

*West View*, 41 A.3d at 934 (emphasis added). Similarly, Peoples meets the direct and immediate interest prongs of the standing test because Duquesne's rate increase will have an immediate adverse impact on Peoples; in order to avoid the increased rate for Back-Up Service from Duquesne, Peoples' existing customers may purchase less natural gas from Peoples for CHP projects and other forms of distributed generation.

Peoples also meets the substantial interest prong of the standing test with regard to these existing customers because, to the extent that Duquesne's increase in the rate for Back-Up Service causes Peoples to lose business from existing customers, Peoples will suffer economic harm. Peoples' interest in this proceeding is clearly more than the general interest of all citizens in compliance with the law.

*c. Peoples is actively partnering with customers to develop additional CHP projects.* Peoples is helping to develop a variety of distributed generation projects, some of which will *not* be owned by Peoples. These projects give Peoples standing to challenge the proposed increase in rates pursuant to Rider 16 for the same reasons as stated above. Peoples' customers, who are currently in the process of developing CHP and other distributed generation projects, may decide not to pursue some or all of their planned CHP projects. Peoples would suffer an economic harm as a result because it would sell less natural gas to its customers if those customers decide to "pull the plug" on a CHP project that is currently being developed.

It is significant to note, in this regard, that Peoples has submitted to the Commission an energy efficiency and conservation plan that includes a combined heat and power program. *See Petition of Peoples Natural Gas Company LLC for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2017-2640306. This filing demonstrates Peoples' commitment to developing CHP projects at this time -- even CHP projects developed by others.

Finally, it should be noted that, as a developer of CHP projects, Peoples has a greater interest in contesting Rider 16 than do most customers using, or considering the construction of, a CHP or other distributed generation project. 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 rather than fighting Duquesne's rate increase. If developers of CHP projects, such as Peoples, lack standing to contest unjust and unreasonable increases in Back-Up Service rates, this could be an issue capable of evading review, thereby thwarting the Commission's attempt to promote the public benefits of CHP projects. *Final Policy Statement* pp. 1 and 2.

*d. The Interim Order's restrictive view of standing is inconsistent with the Commission's Final Policy Statement.* In the *Final Policy Statement*, the Commission expressed the desire to encourage the development of CHP in Pennsylvania. If only current Back-Up Service customers have standing to challenge back-up rates that act as a barrier to the further development of CHP, the Commission's policy would be frustrated. Developers of CHP projects would be unable to challenge rates that act as a barrier to CHP projects. These are the very people that the Commission *should* permit to challenge rates that act as a barrier to CHP projects. To promote the goals of the *Final Policy Statement*, the Commission should find that people developing CHP projects, as well as existing CHP customers, have a direct, substantial and immediate interest in the back-up rate of an electric distribution company, such as Duquesne.

Additionally, the Commission's *Final Policy Statement* indicated that rate cases are the appropriate forum for pursuing claims that back-up rates for electric service are setting up barriers to the development of CHP. *Final Policy Statement* pp. 10 and 14. The Commission also noted that separate proceedings would be required to resolve disputes relating to interconnection fees



and procedures. *Id.* p. 8. The Interim Order’s restrictive interpretation of standing in a rate case is therefore inconsistent with the Commission’s stated intent in the *Final Policy Statement*.<sup>6</sup>

*e. Peoples seeks to protect its own interests, not vindicate the rights of its customers.*

Peoples is developing CHP and other distributed generation projects that will result in the increased sale of natural gas by Peoples.<sup>7</sup> Duquesne has admitted this by claiming in another proceeding that gas-utility sponsored CHP projects are more like market development projects than energy conservation projects. From this perspective, Peoples has an immediate, direct and substantial interest in Duquesne’s proposal to increase rates pursuant to Rider 16. Higher rates for Back-Up Service will make these projects less economically viable, which will have a direct, immediate and substantial impact on Peoples’ business.

*f. Appellate precedent supports a Commission finding that Peoples has standing.* In *West View, supra*, the Commonwealth Court explained its earlier decision in *Pennsylvania Petroleum Association v. Pennsylvania Power and Light Co.*, 377 A.2d 1270 A.2d 1270 (Pa. Cmwlth. 1977) (en banc), *aff’d*, 488 Pa. 308, 412 A.2d 522 (1980) (“*Pa. Petroleum*”). The Court stated:

Our decision in *Pa. Petroleum* addressed a circumstance where an entity attempted to interject itself into a regulatory scheme in an effort to avoid a result that might prove injurious to its competitive interests. Our decision in that case stands for the proposition that such an effort is only appropriate where (a) the competitor participates (*i.e.*, is subject to) the same regulatory scheme and (b) the regulatory scheme prohibits competition or somehow takes competitive injury into account.

*West View, supra* p. 935. The Commonwealth Court went on to say that an examination of standing would have been appropriate under the *Pa. Petroleum* analysis “if, for example, this case

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<sup>6</sup> It is worth noting that Peoples’ desire to pursue issues pertaining to Rider 16 does not expand the scope of this proceeding. Duquesne has proposed changes in Rider No. 16. As a result, the justness and reasonableness of those changes are already an issue in this proceeding

<sup>7</sup> This activity is nonetheless consistent with Peoples’ statutory obligation under the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1301, to maintain rates that are just and reasonable. By increasing its customer base, and promoting the use of natural gas by its customers, Peoples can mitigate future rate increases for all of its customers.

involved a complaint . . . opposing a [utility's] rate application.” That is the precise scenario presented in this case. A regulated natural gas utility filed a complaint opposing a rate increase filed by a regulated electric distribution company. In other words, both entities participate in the same regulatory scheme. This scheme takes competitive injury into account; in fact, the PUC has stated that issues relating to the manner in which back-up service rates and interconnection fees and procedures impact CHP projects are to be resolved through rate cases. *Final Policy Statement* pp. 10 and 14. Therefore, Peoples’ standing is appropriate in this case under the *Pa. Petroleum* analysis.

#### **IV. Conclusion.**

WHEREFORE, for all of the foregoing reasons, Peoples respectfully submits that the Commission should expeditiously:

- (1) grant interlocutory review;
- (2) answer the following Material Question in the affirmative:

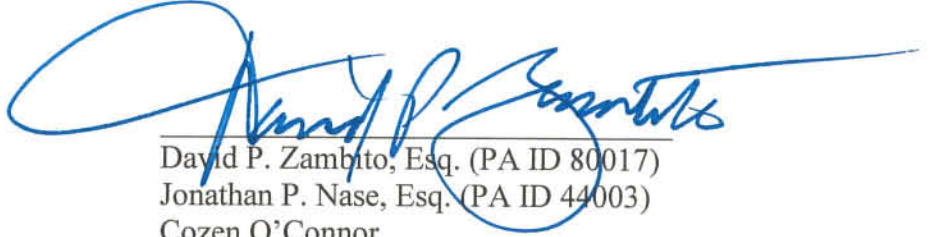
Does the Interim Order, dated May 22, 2018, err in granting the Motion for Partial Judgment on the Pleadings filed by Duquesne Light Company on May 1, 2018 and precluding Peoples -- as a developer of Combined Heat and Power projects -- from contesting, in Duquesne’s base rate proceeding, a proposed 220% increase in the rate for Back-Up Service for CHP projects?

(3) reverse the Interim Order Granting Respondent’s Motion for Partial Judgment on the Pleadings;

(4) remand these proceedings to the Administrative Law Judge so that Peoples can expeditiously resume its discovery and preparation of testimony in this on-going rate proceeding; and,

(5) direct the Administrative Law Judge to revise, as appropriate, the procedural schedule previously set in the case to account for Peoples' time lost as a result of the Interim Order Granting Respondent's Motion for Partial Judgment on the Pleadings.

Respectfully submitted,



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Dated: May 31, 2018