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May 1, 2018

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Peoples Natural Gas Company LLC v. Duquesne Light Company
Docket Nos. R-2018-3000124 and C-2018-3001152**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding are: (1) the **Motion of Duquesne Light Company for Partial Judgment on the Pleadings with Regard to Averments in the Complaint of Peoples Natural Gas Company LLC Regarding Tariff Rider No. 16**; and (2) the **Notice of Appearance** of the undersigned. Copies of the enclosed documents are being served upon the persons and in the manner set forth on the enclosed Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Anthony C. DeCusatis

ACD/ap
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PEOPLES NATURAL GAS COMPANY LLC	:	
	:	
v.	:	Docket Nos. R-2018-3000124
	:	C-2018-3001152
DUQUESNE LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing: (1) **Motion of Duquesne Light Company for Partial Judgment on the Pleadings with Regard to Averments in the Complaint of Peoples Natural Gas Company LLC Regarding Tariff Rider No. 16**; and (2) the **Notice of Appearance** have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

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Dated: May 1, 2018

Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peoples Natural Gas Company LLC

v.

Duquesne Light Company

:
:
:
:
:

Docket No. C-2018-3001152

NOTICE TO PLEAD

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YOU ARE HEREBY NOTIFIED that, pursuant to 52 Pa. Code § 5.102(b), an Answer must be filed within twenty (20) days of the date of service of Duquesne Light Company's Motion for Partial Judgment on the Pleadings, which is attached to this Notice.

Respectfully submitted,



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Counsel for Duquesne Light Company

Dated: May 1, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peoples Natural Gas Company LLC	:	
	:	
v.	:	Docket No. C-2018-3001152
	:	
Duquesne Light Company	:	

**MOTION OF DUQUESNE LIGHT COMPANY
FOR PARTIAL JUDGMENT ON THE PLEADINGS WITH REGARD TO
AVERMENTS IN THE COMPLAINT OF PEOPLES NATURAL GAS COMPANY LLC
REGARDING TARIFF RIDER NO. 16**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code §§ 5.102 and 5.103, the Respondent, Duquesne Light Company (“Duquesne Light”) hereby moves for partial judgment on the pleadings with regard to the Complaint of Peoples Natural Gas Company LLC (“Peoples”) filed at the above-referenced docket (“Complaint”) and served on Duquesne Light by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) on April 13, 2018. Specifically, Duquesne Light moves for judgment that Peoples does not have standing to contest the existing or proposed terms of Rider No. 16 of Duquesne Light’s Tariff – Electric-Pa. P.U.C. No. 24 (“Rider No. 16”), which set forth the rates, rules and conditions for electric distribution service furnished to non-utility generating facilities.

Peoples is not now, nor does it aver that it ever would be, subject to the terms of Rider No. 16 because Peoples does not own non-utility generation. Rather, as evidenced by averments in Paragraph Nos. 9-13 and 15 of its Complaint, Peoples is trying to insert itself into this proceeding by asserting the interests of third-parties who have the opportunity to participate in

their own right, speak for themselves, and protect and promote their own interests as they perceive those interests. Pennsylvania's appellate courts have held that efforts such as Peoples to bootstrap standing by asserting the interests of other parties who can participate in their own right is not permissible and, in fact, warrants summary dismissal of a complainant's claims: "A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard."¹ Commission precedent also solidly supports this point.² Accordingly, as more fully explained below, Duquesne Light is entitled to a judgment that Peoples does not have standing to contest the existing or proposed terms of Rider No. 16.³

II. BACKGROUND

1. On March 28, 2018, Duquesne Light filed Supplement No. 174 to Tariff – Electric Pa. P.U.C. No. 24 ("Supplement No. 174"), which proposes changes in Duquesne Light's rates designed to produce an increase in electric distribution revenue of approximately \$133.8 million. Accompanying Supplement No. 174, Duquesne Light filed all of the supporting data required by the Commission's regulations at 52 Pa. Code §§ 53.52 *et seq.* for a historic test year ended December 31, 2017, a future test year ending December 31, 2018, and a fully projected future test year ending December 31, 2019. Duquesne Light's supporting information

¹ *Mid-Atlantic Power Supply Ass'n. v. Pa. P.U.C.*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

² *Municipal Auth. Of the Borough of West View v. Pennsylvania-American Water Co.*, Docket No. C-2010-2153062, 2010 Pa. PUC LEXIS 322 *8 (July 15, 2010) ("[T]he complainant must establish that its alleged injury follows so closely from the action complained of, and is so closely aligned with the zone of protection afforded by the legal authority on which it relies, that it, rather than another, is the proper party to initiate a justiciable controversy. I.D. at 4. The Authority, in our view, is not."). The Commission's decision was affirmed by the Commonwealth Court of Pennsylvania. *Municipal Auth. Of the Borough of West View v. Pa. P.U.C.*, 31 A.3d 929, 933 (Pa. Cmwlth. 2012).

³ To be clear, Duquesne Light is not contesting Peoples' intervention in this case to raise issues that legitimately, directly, and immediately affect Peoples adversely in its capacity as a rate-paying customer of Duquesne Light. See Paragraph No. 17, *infra*. Such issues do not, however, include (and Duquesne requests to exclude) issues Peoples seeks to raise pertaining to the current or proposed terms of Rider No. 16 and related matters, such as, for example, interconnection requirements for non-utility generation, as to which Peoples does not have standing (as a customer or in any other capacity) for the reasons summarized above and set forth in more detail hereafter.

included the written direct testimony of fifteen witnesses and the exhibits sponsored by those witnesses.

2. Duquesne Light's Tariff – Electric Pa. P.U.C. No. 24 includes Rider No. 16, which applies to the provision of electric distribution service (i.e., not including electric generation service) to non-utility generating facilities. Supplement No. 174 includes changes to Rider No. 16 to clarify its existing terms and to increase the distribution charge for Back-Up Service. Hereafter, references to Rider No. 16 will be to the terms set forth in Rider No. 16 of Supplement No. 174 unless stated, or the context clearly indicates, otherwise. A copy of Rider No. 16 is attached to this Motion as Appendix A.

3. Rider No. 16 sets forth the rates, terms and conditions at which Duquesne Light will furnish electric distribution service to customers with behind-the-meter generation (“customer-generators”). Rider No. 16 provides for two categories of distribution service to customer-generators. Supplementary Service is the electric distribution service used to deliver electricity that the customer-generator needs to meet its load above the level it regularly generates for itself. Back-Up Service is the electric distribution service, including the reservation of capacity on Duquesne Light's distribution system that Duquesne Light must stand ready to provide to a customer-generator on a 24/7/365 basis, to deliver electricity to meet the customer-generator's electric load whenever its generating facility is not operating because of forced or planned outages.

4. Under Rider No. 16, a customer-generator pays for Supplementary Service at the General Service rates that apply given its usage characteristics and the availability provisions of the otherwise applicable General Service rate schedule(s).

5. Under Rider No. 16, a customer-generator pays for Back-Up Service at the Back-Up Service distribution charge set forth in that Rider. As proposed in Supplement No. 174, the Back-Up Service distribution charge is \$8.00 per kW of demand, which is to be applied to the Back-Up Billing Determinants specified in Rider No. 16. The proposed Back-Up Service distribution charge, which is lower than the applicable rate for Supplementary Service, was established based upon a detailed class cost of service study performed by Duquesne Light's witness Howard S. Gorman and described in Mr. Gorman's direct testimony (Duquesne Light Statement No. 14).⁴

6. Rider No. 16, as set forth in Supplement No. 174, like Rider No. 16 currently in effect, limits the use of Back-Up Service to 15% of the hours in any Base Period, which is defined as the customer-generator's twelve consecutive monthly billing periods ending one month prior to the installation, or increase in capacity, of the customer-generator's generating facility. Electric distribution service that exceeds the ceiling (as defined in Rider No. 16) on Back-Up Service is billed at the rate for Supplementary Service. Rider No. 16 also contains provisions – also present in the current Rider No. 16 – to deal with customer-generators that exceed the level of Back-Up Service demand for which they have contracted with Duquesne Light.

7. As previously indicated, Duquesne Light does not furnish electric generation supply (kWh) under Rider No. 16 to meet customer-generators' electric load. Significantly, such standby *generation* service (which customer-generators can purchase from others) can be supplied by generation that is turned on to provide the necessary energy (kWh) when the

⁴ Mr. Gorman has extensive experience in preparing class cost of service studies and has testified before utility regulatory agencies in many jurisdictions, including numerous appearances as an expert witness in proceedings before this Commission. *See* Duquesne Light Statement No. 15, Attachment A, which sets forth Mr. Gorman's educational background, professional experience and a summary of his appearances as an expert witness.

customer-generator's generating facility is not operating and turned off when no longer needed. When the generation service is not used by the customer-generator it is available for sale to other purchasers. When such standby generation service is being used, the marginal cost of providing generation is principally its fuel cost, which is a cost that can be avoided when the standby generation service is not in use. The situation is much different for electric distribution service.

8. Rider No. 16 deals with electric *distribution* service, not generating capacity or electric generation supply. The Back-Up Service furnished under Rider No. 16 is designed to ensure that there is capacity available on Duquesne Light's distribution system equal to the level of contracted demand (kW) that will be called upon to deliver electricity from other sources to the customer-generator's site when the customer-generator's own generating facility is not operating. The distribution capacity reserved for this purpose must be available 24 hours per day, every day, 365 days per year. And because the capacity is thus reserved, it cannot be used for any purpose other than to be available for the customer-generator who contracted for that reservation. Because Duquesne Light must hold that capacity available whether or not the customer-generator is using it, Duquesne Light does not avoid any costs when the customer-generator is running its generator and, therefore, not using its contracted electric delivery service.

9. The costs are the same to Duquesne Light (or any other electric distribution company ("EDC")) to build and maintain either a distribution system used every day of the year or a distribution system that is used only a few times per year but is reserved for on-demand use the rest of the year. In both instances, Duquesne Light has to build the same system at the same costs and assure that it is available 24/7/365 to serve the customer whenever called upon to do so. Therefore, the fact that a customer-generator's use of the distribution system may be

intermittent does not diminish the year-round costs that its reservation of distribution capacity imposes.

10. For the reasons set forth in Paragraph Nos. 8 and 9, above, customer-generators' reliance on the distribution system to obtain Back-Up Service presents the issue of who should bear the costs of capacity used, and reserved for use, by those customers. Unless the rate for Back-Up Service is properly determined to recover the costs that customer-generators impose, those costs would be shifted to other customers in the customer-generator's class (thereby creating an intra-class subsidy) and to customers in other classes (thereby creating an inter-class subsidy).

11. The class cost of service study prepared by Mr. Gorman shows that Duquesne Light's currently-effective distribution charge for Back-Up Service is significantly below the cost of providing that service and, therefore, intra-class and inter-class subsidization currently exists. Rider No. 16 is designed to align the rates paid by customer-generators with the costs they impose and, in that way, to reduce or eliminate cross-subsidization. While a material increase in the Back-Up Service distribution charge is necessary to achieve that end, the proposed Back-Up Service distribution charge itself is consistent with the level of rates for similar service furnished by other major Pennsylvania EDCs.

III. PEOPLES' COMPLAINT

12. Peoples is a public utility that furnishes natural gas distribution service under the Commission's jurisdiction to customers located in its certificated service territory in western Pennsylvania. Peoples' service area overlaps, to a significant degree, the certificated service territory of Duquesne Light.

13. Paragraph No. 8 of Peoples' Complaint alleges that Duquesne Light's proposed increase in revenues, allocation of revenues and proposed rate design "may be unlawfully discriminatory, in violation of the [Pennsylvania Public Utility] Code . . . and may otherwise be contrary to sound ratemaking principles and public policy." Paragraph Nos. 10-13 of the Complaint contain averments addressed to Rider No. 16 and its possible impact on behind-the-meter combined heat and power ("CHP") projects in Peoples' service territory. The gravamen of those averments is that Rider No. 16 and, in particular, the proposed increase in the Back-Up Service distribution charge, would "negatively impact Peoples' pursuit of distributed generation" (Paragraph No 10); would "discourage the development of CHP projects in Duquesne Light's service territory" (Paragraph No. 11) and are "excessive and inconsistent with the Commission's policy of encouraging CHP projects, such as those Peoples is trying to develop" (Paragraph No. 12). Peoples also avers that the "interconnection rules" in Rider No. 16 establish a "process" that is "cumbersome and lengthy" and, therefore, allegedly "discourages CHP and other distributed generation projects" (Paragraph No. 13).

14. Peoples' Complaint does not aver that it owns any non-utility generation, that it is receiving service under Rider No. 16 or that it has applied for service under Rider No. 16. The sole interest expressed in the Complaint as Peoples' alleged basis for contesting Rider No. 16 is that Peoples "has existing customers currently using distributed generation and is currently pursuing additional distributed generation projects throughout Duquesne Light's certificated service area – including projects with universities, health care systems, manufacturing facilities, residential apartment complexes, and government buildings." Complaint, Paragraph No. 9. Notably, all of the entities whose "projects" Peoples contends it is "pursuing" are large, sophisticated enterprises with the requisite business acumen to assess the economics of CHP and

or other distributed generation (“DG”) and the expertise, resources and motivation to pursue, protect and promote their own interests in this case (and in other forums) if they deem it necessary or cost-effective to do so.

15. Peoples also notes that the “projects” it is “pursuing” are alleged to be targets of its “voluntary energy efficiency and conservation plan” that was filed with the *Petition of Peoples Natural Gas Company, LLC for Approval of its Energy Efficiency and Conservation Plan* at Docket No. M-2017-2640306 (“Peoples’ Voluntary EE&C Plan”) (Complaint, Paragraph No. 9). Under Peoples’ Voluntary EE&C Plan, Peoples proposes to expend not less than \$13.4 million, and up to \$17.5 million,⁵ of ratepayer-supplied funds over five years to subsidize CHP projects that will substantially enhance Peoples’ sales and revenues by increasing its customers’ use of fossil fuel and increasing the demand imposed on Peoples’ own distribution system. It is instructive, in this regard, that the CHP component of Peoples’ Voluntary EE&C Plan, while cloaked in the garb of energy efficiency, is a gas market-development program that increases rather than conserves gas usage. The Commission itself identified this anomalous – indeed, contradictory – aspect of gas utility-sponsored CHP programs that are appended to true EE&C programs:

In general, natural gas EE&C programs are designed to reduce the usage of natural gas. CHP programs, to the contrary, usually result in higher natural gas usage, but produce an overall reduction in total energy usage. As such, CHP programs are more akin to market development projects, in addition to being energy efficient. Thus, the Commission had rejected CHP programs in natural gas EE&C plans.⁶

⁵ Peoples Natural Gas Company, LLC Energy Efficiency and Conservation Plan – December 2017, p. 52. This is the document Peoples filed at Docket No. M-2017-2640306 for approval by the Commission, as noted above.

⁶ *Pa. P.U.C. v. UGI Utilities, Inc. – Gas Division*, Docket Nos. R-2015-2518438 *et seq.* (Final Order entered Oct. 14, 2016), pp. 28-29.

**IV. PEOPLES' COMPLAINT DOES NOT PRESENT AVERMENTS THAT ARE
LEGALLY SUFFICIENT TO CONFER STANDING TO
CONTEST RIDER NO. 16**

16. Distilled to its essence, Peoples' claim of standing to challenge Rider No. 16 is based on an attenuated daisy-chain of causal links that purport to connect Rider No. 16's impact on the economic analysis of potential customer-generators contemplating the installation of CHP or DG to Peoples' economic interest in increasing its throughput and achieving attendant increases in its gas sales revenues and net income. Thus, Peoples situation is comparable to a vendor to a manufacturer that seeks to intervene in a utility rate case to contest the electric rates charged to that manufacturer on the grounds that lower electric rates could cause the manufacturer to increase its capacity (or its utilization of existing capacity) and, therefore, use more of what the vendor sells. There is no authority for allowing such an indirect, non-immediate, "one-off" interest to confer standing on a complainant or intervenor. Indeed, as explained in more detail hereafter, there is substantial legal authority, which arose in a case analogous to the factual scenario presented here, holding that such an indirect and non-immediate interest is entirely inadequate to find that standing exists to raise a justiciable issue before the Commission.⁷ Indeed, granting Peoples standing to attack Rider No. 16 in this case would mark a significant dislocation from prior Commission practice and precedent and would likely release a cascade of attempts to force the Commission to adjudicate controversies by parties with attenuated and, under currently controlling authority, legally insufficient, interests to invoke the Commission's jurisdiction.

17. The Complaint also avers that Peoples is a customer of Duquesne Light, which is accurate. However, Peoples makes no attempt to connect its interest as a customer to its efforts

⁷ See, e.g., *Municipal Auth. Of the Borough of West View v. Pennsylvania-American Water Co.*, *supra*.

to contest the terms of Rider No. 16. In fact, no such connection exists because Peoples' interest as a customer of Duquesne Light is in conflict with the alleged interest Peoples claims to promote by contesting Rider No. 16. As previously explained, Rider No. 16 exists, and an increase in the Back-Up Service distribution charge is being proposed, to assure that customer-generators pay their fair share of electric distribution system costs because, otherwise, customers without behind-the-meter generation are forced to pay higher rates to reflect those costs. Peoples is not a customer-generator and, therefore, *in its capacity as a customer of Duquesne Light*, Peoples is a beneficiary of Rider No. 16 in both its current form and as it is proposed to be changed in Supplement No. 174. In short, Peoples, in its capacity as a customer, has no basis to claim that it would be "aggrieved" by proposed changes in Rider No. 16. Aggrievement is an essential precondition to conferring standing to address the issue that is the object of a putative complainant's participation in a proceeding.⁸ In other words, Peoples is barred from using its standing *as a customer* to advocate positions that are outside its zone of interest *as a customer* – indeed, positions that conflict with its interest as a customer of Duquesne Light.

V. PEOPLES' COMPLAINT FALLS FAR SHORT OF THE LEGAL STANDARD THAT WOULD CONFER STANDING TO CONTEST RIDER NO. 16

18. The Commission has summarized the standing requirement to be applied to complaints invoking its jurisdiction as follows:

The test for determining whether a party has standing, i.e., an interest in the subject matter, has been set forth by the Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). Although the specific issue before the Court was the standing to exercise a statutory appeal challenging an ordinance of the City of Pittsburgh, the

⁸ *Capital Blue Cross v. Pa. Ins. Dep't*, 937 A.2d 552, 567 (Pa. Cmwlth. 2007) ("To have standing to challenge an official order or action of a Commonwealth agency, a party must be aggrieved by it. . . . A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest.").

Commission has applied the test enunciated in *William Penn Parking Garage* in determining whether complainants had standing to bring a complaint against a public utility.⁹

19. The Commonwealth Court expanded on the three-part test for standing under *Wm. Penn Parking Garage, Inc.*, in *Capital Blue Cross v. Pa. Ins. Dep't*, *supra*:

To have standing to challenge an official order or action of a Commonwealth agency, a party must be aggrieved by it. *Pa. R.A.P. 501*; *2 Pa. C.S. § 702*; *Beers v. Unemployment Comp. Bd. of Review*, 534 Pa. 605, 633 A.2d 1158 (1993). “In order to be ‘aggrieved’ a party must (a) have a substantial interest in the subject matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence.” *Bankers Life & Casualty Company v. Unemployment Comp. Bd. of Review*, 750 A.2d 915, 917 (Pa. Cmwlth. 2000), citing *Beers*; *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

“A ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law.” *S. Whitehall Twp. Police Serv. v. S. Whitehall Twp.*, 521 Pa. 82, 86, 555 A.2d 793, 795 (1989). “A ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest.” *Id.* at 86-87, 555 A.2d at 795. “An ‘immediate interest’ involves the nature of the causal connection between the action complained of and the injury to the party challenging it, and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.” *Id.* at 87, 555 A.2d at 795 (citations omitted).

20. Notably, the Commonwealth Court has firmly established that a putative complainant or intervenor cannot establish standing by asserting the interests of third-parties that could participate in their own right:

⁹ *Landlord Serv. Bureau, Inc. v. Equitable Gas Co.*, Docket No. C-00934801, 1993 Pa. PUC LEXIS 54 (June 8, 1993). *Accord Waddington v. Pa. P.U.C.*, 670 A.2d 199 (Pa. Cmwlth. 1995) (“Undoubtedly, in order to have standing under Section 701 [of the Public Utility Code], a party must have a direct, immediate and substantial interest in the subject matter of the controversy.”).

Rather PECO allegedly attacks the PUC's final Order on the ground that its customers' rights were not fully respected. We are unpersuaded. PECO does not represent the interests of its ratepayers. *A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard. Pennsylvania Dental Assoc. v. Commonwealth of Pennsylvania, Department of Health*, 75 Pa. Commw. 7, 461 A.2d 329 (Pa. Cmwlth. 1983).¹⁰

21. In *Municipal Auth. Of the Borough of West View, supra*, the Commission addressed standing under circumstances analogous to those presented by Peoples' Complaint. In that case, the Municipal Authority of the Borough of West View ("West View") filed a complaint to contest the lawfulness of Pennsylvania-American Water Company's ("PAWC") Rider DRS. Rider DRS allowed PAWC to "flex" its otherwise applicable tariff rates, within specified floor and ceiling levels, to acquire or retain customer load that otherwise would be lost to a viable competitive alternative that the current or prospective customer would use in lieu of service from PAWC.

The Borough of Evans City ("Evans City") was faced with the need to rebuild its water treatment plant to correct outstanding water quality problems. Evans City issued a request for proposals ("RFP") to ascertain if it could purchase water at lower cost than sourcing its own supply through a newly-constructed treatment facility. Evans City received responses to its RFP from PAWC and two other contiguous water systems (Cranberry Township and Adams Township Municipal Authority). PAWC relied on its Rider DRS authority to offer a rate below its otherwise applicable tariff rate and, as a result, was the successful low bidder.

West View challenged PAWC's right to furnish service to Evans City pursuant to Rider DRS, which it contended was unjust, unreasonable and unlawful. West View claimed standing on the grounds that it supplied water to Cranberry Township and the Adams Township

¹⁰ *Mid-Atlantic Power Supply Ass'n v. Pa. P.U.C., supra* (emphasis added).

Municipal Authority and, absent PAWC's reliance on Rider DRS, either of those entities would have been the low bidder and West View would have sold to the successful bidder the water needed to supply Evans City.¹¹

22. PAWC filed a Motion to Dismiss West View's Complaint on the grounds that West View did not have standing to challenge Rider DRS. The Commission agreed and granted PAWC's Motion to Dismiss based on its finding that West View could not satisfy the "immediacy" prong of the standing test:

Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate. *William Penn Parking Garage, supra*. We note initially that, in its Exception, the Authority does not engage the ALJ's finding that the Authority's alleged interest cannot satisfy the "immediacy" prong of the three-part test for standing.

As explained by the ALJ, even if a complainant's interest is "substantial" (something more than the abstract interest of all citizens in having others comply with the law) and "direct" (the matter complained of was the cause-in-fact of the alleged injury), the complainant must demonstrate that its interest is also "immediate." *That is, the complainant must establish that its alleged injury follows so closely from the action complained of, and is so closely aligned with the zone of protection afforded by the legal authority on which it relies, that it, rather than another, is the proper party to initiate a justiciable controversy. I.D. at 4. The Authority, in our view, failed to do this.*¹²

23. West View appealed the Commission's Final Order to the Commonwealth Court, where it again argued that it had satisfied the legal standard to confer standing to challenge PAWC's Rider DRS. The Commonwealth Court rejected West View's arguments and affirmed the Commission's Order on the grounds that West View's interest was too attenuated to pass the

¹¹ See 2010 Pa. PUC LEXIS 322 at *3-6.

¹² *Id.* at *7-8 (emphasis added).

“immediacy” test for standing and, in any event, its interest was, at most, “indirect” and, therefore, legally insufficient to pass the “directness” test as well:

The PUC further noted that the two unsuccessful offerors – Adams Township and Cranberry Township – did not file a complaint with the PUC or otherwise challenge PAWC’s proposal. Based on these uncontested facts, the PUC concluded that the Authority’s lost opportunity of increased business from either Cranberry Township or Adams Township if either of them had been selected by Evans City over PAWC was too remote a consequence of PAWC’s use of its Rider DRS to confer standing on the Authority to challenge the result of the Evans City RFP.

We agree. Here, the immediate consequence of PAWC’s use of its Rider DRS was Evans City’s selection of PAWC over Cranberry Township and Adams Township. A more remote consequence was the Authority’s loss of potential additional business with either Cranberry Township or Adams Township. This loss – akin to a wholesaler’s loss when its retail customer loses a contract – is one step too far removed from the impact of PAWC’s conduct to meet the immediacy requirement for standing. Inasmuch as the Authority’s loss of potential additional business was not an immediate consequence of PAWC’s use of its Rider DRS, the PUC did not err in concluding that the Authority lacked standing in this case.

Alternatively, even if the Authority’s interest could be characterized as an immediate consequence of PAWC’s use of Rider DRS in response to the Evans City RFP, that interest is only indirectly, rather than directly, impacted by PAWC’s conduct. As the PUC appropriately noted, the Authority did not respond to the Evans City RFP. Accordingly, it cannot be said to have been “directly” impacted by Evans City’s decision to select PAWC over Cranberry Township and Adams Township. At best, the Authority’s status as a supplier of water to two unsuccessful offerors (Cranberry Township and Adams Township) gave the Authority an “indirect” interest in the process by which Evans City selected its water supplier. An indirect interest is not a sufficient interest to confer standing.¹³

¹³ *Municipal Auth. Of the Borough of West View v. Pa. P.U.C.*, *supra*, at 933-934 (footnote omitted).

24. The Commission's decision in *Municipal Auth. Of the Borough of West View* and the Commonwealth Court's Opinion and Order affirming it both upheld the fundamental principle that "[a] party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard."¹⁴ Sound practical and prudential considerations underlie that statement of blackletter law, namely, that there is no reason to assume the positions and desires of the real parties in interest align with the positions and desires of another party that appoints itself to be their unauthorized representative. Those practical and prudential considerations underscore the impropriety of Peoples' attempt to assume the role of self-appointed advocate for the interests of sophisticated entities that are capable of participating in this case and articulating their own interests, rather than having Peoples put words in their mouth.

Specifically, a customer's decision to pursue CHP or DG requires solving a complex economic calculus to assess the present value of costs and benefits, which necessarily entails customer-specific and site-specific factors (e.g., development costs, cost of capital, patterns of operation and potential operational efficiencies). Whether, or to what extent, an increase in the distribution charge for Back-Up Service – a cost that pales in magnitude to other factors driving the economics of CHP and DG – affects a customer's decision to install CHP or DG is a decision that lies within the sound judgment of the real parties in interest that will own and operate those facilities, bear the facilities' costs and reap their benefits (if such benefits were to accrue). Those customers, who have the ability and motivation to speak for themselves, know where their interests lie and can articulate them better and more accurately than Peoples can.

Indeed, it is entirely possible that Peoples, as self-appointed spokesman for potential customer-generators, could advance positions with which those customers do not agree and

¹⁴ *Mid-Atlantic Power Supply Ass'n, supra.*

would not want to be associated. These kinds of mixed messages do not advance the development of a sound evidentiary record. To the contrary, they impede it. They also lead to unnecessary, unproductive and resource-wasting litigation over hypotheticals that have no practical consequence. Precisely for those reasons, Commission and appellate court precedent demands that real parties in interest speak for themselves and not have their positions filtered through (or distorted by) others who claim to assert – but have no legitimate right to represent – their interests. Yet, that is exactly the position Peoples is attempting to advance as the basis for interjecting itself into this proceeding to address the terms of Rider No. 16.

25. For all the reasons set forth above, the full weight of Commission and Pennsylvania appellate court precedent establishes that Peoples does not have standing in this proceeding to address the terms of either the current or proposed Rider No. 16.

**VI. DUQUESNE LIGHT IS ENTITLED TO JUDGMENT ON THE PLEADINGS
HOLDING THAT PEOPLES DOES NOT HAVE STANDING TO
ADDRESS RIDER NO. 16**

26. The Commission’s regulation at 52 Pa. Code § 5.102(a) provides that “[a]fter the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment.” That regulation provides further that judgment on the pleadings may be rendered if there is no genuine issue as to a material fact and the moving party is entitled to a judgment as a matter of law. In rendering its judgment, the Commission should accept as true all well-pleaded facts of the party against whom the motion is made.¹⁵

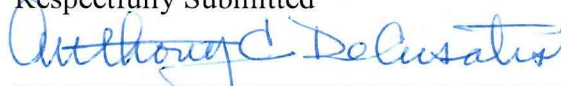
27. For the reasons set forth previously in this Motion, Duquesne Light is entitled to judgment on the pleadings holding that, based on the averments set forth in its Complaint,

¹⁵ See *Municipal Auth. Of the Borough of West View v. Pennsylvania-American Water Co.*, Docket No. C-2010-2153062, 2010 Pa. PUC LEXIS 2081 *8-9 (Rec. Dec. issued April 15, 2010).

Peoples does not have standing to address Rider No. 16 and it is not entitled to participate in this proceeding with respect to any issues relating to Rider No. 16. The issue of standing presented here does not raise any genuine issue of material fact and can be determined based on the pleadings – in particular, on averments in the Complaint that concede facts sufficient to establish Peoples’ lack of standing. Moreover, as in *Municipal Auth. Of the Borough of West View, supra*, the issue presented in this case is a legal, not a factual, one and, as such, is a proper and lawful subject for judgment on the pleadings.

WHEREFORE, for the foregoing reasons, Duquesne Light Company is entitled to judgment on the pleadings finding and determining that Peoples Natural Gas Company LLC does not have standing to address any issues related to Duquesne Light Company’s Rider No. 16 in this proceeding.

Respectfully Submitted



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Counsel for Duquesne Light Company

Dated: May 1, 2018

APPENDIX A

DUQUESNE LIGHT COMPANY
RIDER NO. 16 AS SET FORTH IN SUPPLEMENT NO. 174

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 16 - SERVICE TO NON-UTILITY GENERATING FACILITIES

(Applicable to GM < 25, GM ≥ 25, GMH < 25, GMH ≥ 25, GL, GLH and L Rates)

(C)

The following applies to non-utility generating facilities including, but not limited to cogeneration and small power production facilities that are qualified in accord with Part 292 of Chapter I, Title 18, Code of Federal Regulations (qualifying facility). Electric energy will be delivered to a non-utility generating facility in accord with the following:

A. DEFINITIONS

Supplementary Service is distribution services provided by the Company to a non-utility generating facility and regularly used in addition to that electric energy which the non-utility generating facility generates itself. The Company's regular and appropriate General Service Rates will be utilized for billing for Supplementary Service. (C)

Back-Up Service is distribution services provided by the Company to a non-utility generating facility during any outage of the non-utility generating facility's electric generating equipment or otherwise, to replace electric energy ordinarily generated by the non-utility generating facility's generating equipment. (C)

Base Period is the twelve consecutive monthly billing periods applicable to the customer ending one month prior to the installation of new on-site generation or increase in capacity to existing on-site supply.

Contract Demand is the maximum electrical capacity in kilowatts that the Company shall be required by the contract to deliver to the customer for Back-Up Service. A Contract Demand may be established for Supplementary Service to the customer's facility. (C)

Supplementary Service Billing Determinants is the kW specified in the Contract with the customer for Supplementary Service. (C)

Back-Up Service Billing Determinants is the kW specified in the Contract with the customer for Back-Up Service. (C)

Distribution Base Period Billing Determinants are the billing demand (kW) for the month in the Base Period corresponding to the current billing month under which the on-site generation is operable. For new customers, the Company will use existing procedures to estimate Base Period Billing Determinants. (C)

Supply Billing Determinants for customers not being served by an Electric Generation Supplier ("EGS"), Rate Schedules GL, GLH, and L shall be the billing determinates for the current billing month then in effect under Rider No. 9 – Day-Ahead Hourly Price Service. Supply Billing Determinants for customers on Rate Schedule GS/GM and GMH shall be the billing determinants for the current billing month then in effect under Rider No. 8 – Default Service Supply. (C)

(C) – Indicates Change

ISSUED: MARCH 28, 2018

EFFECTIVE: MAY 29, 2018

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 16 - SERVICE TO NON-UTILITY GENERATING FACILITIES - (Continued)

(Applicable to GM < 25, GM ≥ 25, GMH < 25, GMH ≥ 25, GL, GLH and L Rates)

(C)

B. BACK-UP SERVICE

(C)

The Company will supply Back-Up Service at the following rates:

(C)

DISTRIBUTION

A distribution charge of \$8.00 per kW shall be applied to the Back-Up Service Billing Determinants.

(I)(C)

The distribution charges will be applied in each month based on the customer's Contract Demand without regard to actual usage.

(C)

(C)

If actual usage of Back-Up Service exceeds zero for more than 15% of the hours in any Base Period, then those hours above the 15% threshold will be counted toward the billing on the customer's applicable general service rate, including all ratchets applicable.

(C)

If a customer's Back-Up Service requirement at any time exceeds the customer's Back-Up Contract Demand by 5% or more, the actual Back-Up Service requirement measured in kW demand will become the customer's new Back-Up Contract Demand for the remaining term of the back-up contract. If a customer's actual Back-Up Service requirement at any time exceeds the customer's Back-Up Contract Demand by 10% or more, the customer will be assessed a fee equal to the difference between the actual Back-Up Service requirement at the time and the Back-Up Contract Demand multiplied by two times the applicable charge per kilowatt.

(C)

(C)

(C)

(C)

(C)

(C)

SUPPLY

(C)

In any month that the Company provides energy to back up the customer's equipment, supply service shall be supplied and billed under Rider No. 9 for customers with Contract Demand of 300 kW or more. For customers having Contract Demand of less than 300 kW, the Company will bill the applicable supply demand and energy charges then in effect under Rate Schedule GS/GM.

C. INTERCONNECTION

Each non-utility generating facility will be required to install at its expense or pay in advance to have the Company install interconnection equipment and facilities which are over and above that equipment and facilities required to provide electric service to the non-utility generating facility according to the Company's General Service Rates, except as noted below. Any such equipment to be installed by the non-utility generating facility must be reviewed and approved in writing by the Company prior to installation. Nothing in this Rider shall exempt a new customer from the application of Rule No. 7 and Rule No. 9 regarding Supply Line Extensions and Relocation of Facilities.

However, customers may elect to pay the cost of existing or newly required transformation equipment that is over and above that equipment necessary for the Company to supply the customer with its contracted Supplemental Service via a monthly charge rather than in total at the onset of the contract. The monthly charge for transformation equipment for customers with contract demand under this rider of 5,000 kW or more will be determined by the Company on a case-by-case basis

(C)

(C)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peoples Natural Gas Company, LLC

Docket No.C-2018-3001152

v.

Duquesne Light Company

VERIFICATION

I, David Ogden, hereby state that the facts set forth in the **Motion of Duquesne Light Company for Partial Judgment on the Pleadings with Regard to Averments in the Complaint of Peoples Natural Gas Company LLC regarding Tariff Rider No. 16** are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the provisions and penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



David Ogden
Manager, Rate & Tariff Service

Date: May 1, 2018