



May 11, 2018

VIA E-FILE

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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, C-2018-3001152**

**ANSWER OF PEOPLES NATURAL GAS COMPANY LLC TO 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"**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find the Answer of Peoples Natural Gas Company LLC to 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" in the above-referenced proceeding. 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 (*includes MS Word version*)  
William H. Roberts II, Esquire  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |   |                            |
|--|---|----------------------------|
| Pennsylvania Public Utility Commission | : |                            |
|  | : |                            |
| v.                                     | : | Docket Nos. R-2018-3000124 |
|  | : | C-2018-3001152             |
| Duquesne Light Company                 | : |                            |

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Answer of Peoples Natural Gas Company LLC to 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,”** 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 11, 2018



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Counsel for *Peoples Natural Gas Company LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Katrina L. Dunderdale**

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|--|---|----------------------------|
| Pennsylvania Public Utility Commission | : |                            |
|  | : | Docket Nos. R-2018-3000124 |
| v.                                     | : | C-2018-3001152             |
|  | : |                            |
| Duquesne Light Company                 | : |                            |

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**ANSWER OF PEOPLES NATURAL GAS COMPANY LLC  
TO 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”**

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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 §§ 5.101(f) and 5.102(b), to file this Answer to 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” (“Motion”). In the Motion, Duquesne Light Company (“Duquesne”) contends that Peoples lacks standing to raise issues in Duquesne’s general rate base proceeding at Docket No. R-2018-3000124 regarding Rider No. 16 – Service to Non-Utility Generating Facilities (“Rider 16”).

Peoples respectfully submits that a challenge to a party’s standing should be raised by a preliminary objection, 52 Pa. Code § 5.101(a)(7), rather than a motion for judgment on the

pleadings.<sup>1</sup> Consequently, the Motion should be treated as a “Preliminary Objection.” Peoples respectfully submits that the Honorable Administrative Law Judge (“ALJ”) should deny the Preliminary Objection. In support thereof, Peoples states as follows:

## I. INTRODUCTION AND OVERVIEW

Section 5.101 of the Commission’s Rules of Practice and Procedure, 52 Pa. Code § 5.101 (regarding preliminary objections), states that a party to a Pennsylvania Public Utility Commission (“PUC” or “Commission”) proceeding may file preliminary objections raising, among other issues, the standing of a party to participate in the proceeding. Consequently, Peoples submits that Duquesne’s Motion should be treated as a preliminary objection rather than a motion for judgment on the pleadings.<sup>2</sup>

Duquesne alleges that the Formal Complaint of Peoples Natural Gas Company LLC to Proposed General Rate Increase (“Complaint”), filed in response to Duquesne’s general base rate increase at Docket No. R-2018-3000124, fails to establish Peoples’ standing to raise issues pertaining to Rider 16. To have standing to file 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

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<sup>1</sup> Unlike a preliminary objection, a motion for judgment on the pleadings is intended to adjudicate -- as a matter of law -- one or more of the outstanding issues in a case. 52 Pa. Code § 5.102(d)(2). Here, Duquesne is not asking for a final adjudication of the justness and reasonableness of DLC’s proposed Rider 16. Instead, it is simply attempting to forestall Peoples from contesting the justness and reasonableness of Rider 16 on the alleged basis that Peoples lacks standing to participate. Standing is appropriately contested via a preliminary objection. *See id.* § 5.101(a)(7) (identifying standing of a party to participate in a proceeding as a basis for preliminary objection).

<sup>2</sup> The distinction is significant. If a motion for judgment on the pleadings is granted, in whole or in part, the ALJ is to issue an initial decision or recommended decision, which is subject to exceptions. 52 Pa. Code § 5.102(d)(3). If a preliminary objection is granted, in contrast, the party whose pleading is stricken may file an amended pleading within ten days. 52 Pa. Code § 5.101(h).

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.

It is well settled that:

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep’t of Environmental Resources*, 406 A.2d 1020 (Pa. 1979). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the [pleading] are true. *Id.* The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep’t of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

*Silvestri v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2174497 (Order entered July 1, 2011) (“*Silvestri*”).<sup>3</sup>

In pertinent part, Peoples’ Complaint states:

Peoples has existing customers currently using distributed generation and is currently pursuing additional distributed generation projects throughout Duquesne Light’s certificated service territory -- including projects with universities, health care systems, manufacturing facilities, residential apartment complexes and government buildings. Some of these distributed generation projects are combined heat and power (“CHP”) projects. In fact, CHP programs are an important part of Peoples’ voluntary energy efficiency and conservation plan. *See Petition of*

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<sup>3</sup> Duquesne’s Preliminary Objection erroneously relies on extensive representations of facts that are not contained in Peoples’ Complaint. For purposes of ruling on the Preliminary Objection, these representations cannot be considered and are therefore irrelevant. The focus must be on the factual allegations in Peoples’ Complaint, and all reasonable inferences deducible from those facts.

*Peoples Natural Gas Company, LLC for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2017-2640306. For the hospitals in Peoples' service territory, the redundancy provided by CHP as an additional source to assure reliability is critical to the public safety and provision of critical medical services to the public.

Peoples Complaint ¶ 9. Peoples' Complaint also challenges Rider 16 in terms of the fees and procedures established therein for interconnecting a CHP project, or other distributed generation project, to Duquesne's system. Peoples' Complaint ¶ 13.<sup>4</sup>

Assuming as true the averments of Peoples' Complaint, as well as all reasonable inferences therefrom, Peoples has established a direct, immediate and substantial interest in this proceeding.<sup>5</sup>

Peoples has standing for the following reasons:

a. 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"). For purposes of Duquesne' Preliminary Objection, this factual allegation must be assumed to be true.

*See Silvestri, supra.*

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

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<sup>4</sup> It should be noted that Duquesne elected not to file a timely answer to Peoples' rate complaint, as is permitted by 52 Pa. Code § 5.61(d). If, however, Duquesne wanted the Commission to consider the extensive factual allegations contained in its Motion, it should have made those allegations by way of an answer and new matter, pursuant to 52 Pa. Code § 5.62, to which Peoples would have had an opportunity to reply. By failing to do so, Duquesne has waived the Commission's ability to consider those factual allegations in ruling on the Motion because those allegations are not contained anywhere in the pleadings. *Cf.* 52 Pa. Code § 5.102(a) (directing that a motion for judgment on the pleadings is appropriate only "[a]fter the pleadings are closed . . .").

<sup>5</sup> Even if the ALJ treats Duquesne's filing as a Motion for Judgment on the Pleadings, it should be denied. Examining the pleadings in the light most favorable to the non-moving party, and resolving all doubts against the moving party, it is not clear and free from doubt that Peoples lacks standing.

As the Commission stated in *Final Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (Final Policy Statement entered April 5, 2018) (“*Final Policy Statement*”), the costs of purchasing backup 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 forgo the investment that it has already made in pursuing the projects. Thus, 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.

c. In addition to Peoples’ own interest in developing distributed generation projects, 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 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.

d. In *Municipal Authority of Borough of West View v. Pa. Pub. Util. Comm’n*, 41 A.3d 929 (2012) (*West View*), the Commonwealth Court of Pennsylvania (“Commonwealth Court”) discussed its previous, unreported memorandum opinion in *Municipal Auth. of the Twp. of Robinson v. Pa. Pub. Util. Comm’n*, 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 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.

e. 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 Rider 16 rates 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.

f. Furthermore, Peoples is pursuing 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.

g. It is significant to note 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.

h. Peoples is not seeking to vindicate the rights of its customers in this proceeding, as suggested by Duquesne. Peoples seeks to protect its own interests. Peoples is developing CHP and other distributed generation projects that will result in the increased sale of natural gas by Peoples.<sup>6</sup> Duquesne's proposal to increase rates pursuant to Rider 16 will directly, immediately and substantially affect Peoples' economic interests by making these projects less economically viable.

i. Significantly, the Commission's recent *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. Peoples' pursuit of these claims in this forum does not increase the scope of the proceeding; it is consistent with the Commission's stated intent for the proceeding under the *Final Policy Statement*. Duquesne has proposed changes in Rider 16. As a result, the justness and reasonableness of those changes are already an issue in this proceeding.

j. 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 lack standing to contest unjust and unreasonable increases in back-up service rates, this could be an issue capable of evading review,

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<sup>6</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.

thereby thwarting the Commission's attempt to promote the public benefits of CHP projects. *Final Policy Statement* pp. 1 and 2.

k. For all of the foregoing reasons, Peoples respectfully submits that Duquesne's Preliminary Objection should be denied. Assuming as true all of the averments of Peoples' Complaint, and the reasonable inferences therefrom, Duquesne has failed to demonstrate, as a matter of law, that Peoples lacks standing to contest Rider 16.

## II. ANSWER

1. Admitted in part, denied in part. It is admitted that Duquesne filed Supplement No. 174 (the "Supplement") to Tariff—Electric Pa. P.U.C. on March 28, 2018, together with accompanying documents. Duquesne's filing consists of written documents that speak for themselves.

2. Admitted in part, denied in part. It is admitted that the Supplement includes proposed changes in Rider 16. That rider is a written document that speaks for itself.

3. Denied. Rider 16 is a written document that speaks for itself.

4. Denied. Rider 16 is a written document that speaks for itself.

5. Denied. Rider 16 is a written document that speaks for itself. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. Additionally, Duquesne improperly bases its Preliminary Objection on 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 is clearly inappropriate to base a decision on direct testimony that has not been subject to cross-examination nor admitted into the evidentiary record. In ruling on

Duquesne's Preliminary Objection, 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.

6. Denied. Rider 16, as currently in effect and as Duquesne proposes to modify it, is a written document that speaks for itself.

7. Denied. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. As a result, the averments of this paragraph are irrelevant.

8. Denied. Rider No. 16 is a written document that speaks for itself. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. As a result, the remaining averments of this paragraph are irrelevant.

9. Denied. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. As a result, the averments of this paragraph are irrelevant.

10. Denied. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. As a result, the averments of this paragraph are irrelevant.

11. Denied. By way of further answer, as noted previously, a party filing a Preliminary Objection 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. *Silvestri, supra*. As a result, the averments of this paragraph are irrelevant.

12. Admitted.

13. Denied. Peoples' Complaint is a written document that speaks for itself.

14. Denied. Peoples' Complaint is a written document that speaks for itself. By way of further answer, Duquesne misunderstands Paragraph 9 of Peoples' Complaint. That paragraph states that "Peoples has existing customers currently using distributed generation and [Peoples] is currently pursuing additional distributed generation projects throughout Duquesne's certificated service territory."

Contrary to Duquesne's interpretation of Peoples' Complaint, some of these additional distributed generation projects will be owned by Peoples. To the extent that Peoples is developing a CHP or other distributed generation project by which it will be a customer of Duquesne, it has a direct, immediate and substantial interest in Duquesne's proposed increase in rates pursuant to Rider 16. The proposed rate increase has a direct, immediate and substantial impact on Peoples because that proposed rate increase immediately affects the economic viability of the project (even if the project remains in the planning stage). Duquesne's proposed rate increase, if adopted, may cause Peoples to refrain from pursuing some or all of the CHP projects it is currently developing. For the same reason, Duquesne's interconnection fees and processes have an immediate impact on the CHP and other distributed generation projects that Peoples is developing because those fees, and the ability to connect to Duquesne's electrical system in a timely manner, have an immediate impact on the economic viability of the project. Therefore, Peoples' interest in this proceeding is immediate, even though Peoples is not yet a customer of Duquesne with respect to these projects.

Additionally, Peoples has customers that currently have distributed generation projects, including CHP projects, by which those customers currently use natural gas purchased from Peoples to generate electricity. To the extent that Duquesne's proposed increase in rates, pursuant to Rider 16, will cause existing customers to switch (in part or in whole) from generating electricity using Peoples' natural gas to purchasing electricity from Duquesne, Peoples suffers a direct and immediate adverse economic harm. Peoples' interest in this proceeding is clearly more than the general interest of all citizens in compliance with the law.

Finally, some of the additional distributed generation projects that Peoples is currently developing will *not* be owned by Peoples. These projects give Peoples standing to challenge the proposed increase in rates pursuant to Rider 16 for many of the same reasons as stated above. Peoples' customers, who are currently in the process of developing CHP and other distributed generation projects, may decide to refrain from pursuing some or all of their planned CHP projects because of Duquesne's Back-Up Service rates, interconnection fees, and interconnection procedures. Peoples would thereby lose business and suffer an economic harm. The *Petition of Peoples Natural Gas Company LLC for Approval of its Energy Efficiency and Conservation Plan*, which includes a significant CHP component, demonstrates Peoples' commitment to developing CHP projects at this time. Peoples has an immediate interest in developing CHP projects.

15. Denied. The *Petition of Peoples Natural Gas Company LLC for Approval of its Energy Efficiency and Conservation Plan* is a written document that speaks for itself. For purposes of ruling on the instant Preliminary Objection, Peoples submits that all well-pleaded averments in that petition, together with all reasonable inferences therefrom, must be accepted as true.

16. Denied. By way of further answer, Peoples incorporates its answer to paragraph 14 above. Accepting as true all of the facts averred in Peoples' Complaint, and all reasonable

inferences therefrom, Peoples has clearly established a direct, immediate, and substantial interest in Duquesne's proposed changes to Rider 16.

17. Denied. By way of further answer, Peoples incorporates its answer to paragraph 14 above. In addition, a party filing a Preliminary Objection may not rely on its own factual assertions, but must accept all well-pleaded, material facts of the non-moving party, as well as every inference fairly deducible from those facts. *Silvestri, supra*. As a result, the remaining averments of this paragraph are irrelevant.

18. Denied. This paragraph states a conclusion of law to which no response is necessary.

19. Denied. This paragraph states a conclusion of law to which no response is necessary.

20. Denied. This paragraph states a conclusion of law to which no response is necessary. By way of further answer, Peoples is not seeking to vindicate the rights of its customers in this proceeding. Peoples seeks to protect its own interests. Peoples is developing CHP and other distributed generation projects that will result in the increased use of Peoples' natural gas, regardless of whether the project is owned by Peoples or by another party. To the extent that Duquesne's proposal to increase Back-Up Service rates pursuant to Rider 16 will erect a barrier to the development of CHP and other forms of alternative generation, it will adversely impact Peoples' business. In so doing, it will substantially, immediately and directly affect Peoples' interests. Peoples is the proper party to bring this action to protect Peoples' interests.

21. Denied. This paragraph states a conclusion of law to which no response is necessary. The Commission's decision in *West View* is a written document that speaks for itself.

By way of further answer, *West View* is clearly distinguishable. In that case, a municipal authority that did not even submit a bid in response to a request for proposal ("RFP") submitted a

complaint to the PUC challenging the rate that a utility used in submitting the successful bid. In the instant case, in contrast, a gas utility that is actively developing CHP and other distributed generation projects filed a complaint against an electric company's proposed rate increase, challenging the higher rate that the electric company seeks to charge for back-up electricity to those distributed generation projects. That new, higher rate will cause existing distributed generation customers to use more electricity and less natural gas purchased from Peoples (a direct, immediate and substantial harm to Peoples). That new, higher rate will also cause an immediate adverse impact on the economics of distributed generation projects, causing Peoples and others currently developing such projects to "pull the plug" on some projects (another direct, immediate and substantial harm to Peoples).

22. Denied. This paragraph states a conclusion of law to which no response is necessary. The Commission's decision in *West View* is a written document that speaks for itself.

23. Denied. This paragraph states a conclusion of law to which no response is necessary. The decision of the Commonwealth Court in *West View* is a written decision that speaks for itself.

By way of further answer, in *West View*, 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 the *West View* authority's standing would have been appropriate under the *Pa. Petroleum* analysis "if,



for example, this case involved a complaint by the Authority, 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.

Peoples respectfully submits that Commonwealth Court precedent supports its claim of standing in this case. At a minimum, Duquesne has failed to establish, as a matter of law, that it is entitled to judgment in its favor. As a result, its Preliminary Objection should be denied.

24. Denied. This paragraph states a legal conclusion to which no response is necessary. By way of further answer, the decisions of the Commission and the Commonwealth Court in *West View* are written decisions that speak for themselves. By way of further answer, Peoples incorporates by reference the averments of paragraph 20, *supra*.

25. Denied. This paragraph states a legal conclusion to which no response is necessary. By way of further answer, Peoples incorporates by reference the averments of paragraphs 20, 21 and 23, *supra*.

26. Admitted, but irrelevant. As discussed previously, Duquesne should have challenged Peoples' standing by way of a Preliminary Objection rather than a Motion for Judgment on the Pleadings. 52 Pa. Code § 5.101(a)(7). Accepting the averments of Peoples' Complaint as true, for purposes of ruling on the Preliminary Objection, Peoples has established that it has an immediate, direct, and substantial interest in Duquesne's proposed changes to Rider 16. Duquesne's Preliminary Objection therefore must be denied.

27. Denied. This paragraph states a legal conclusion to which no response is necessary. By way of further response, Peoples incorporates by reference the averments of paragraph 26, *supra*.

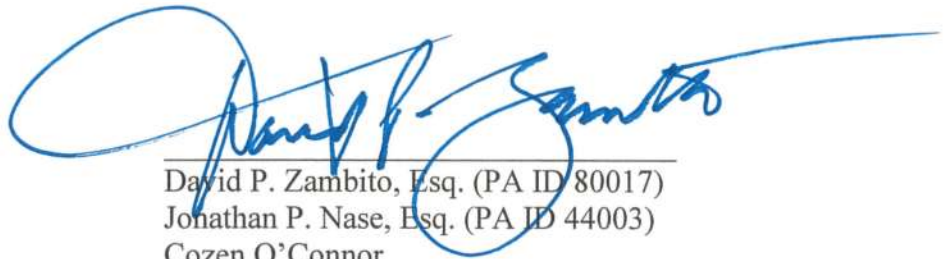
### III. CONCLUSION

WHEREFORE, for the foregoing reasons, Peoples Natural Gas Company LLC respectfully requests that the Honorable Administrative Law Judge:

(1) Treat the “Motion of Duquesne Light Company for Partial Judgement on the Pleadings with Regard to Averments in the Complaint of Peoples Natural Gas Company LLC Regarding Tariff Rider No. 16” as a preliminary objection, and deny that Preliminary Objection in its entirety.

(2) In the alternative, if the Administrative Law Judge treats the “Motion of Duquesne Light Company for Partial Judgement on the Pleadings with Regard to Averments in the Complaint of Peoples Natural Gas Company LLC Regarding Tariff Rider No. 16” as a Motion for Judgment on the Pleadings, the Motion should be denied in its entirety.

Respectfully submitted,



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