**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2018-3000124

Office of Consumer Advocate : C-2018-3001029

Jason Dolby : C-2018-3001074

Peoples Natural Gas Company LLC : C-2018-3001152

James Fedell : C-2018-3001473

Office of Small Business Advocate : C-2018-3001566

Duquesne Industrial Intervenors : C-2018-3001713

:

v. :

:

Duquesne Light Company :

1308(d) Proceeding :

**SECOND INTERIM ORDER**

Motion to Dismiss Objections

And Compel Answers to Interrogatories of

Peoples Natural Gas Company LLC

On March 28, 2018, Duquesne Light Company (Duquesne Light), Utility Code 110150, filed Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24 to become effective May 29, 2018, containing a proposed general increase in electric distribution rates of approximately $133.8 million. The proposed base rate increase includes $52.2 million of revenues currently recovered under surcharges, therefore the increase to customers over current charges is $81.6 million.

On April 10, 2018, the Peoples Natural Gas Company LLC (Peoples) filed a formal complaint at Docket No. C-2018-3001152. Peoples objected to Duquesne Light’s proposed changes to its Tariff Rider 16 in Docket No. R-2018-3000124. Peoples specifically objected to Duquesne Light’s proposal to more than double the backup service charges imposed on non-utility generating facilities and increase charges when distributed generation customers exceed the capacity reservation limits. Peoples averred it had existing customers using distributed generation projects in Duquesne Light’s service territory, including some Combined Heat and Power (CHP) projects. Peoples contended these actions in the base rate proceeding would adversely affect reliability and public safety. Peoples also contended the increases in Tariff Rider 16 would have a significant adverse economic impact on Peoples because the higher rates would negatively impact its pursuit of distributed generation projects, contrary to the Commission’s *Final Policy Statement on Combined Heat and Power*, at Docket No. M-2016-2530484 (Opinion and Order entered April 5, 2018), p. 3

By Order entered April 19, 2018, the Commission suspended the implementation of Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24 by operation of law, pursuant to 66 Pa.C.S.A. § 1308(d), until December 29, 2018, unless permitted by Commission Order to become effective at an earlier date, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations proposed in Supplement No. 174.

On April 26, 2018, the Office of Administrative Law Judge (OALJ) scheduled a prehearing conference to be conducted telephonically on May 3, 2018.

On May 1, 2018, Duquesne Light filed a Motion for Partial Judgment on the Pleadings (Motion for Partial Judgment) and asked the Commission to preclude Peoples from pursuing its opposition to Tariff Rider No. 16 on the grounds Peoples lacks standing to address the matters included in Tariff Rider No. 16.

On May 3, 2018, Administrative Law Judge Katrina L. Dunderdale conducted a call-in telephonic prehearing conference with the parties in which various procedural matters were discussed and a litigation schedule was established.

On May 4, 2018, Peoples served upon Duquesne Light its first set of written interrogatories (Interrogatories Set I), consisting of 40 interrogatories. Interrogatories Set I

included Nos. 20, 22 and 23. Those discovery requests state:

# 20. A. Please explain how Duquesne supports CHP through its Act 129 energy efficiency and conservation (“EE&C”) plan.

# B. Please describe the financial incentives that Duquesne offers to support CHP in its EE&C plan.

# C. How much money did Duquesne provide to support CHP through its EE&C plan in 2015?

# D. How much money did Duquesne provide to support CHP through its EE&C plan in 2016?

# 22. A. Please explain the process for applying for grants, loans, or other financial assistance from Duquesne for CHP projects.

# B. Please describe all informational materials that Duquesne may provide to a party who asks about CHP development on the Duquesne system. For each document so described, please provide a copy or a reference to where the material can be obtained if it is something other than a printed item.

# 23. A. How many grants or loans were provided by Duquesne for CHP projects during 2015?

# B. How many grants or loans were provided by Duquesne for CHP projects during 2016?

# C. How many grants or loans were provided by Duquesne for CHP projects during 2017?

# D. How much money did Duquesne provide to support CHP through its EE&C plan in 2017?

On May 8, 2018, the presiding officer issued the Prehearing Order which memorialized the matters discussed at the prehearing conference on May 3, 2018.

On May 11, 2018, Duquesne Light served objections upon Peoples, in which Duquesne Light protested to Interrogatories Nos. 20, 22 and 23 on the grounds all costs associated with the Combined Heat and Power (CHP) program are included in Duquesne Light’s existing Energy Efficiency and Conservation (EE&C) Plan. As such, the costs of the CHP program are recovered under a separate rate adjustment mechanism and are not included in the base rate. Duquesne Light contended in its objections that the three interrogatories are improper and objectionable because the interrogatories seek information about matters that are being addressed at other dockets.

On May 14, 2018, Peoples served a Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Peoples Natural Gas Company LLC to Duquesne Light Company – Set 1, Nos. 20, 22 and 23 (Motion to Compel), averring its questions are relevant to the issues Peoples properly raised in the formal complaint. Peoples contended an issue does not become irrelevant and require exclusion from a proceeding merely because the issue is raised in another proceeding. Peoples asked the presiding officer to dismiss Duquesne Light’s Objections.

On May 21, 2018, Duquesne Light served an Answer to Peoples Natural Gas Company’s Motion to Dismiss Objections and Compel Answers to Interrogatories, in which Duquesne Light averred Peoples was attempting to foster and pursue its own gas marketing efforts and was attempting to convert the base rate proceeding into an opportunity to increase Peoples’ sales, revenues and profits. Duquesne Light argued the interrogatories were improper because the interrogatories seek information that bears no reasonable relationship to the substance of the base rate proceeding.

On May 22, 2018, the presiding officer issued the Interim Order which granted Duquesne Light’s Motion for Partial Judgment on the Pleadings. In the Interim Order, Peoples was precluded from opposing Tariff Rider No. 16.

DISCUSSION

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id*. Information may be discoverable, even if it would be inadmissible at a hearing. “It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id*. Consistently, the Commission has allowed participants wide latitude in discovery matters. Pa. Pub. Util. Comm’n v. The Peoples Natural Gas Company, 62 Pa. PUC 56 (August 26, 1986); and Pa. Pub. Util. Comm’n v. Equitable Gas Company, 61 Pa. PUC 468 (May 16, 1986).

When evaluating a base rate filing by a certificated utility, the Commission must determine if the proposed rate change is a just and reasonable rate to be charged or applied for the utility service. See 66 Pa.C.S.A. § 1308(c).

Motion to Compel of Peoples

Here, Peoples seeks information it avers is relevant. Peoples specifies the sought-for information is relevant to the issues Peoples properly raised in its formal complaint. Peoples contended an issue does not become irrelevant and require exclusion from a proceeding merely because the issue is raised in another proceeding. Peoples contends it is entitled to have Duquesne Light respond to the request for information in order to prepare for the upcoming hearings.

Peoples has the burden of specifying some justification for how the information sought to be discovered is relevant. Peoples’ discovery requests must relate or add information to the question of whether the proposed rate change is a just and reasonable rate to be charged or applied for the utility service. To the extent Duquesne Light has set forth a proposal to change the rate at which its customers will be charged, Peoples should have the opportunity as a customer and a party in the base rate proceeding to request documentation of any cost or charge to be reflected in Duquesne Light’s base rate.

The problem here is two-fold. First, Peoples’ formal complaint was limited by the Interim Order dated May 22, 2018 to preclude any continuing opposition to the CHP program costs.[[1]](#footnote-1) These interrogatories, written and served prior to the May 22, 2018 Interim Order, question the costs associated with the CHP program. However, Peoples is a customer and a party in the base rate proceeding. A party to a base rate proceeding is permitted to challenge and/or question any proposed rate change in order to assist the presiding officer and the Commission to ascertain whether the proposed rate change is just and reasonable.

Second, Duquesne Light insists the CHP costs are not reflected in the base rate despite the fact that Duquesne Light has included proposed increases to the CHP costs within its base rate filing. Peoples did not make the issue with CHP costs magically appear. Among the panoply of charges and costs potentially at issue, Duquesne Light on its own initiative brought the CHP costs, *inter alia*, into the realm of relevance for any party in this base rate proceeding. Peoples is a party in the base rate proceeding. Therefore, Peoples is permitted to inquire about how the costs of the CHP program are reflected in the base rate.

As a result of the Interim Order dated May 22, 2018, Peoples does not have standing to oppose the proposed changes to the CHP costs and charges. However, Peoples does have standing as a party and a customer to seek to discover the factual basis upon which Duquesne Light asserts it is appropriate to make the proposed changes to the CHP program.

Upon a review of the three interrogatories at issue, it appears the Interrogatory No. 22 involves matters concerning only Duquesne Light’s EE&C program. That Interrogatory is not relevant to answering the basic question from 66 Pa.C.S.A. § 1308(c): is the proposed rate change a just and reasonable rate to be charged or applied for the utility service? Interrogatories Nos. 20 and 23, however, do relate to the amounts expended by Duquesne Light and charged for this program. The rates charged, in addition to knowing the amounts paid by Duquesne Light, for the last few years are matters which relate to how much Duquesne Light needs to operate, with a reasonable rate of return, and can illustrate the reasonableness of the proposed changes noted in Duquesne Light’s initial filing.

Granting a motion to compel is not a determination that the material is admissible or that the requesting party, in this case Peoples, would be permitted to move for admission of the discovered material. But as a party, Peoples is permitted to request the documentation which relates to the base rate to be charged.

THEREFORE,

IT IS ORDERED:

1. That the motion of Peoples Natural Gas Company LLC to compel Duquesne Light Company to respond and answer the Interrogatories Set I, No. 22, is hereby denied.

2. That the motion of Peoples Natural Gas Company LLC to compel Duquesne Light Company to respond and answer the Interrogatories Set I, Nos. 20 and 23, is hereby granted.

3. That on or before 4:00 p.m. on Wednesday, May 30, 2018, Duquesne Light Company shall serve the following documentation noted in paragraph 5 below upon Peoples Natural Gas Company LLC.

4. That failure of Duquesne Light Company to comply with paragraph 3 above may result in an order consistent with the provisions of 52 Pa.Code § 5.372(a).

5. That Duquesne Light Company shall fully answer Interrogatories Set I, Nos. 20 and 23 of Peoples Natural Gas Company LLC.

Date: May 24, 2018 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Katrina L. Dunderdale

Administrative Law Judge

**R-2018-3000124 – PENNSYLVANIA PUBLIC UTILITY COMMISSION V. DUQUESNE LIGHT COMPANY 1308(D)**

*(Revised 5/22/18)*

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1. It should be noted Peoples requested Expedited Interlocutory Review, pursuant to 52 Pa.Code § 5.302, on May 22, 2018, and insists it has standing to oppose the proposed changes for the CHP program in Duquesne Light’s base rate proceeding. [↑](#footnote-ref-1)