

# Morgan Lewis

**Anthony C. DeCusatis**

Of Counsel

+1.215.963.5034

anthony.decusatis@morganlewis.com

May 31, 2018

## **VIA eFILING**

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

**Re: Petition of Peoples Natural Gas Company LLC for Approval of Its Energy Efficiency and Conservation Plan  
Docket No. M-2017-2640306**

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

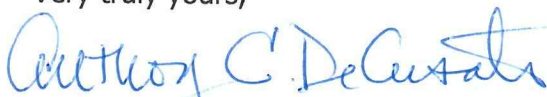
Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceedings is the **Motion of Duquesne Light Company for Simultaneous Consideration of: (1) The Petition for Interlocutory Review of Duquesne Light Company Filed April 29, 2018 at Docket No. M-2017-2640306; and (2) The Petition for Interlocutory Review Filed May 22, 2018 by The Peoples Natural Gas Company LLC at Docket Nos., R-2018-3000124, et al.**

Copies are being served upon the persons listed on the enclosed Certificate of Service, and in the manner set forth therein.

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

Very truly yours,



Anthony C. DeCusatis

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

**Morgan, Lewis & Bockius LLP**

1701 Market Street  
Philadelphia, PA 19103-2921  
United States

**T** +1.215.963.5000  
**F** +1.215.963.5001

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PEOPLES NATURAL GAS  
COMPANY LLC FOR APPROVAL OF ITS  
ENERGY EFFICIENCY AND  
CONSERVATION PLAN** :  
:  
: **Docket No. M-2017- 2640306**  
:

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION** :  
:  
:  
: **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 **Motion of Duquesne Light Company for Simultaneous Consideration of: (1) The Petition for Interlocutory Review of Duquesne Light Company Filed April 29, 2018 at Docket No. M-2017-2640306; and (2) The Petition for Interlocutory Review Filed May 22, 2018 by The Peoples Natural Gas Company LLC at Docket Nos., R-2018-3000124, et al.** 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**

The Honorable Katrina L. Dunderdale  
Administrative Law Judge  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222  
[kdunderdal@pa.gov](mailto:kdunderdal@pa.gov)

Christy M. Appleby  
Darryl Lawrence  
Phillip D. Demanchick  
David T. Evrard  
Aron J. Beatty  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)  
[pdemanchick@paoca.org](mailto:pdemanchick@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)

Gina L. Miller  
John M. Coogan  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815-2036  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
*Counsel for IBEW*

Patrick M. Cicero  
Kadeem G. Morris  
Elizabeth R. Marx  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
*Counsel for CAUSE-PA*

Sharon E. Webb  
Elizabeth Rose Triscari  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Commerce Tower, Suite 202  
300 North Second Street  
Harrisburg, PA 17101-1923  
[swebb@pa.gov](mailto:swebb@pa.gov)  
[etriscari@pa.gov](mailto:etriscari@pa.gov)

David P. Zambito  
Jonathan P. Nase  
Cozen & O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[jnase@cozen.com](mailto:jnase@cozen.com)  
*Counsel for Peoples Natural Gas Company LLC*

Joseph L. Vullo  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@aol.com](mailto:jlvullo@aol.com)  
*Counsel for CAAP*

Michael W. Gang  
Anthony D. Kanagy  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
*Counsel for Duquesne Light Company*

Kevin J. Moody  
212 Locust Street, Suite 300  
Harrisburg, PA 17101-1510  
[kevin@pioga.org](mailto:kevin@pioga.org)

**VIA FIRST CLASS MAIL ONLY**

Jason Dolby  
409 Anawanda Avenue  
Pittsburgh, PA 15228



Anthony C. DeCusatis (Pa. I.D. 25700)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5034 (bus)  
215.963.5001 (fax)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)

Tishekia E. Williams (Pa. I.D. 208997)  
Michael Zimmerman (Pa. I.D. 323715)  
Duquesne Light Company  
411 Seventh Avenue, 15-7  
Pittsburgh, PA 15219  
412.393.6268 (bus)  
412.393.5897 (fax)  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

Dated: May 31, 2018

*Counsel for Duquesne Light Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of Peoples Natural Gas Company, LLC for Approval of its Energy Efficiency and Conservation Plan</b>	:		
	:	<b>Docket No.</b>	<b>M-2017-2640306</b>
	:		
<b>Pennsylvania Public Utility Commission</b>	:		
	:		
<b>v.</b>	:	<b>Docket Nos.</b>	<b>R-2018-3000124</b>
	:		<b>C-2018-3001152</b>
<b>Duquesne Light Company</b>	:		

---

**NOTICE TO PLEAD**


---

David P. Zambito  
Jonathan P. Nase  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
717.703.5892  
215.989.4216  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[jnase@cozen.com](mailto:jnase@cozen.com)

William H. Roberts II  
PNG Companies LLC  
375 North Shore Drive  
Pittsburgh, PA 15212  
412-208.6527  
[william.h.robertsii@peoples-gas.com](mailto:william.h.robertsii@peoples-gas.com)

**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 Simultaneous Consideration of Petitions for Interlocutory Appeal**, which is attached to this Notice, unless an earlier date is established, as requested in the Motion.

Respectfully submitted,

  
Anthony C. DeCusatis (Pa. I.D. 25700)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)

Tishekia E. Williams (Pa. ID. No. 208997)  
Michael Zimmerman (Pa. ID. No. 323715)  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

*Counsel for Duquesne Light Company*

Dated: May 31, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PETITION OF PEOPLES NATURAL GAS COMPANY LLC FOR APPROVAL OF ITS ENERGY EFFICIENCY AND CONSERVATION PLAN</b>	: : : :	
	:	<b>Docket No. M-2017-2640306</b>
<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	: : : :	
<b>v.</b>	:	<b>Docket Nos. R-2018-3000124 C-2018-3001152</b>
<b>DUQUESNE LIGHT COMPANY</b>	: :	

---

**MOTION OF DUQUESNE LIGHT COMPANY FOR  
SIMULTANEOUS CONSIDERATION OF:**

- (1) THE PETITION FOR INTERLOCUTORY REVIEW OF DUQUESNE LIGHT COMPANY FILED APRIL 29, 2018 AT DOCKET NO. M-2017-2640306; AND**
  - (2) THE PETITION FOR INTERLOCUTORY REVIEW FILED MAY 22, 2018 BY THE PEOPLES NATURAL GAS COMPANY LLC AT DOCKET NOS. R-2018-3000124 *ET AL.***
- 

**I. INTRODUCTION AND OVERVIEW**

Pursuant to 52 Pa. Code § 5.103, Duquesne Light Company (“DLC” or “Company”) hereby moves that the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) consider simultaneously: (1) the Petition for Interlocutory Review and Answer of Material Questions filed by DLC at Docket No. M-2017-2640306 on April 29, 2018 (“DLC Petition”); and (2) the Petition for Interlocutory Review and Answer to Material Question filed by Peoples Natural Gas Company LLC (“PNG”) at Docket Nos. R-2018-3000124 *et al.* on May 22, 2018 (“PNG Petition”). Because this Motion would affect only the timing of the Commission’s consideration of the DLC Petition and not impact the substantive rights of any party, the Commission should waive the application of 52 Pa. Code § 5.103(c) and dispense with the filing

of answers to this Motion, as the Commission has authority to do pursuant to 52 Pa. Code § 1.2. Indeed, the Commission has authority to decide *sua sponte* that the DCL Petition and the PNG Petition should properly be considered at the same time. If, however, the Commission is disposed to provide an opportunity for other parties to file answers to this Motion, it should set a deadline that will allow answers to be filed expeditiously so that it can decide this Motion before it considers the PNG Petition. For the reasons set forth hereafter, in the interest of providing DLC the due process to which it is entitled, promoting fundamental fairness and reaching an appropriate resolution of both Petitions, the Commission should grant this Motion and consider the DLC Petition and the PNC Petition concurrently.

**The DLC Petition.** The DLC Petition seeks Interlocutory Review of an Initial Decision in *Petition of Peoples Natural Gas Company LLC for Approval of its Energy Efficiency and Conservation Plan* at Docket No. M-2017-2640306 (“PNG EEC Proceeding”) that improperly denied DLC the right to intervene in the PNG EEC Proceeding *in any capacity*, even though DLC is a customer of PNG; would be subject to the rate increases PNG proposed as part of its filing; and had proffered testimony addressing the prudence and reasonableness of specific costs PNG was seeking to recover from customers as well as other issues presented by PNG’s Petition in which DLC has a substantial, direct and immediate interest.

**The PNG Petition.** The PNG Petition seeks Interlocutory Review of an Interim Order that granted DLC’s Motion for Partial Judgment on the Pleadings and, consistent with applicable precedent, held that: (1) PNG could participate in DLC’s general rate case at Docket No. R-2018-3000124 (“DLC Base Rate Case”) in its capacity as a customer of DLC; but (2) PNG did not have standing to challenge Rider No. 16 for Back-Up Service to “non-utility generating facilities” because PNG was not eligible for service under that rider and was merely asserting the

interests of third-parties that could participate in their own right, including the only customer served under Rider No. 16, who is already a Complainant in this case.

There are a number of important reasons why the DLC Petition and the PNG Petition should be considered at the same time:

- Both Petitions involve DLC and PNG.
- Both Petitions require the Commission to address the issue of “standing” and to consider and apply a common body of operative legal principles.
- Considering the Petitions together will advance administrative efficiency by determining, at one time, the scope of participation of DLC and PNG in each respective proceeding.
- Because of the procedural posture of both proceedings (and, in particular, the fact that the evidentiary hearing in the PNG EEC Proceeding has already taken place), these issues should be resolved by the Commission as expeditiously as possible

## **II. BACKGROUND AND RELEVANT HISTORY**

### **A. The PNG EEC Proceeding**

1. PNG filed its Petition initiating the PNG EEC Proceeding on December 27, 2017. As its caption suggests, PNG is seeking Commission approval of a non-statutory energy efficiency and conservation plan that would authorize it to spend up to \$42.5 million, consisting of approximately \$25 million for four EEC programs and up to \$17.5 million for a customer-funded program to subsidize gas-fueled combined heat and power (“CHP”) projects that would be located in DLC’s service area and connected to its electric distribution system (“PNG Plan”). As a consequence, PNG’s CHP-subsidy program would increase PNG’s gas sales and enhance its net income between base rates cases while, at the same time, the cost of the subsidies would



be borne by customers, such as DLC, through the rate increase PNG also proposed, as explained below.

2. PNG's Petition is also a tariff filing proposing a new rate. Specifically, the Petition asks the Commission to approve tariff supplements that would establish a new Section 1307 automatic adjustment clause for two of PNG's divisions designed to surcharge gas distribution customers to recover all of the expenditures PNG would make under the PNG Plan. Notably, all of those expenditures would be deemed pre-approved if the Commission were to adopt PNG's Plan, as the Petition requests.

3. Although PNG's Petition includes a rate filing, PNG failed to provide notice to customers of its proposed rate increase as required by well-established appellate court precedent, which is discussed in DLC's Brief in support of the DLC Petition. Thus, before the Commission could issue a valid final order at the end of the PNG EEC Proceeding, it would have to direct PNG to correct this deficiency and afford previously un-noticed customers the right to be heard.

4. Although PNG's Petition proposed a voluntary plan that is not subject to any statutory or regulatory deadlines, PNG requested an expedited schedule designed to place its Petition on the PUC's agenda for the public meeting to be held on August 23, 2018. The presiding Administrative Law Judge granted PNG's request. As explained in DLC's Brief in support of the DLC Petition, the absence of customer notice coupled with the adoption of a needlessly expedited procedural schedule were material factors underlying the Administrative Law Judge's decision to deny DLC's Petition to Intervene in the PNG EEC Proceeding.

5. The Office of Small Business Advocate ("OSBA") and the Office of Consumer Advocate ("OCA") filed Answers to PNG's Petition as well as Notices of Appearance or Intervention on January 16 and 19, 2018, respectively.

6. A Prehearing Conference was held on January 26, 2018. At that time, a litigation schedule was established, which was subsequently memorialized in a Prehearing Order issued on February 5, 2018. Also on February 5, 2018, the Pennsylvania Oil & Gas Association filed a Petition to Intervene, which PNG did not oppose and which, therefore, was granted.

7. On March 12, 2018, DLC filed a Petition for Intervention. Although DLC eventually learned of the PNG EEC Proceeding despite the lack of requisite customer notice, DLC was not afforded an opportunity to participate in the Prehearing Conference and, consequently, the schedule was established without DLC's input. Nonetheless, DLC stated that it would accept the litigation schedule as it then existed. DLC averred, and it is uncontested, that DLC is a customer of PNG. DLC also averred that it had standing to intervene as a customer of PNG. DLC stated that it expected to address, among other issues, how incentive measures PNG proposed as part of its voluntary PNG Plan would be coordinated with measures in DLC's mandatory EEC Plan. Unlike PNG's proposed voluntary EEC Plan, DLC's mandatory EEC Plan has been approved by the Commission pursuant to Act 129 of 2008. DLC's expression of interest in the proceeding to address the coordination of measures between its approved EEC Plan and PNG's proposed EEC Plan was consistent with, and flowed directly from, PNG's own representations underscoring the importance of coordinating with DLC and other electric distribution companies "to combine marketing and delivery options" and to "address all aspects of efficiency at the same time."<sup>1</sup>

8. On March 29, 2018, PNG filed an Answer to DLC's Petition to Intervene in which it stated that it did not oppose DLC's intervention but sought to limit DLC's participation.

---

<sup>1</sup> PNG Plan, p. 17.

Specifically, PNG contended that the Administrative Law Judge should prohibit DLC from addressing any issues pertaining to how the voluntary PNG Plan's EEC measures would be coordinated with measures in DLC's EEC Plan, which DLC needs to implement in order to achieve the usage and demand reductions imposed by Act 129 or face stiff monetary penalties.

9. DLC filed a Motion asking the Administrative Law Judge to hold oral argument on PNG's request to limit DLC's participation in the PNG EEC Proceeding, which the Judge granted. Oral argument was held on April 9, 2018. At oral argument, PNG changed its position and asked the Administrative Law Judge to bar DLC from participating in the PNG EEC Proceeding *in any capacity*, including its capacity as a rate-paying customer seeking to test the reasonableness and prudence of costs that PNG claimed for recovery under its proposed Section 1307 adjustment clause, which was the subject of DLC's proffered direct testimony.<sup>2</sup>

10. On April 27, 2018, the Administrative Law Judge issued an Initial Decision. In his Initial Decision, the Administrative Law Judge rejected PNG's argument that DLC's Petition to Intervene was filed too late and made a specific determination that DLC's Petition to Intervene was, in fact and in law, timely.<sup>3</sup> Nonetheless, the Initial Decision granted PNG's request (made at oral argument) to bar DLC from participating in the PNG EEC Proceeding *in any capacity* and, therefore, denied DLC's Petition to Intervene in its entirety.

11. On April 29, 2018, DLC filed the DLC Petition, in which it posed five material questions for consideration by the Commission that arose directly from the April 27, 2018 Initial Decision.

---

<sup>2</sup> This statement was pre-marked as DLC Statement No. 2. See DLC Brief in support of the DLC Petition, pp. 6-7.

<sup>3</sup> Initial Decision, p. 5.

12. On May 10, 2018, DLC filed its Brief in support of its Petition for Interlocutory Review. In its Brief and in its letter-request accompanying its Brief, DLC asked that the Commission stay the PNG EEC Proceeding because: (1) the case is not subject to any statutory or regulatory deadlines; (2) absent a stay, the case would proceed on an expedited schedule without DLC's participation despite DLC's clear right to intervene both as a customer of PNG and as a party that had other substantial and immediate interests that would be directly affected if PNG's Petition were granted; and (3) a stay would not unduly delay the final outcome because PNG had failed to provide the requisite customer notice and, therefore, any order entered by the Commission at the end of the proceeding (other than a blanket denial of PNG's Petition) would not be valid.<sup>4</sup>

13. The OSBA and OCA filed Briefs supporting the DLC Petition. PNG filed a Brief opposing interlocutory review in which it reiterated its position that DLC, despite being a customer of PNG that would be subject to the rate increase PNG was proposing, had no right to participate in the PNG EEC Proceeding in any capacity.<sup>5</sup>

14. Without addressing DLC's concern that, absent the Commission's intervention, the case would proceed to a hearing on May 22, 2018, the Commission issued a Secretarial

---

<sup>4</sup> *Barasch v. Pa. P.U.C.*, 546 A.2d 1296, 1308 (Pa. Cmwlth. 1987) ("*Milesburg*"), requiring notice to customers by (at a minimum) bill-insert notices where a utility requested pre-approval to incur costs that it planned to subsequently recover under a Section 1307 adjustment clause, i.e., precisely what PNG requested in its Petition.

<sup>5</sup> In its Brief, PNG argued that Interlocutory Review was not an appropriate procedural vehicle and DLC should have filed "Exceptions" to the Initial Decision. Although PNG's position is not correct, the OCA and OSBA, out of an abundance of caution, filed "Exceptions" to the Initial Decision that included the substance of their Briefs in support of the DLC Petition. DLC filed a letter-request, also out of an abundance of caution, in which it asked that, if the Commission were to decide that Exceptions are the preferred procedural vehicle for reviewing the Initial Decision and preserving DLC's objections, it should treat the DLC Petition and DLC's Brief as "Exceptions," as the Commission is permitted to do pursuant to 52 Pa. Code § 1.2(a) and (c) and long-standing Commission precedent. The Exceptions filed by the OSBA and OCA and DLC's letter-request were all filed within the time for filing Exceptions to the Initial Decision. On May 29, 2018, PNG filed a response, styled as Reply Exceptions, in which it replied to the Briefs filed by DLC, the OCA and OSBA.

Letter on May 10, 2018 waiving the 30-day period set forth in 52 Pa. Code § 5.303 and extending the time for considering the DLC Petition for a period beyond thirty days. The Commission did not grant DLC's request to stay the proceeding, even though the evidentiary hearing in that case was scheduled to occur on May 22, 2018, as DLC emphasized in its request for a stay and in its Brief in support of its Petition for Interlocutory Review.

15. DLC is still awaiting disposition of the DLC Petition.

#### **B. DLC's Base Rate Case**

16. On March 28, 2018, DLC filed Supplement No. 174 to Tariff – Electric Pa. P.U.C. No. 24 (“Supplement No. 174”), which proposes changes in DLC's rates designed to produce an increase in electric distribution revenue of approximately \$133.8 million. Accompanying Supplement No. 174, DLC 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. DLC's supporting information included the written direct testimony of fifteen witnesses and the exhibits sponsored by those witnesses.

17. DLCs Tariff – Electric Pa. P.U.C. No. 24 includes the previously-approved Rider No. 16, which applies to the provision of electric distribution service (i.e., *not* electric generation service) to “non-utility generating facilities.”

18. Rider No. 16 sets forth the rates, terms and conditions at which DLC may furnish electric distribution service to non-utility generating facilities that meet a portion of a customer's load if the customer elects to be served under Rider No. 16. Rider No. 16 provides for two categories of distribution service. Supplementary Service is the electric distribution service used to deliver electricity that the customer 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 DLC's distribution system that the Company 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 (or is operating at less than its full generating capacity) because of forced or planned outages.

19. 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).

20. Under the current Rider No. 16, a customer with non-utility generating facilities pays for Back-Up Service at the Back-Up Service distribution charge set forth in that Rider. In order to avoid the intra-class and inter-class subsidies that would arise from the introduction of additional customer-owned generation eligible for Back-Up Service under Rider No. 16 in its current form, Supplement No. 174 includes proposed changes to Rider No. 16 to clarify its existing terms and conditions and to increase the distribution charge for "Back-Up Service" (as defined in the Rider). As proposed in Supplement No. 174, the Back-Up Service distribution charge is a price per kW of demand, which is applied to the Back-Up Billing Determinants specified in Rider No. 16. The proposed Back-Up Service distribution charge, while still *lower* than the applicable rate for Supplementary Service, was established based upon a fully allocated class cost of service study submitted with DLC's supporting data.

21. PNG 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. PNG's service area overlaps, to a significant degree, the certificated service territory of DLC.

22. On April 10, 2018 PNG filed a Complaint against the DLC Base Rate Case.<sup>6</sup>

23. Paragraph No. 8 of the PNG Complaint alleges that DLC'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."

24. Paragraph Nos. 10-13 of the PNG Complaint contain averments addressed to Rider No. 16 and its possible future impact on CHP projects in PNG's 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). PNG 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).

25. PNG's original Complaint did not aver that it owns any non-utility generation, that it is receiving service under Rider No. 16, or that it had applied for service under Rider No. 16.<sup>7</sup> The sole interest expressed in the Complaint as the alleged basis for contesting Rider No.

---

<sup>6</sup> PNG's Complaint was subsequently consolidated with the Commission's investigation of the DLC Base Rate Case.

<sup>7</sup> However, throughout this case, PNG's position has been a moving target as it changed material averments with each successive pleading, as explained in DLC's Brief in support of the DLC Petition and as summarized in subsequent paragraphs of this Motion. On May 25, 2018, PNG made its latest pronouncement in an "Amended" Complaint where, for the first time, it revealed that it had all along been planning to build a 35 kW CHP facility as part of an on-going construction project at its "Etna field shop," PNG did not explain why it waited until May 25, 2018 to tell the parties and the Commission about its allegedly long-planned addition of a CHP generator to its field

16 was that PNG “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.”<sup>8</sup>

26. PNG’s Complaint also stated that the “projects” it would be “pursuing” may be targets of its customer-funded “voluntary energy efficiency and conservation plan” that was filed for approval in the PNG EEC Proceeding.<sup>9</sup> PNG’s EEC Plan has yet not been approved by the Commission and, therefore, any plan PNG may have for “pursuing” such projects under the umbrella of its EEC plan must await PUC approval.

27. PNG’s Complaint asserted that PNG intended to explore whether Rider No. 16 would be a “barrier” to CHP deployment and, therefore, would be inconsistent with the Commission’s desire, expressed in its *Final Policy Statement on Combined Heat and Power* to “encourage” cost-effective CHP projects.<sup>10</sup> These statements, as well as discovery subsequently issued by PNG to DLC, indicated that PNG intended to use Rider No. 16 as the wedge issue for converting the DLC Base Rate Case into a far-ranging examination of a host of CHP-related

---

shop project. In any event, as explained in DLC’s Brief in Opposition to the PNG Petition, PNG’s proposed CHP project does not meet the criteria for “non-utility generating facilities” under Rider No. 16.

<sup>8</sup> PNG Complaint, Paragraph No. 9.

<sup>9</sup> *Id.*

<sup>10</sup> *Final Policy Statement On Combined Heat and Power*, Docket No. M-2016-2530484 (Apr. 5, 2018). There is no evidence that a properly designed back-up service rate would be a “barrier” to the development of CHP. There are much larger and far more material factors that actually determine whether the economics of CHP would provide a financial justification for a customer to undertake a CHP project. The Commission itself acknowledged that parties have expressed legitimate concerns over matters outside the control of both the Commission and electric distribution companies that create meaningful hurdles to CHP development, including justifying the capital investment required for a CHP project, due to the long pay-back periods involved. *Id.* at 3. As evidenced by the experience of customers considering whether a CHP project would be cost-effective, the Commission could add to that list the cost of expanding gas facilities to provide necessary capacity to accommodate CHP fuel demands; electric power prices that have generally been trending lower; air permitting issues; the customer’s cost of capital; and operational issues (CHP customers have to be responsible for operating and maintaining their generation facilities). *See* Duquesne Light Comments at Docket No. M-2016-2530484 at 4 (May 31, 2016).



issues that were not implicated by Rider No. 16. To cite a particularly illuminating example, PNG's Interrogatories (Set II) included two questions that exhibited PNG's intent to use the DLC Base Rate Case to prospect for possible candidates for its own CHP program, which is clearly improper under any circumstances.<sup>11</sup>

28. On May 1, 2018, DLC filed a Motion for Partial Judgment on the Pleadings. In its Motion, DLC stated that it was not opposing PNG's right to intervene in the DLC Base Rate Case to pursue issues that are legitimately within its zone of interest as a customer of DLC. Rather, DLC sought a judgment that PNG did not have standing to contest Rider No. 16 because it was not a customer receiving service under Rider No. 16, it had not averred that it would be a customer that would receive service under Rider No. 16, and it was merely asserting the interests of third-parties that could intervene in their own right (and some of whom did). DLC also explained that PNG's claim that its gas sales would increase if more CHP projects were deployed was the kind of interest that both the Commission and the Commonwealth Court had previously held is neither "direct" nor "immediate" and, therefore, cannot confer standing.<sup>12</sup> Moreover, as PNG's alleged interest fundamentally is the expression of a desire to pursue its gas marketing efforts, it is not an interest that should be interjected into an electric distribution company's base rate case.

29. On May 11, 2018, PNG filed an Answer to DLC's Motion. In its Answer, PNG attempted to make an improper *de facto* amendment to its Complaint by alleging, for the first time, that it was planning to own and operate the kinds of CHP projects referenced in Paragraph

---

<sup>11</sup> PNG Interrogatory (Set II) No. 12 asked: "Has Duquesne estimated the potential for additional CHP deployment in its service territory? If so, please provide that estimate and related documents." PNG Interrogatory (Set II) No. 15 asked: "Please describe the efforts that Duquesne has taken to identify any potential CHP project hosts in its service territory." DLC served Objections to these interrogatories on May 24, 2018.

<sup>12</sup> See Motion for Partial Judgment on the Pleadings, pp. 9-16.

No. 9 of its Complaint “including projects with universities, health care systems, manufacturing facilities, residential apartment complexes and government building.”<sup>13</sup> Moreover, even if the *de facto* amendment PNG attempted were given any credence (and it should not), PNG-owned generating facilities would not meet the availability criterion of Rider No. 16, which specifies that Rider No. 16 only applies to “non-utility generating facilities.”

30. On March 22, 2018, the Administrative Law Judge issued an Interim Order granting DLC’s Motion for Partial Judgment on the Pleadings. The Administrative Law Judge correctly determined that her decision had to be rendered on the basis of “well-pleaded facts” in PNG’s Complaint, and “[w]hen viewing all the facts as averred by Peoples in light of the requirements to prove standing, Peoples does not have standing to contest Tariff Rider No. 16.”<sup>14</sup> The Administrative Law Judge noted that, although PNG lacked standing to challenge Rider No. 16, “[i]n all other regards, Peoples has standing as a customer to participate in the base rate proceeding . . .”<sup>15</sup>

31. On May 22, 2018, PNG filed the PNG Petition. It requested “expedited” treatment of the PNG Petition, notwithstanding the fact that the procedures for interlocutory review as set forth in the Commission’s regulations already impose an expedited process when a Petition for Interlocutory Review is filed. On May 24, 2018 a Secretarial Letter was issued advancing the date for filing briefs on the PNG Petition to May 29, 2018. On May 29, 2018, that

---

<sup>13</sup> PNG did not indicate whether it intended to own and operate those projects as a regulated utility service (and include its associated investment in rate base) or start an entirely new unregulated line of business that would operate within its limited liability company structure in parallel with its utility operations. Either alternative raises significant issues that would be highly relevant to assessing the CHP program PNG proposed in the PNG EEC Proceeding. However, in that proceeding, PNG did not disclose that it intended to enter the business of owning and operating CHP projects to serve third parties nor that it apparently intended to use customer-funded subsidies for these projects.

<sup>14</sup> Interim Order, pp. 7-8.

<sup>15</sup> Interim Order, p. 8.

deadline was moved to May 31, 2018. On May 25, 2018, PNG filed an Amended Complaint in the DLC Base Rate Case.

### **III. THE DLC PETITION AND THE PNG PETITION SHOULD BE CONSIDERED AT THE SAME TIME**

32. The DLC Petition and the PNG Petition involve the same parties. More importantly, both Petitions raise issues that require the Commission to analyze, interpret and apply appellate and Commission authority on the issue of “standing” to intervene in a PUC proceeding. They also require the Commission, applying the same legal authorities, to determine how it will define the legitimate scope of interest of a party. Defining a party’s zone of interest is necessary to ascertain if that party would be “aggrieved” by a proposed action and, therefore, whether it is presenting a real case or controversy for the Commission to adjudicate<sup>16</sup> or just positing a hypothetical.<sup>17</sup>

33. Given the commonality of the issues presented by the DLC Petition and the PNG Petition, they clearly should be considered together, if only for purposes of administrative efficiency. More importantly, by reviewing the two Petitions at the same time, the Commission can carefully identify, analyze and discuss similarities and differences that have legal significance in order to reach appropriate decisions in *both* cases based on the facts in each. Because of the procedural posture of both proceedings – and, in particular, the fact that an

---

<sup>16</sup> DLC certainly is a real party in interest that would be aggrieved by the relief PNG is requesting in the PNG EEC Proceeding inasmuch as it is a customer of PNG and would be subject to the Section 1307-based rate increases that PNG is asking the Commission to approve. DLC also is a real party in interest in its role as an electric distribution company due to the impacts upon its mandatory electric utility energy efficiency and conservation program from a gas utility program that, while styled as an energy efficiency and conservation plan, would increase gas usage while targeting reduced electricity consumption as a principal alleged benefit.

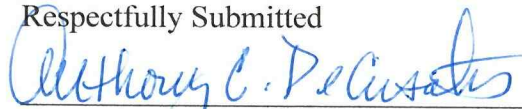
<sup>17</sup> DLC submits that PNG is not a real party in interest as to Rider No. 16 because, among other reasons, it is not eligible for service under that Rider.

evidentiary hearing has already taken place in the PNG EEC Proceeding – these issues should be resolved as soon as possible.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant this Motion for Simultaneous Consideration and issue concurrent decisions on the DLC Petition and the PNG Petition.

Respectfully Submitted



Tishekia E. Williams (Pa. ID. No. 208997)  
Michael Zimmerman (Pa. ID. No. 323715)  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
412.393. 1514 (bus)  
412.393.6268 (bus)  
412.393.5897 (fax)  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

Anthony C. DeCusatis (Pa. I.D. 25700)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5034 (bus)  
215.963.5001 (fax)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)

*Counsel for Duquesne Light Company*

Dated: May 31, 2018