

# Morgan Lewis

**Anthony C. DeCusatis**  
Of Counsel  
+1.215.963.5034  
anthony.decusatis@morganlewis.com

June 7, 2018

## **VIA eFILING**

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

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

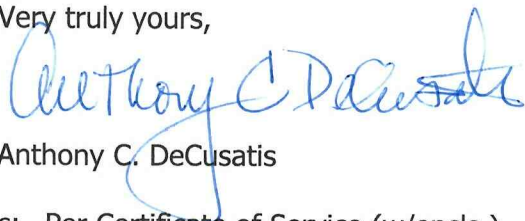
Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding are the **Preliminary Objections of Duquesne Light Company to the Amended Complaint of Peoples Natural Gas Company LLC.**

Copies are being served upon the persons listed on the enclosed Certificate of Service 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.)  
David T. Fisfis (w/encls.)  
Tishekia E. Williams (w/encls.)  
Michael Zimmerman (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**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
v.	:	<b>Docket Nos. R-2018-3000124</b>
	:	<b>C-2018-3001152</b>
	:	
<b>DUQUESNE LIGHT COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing **Preliminary Objections of Duquesne Light Company to the Amended Complaint of Peoples Natural Gas Company LLC** 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)

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

Sharon E. Webb  
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)

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*

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*

Mark C. Szybist  
Natural Resources Defense Council  
1152 15th Street N.W., Suite 300  
Washington, DC 20005  
[mszybist@nrdc.org](mailto:mszybist@nrdc.org)  
*Counsel for Natural Resources  
Defense Council*

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

Pamela C. Polacek  
Matthew L. Garber  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[ppolacek@mcneeslaw.com](mailto:ppolacek@mcneeslaw.com)  
*Counsel for Duquesne Industrial Intervenors*

Derrick Price Williamson  
Barry A. Naum  
Spilman Thomas & Battle PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)  
*Counsel for Walmart*

Joseph Otis Minott  
Logan Welde  
Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
*Counsel for Clean Air Council*

Renardo L. Hicks  
Dilworth Paxson LLP  
2 North 2nd Street, Suite 1101  
Harrisburg, PA 17101  
[rhicks@dilworthlaw.com](mailto:rhicks@dilworthlaw.com)  
*Counsel for ChargePoint, Inc.*

**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: June 7, 2018

*Counsel for Duquesne Light Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Peoples Natural Gas Company LLC</b>	:	
	:	
<b>v.</b>	:	<b>Docket Nos. R-2018-3000124</b>
	:	<b>C-2018-3001152</b>
<b>Duquesne Light Company</b>	:	

---

**NOTICE TO PLEAD**

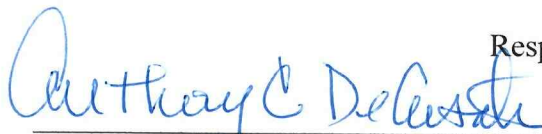
---

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 pursuant to 52 Pa. Code § 5.63 that a responsive pleading must be filed within twenty (20) days of the date of service of the following **Preliminary Objections**.

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: June 7, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Peoples Natural Gas Company LLC</b>	:	
	:	
<b>v.</b>	:	<b>Docket Nos. R-2018-3000124</b>
	:	<b>C-2018-3001152</b>
<b>Duquesne Light Company</b>	:	

---

**PRELIMINARY OBJECTIONS OF DUQUESNE LIGHT COMPANY TO THE  
AMENDED COMPLAINT OF  
PEOPLES NATURAL GAS COMPANY LLC**

---

Pursuant to 52 Pa. Code § 5.101, the Respondent, Duquesne Light Company (“DLC” or the “Company”) hereby submits Preliminary Objections to the Amended Complaint filed by Peoples Natural Gas Company LLC (“PNG”) on May 25, 2018 in the above-captioned docket.

**I. OVERVIEW**

There is one substantive difference between PNG’s Amended Complaint and its original Complaint filed on April 10, 2018. PNG now avers, for the first time, that it will own and operate a 35 kW generating facility at its Etna field shop.<sup>1</sup> Based on that new averment, PNG implies that it will be eligible for Back-Up Service under Rider No. 16 of DLC’s tariff.<sup>2</sup> However, the Amended Complaint does not expressly aver that PNG will be eligible for service under Rider No. 16 and, more importantly, it does not address how PNG could be eligible for

---

<sup>1</sup> Amended Complaint ¶ 11.

<sup>2</sup> *Id.*

Rider No. 16, which, by its terms, applies only to “service to non-utility generating facilities.” The 35 kW generating facility that PNG avers it is building will, upon completion, be a utility generating facility inasmuch as it will be owned by a public utility and, as such, would be included in the utility’s rate base and paid for by PNG’s customers.<sup>3</sup> Therefore, the Amended Complaint is factually and legally insufficient and, as a consequence, it is objectionable under 52 Pa. Code §§ 5.101(a)(3) and (4).

Additionally, DLC files these Preliminary Objections pursuant to 52 Pa.C.S. § 5.101(a)(7) on the grounds that the Amended Complaint does not aver facts that would confer standing on PNG to contest Rider No. 16, as PNG asserts it plans to do in this case.<sup>4</sup> In that regard, the Administrative Law Judge (“ALJ”) in the Interim Order issued on May 22, 2018, has already found that the facts averred in PNG’s original Complaint do not establish PNG’s standing to contest Rider No. 16. Although PNG filed a Petition for Interlocutory Review of the Interim Order on May 22, 2018, its Petition is still pending before the Commission. Unless reversed by the Commission, the Interim Order is controlling legal authority in this case with respect to PNG’s standing to contest Rider No. 16 based on averments in the Amended Complaint that are the same or similar to the averments of its original Complaint. As explained hereafter, the new averments in the Amended Complaint also are inadequate to confer standing on PNG to contest Rider No. 16.

---

<sup>3</sup> Whether the Pennsylvania Public Utility Commission (“Commission”) would permit PNG’s investment in the 35 kW generating facility to be included in its rate base would, of course, ultimately depend on whether the Commission determines that PNG’s investment is a prudent and reasonable expenditure considering all of the facts and circumstances and PNG’s actual use of the generating facility.

<sup>4</sup> See Amended Complaint ¶ 19 and p. 8.

## II. BACKGROUND

1. On April 10, 2018, PNG filed its original Complaint in this case. In that Complaint, PNG indicated that it would contest the terms of Rider No. 16, which sets forth the eligibility criteria, terms and rates for Back-Up service to customers with “non-utility generating facilities.” PNG asserted that it has standing to intervene because it is a general service customer of PNG. PNG also asserted that it has standing to contest the terms of Rider No. 16 because it is promoting the development of combined heat and power (“CHP”) projects in its service territory, which would increase its sales levels, revenues and net income, and PNG believes that the changes to Rider No. 16 DLC is proposing to mitigate intra-class and inter-class subsidization could have an effect on customers’ economic decisions about building CHP.<sup>5</sup>

2. On May 1, 2018, DLC filed a Motion for Partial Judgment on the Pleadings in which it requested a judgment that, based on the averments of its original Complaint, PNG did not have standing to contest the terms of Rider No. 16. In broad summary, the Motion stated that PNG could not claim standing to protect or vindicate the rights of third-parties (in this case the customers or prospective customers who would own and operate non-utility generating facilities that qualify for service under Rider No. 16). The Motion also stated that PNG’s averments that it could sell either more or less gas to current or prospective customers that are eligible for service under Rider No. 16<sup>6</sup> is not an interest that is either direct or immediate and, therefore, is also insufficient to confer standing. DLC cited and discussed in its Motion for Partial Judgment on the Pleadings the relevant Commission and appellate court authority supporting its position on both points.

---

<sup>5</sup> See Complaint ¶¶ 9-11.

<sup>6</sup> See Complaint ¶ 9.



3. On May 11, 2011, PNG filed an Answer to the DLC's Motion for Partial Judgment on the Pleadings. In its Answer to the Motion, and as a *de facto* amendment to its original Complaint, PNG alleged that some of the CHP and distributed generation projects that it would be "pursuing" and "developing" to serve "universities, health care systems, manufacturing facilities, residential apartment complexes, and government buildings" would be "owned" by PNG.<sup>7</sup>

4. On May 22, 2018, the ALJ issued the Interim Order that granted DLC's Motion for Partial Judgment on the Pleadings. The Interim Order holds that PNG does not have standing to contest DLC's Rider No. 16 based on the averments in PNG's original Complaint. The Interim Order found that PNG could not establish standing to contest Rider No. 16 based on its status as a general service customer or claims that its sales levels for gas deliveries to its current or prospective gas customers would be affected by DLC's proposed changes in Rider No. 16. In addition, the Interim Order rejected PNG's claims made for the first time in its Answer to DLC's Motion for Partial Judgment on the Pleadings that some of the CHP projects that would serve the enterprises listed in Paragraph No. 9 of its Complaint would be owned by PNG, stating:

Applying these criteria, one can see more clearly that Peoples' interest as an owner of a CHP enterprise is not at risk because Peoples does not currently own a CHP project. Peoples' investment as an owner in a CHP enterprise is not an immediate risk. Peoples may have invested sums of money to investigate and prepare to own a CHP enterprise, but it does not currently have an ownership interest, according to its formal complaint. If Peoples were to own a CHP enterprise, then Peoples could experience an adverse impact as a direct result from the proposed action of Duquesne Light, but that factual scenario was not alleged by Peoples. When viewing all the facts as averred by Peoples in light

---

<sup>7</sup> PNG Answer to Motion for Partial Judgment on the Pleadings, p. 3, where PNG referenced Paragraph No. 9 of its original Complaint and stated that some of those projects "are anticipated to be owned by PNG."

of the requirements to prove standing, Peoples does not have standing to contest Tariff Rider No. 16.<sup>8</sup>

5. Also on May 22, 2018, PNG filed a Petition for Interlocutory Review of the Interim Order. PNG's Petition is pending before the Commission.

6. On May 25, 2018, PNG filed the Amended Complaint.

7. The Amended Complaint largely repeats the averments of PNG's original Complaint. The principal new substantive averment in the Amended Complaint is found in Paragraph No. 11, which states as follows:

Peoples is currently installing a 35 kW reciprocating engine combined heat and power ("CHP") project to provide baseload electricity to its Etna field shop ("Peoples Etna CHP"). Peoples will require Back-Up Service from Duquesne pursuant to Rider No. 16 for electricity during maintenance and unplanned outages. The building is currently under construction and Peoples has applied for new electric service at this location. Duquesne is considering whether new transformers will be needed to service Peoples and a development across the street. Peoples expects to complete installation of the CHP unit, and occupy the building, by the end of 2018 (i.e., before the end of the fully projected future test year ("FPFTY") being used by Duquesne Light in its base rate filing). Attached hereto as Appendix A are photographs of the construction site for the Peoples Etna CHP.

### III. PRELIMINARY OBJECTIONS

8. The Amended Complaint implies, although it does not expressly state, that PNG would be eligible for service under Rider No. 16.<sup>9</sup> The Amended Complaint does not, however, contain any averments that set forth the basis on which PNG contends the generating facility it

---

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

<sup>9</sup> See Amended Complaint ¶¶ 11, 13 and 14 and p. 8.

avens it is building, and will own, at its Etna field shop would be eligible for service under Rider No. 16.

9. The generating facility that PNG avers it is building and will own at its Etna field shop will be owned by a public utility and, as such, would be part of the utility rate base (if found to be a prudent and reasonable investment) on which PNG would be permitted to earn a return and to recover depreciation through the rates charged to its gas customers.

10. Rider No. 16 by its terms applies to “service to non-utility generating facilities.”

11. The Amended Complaint does not address the basis on which a generating facility owned by a public utility would be eligible for service under Rider No. 16. Additionally, the Amended Complaint does not address other eligibility criteria that apply to Rider No. 16. Consequently, the Amended Complaint is factually and legally insufficient in that it does not aver facts that would provide PNG standing to contest Rider No. 16 in view of the holding of the Interim Order and the express terms of Rider No. 16. Accordingly, the Amended Complaint is objectionable under both 52 Pa. Code § 5.101(a)(3) and 52 Pa. Code § 5.101(a)(4).

12. As previously explained, the Interim Order was issued on May 22, 2018. Although PNG has filed a Petition for Interlocutory Review of the Interim Order, its Petition is still pending. Unless reversed by the Commission, the Interim Order is controlling legal authority in this case with respect to PNG’s standing to contest Rider No. 16 based on averments in its Amended Complaint that are the same or similar to the averments of its original Complaint. Accordingly, PNG’s averments in its Amended Complaint that are the same or similar to those in its original Complaint are subject to the same deficiencies identified in the Interim Order and are inadequate to confer standing on PNG to contest Rider No. 16.

13. The principal new substantive averments in the Amended Complaint are made in Paragraph No. 11, which was quoted and discussed above. The facts set forth in Paragraph Nos. 8-10 of these Preliminary Objections are incorporated herein by reference as if set forth at length.

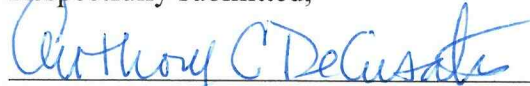
14. For the reasons set forth in Paragraph Nos. 9, 10, 11 and 13, even if the new averments set forth in Paragraph No. 11 of the Amended Complaint were accepted as true, PNG will not own generating facilities that are eligible for service under Rider No. 16. Accordingly, such averments do not provide a valid basis for PNG to assert standing to contest Rider No. 16, and PNG's Amended Complaint is objectionable under 52 Pa. Code § 5.101(a)(7) to the extent it is offered as the basis for PNG to contest the terms of Rider No. 16.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, Duquesne Light Company's Preliminary Objections should be granted and the ALJ should issue an Order finding that Peoples Natural

Gas Company LLC does not have standing to contest Rider No. 16 based on the averments its Amended Complaint.

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

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

Dated: June 7, 2018

*Counsel for Duquesne Light Company*

DB1/ 97845856.2