**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2018-3000124

: R-2018-3000829

:

Office of Consumer Advocate : C-2018-3001029

Jason Dolby : C-2018-3001074

Peoples Natural Gas Company LLC : C-2018-3001152

Office of Small Business Advocate : C-2018-3001566

Duquesne Industrial Intervenors : C-2018-3001713

Leonard Coyer : C-2018-3002424

NRG Energy Center Pittsburgh LLC : C-2018-3002755

:

v. :

:

Duquesne Light Company :

1308(d) Proceeding :

# **SEVENTH INTERIM ORDER**

**Denying Respondent’s Preliminary Objections**

**Against Peoples Natural Gas Company LLC**

**dated June 7, 2018**

Before

Katrina L. Dunderdale

Administrative Law Judge

INTRODUCTION

This Interim Order denies Duquesne Light Company’s Preliminary Objections dated June 7, 2018 which it filed against Peoples Natural Gas Company LLC at Docket No. C‑2018-3001152 averring Peoples Natural Gas Company LLC lacked standing to participate in the base rate proceeding initiated by Duquesne Light Company at Docket No. R‑2018-3000124.

HISTORY OF THE PROCEEDING

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. In Supplement No. 174, Duquesne Light proposes, *inter alia*, to raise the rate for backup service for non-utility generating facilities from the current rate of $2.50 per kWh to $8.00 per kWh, (or 220%). Duquesne Light proposes to retain the existing tariff language that customers who exceed capability reservation will be charged two times the applicable charge per kilowatt hour but proposes to increase the charge from the current rate of $5.00 per kWh to $16.00 per kWh.

On April 10, 2018, Peoples Natural Gas Company LLC (Peoples) filed a formal complaint against Duquesne Light at Docket No. C-2018-3001152. Peoples objected to provisions in Duquesne Light’s base rate proceeding concerning Tariff Rider 16. 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 the 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.

On May 1, 2018, Duquesne Light filed a Motion 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 for Partial Judgment), with a Notice to Plead, at Docket No. C-2018-3001152. Duquesne Light indicated Peoples lacked standing to pursue a claim on behalf of Peoples’ customers. Duquesne Light cited to 52 Pa.Code § 5.102 and § 5.103 as authority for its Motion and averred there is no legal basis in Peoples’ formal complaint to justify the Commission requiring Duquesne Light to defend its actions

relative to Tariff Rider No. 16 as it relates to Peoples. Duquesne Light asked for a determination that Peoples did not have standing to address any issues related to Tariff Rider No. 16.

On May 11, 2018, Peoples filed its Answer to the Motion for Partial Judgment. Peoples argues the Motion for Partial Judgment should be treated as a preliminary objection. Citing to *Silvestri v. Verizon Pennsylvania, Inc.*, Docket No. C-2010-2174497 (Opinion and Order entered July 1, 2011), Peoples avers that, as a preliminary objection, dismissal is warranted only when the dismissal is free from doubt, and the movant prevails only based on Peoples’ assertions as a matter of law, assuming all factual allegations in Peoples’ formal complaint are true. Peoples asserts it is pursuing distributed generation projects, some of which Peoples anticipates will be owned by Peoples.

Peoples further contended that when it owns a distributed generation project, Peoples will be a customer of Duquesne Light receiving service through Tariff Rider 16. Peoples contends its pursuit of further development of and ownership in distributed generation projects gives it a direct, immediate and substantial interest in Duquesne Light’s proposed increase in rates under Tariff Rider 16. Peoples argues that Duquesne Light’s proposed changes will directly affect the economic viability of the CHP and other distributed generation projects, and may render these projects uneconomically feasible, if the proposed rate changes are approved by the Commission.

Thereafter, on May 22, 2018, the presiding officer issued the Interim Order Granting Respondent’s Motion for Partial Judgment on the Pleadings. In the Interim Order, the presiding officer determined Peoples did not have standing to contest Tariff Rider 16 but did have standing to pursue its other objections against the proposed base rate increase.

Also on May 22, 2018, Peoples filed with the Commissioners a Petition for Interlocutory Review of the Interim Order dated the same date. In its Petition, Peoples asked the Commission to answer a material question. In essence, the question which Peoples asked the Commission to answer in the affirmative was: did the Interim Order err in granting the Motion for Partial Judgment on the Pleadings filed by Duquesne Light Company, and preclude Peoples – as a developer of CHP projects – from contesting a proposed 220% increase in the Back Up Rate for CHP projects? Peoples argued not only that it had standing to proceed with its complaint but also contended the Commission should permit a CHP developer (such as Peoples) to pursue its questions within the context of the rate proceeding because it would create a fuller evidentiary record which would illustrate better for the Commission what revenues and expenses are likely to be realized during the course of the FPFTY used by Duquesne Light in the rate proceeding.

On May 25, 2018, Peoples filed an Amended Formal Complaint with a Notice to Plead pursuant to 52 Pa.Code § 5.91(a). Peoples avers it is installing a 35- kilowatt reciprocating engine combined heat and power (CHP) project to provide baseload electricity to its Etna field shop (Peoples Etna CHP). Peoples averred it would need Back-Up Service from Duquesne Light pursuant to Tariff Rider 16 for electric service during maintenance and unplanned outages at the Peoples Etna CHP. Peoples further averred it applied for new electric service at the Peoples Etna CHP from Duquesne Light but Duquesne Light has not determined yet if it will install new transformers. Peoples’ stated expectation is to complete construction in time to occupy and operate the CHP unit by December 31, 2018, and pointed out that December 31, 2018 is prior to the end of the fully projected future test year being used by Duquesne Light in its base rate proceeding.

On June 7, 2018, Duquesne Light filed its Answer and New Matter to the Amended Complaint. Duquesne Light denied knowing that Peoples is installing a 35-kilowatt CHP in its Etna field shop location and further denies that Peoples will require backup service. Duquesne Light asserted it started an analysis on whether to install new transformers near the Peoples Etna CHP before Peoples revealed a plan to add a generating facility at its Etna field shop. Specifically, Duquesne Light denied Peoples will qualify for electric service through Tariff Rider 16 because any generation at the planned Peoples Etna CHP will be a utility generating facility and Tariff Rider 16 is only available to non-utility generating facilities. In New Matter, Duquesne Light contended Peoples lacked standing to file a complaint against Duquesne Light’s proposed changes to Tariff Rider 16.

Also on June 7, 2018, Duquesne Light filed Preliminary Objections to the Amended Complaint. Duquesne Light requested the Commission dismiss the Amended Complaint because Peoples lacks standing in Duquesne Light’s base rate proceeding to contest Tariff Rider 16. Duquesne Light pointed out the Amended Complaint repeated the averments from the original complaint except to add new substantive averments that Peoples has started installation on the Peoples Etna CHP and will require electric service from Duquesne Light under Tariff Rider 16. Specifically, Duquesne Light contended the Amended Complaint did not aver any new facts that would be sufficient to establish standing. Duquesne Light averred Tariff Rider 16 applies only to electric service provided to non-utility generating facilities and Peoples’ new generating facility will be a utility generating facility, and the Amended Complaint failed to aver or address the basis on which Peoples believes its new generating facility which is owned by a public utility would be eligible for service under Tariff Rider 16. Duquesne Light asked the presiding officer to reaffirm the ruling made in the Interim Order dated May 22, 2018 that determined Peoples did not have standing to contest Tariff Rider 16.

On June 14, 2018, the Commission issued an Order on Peoples’ Petition for Interlocutory Review dated May 22, 2018. In its Order, the Commission reversed the Interim Order dated May 22, 2018. The Commission determined that full participation of Peoples would facilitate a complete evidentiary record. Accordingly, the Commission answered the following material question in the affirmative: did the Interim Order err in granting the Motion for Partial Judgment on the Pleadings filed by Duquesne Light Company, and preclude Peoples – as a developer of CHP projects – from contesting a proposed 220% increase in the Back Up Rate for CHP projects?

This matter is now ripe for a disposition on Duquesne Light’s Preliminary Objections.

DISCUSSION

Duquesne Light filed preliminary objections and requested the Commission dismiss the Amended Complaint filed by Peoples at Docket No. C-2018-3001152, on the basis Complainant lacks standing in Duquesne Light’s base rate proceeding at Docket No. R-2018-3000124.

Section 701 of the Code provides, in pertinent part:

[A]ny person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 Pa. C.S. § 701. In order to have standing to pursue a formal complaint before the Commission under Section 701, the complainant must have a direct, immediate, and substantial interest in the subject matter of the controversy.[[1]](#footnote-1)

The Commission’s regulations make preliminary objections available to parties and allow for those objections to be filed in response to any pleading except a motion or prior preliminary objections. A party filing preliminary objections must include a notice to plead, must state specifically the legal and factual grounds relied upon and limit the objections to the following:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to Chapter 5, Title 52 of the Pennsylvania Code, or include scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

1. Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa.Code § 5.101(a).

Here, Duquesne Light, *inter alia*, challenges the standing of Peoples to contest the proposed changes to Duquesne Light’s Tariff Rider 16, in the context of Duquesne Light’s base rate proceeding (at R-2018-3000124). Duquesne Light avers Peoples failed to demonstrate how it is a “party in interest” as required by the Public Utility Code, 66 Pa.C.S.A. § 701, and Commission regulations.[[2]](#footnote-2)

On June 14, 2018, the Commission issued its Opinion and Order answering the Petition for Interlocutory Order filed by Peoples on May 22, 2018. The Commission agreed with Peoples that Peoples, as a developer of CHP projects, had standing to file a formal complaint against Duquesne Light and question the reasonableness, lawfulness and justness of the Tariff Rider 16. The Commission’s Opinion and Order answered the central and only issue in Duquesne Light’s preliminary objections, namely, whether Peoples has standing to participate in the rate proceeding. The Commission has determined Peoples has standing to participate fully. Accordingly, the preliminary objections of Duquesne Light will be denied in the Ordering Paragraph below as moot.

Analysis

The core concept of the question of standing is that a person or entity is “aggrieved” if adversely affected in any way by the matter the person or entity seeks to challenge and, if so aggrieved, then that person or entity has standing to obtain a judicial resolution of the challenge. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). Peoples is an entity that will be adversely affected, at least potentially, if Duquesne Light’s proposed changes to its base rate are instituted.

Peoples alleged sufficient facts in the Complaint and the Amended Complaint that, if proven, would justify the issuance of an Initial Decision against Duquesne Light for failure to provide adequate and reasonable electric service and to comply with the Commission’s regulations as concerns Tariff Rider No. 16. There is no longer a sufficient basis to preclude Peoples from participating fully in Duquesne Light’s base rate proceeding, including any proposed changes to Tariff Rider No. 16. The Preliminary Objections of Duquesne Light Company are denied in the ordering paragraph below. Furthermore, the Ordering Paragraph in the Interim Order dated May 22, 2018 has been reversed by order of the Commission in the June 14, 2018 Opinion and Order.

ORDER

THEREFORE,

IT IS ORDERED:

That the Preliminary Objections of Duquesne Light Company are denied.

Date: June 20, 2018

Katrina L. Dunderdale

Administrative Law Judge

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

*(Revised 6/18/18)*

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1. *Municipal Authority of the Borough of West View v. Pa. Pub. Util. Comm’n*, 41 A.3d 929 (Pa.Cmwlth. 2012) (standing cannot be conferred to vindicate the rights of third parties). [↑](#footnote-ref-1)
2. *See,* 52 Pa.Code § 1.8. [↑](#footnote-ref-2)