BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF CHESAPEAKE UTILITIES CORPORATION FOR A GENERAL INCREASE IN ITS NATURAL GAS RATES AND FOR APPROVAL OF CERTAIN OTHER CHANGES TO ITS NATURAL GAS TARIFF (Filed DECEMBER 21, 2015)	)	PSC DOCKET NO. 15-1734

ANSWER OF THE DELAWARE ASSOCIATION OF ALTERNATIVE ENERGY PROVIDERS, INC. TO PETITION FOR INTERLOCUTORY APPEAL

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March 21, 2016

Pursuant to 26 *Del. Admin. C.* § 2.16.3, the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") hereby submits the following answer to the petition of Chesapeake Utilities Corporation ("Chesapeake") for interlocutory review of DE PSC Order No. 8860 (the "Order"), granting DAAEP's Petition for Leave to Intervene in PSC Docket No. 15-1734.

SUMMARY OF DAAEP'S POSITION

1. Through its petition, Chesapeake seeks to reverse the policy and history of the Delaware Public Service Commission (the "Commission") permitting competitors to intervene in all types of utility cases, and specifically permitting DAAEP to intervene in Chesapeake cases. (*See* DE PSC Order No. 8210). In doing so, Chesapeake points to no new substantive Delaware public policy reasoning, but instead erroneously asserts that DAAEP fails to satisfy the Commission's Rule 2.9.1.3 intervention requirements. Chesapeake is incorrect and, for similar reasons that DAAEP was permitted to intervene in Dockets Nos. 97-72T, 05-322, 07-186 and 12-292, the Hearing Examiner was correct to permit DAAEP to intervene in this proceeding for the reasons set forth in the Order and herein.

GROUNDS SUPPORTING DENIAL OF INTERLOCUTORY APPEAL

2. Contrary to the imaginative language in Chesapeake's appeal, DAAEP does not seek to "highjack" this proceeding or seek for this Commission to "safeguard" its interests. Instead, as recognized in the Order, DAAEP seeks to intervene to represent its interests and contribute its "unique industry perspective" with respect to the "new service offerings" proposed by Chesapeake, as well as to ensure that Chesapeake will comply with the settlement agreements that it has previously entered with as DAAEP. (See Order ¶¶ 7, 23 and 25).

3. In asserting that DAAEP's intervention in this proceeding will be a "substantial injustice" and "detriment to the public interest," Chesapeake states that "As demonstrated by

their intervention in Chesapeake's last rate case, the Association's participation accomplished nothing other than needlessly complicating the discovery process and wasting the Commission's resources." (Appeal, ¶ 3). First, this conclusory assertion fails to reflect the full history of DAAEP's participation in Chesapeake dockets that involve service expansion. Second, Chesapeake's assertion of needless intervention in PSC Docket No. 07-186 is contrary to the plain language of the Hearing Examiner's Report in that proceeding recommending approval of the settlement agreement. Such report described that, notwithstanding DAAEP not filing any written testimony, as the matter progressed through the final settlement negotiations and proposal DAAEP focused on its particular issues, participated in the settlement negotiations and ultimately signed the settlement agreement. (*See* DE PSC Order No. 7434, appending the Report and Recommendations of the Hearing Examiner). Further, the settlement agreement reserved to each party the right to submit additional testimony if the settlement did not become final.

4. Chesapeake then turns to the crux of its appeal, which is for this Commission to follow two recent Maryland rulings not allowing "unregulated competitors" to intervene on the basis of being improper or not in the public interest.[1] (Appeal, ¶ 3). The Hearing Examiner rejected this argument by Chesapeake and this Commission should as well.

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[1] In its appeal, Chesapeake suggests "[n]umerous other state utility commissions," including New Jersey and Pennsylvania, have held that it is not in the public interest to allow competitors of public utilities to intervene in rate cases and other proceedings. In doing so, Chesapeake cites to New Jersey and Pennsylvania decisions from 1965, 1977 and 1996. These cases do not support the broad assertion made by Chesapeake, and no survey of state intervention policy has been cited by Chesapeake. (For instance, *see* Illinois Commerce Commission, Application for Approval of Rider 33, Designated Extension Service Area, Docket No. 15-0218, December 4, 2015 Notice of Administrative Law Judge's Ruling (granting Illinois Propane Gas Association's petition to intervene)(attached as Exhibit 1). In addition, all of the New Jersey, Pennsylvania and Maryland decisions cited by Chesapeake occurred before this Commission's 2007 decision in Order No. 7325, and thus were known at that time and should be given no weight by this Commission.

5. Chesapeake first raises a misleading argument that this Commission has no authority to protect DAAEP's competitive interest. Of course, DAAEP is not asking for the Commission to do so. Further, the suggested conclusion from this argument, that DAAEP should not be allowed to intervene in Chesapeake proceedings, is errant and fails to recognize this Commission's broad authority to consider the lawfulness of any new rate. (*See* 26 *Del. C.* §§ 201(a) and 305). Development of a full record allows this Commission to implement the Delaware public policy of balancing "the interests of the consuming public and of the regulated public utilities," which regulated utilities are "the product of many years of unhappy experience with the evils of uncontrolled monopoly, and the resulting ills visited on the public by speculative schemes, unwarranted competitive practices, and unsatisfactory service." *See Delmarva Power & Light Co. v. City of Seaford*, 575 A.2d 1089, 1096-97 (Del. 1990).

6. Second, Chesapeake argues that the issues raised by DAAEP are adequately represented by others in this proceeding, asserting that the Commission Staff and DPA better represent any protectable interest in Chesapeake's proposed new service offerings. This is contrary to the Hearing Examiner's finding that based on such new service offerings, each of which has details which are not fully known, DAAEP's interests may not be adequately represented by other parties in this proceeding. This finding recognized that in PSC Order No. 7325 this Commission held that DAAEP's interest in the docket was firmly established by the potential for a previous settlement agreement to be modified in the proceeding and DAAEP's status as a party in a closed Chesapeake service expansion docket.

7. Chesapeake fails in its appeal to address the basis of the Order's finding, instead surmising that DAAEP's participation in prior proceedings is "irrelevant". This is not surprising, as both of the factors that previously firmly established DAAEP's interest may be present in this

case - Chesapeake's expansion service offerings and previous settlement agreements. As the Hearing Examiner recognized, only discovery in this docket will provide the specifics of the scope of, and how Chesapeake intends to implement, the proposed new service offerings. (Order, ¶ 14).

8. DAAEP's intervention is supported as it has a direct interest in the outcome of this proceeding as such outcome will have a direct impact upon DAAEP's members, and their employees, who may be significantly harmed by the "new service offerings" proposed by Chesapeake in its Application. As provided in its Petition and recognized in the Order, DAAEP's interest in Chesapeake's expansion-related proceedings before the Commission have been firmly established over the past 15 years.

9. Chesapeake's assertion that DAAEP will not provide meaningful participation in this case is incorrect. Instead, the Order correctly states "[a]s the representative of some of Chesapeake's competitors with "a unique industry perspective" of Delaware's natural gas and propane industries, and as a signatory to two (2) prior Settlement Agreements, I find that DAAEP's participation as an intervenor would substantially contribute to each party's analysis of the rather novel service offerings presented in Chesapeake's Application and developing the evidentiary record." (Order, ¶ 25).

10. Third, Chesapeake argues that DAAEP's intervention would not further the public interest. This argument by Chesapeake is meritless, and based on unfounded assertions and its own interpretation of the "public interest".[2] DAAEP, having a direct and very real interest in

[2] As Chesapeake did in its opposition to DAAEP's intervention, it cites to Delaware Senate Joint Resolution No. 7, signed July 31, 2104. (Appeal, ¶ 7, fn. 8). Chesapeake's public assertions regarding 2014 SJR No. 7 are incorrect. As this Commission is aware, natural gas availability in southern Delaware has been studied and of interest to the State since 2003 or

insuring that Chesapeake's expansion policies are not contrary to established law and/or rules and regulations of the Commission, advances such goals by intervening and is in a unique position to do so. As this Commission has previously stated in granting DAAEP's Petition to Intervene in another gas docket, intervention is appropriate because DAAEP "represents interests [that] are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed" and "granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit." (*See* PSC Docket No. 95-44, Order No. 4014, attached as Exhibit 2).

11. Accordingly, consistent with the Commission's liberal granting of intervention and the previous Commission proceedings in which DAAEP has intervened, the Order should be affirmed by this Commission and DAAEP allowed to intervene.

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Dated: March 21, 2016

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before. Notwithstanding this interest, DAAEP has been an intervening party in Chesapeake dockets, and no shift in public interest has occurred.

CERTIFICATE OF SERVICE

It is hereby certified that the Answer of the Delaware Association of Alternative Energy Providers, Inc. to the Petition for Interlocutory Appeal of Order No. 8860 in PSC Docket 15-1734 has been served this 21st day of March, 2016 as indicated below:

VIA DELAFILE

Donna Nickerson, Secretary
Delaware Public Service Commission
Suite 100, Cannon Building
861 Silver Lake Blvd.
Dover, Delaware 19904

VIA ELECTRONIC MAIL

Service List (dated 3/11/2016)

Todd A. Coomes (#4694)

Exhibit 1

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

December 4, 2015

Northern Illinois Gas Company d/b/a Nicor Gas Company	:	
	:	15-0218
Application for Approval of Rider 33, Designated Extension Service Area.	:	**SERVED ELECTRONICALLY**

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given by the Administrative Law Judge ("ALJ") that Illinois Propane Gas Association's ("IPGA") Petition to Intervene and Motion for Leave to File Rebuttal Testimony is granted, and Nicor Gas should make every effort to immediately respond to IPGA's First Set of Data Requests.

Galena Territory Association, Inc. ("Galena") and Eagle Ridge Resort & Spa ("Eagle Ridge") filed a joint response to IPGA's Motion for Leave to File Rebuttal Testimony requesting, in part, that should the ALJ allow IPGA to file rebuttal testimony, then Galena and Eagle Ridge should also be allowed to file additional rebuttal testimony. According to the case schedule, September 25, 2015, was the date for Nicor Gas to file its rebuttal testimony. The testimony filed on September 25, 2015, by Galena and Eagle Ridge was not filed in accordance with the case schedule, and therefore should have been accompanied by a Motion for Leave to File Testimony. Moreover, the testimony was not designated as either direct or rebuttal testimony. Rather than striking the September 25, 2015, testimony by Galena and Eagle Ridge, the ALJ allowed the testimony as filed and considered it early filed rebuttal testimony by an intervenor at the status hearing held on October 6, 2015. Counsel for Galena and Eagle Ridge did not object the designation of its September 25th testimony as rebuttal testimony, or otherwise request that the September 25th testimony be considered direct testimony, with the opportunity to file rebuttal testimony as an intervenor at the same date that Staff is to file its rebuttal testimony. Therefore, Galena's and Eagle Ridge's request to file additional rebuttal testimony is denied.

Sincerely,

Elizabeth A. Rolando
Chief Clerk

EAR:lkb
Administrative Law Judge Jorgenson

cc: FAD
Ms. Harden
Ms. Ebrey
Mr. Knepler

Exhibit 2

2 of 98 DOCUMENTS

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY TO RESTRUCTURE GAS SERVICES (FILED MARCH 1, 1995)

PSC DOCKET NO 95-44, ORDER NO 4014

Delaware Public Service Commission

1995 Del PSC LEXIS 76

May 23, 1995

PANEL: [*1] Robert J. McMahon, Chairman; Nancy M Norling, Commissioner; Robert W Hartley, Commissioner; Joshua M Twilley, Commissioner; John R McClelland, Commissioner

OPINION: ORDER NO. 4014

AND NOW, to-wit, this 23rd day of May, 1995,

WHEREAS, on March 1, 1995, The Delmarva Power & Light Company filed the above-captioned application with the Commission seeking approval to restructure its gas services by initiating new services, terminating certain existing services, changing its rate design, modifying its Gas Cost Adjustment mechanism, and changing certain provisions of the Rules and Regulations of its Gas Service tariff; and,

WHEREAS, the Commission by Order No 3961, dated March 21, 1995 provided that in order to be timely all petitions for intervention concerning this matter should be filed on or before April 24, 1995; and,

WHEREAS, The Delaware Association of Alternative Energy Providers, an unincorporated association consisting of Burns & McBride Inc., Schagringas Co , Keen Compressed Gas Co , Boulden Inc. and Diamond Fuel Oil on May 19, 1995 petitioned the Commission for leave to intervene in this matter setting forth reasons for the untimely nature of said petition; [*2] and,

WHEREAS, the Commission on May 23, 1995 heard and considered the presentation and representations of the Delaware Association of Alternative Energy Providers and determined that the Association represents interest are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed; and,

WHEREAS, The Commission has afforded the applicant the opportunity to objection to the granting of such intervention petition and in the absence of any such objection has concluded that the granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit; now therefore,

IT IS ORDERED:

1 That the intervention petition for leave to intervene filed in the above-captioned matter on May 19, 1995 on behalf of the Delaware Association of alternative Energy Providers, an unincorporated association consisting of Burns & McBride Inc , Schagringas Co , Keen Compressed Gas Co , Boulden Inc and Diamond Fuel Oil is hereby granted and approved effective with the date hereof

2 [*3] That the Commission reserves the jurisdiction and authority to enter such other or further Orders in this

matter as may be deemed necessary or proper

BY ORDER OF THE COMMISSION:

/s/ Robert J McMahon, Chairman

/s/ Nancy M. Norling, Commissioner

/s/ Robert W. Hartley, Commissioner

/s/ Joshua M Twilley, Commissioner

/s/ John R McClelland, Commissioner

Legal Topics:

For related research and practice materials, see the following legal topics:
Energy & Utilities LawUtility CompaniesOwnership & RestructuringEnergy & Utilities LawUtility CompaniesRatesGeneral OverviewEnergy & Utilities LawUtility CompaniesService Terminations