

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
CHESAPEAKE UTILITIES CORPORATION )  
FOR AN INCREASE IN ITS NATURAL GAS )  
RATES AND SERVICES, AND FOR APPROVAL ) PSC DOCKET NO. 07-186  
OF CERTAIN OTHER CHANGES TO ITS )  
NATURAL GAS TARIFF )  
(OPENED JULY 6, 2007) )

**ORDER NO. 7325**

This 4<sup>th</sup> day of December, 2007, the Commission determines and Orders the following:

1. On August 27, 2007, the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") petitioned for intervention in this matter in order to protect the interests of its members, several of whom are competitors of Chesapeake Utilities Corporation ("Chesapeake").<sup>1</sup> On September 6, 2007, Chesapeake objected to DAAEP's petition arguing that intervention in a utility's rate case by a non-customer, for the purpose of furthering its private interest as a competitor of the utility, is improper. With its objection, Chesapeake requested that, if DAAEP were granted intervention, certain limitations be placed on the scope of its participation and that DAAEP be required to pay the costs incurred by Chesapeake, Commission Staff, and the Division of the Public Advocate ("DPA") resulting from its

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<sup>1</sup>Rules of Practice and Procedure ("Practice Rules"), Rule 21.

intervention. On September 12, 2007, DAAEP replied to Chesapeake's objection and, on September 17, 2007, Chesapeake responded to DAAEP's reply.

2. By letter dated October 19, 2007, the Hearing Examiner granted DAAEP's request for intervention but conditioned DAAEP's participation on its payment of its share of the litigation costs incurred by Chesapeake, Staff, and DPA. As grounds for requiring that DAAEP pay the costs caused by its intervention, the Hearing Examiner reasoned that because DAAEP's members are not customers of Chesapeake and because they do not contribute to the Commission's regulatory fund, it would be unfair to burden Chesapeake's ratepayers (who ultimately pay litigation expenses) with the cost of DAAEP's intervention, especially when DAAEP's intervention is not designed to serve the interests of the ratepayers.<sup>2</sup>

3. On October 23, 2007, DAAEP filed an interlocutory appeal<sup>3</sup> of the Hearing Examiner's requirement that it be responsible for the litigation costs incurred as a result of its intervention. Chesapeake responded to DAAEP's appeal on October 29, 2007.

4. At its meeting on November 6, 2007, the Commission considered DAAEP's interlocutory application. After hearing the parties' oral arguments, which included Staff's support of DAAEP's position, the Commission granted DAAEP's appeal and struck the Hearing Examiner's condition that DAAEP pay the costs incurred by Chesapeake, Staff, and DPA as a result of DAAEP's intervention. The Commission

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<sup>2</sup>Hearing Exam. Letter (Oct. 19, 2007), at 8-9.

<sup>3</sup>Practice Rule 28.

believes that its past practice of allowing intervention by a utility's competitors, without requiring the competitors to pay for the litigation costs caused by their intervention, should be followed here, especially when DAAEP's interest in this matter is firmly established by: (a) the prospect that this case will result in the modification of a settlement agreement to which DAAEP is a signatory (approved in PSC Docket No. 97-72T); and (b) DAAEP's status as a (former) party to the recently-closed PSC Docket No. 05-322, the main issue of which has been transferred to this case. Furthermore, the Hearing Examiner can minimize the litigation costs caused by DAAEP's intervention by disallowing discovery from DAAEP that is unrelated to its interest in the case or that is otherwise unduly burdensome.

Now, therefore, **IT IS ORDERED:**

1. That the Hearing Examiner's decision dated October 19, 2007, that allows the Delaware Association of Alternative Energy Providers, Inc. to intervene in this docket, is affirmed. The decision of the Hearing Examiner directing that, as a condition of such participation, the Delaware Association of Alternative Energy Providers, Inc. pay the litigation costs incurred by Chesapeake Utilities Corporation, Commission Staff and the Public Advocate as a result of its intervention is reversed, and such requirement is struck.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary