

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) PSC Docket No. 15-1734
OTHER CHANGES TO ITS NATURAL GAS)
TARIFF (FILED DECEMBER 21, 2015))
)

ORDER NO. 8860

GRANTING DAAEP INC.'S INTERVENTION

AND NOW, this 11th day of March, 2016, pursuant to the authority granted me in PSC Order No. 8848 dated January 19, 2016, this Hearing Examiner having considered the Petition for Leave to Intervene ("the Petition") filed by the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") on February 25, 2016, which Chesapeake Utilities Corporation ("Chesapeake") opposes;¹

NOW, THEREFORE,

1. The Petition for Leave to Intervene is GRANTED.
2. In PSC Order No. 8848, the Commission ordered that the deadline for filing a Petition for Intervention was February 26, 2016. (See Order, ¶8.)
3. Thus, DAAEP's Petition to Intervene ("the Petition") was timely filed. (See Title 26, Rule 2.9.2, D.A.C.)

¹ Chesapeake did not oppose the intervention of Delmarva Power & Light Company in this Docket. (See PSC Order No. 8857, March 1, 2016, granting intervention.)

4. Pursuant to Title 26, Rule 2.9.1.3, D.A.C, of the Commission's *Rules of Practice and Procedure*:

(b) "[A petition to intervene shall set forth] a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest...." (emphasis supplied.)

NOW, THEREFORE,

1. DAAEP is an incorporated association of a number of Chesapeake Utility Corporation's ("Chesapeake's") competitors. (Petition, ¶¶ 5, 10-11.) DAAEP has named six (6) of its members. (DAAEP Reply, fn. 1) In its Petition, DAAEP alleges that its members "share a similar interest in the distribution and sale of alternative energy supplies and services to their customers [including propane] for use in heating and other residential and commercial uses." (Petition, ¶11.)
2. DAAEP's Petition also alleges that "[t]he docket will have a direct impact upon DAAEP's members, and their employees, who may be significantly harmed" if the Commission approves Chesapeake's rate Application. (*Id.*) Finally, as required by Title 26, Rules 2.9.1.2, D.A.C of the Commission's *Rules of Practice and Procedure*, DAAEP alleges that it "has a direct interest in the outcome of the proceeding, and the interests of the members of DAAEP are inadequately represented in this proceeding without intervention." (*Id* at ¶10.)

3. According to DAAEP, it should be permitted to intervene in this Docket because Chesapeake has proposed "new service offerings" which seek to expand Chesapeake's market potentially to the disadvantage of DAAEP's members. (*Id.* at ¶¶3-4.) DAAEP further alleges that Chesapeake's expansion "has been before the Commission on multiple occasions since 2007" (*Id.* at ¶4.) In both the 2007 and 2012 dockets, DAAEP was permitted to intervene either by the Commission or the Hearing Examiner. (PSC Order No. 7325 (Dec. 4, 2007), *docket resolved by a Settlement Agreement* i.e. PSC Docket No. 07-186); (HE's Order No. 8210 (August 22, 2012) (*docket resolved by a Settlement Agreement* i.e. PSC Docket 12-292)
4. Moreover, DAAEP was permitted to intervene in two (2) additional dockets involving Chesapeake, Dockets 97-72T and 05-322. (DAAEP Reply, ¶1.) According to DAAEP, "DAAEP's interest in Chesapeake's expansion-related dockets before the Commission has been firmly established over the past 15 years." (*Id.* at ¶3.)
5. In addition to protecting its members' interests, in this Docket, DAAEP is primarily concerned with two (2) of Chesapeake's proposed offerings: a) a Municipal Natural Gas Expansion Program; and b) a Temporary Gas Storage Tank Program. (Petition, ¶¶¶ 3,7,8,9; DAAEP Reply, ¶2.)
6. These two (2) programs are briefly described in Paragraph 7 of Chesapeake's Application, and are described in more

detail in the pre-filed testimony of Shane Breakie, Chesapeake's Director of Energy Services. According to DAAEP, without intervention and thereafter discovery, crucial details of Chesapeake's offerings will not be disclosed to DAAEP which represents many of Chesapeake's competitors in the gas market. (Petition, ¶¶13-14.)

7. DAAEP seeks to monitor this Docket to ensure that Chesapeake has and will comply with the parties' Settlement Agreements in Docket No. 07-186 (PSC Order No. 7434, Sept. 2, 2008) and Docket No. 12-292 (PSC Order No. 8479 Nov. 5, 2013). These Settlement Agreements collectively involve expansion revenue calculations based upon an agreed upon model, the Internal Rate of Return Model or "IRRM" relating to rate base inclusion of main extensions, main extension requirements for expansion, an audit reviewable in this Docket, and new rates for a designated "expansion area" in Sussex County. (*Id.* at ¶9; DAAEP Reply, ¶5; This Order, §7, *infra.*)
8. DAAEP argues that that the parties' Settlement Agreements in two (2) recent Chesapeake dockets could be affected by the Municipal Natural Gas Expansion Program. (*Id.* at ¶9.) In the parties' Settlement Agreement in Docket 12-292, the "expansion area" for Expansion Area Residential Rate Services-1 and 2, EGS (Expansion Area General Service) and EMVS (Expansion Area Medium Volume Service) was limited to specific areas in Sussex County. Chesapeake's current

proposal may or may not seek to expand that expansion area in Sussex County (and Kent County) at those rates as the Application does not state that the Municipal Program is limited to the previously agreed upon expansion area with those rates. (PSC Order No. 8479, (Nov. 5, 2013), §12 & Exh. C.)

9. Specifically, in Docket No. 12-292, for these four (4) rates, the parties agreed that "the southeastern Sussex County, Delaware Expansion Area is defined as the area east of Chesapeake's district regulator station located on Route 9 in Lewes, Delaware that is connected to Chesapeake's distribution main and any area that is connected to Chesapeake's distribution main behind the three (3) Eastern Shore Natural Gas Transmission Pipeline City Gates located in Dagsboro, Frankford, and Selbyville, Delaware." (PSC Order No. 8479, Exh. "A," ¶12.)
10. According to Chesapeake's current Application, this Program broadly "applies to municipalities and unincorporated towns ... seeking to extend gas distribution service into designated areas within the town limits." (Shane Breakie, Chesapeake's Director of Energy Services, p.4.²) Under this program, among other things, the Company would advance the town the funds necessary to complete the project and the

² I hereby take administrative notice of Mr. Breakie's testimony filed with the Commission. (Commission Rule 2.13.1 provides that the "Commission may consider Delaware Uniform Rules of Evidence as a guide"; see Del. R. Evid. 202(d)(1)(B)) re Judicial Notice. Chesapeake has the right to request to be heard by me as to this issue pursuant to Del. R. Evid. 202(e). If Chesapeake files an Interlocutory Appeal of this Order without making this request, I will assume that it has waived this right.

town is required to pay the funds back within six (6) years after the mains are installed. (Breakie, p.12.)

11. DAAEP also questions Chesapeake's proposal to fund the Municipal Natural Gas Expansion Project through a Regulatory Asset as a precursor to including it in Chesapeake's rate base. (Petition, ¶¶ 8,9; Breakie, p.3.) The Company maintains that this program "fits within existing Tariff language Rule and Regulation 6.3 Financial Contributions" addressing Contributions In Aid Of Construction ("CIAC"), the Company instead seeks to create a Regulatory Asset. (Breakie, p.12; 4th Rev. Tariff Sheet 12.2 Nov. 5, 2013.)
12. DAAEP essentially argues that the Commission must examine whether Chesapeake may create a Regulatory Asset deferring it now to its balance sheet and not reporting it for tax purposes while reserving the right to later seek to include it in rate base. (Petition, ¶¶7,8.) Under certain limited circumstances, the Commission has permitted Regulatory Assets, although to date, the Commission simply has never had the opportunity to address a Regulatory Asset like Chesapeake is proposing.
13. Next, Chesapeake owns an unregulated propane subsidiary, Sharp Propane, which competes with DAAEP's members, and according to DAAEP, the Application does not outline whether Sharp Propane and/or Chesapeake is participating to some extent in Chesapeake' proposed Temporary Gas Storage

Program. (*Id.* at ¶7.) DAAEP argues that Chesapeake "has the ability in this Docket to place its affiliate on equal footing with the members of DAAEP." (Reply, ¶7.)

14. This Temporary Gas Storage Program would allow temporary propane (or CNG) to be used for finished developments for which the natural gas infrastructure is not yet completed. (Petition, ¶7.) The specifics of how this temporary propane program will work, its duration at each site, and which safety precautions are being taken, are not described in the Application, but will certainly be addressed in discovery.
15. DAAEP questions whether Chesapeake may include these costs in rate base, and whether it is "illegal subsidization of new customers by old customers." (Petition, ¶8; see pre-filed testimony of Shane Breakie, Chesapeake's Director of Energy Services, pp.3-4.) Specifically, Mr. Breakie's pre-filed testimony states that "the Company proposes to revise its IRR[M] economic test to allow for the costs of utilizing temporary gas storage tanks and equipment conversion costs to be included in the costs of a particular project..." (Breakie, p.4.)
16. Chesapeake unsuccessfully attempts to prevent DAAEP's intervention by arguing that this is a base rate case. DAAEP persuasively argues that 26 *Del. C.* §303(a) "does not speak to rates alone but also includes any regulation, practice or measurement which is unjust, unreasonable,

unduly preferential, or unjustly discriminatory or otherwise in violation of law." (Reply, ¶12.)

17. For purposes of considering the merits of DAAEP's Petition, I assume as true the representations made therein and in its pre-filed Testimony. I find that DAAEP has satisfied the intervention requirements of Title 26, Rule 2.9, D.A.C, of the Commission's *Rules of Practice and Procedure*.

18. This Commission has always construed its intervention rules liberally in favor of permitting interventions by business competitors, unincorporated groups and non-customer individuals with environmental interests, and homeowner's associations in rate cases, in order to continue to foster the Commission's transparency.³ (See DAAEP Reply, §10.) Commission Staff and the Public Advocate have not objected to DAAEP intervening in this Docket.

19. First, DAAEP's arguments as to why it should be permitted to intervene in this Docket are virtually the same reasons why the Commission permitted DAAEP to intervene in PSC Docket No. 07-186 after Chesapeake objected and why, as the Hearing Examiner, I permitted DAAEP to intervene in Docket No. 12-292, after Chesapeake objected. (See PSC Order 7325 (Dec. 4, 2007) & PSC Order No. 8210 (Aug. 22, 2012, *respectively*.) In both prior dockets, Chesapeake primarily

³ Chesapeake cites two (2) dockets in which the Maryland Public Service Commission denied business competitors from intervening in CPCN dockets, but the Maryland Commission granted the competitors "interested person status" whereby the competitors could receive and review evidence but were not permitted to formally present evidence, cross-examine witnesses or file documentary evidence or pleadings. (Chesapeake, ¶18.) However, this Commission has interpreted its Intervention rules as, if intervention is granted, full intervention is allowed unless "just cause" to do otherwise occurs after intervention is granted, for example in the case of discovery abuse.

argued what it does in this Docket, specifically 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." (PSC Order 7325, §1.)

20. According to DAAEP, it should be permitted to intervene in this Docket and conduct discovery because Chesapeake has proposed "new service offerings" which essentially seek to expand Chesapeake's market potentially at the expense of DAAEP's and Chesapeake's two (2) signed Settlement Agreements.
21. Specifically, in PSC Order No. 7325 (Dec. 4, 2007), the Commission permitted DAAEP to intervene in that service expansion docket holding that "DAAEP's interest in this matter is firmly established by a) the prospect that this case [PSC Docket No. 07-186] 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."
22. In Docket No. 12-292, as the Hearing Examiner, I found that "the Commission holding in 2008 applied because DAAEP was a signatory to the 2008 Settlement Agreement and the issues from the prior expansion document will now be addressed in Docket 12-292, along with Chesapeake's proposed

modifications." (PSC Order No. 8210 (Aug. 22, 2012), §13.)

The parties also entered into a Settlement Agreement at the conclusion of Docket No. 12-292.

23. For the reasons described in DAAEP's Petition and described above, I find that Chesapeake's proposed Municipal Natural Gas Expansion and Temporary Gas Storage Tank Programs, each which has details which are not fully known now, including the Municipality Expansion Area, are why DAAEP's interest may "not be adequately represented by other parties to this proceeding," as required by Commission Rule 2.9.1.3.
24. Chesapeake argues that DAAEP is attempting to "stifle competition," however I find that, as argued by DAAEP, it is simply trying to understand the Application which, like every other rate application filed by a large utility, does not contain all of the details of these programs for DAAEP to completely understand the Company's proposed offerings, and their potential effect on DAAEP, its members and employees. DAAEP has extensive knowledge of the propane and natural gas industries in Delaware, both past and present, and as a signatory to two (2) prior Settlement Agreements, and thus is entitled to intervene in this Docket.
25. Although Staff and the Public Advocate are obviously equipped to address the regulatory asset, rate base, and customer subsidization issues, as 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. (See PSC Order No. 4014 (May 23, 1995) (permitting DAAEP to intervene in Delmarva Power gas docket for these reasons; Reply §8.))

26. As argued by DAAEP, I also find that DAAEP's intervention as to these issues "would be in the public interest," as required by Commission Rule 2.9.1.3. (*Id.* at ¶7.) Chesapeake's argument that, through Senate Joint Resolution No. 7 signed by Governor Markell, in which the Delaware legislature has sought to expand natural gas use into unserved areas in Kent and Sussex Counties while recognizing that "natural gas has been replacing fuel oil and coal" does not persuade me otherwise as to DAAEP's right to intervene. (See 147th Gen. Assembly; legislative history.)
27. On July 31, 2014, the legislature expressed its desire that DNREC and DIDO attempt to establish a public-private partnership to expand natural gas downstate to lower energy costs and attract business. (*Id.*) However, nowhere in that legislation does the legislature state that it intended for the Commission to aid a regulated natural gas distributor like Chesapeake in attempting to begin to virtually

extinguish the economic interests of alternative fuel dealers and the economic interests of Kent County and Sussex County residents who do not reside near Chesapeake's mains and who rely upon alternative fuels. (*Id.*) I attach Senate Joint Resolution 7 as "Attachment 1" hereto.

28. If the Commission does not grant DAAEP's intervention, it would not be following the two (2) prior Settlement Agreements between the parties entered into following interventions, the Commission's broad intervention rules, and the Commission's policy of liberally granting interventions.
29. When the Commission deliberates after discovery and the evidentiary hearings in this base rate case are concluded, the Commission will be faced with many rate and program implementation issues as to Chesapeake's proposed offerings, which offerings should be included in rate base and when, and how Chesapeake's offerings should be reconciled with Senate Joint Resolution No. 7. At this early stage of this Docket, it is premature to deny this Intervention Petition.
30. Finally, if Chesapeake finds that Confidential or Proprietary information becomes involved in this Docket, Chesapeake may utilize Commission Rules 1.11 and 2.9.4 to request that I as the Hearing Examiner protect that information from unlawful disclosure to DAAEP. Chesapeake can also use a Confidentiality Agreement where appropriate.

31. In conclusion, for the reasons described above, the Petition for Leave to Intervene filed by the Delaware Association of Alternative Energy Providers, Inc. is GRANTED. If Chesapeake files an Interlocutory Appeal of this Order to the Commission pursuant to Commission Rule 2.16, it is required to do so by 5 p.m. on Wednesday, March 16, 2016.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script that reads "Mark Lawrence". The signature is written in black ink and is positioned above a horizontal line.

Mark Lawrence
Senior Hearing Examiner

ATTACHMENT 1

SPONSOR: Sen. Marshall & Rep. Mulrooney & Sen. Bonini &
Rep. Ramone

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE JOINT RESOLUTION NO. 7

REQUESTING THAT DELAWARE ECONOMIC DEVELOPMENT OFFICE AND DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL EXAMINE ISSUES AND OPPORTUNITIES RELATED TO A NATURAL GAS PIPELINE EXTENSION FROM NEW CASTLE COUNTY INTO KENT AND SUSSEX COUNTIES.

WHEREAS, the "Blue Collar" Task Force was composed of four legislators, five cabinet secretaries, eight representatives of business and labor groups throughout the state, and three additional public appointed members; and

WHEREAS, the Task Force met as a group and additionally held public hearings throughout Delaware to listen to the concerns of citizens and local businesses, both large and small; and

WHEREAS, the Task Force recognized that natural gas has been replacing fuel oil and coal for producing energy and electricity; and

WHEREAS, the Task Force received testimony that the lack of easily available natural gas in Kent and Sussex affects the cost of energy and our ability to attract manufacturing businesses; and

WHEREAS, the Task Force found that the creation of a gas line extension from New Castle County could be achieved through a public-private partnership that would lower energy cost for both businesses and individual homeowners; and

WHEREAS, the Task Force concluded that such an extension would capitalize on the state's natural resources, promote reductions in the cost of doing business, increase the general perception of Delaware as encouraging reasonable growth, and provide a strategic infrastructure project that will create local jobs; and

WHEREAS, the Task Force recommends DEDO and DNREC take the lead to work with private sector providers to develop a plan for implementation of such a pipeline extension;

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 147th General Assembly of the State of Delaware, with the approval of the Governor, that DEDO and DNREC report to the General Assembly their preliminary findings and recommendations including a timeline regarding the extension of a natural gas pipeline to Kent and Sussex Counties by June 1, 2014.

SYNOPSIS

This joint resolution directs DEDO and DNREC to take the lead to work with private sector providers to develop a plan for implementation of such a pipeline extension, as recommended by the "Blue Collar" Task Force.

Author: Senator Marshall