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File #: 167128

May 21, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company
Docket Nos. R-2018-3000124, etc.

Dear Secretary Chiavetta:

Enclosed please find the Answer of Duquesne Light Company to the Expedited Motion to Compel Responses of the Bureau of Investigation and Enforcement in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy, Esquire

ADK/skr
Enclosure

cc: Certificate of Service
Honorable Katrina L. Dunderdale

CERTIFICATE OF SERVICE
(Docket No. R-2018-3000124)

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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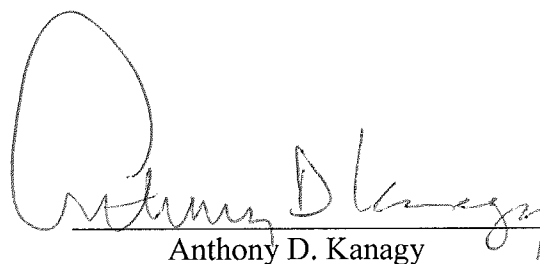
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Date: May 21, 2018


Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No. R-2018-3000124
Office of Consumer Advocate	:	Docket No. C-2018-3001029
Peoples Natural Gas Company LLC	:	Docket No. C-2018-3001152
Jason Dolby	:	Docket No. C-2018-3001074
James Fedell	:	Docket No. C-2018-3001473
Office of Small Business Advocate	:	Docket No. C-2018-3001566
Duquesne Industrial Intervenors	:	Docket No. C-2018-3001713
	:	
v.	:	
	:	
Duquesne Light Company	:	

**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE EXPEDITED MOTION TO COMPEL RESPONSES
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files this Answer, pursuant to 52 Pa. Code § 5.342 and the discovery rules adopted by Administrative Law Judge Katrina L. Dunderdale (the “ALJ”) for this proceeding, to the Expedited Motion to Compel¹ (“Motion”) filed by the Bureau of Investigation and Enforcement (“I&E”) on May 15, 2018. As explained below, I&E’s Motion should be denied because Duquesne Light provided I&E with a copy of the Company’s state tax return and the relevant portions of the federal tax return, along with the option to view the entire consolidated federal tax return.

¹ Duquesne Light notes that the subject discovery requests are not On the Record Data Requests within the meaning of 52 Pa. Code § 5.351(a). Section 5.351(a) of the Commission’s regulations state that “A party may request that a witness provide information or documents at a later time as part of the witness’ response to a question posed during cross-examination in the course of a rate proceeding.” *Id.* I&E’s requests did not occur during the cross examination of a Duquesne Light witness; rather, the requests are requests for the production of documents.

I. INTRODUCTION

1. On April 11, 2018, I&E served Data Requests – I&E-RE-1-D through I&E-RE-26-D (“I&E-RE Set I Discovery”).

2. Among other things, the I&E-RE Set I Discovery requested the following:

I&E-RE-21-D. Provide a copy of the Company’s most recent federal income tax return and supporting calculations for all federal tax allocations from the parent company.

I&E-RE-22-D. Provide copies of the Company’s most recent Pennsylvania Corporate Tax Report, Official Settlement Notice and Assessment Notice along with related worksheet(s).

3. On May 10, 2018, Duquesne Light responded to I&E-RE-21 and I&E-RE-22. Duquesne Light’s responses to I&E-RE-21 and I&E-RE-22 are attached hereto as **Appendix A**.

4. The responses to I&E-RE-21 and I&E-RE-22 stated, *inter alia*, that the responsive documents would “be made available for review by statutory parties at the offices of Post & Schell, P.C., subject to the execution of a separate confidentiality agreement.” *See Appendix A*.

5. Duquesne Light proposed to make the documents available for inspection and review at Post & Schell, P.C.’s offices because of the highly-sensitive nature of the documents. Furthermore, Duquesne Light notes that making federal returns available for inspection at counsel’s office is consistent with its prior practice in base rate proceedings before this Commission.

6. On May 11, 2018, I&E contacted counsel for the Company via telephone and objected to the conditions for release of proprietary and highly-sensitive tax returns. Given the

highly-sensitive nature of the requested documents, counsel for Duquesne Light indicated that they would be made available for review at the offices of Post & Schell, P.C..

7. On May 14, 2018, Duquesne Light's counsel contacted counsel for I&E to discuss the possibility of an agreement to produce the subject documents. Thereafter, counsel for Duquesne Light brought a copy of the requested documents to I&E's offices, and indicated that I&E counsel and witnesses would be able to view the documents with Duquesne Light's counsel present. I&E's counsel did not agree to view the documents in that manner, at that time. However, counsel for I&E and Duquesne Light discussed other alternative methods for disclosure and production of the documents.

8. Later on May 14, 2018, counsel for Duquesne Light contacted counsel for I&E by telephone and informed counsel for I&E that the Company had agreed to produce the state tax returns in response to I&E-RE-22 and that a copy would be delivered to I&E's offices by courier the following morning. Moreover, counsel for Duquesne Light also indicated that Duquesne Light was willing to further negotiate ways to mutually address and resolve both I&E's and Duquesne Light's concerns with respect to the federal tax returns responsive to I&E-RE-21.

9. On May 15, 2018, I&E filed the instant Motion, which seeks, in part, to compel documents in response to I&E-RE-22, which Duquesne Light had indicated would be provided. The state tax return responsive to I&E-RE-22 was provided to I&E in the morning of May 15, 2018. Furthermore, on May 17, 2018, Duquesne Light provided I&E, on a confidential basis and in un-redacted format, with a hard copy of Duquesne Light Company's standalone federal tax return, as well as the consolidated taxable income schedule from DQE Holdings LLC federal tax returns in response to I&E-RE-21. The consolidated taxable income schedule provides the "taxable" income statement for each company in the DQE Holdings group which supports the

consolidated tax adjustment calculation and Duquesne Light's testimony (Statement No. 11) and Exhibits (MLS Exhibit -2) related to income taxes.

10. Despite being given the federal tax return sections that are responsive to I&E's request, the standalone Duquesne Light return and the consolidated taxable income schedule, I&E has indicated that it is not satisfied. However, I&E has not indicated why it needs any other portion of the consolidated federal tax return. Duquesne Light has also given I&E the option to view the remainder of the consolidated tax return to see if I&E needs any other section. Duquesne Light believes that it has answered I&E's request to provide "the Company's most recent federal income tax return and supporting calculations for all federal tax allocations from the parent company" by providing the Duquesne Light federal return and the consolidated taxable income schedule.

II. ANSWER TO THE MOTION TO COMPEL

A. I&E's Motion To Compel A Response To I&E-RE-22 Is Moot.

11. As an initial matter, I&E's Motion is moot with respect to I&E-RE-22. As noted above, Duquesne Light has produced the state tax returns sought by this request to I&E. Therefore, I&E's suggestion that it has been deprived of access to these documents is moot.

12. For the reasons explained above, I&E's Motion to Compel with respect to I&E-RE-22 should be denied.

B. Duquesne Light's Provision Of the Documents Responsive To I&E-RE-21 Is Reasonable.

13. Duquesne Light has provided I&E with Duquesne Light's federal return and the consolidated taxable income schedule. Duquesne Light believes that this information is

responsive to I&E's request. Duquesne Light has also offered to allow I&E to view the entire consolidated tax return to determine if I&E needs more information from the return.

14. I&E argues that Duquesne Light's provision of federal tax returns responsive to I&E-RE-21 by inspection only operates as an untimely objection to I&E-RE-21. Motion, ¶ 18. I&E avers that the Duquesne Light's viewing-only production of the documents is an unreasonable condition that deprives I&E of access to the requested materials and, therefore, should be considered a de facto objection. Motion, ¶ 20. Duquesne Light's proposal to allow I&E to view the entire federal tax return with Duquesne Light's counsel, combined with Duquesne Light's production of the Duquesne Light section of the consolidated tax return as well as the schedules necessary to perform a consolidated tax calculation cannot be reasonably viewed as an objection. Contrary to I&E's assertions, Duquesne Light attempted to physically provide these documents to I&E both by permitting I&E to review the documents at the law offices of Post and Schell, P.C., and by subsequently transporting a copy of these documents to I&E's office. The accommodations proposed by the Company are reasonable in light of the confidential nature of the information contained in DQE Holdings consolidated tax return.

15. The sections of the consolidated tax return that Duquesne Light is willing to allow I&E to view, but not provide a hard copy for I&E to keep, provide income statement and balance sheet detail for all of Duquesne Light's unregulated affiliates. That information is highly sensitive, and it is not clear why I&E needs this information. As explained above, Duquesne Light has provided the relevant portions of the consolidated tax return and is willing to allow I&E to view the remaining sections.

16. Given the highly sensitive nature of these documents, and the highly-sensitive material related to the unregulated operations of Duquesne Light's affiliates contained therein,

permitting I&E to only inspect and take notes of the other sections of the federal return is reasonable under the circumstances. Importantly, I&E was aware of its opportunity to inspect the documents on May 10, 2018, the date that Duquesne Light responded to I&E-RE-21. Rather than attempt to inspect the documents at Post & Schell's offices and determine whether reproduction of any of the contents was necessary, I&E simply claimed that it would be unreasonably burdened by this method of production and made no further attempt to inspect the documents in advance of filing the instant Motion. I&E further rejected the opportunity to inspect the documents at their own offices.

17. For these reasons, any delay associated with I&E's ability to view and inspect the requested documents after May 10, 2018, is exclusively the result of I&E's decision not to inspect or view the documents in the manner stated in Duquesne Light's response to I&E-RE-21.

18. The highly-sensitive nature of the documents responsive to I&E-RE-21 warrant protection in addition to traditional confidential or proprietary treatment. While I&E is correct that Duquesne Light had indicated that the documents were Highly Confidential in its response, I&E disregards the fact that parties regularly seek, and the Commission regularly grants, the authority to afford additional protections for extremely sensitive information beyond designating the information as such and limiting its production to certain individuals. *See, e.g., Pa. Pub. Util. Comm'n et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2016-2429660 (Protective Order issued by ALJ Dunderdale Aug. 2, 2016); *Petition of Duquesne Light Company for Approval to Modify its Smart Meter Procurement and Installation Plan*, Docket No. P-2015-2497267 (Protective Order issued by ALJ Dunderdale Jan. 22, 2016).

19. Such Protective Orders regularly state that each party "shall retain the right...to seek additional measures of Protection of Proprietary Information beyond those provided in this

Protective Order.” *Pa. Pub. Util. Comm’n et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2016-2429660 (Protective Order issued by ALJ Dunderdale Aug. 2, 2016), at ¶ 14; *Petition of Duquesne Light Company for Approval to Modify its Smart Meter Procurement and Installation Plan*, Docket No. P-2015-2497267 (Protective Order issued by ALJ Dunderdale Jan. 22, 2016), at ¶ 18. Furthermore, the proposed Protective Order circulated among the parties, which I&E indicated it did not object to, contains a similar provision.

20. Duquesne Light has done nothing more than seek additional protections for highly sensitive information that concerns Duquesne Light’s unregulated affiliates and is not relevant in this proceeding.

21. I&E also attempts to assert that the production of information by inspection is not contemplated by the Commission’s regulations and is so limiting that it would deprive I&E of any evidentiary use of the information. Motion ¶ 27. I&E is incorrect on both counts.

22. Section 5.349 of the Commission’s regulations governs requests for documents, entry for inspection and other purposes. 52 Pa. Code § 5.349. Through this regulation, reference is made to permit a party to inspect designated documents and copies in response to a request for documents. *See id.* Duquesne Light has provided a hard copy of the relevant sections of the consolidated federal return to I&E and has offered I&E the opportunity to view the remaining sections.

23. In addition, nothing would prevent I&E or its witnesses from utilizing any information gathered during its inspection for evidentiary purposes. Presumably, I&E’s witnesses are expert witnesses who regularly provide opinion testimony based upon their physical inspection of documents, records or other materials as a part of this role. Subject to the traditional evidentiary limitations applied during Commission proceedings, I&E’s witnesses

would be able to testify as to the results of their investigation and inspection of the responsive documents.²

24. For these reasons, Duquesne Light's production by inspection of documents responsive to I&E-RE-21 is reasonable and appropriate under the circumstances and I&E's arguments to the contrary should be denied.

C. **Duquesne Light's Production By Inspection Of I&E-RE-21 Does Not Unreasonably Burden I&E.**

25. Contrary to I&E's assertions, it is neither unreasonably burdensome nor impractical for I&E to review the documents responsive to I&E-RE-21. Production by inspection provides I&E witnesses the ability to review and investigate the requested tax return and also develop further discovery and written testimony. Duquesne Light did not request restrictions that limited the I&E witnesses' and counsel's ability to take notes in order to develop discovery or written testimony.³ Furthermore, as noted above, Duquesne Light has not deprived I&E of any evidentiary value associated with the responsive documents by producing them for inspection only.

26. For the reasons more fully explained above, I&E's Motion should be denied. Duquesne Light remains willing to attempt to resolve I&E's concerns in a manner that is satisfactory to both parties.

² As noted above, Duquesne Light also produced the Duquesne Light portion of the federal tax returns, as well as the schedules necessary for calculation a consolidated income tax adjustment. I&E can review any other parts of the federal tax return to see if they need any other sections necessary to conduct this calculation.

³ Duquesne Light again notes that it produced the Duquesne Light portion of the federal tax returns, as well as the schedules necessary for calculation a consolidated income tax adjustment. Duquesne Light is willing to allow I&E to view the entire return to determine if they need additional schedules.

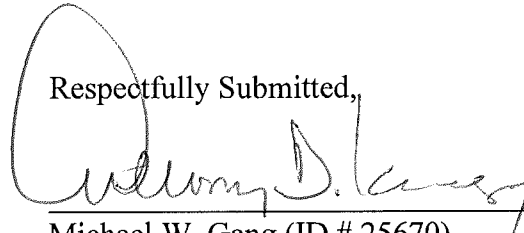
III. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that Administrative Law Judge Katrina L. Dunderdale deny the Bureau of Investigation and Enforcement's Motion to Compel and enter an appropriate order directing the following:

(I) I&E's Motion to Compel a response to I&E-RE-22 is denied as moot; and

(II) I&E's Motion to Compel production of the documents responsive to I&E-RE-21 be denied.

Respectfully Submitted,



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May 21, 2018

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Appendix A



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May 10, 2018

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Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket No. R-2018-3000124

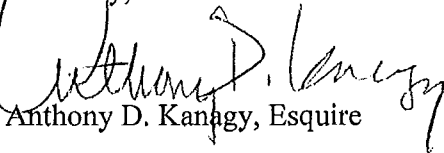
Dear Counsel:

Enclosed please find the responses of Duquesne Light Company to the Interrogatories and Requests for Production of Documents of the Bureau of Investigation and Enforcement, as follows:

I&E-RE-21-D and I&E-RE-22-D

The attachments to these responses include HIGHLY CONFIDENTIAL Tax Returns which will be made available for review by statutory parties at the offices of Post & Schell, P.C.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony D. Kanagy". The signature is written in a cursive style with a large initial "A".

Anthony D. Kanagy, Esquire

ADK/skr
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE
(Docket No. R-2018-3000124)

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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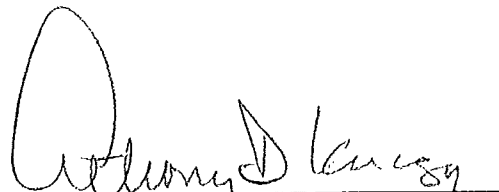
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Date: May 10, 2018


Anthony D. Kanagy

Bureau Of Investigation And Enforcement
Data Requests

Duquesne Light Company
Docket No. R-2018-3000124

Set III

Witness: Matthew Simpson

I&E-RE-21-D

21. Provide a copy of the Company's most recent federal income tax return and supporting calculations for all federal tax allocations from the parent company.

Response:

The most recent federal income tax return filed by the consolidated group is tax year 2016. This document is Highly Confidential. It will be made available for review by statutory parties at the offices of Post & Schell P.C., subject to the execution of a separate confidentiality agreement.

Bureau Of Investigation And Enforcement
Data Requests

Duquesne Light Company
Docket No. R-2018-3000124

Set III

Witness: Matthew Simpson

I&E-RE-22-D

22. Provide copies of the Company's most recent Pennsylvania Corporate Tax Report, Official Settlement Notice and Assessment Notice along with related worksheet(s).

Response:

The most recent Pennsylvania income tax return filed by the Duquesne Light is tax year 2016. This document is Highly Confidential. It will be made available for review by statutory parties at the offices of Post & Schell P.C., subject to the execution of a separate confidentiality agreement. The Company has not received an Official Settlement and Assessment Notice from the Pennsylvania Department of Revenue as the Department no longer issues Official Settlement Notices.