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File #: 164590

October 7, 2016

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: Petition of Duquesne Light Company For Approval of Default Service Plan For The  
Period June 1, 2017 Through May 31, 2021  
Docket No. P-2016-2543140**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply to Noble Americas Energy Solutions LLC's Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement in the above-referenced proceeding. Copies of this filing will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Anthony D. Kanagy

ADK/skr  
Enclosures

cc: Certificate of Service  
Honorable Conrad A. Johnson

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :  
for Approval of a Default Service Plan : Docket No. P-2016-2543140  
for the Period June 1, 2016 to May 31, 2021 :

**DUQUESNE LIGHT COMPANY'S  
REPLY TO NOBLE AMERICAS ENERGY SOLUTIONS LLC'S  
OBJECTIONS AND STATEMENT IN OPPOSITION TO  
THE JOINT PETITION FOR APPROVAL OF  
NON-UNANIMOUS SETTLEMENT**

**TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:**

**I. INTRODUCTION**

Duquesne Light Company ("Duquesne Light" or the "Company") hereby files its Reply to Noble Americas Energy Solution's LLC's ("Noble") Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement ("Settlement") that was filed on September 23, 2016 in the above-referenced proceeding. All other parties in this proceeding either support or do not oppose the Settlement. In addition, Noble only opposes one provision of the Settlement which would eliminate the uncollectible accounts expense component of the Purchase of Receivables ("POR") discount for electric generation suppliers ("EGSs") and allow the Company to recover these costs in its Rider No. 1 Retail Market Enhancement Surcharge ("RMES") until its next base rate proceeding. Duquesne Light filed its Statement in Support of the Settlement on September 29, 2016, and hereby files its Reply to Noble's Statement in Opposition to the Settlement.

## II. SUMMARY OF ARGUMENT

Noble's opposition to the Settlement should be denied. Noble argues that the proposal to eliminate the uncollectible expense component of the POR discount was improperly introduced in rebuttal testimony, and therefore should not be considered. There are several flaws to this argument. The proposal to eliminate the uncollectible expense component of the POR discount relates to the core issue of unbundling default service costs that the Company addressed in its direct testimony in this proceeding. RESA, in its direct testimony, proposed that the Company unbundle additional costs, including uncollectible expenses. In response to RESA's testimony, the Company made a counter-proposal to eliminate the uncollectible expense component of the POR discount and recover these costs through the RMES. The Company's counter-proposal was related to the core unbundling issue in this proceeding. Parties are permitted to make counter-proposals in rebuttal testimony.

In addition, it is too late for Noble to now object to the Company's rebuttal testimony as improper. If Noble thought that the Company's rebuttal testimony contained an improperly presented proposal, Noble should have objected before the testimony was admitted into the record. Noble made no such objection, and has thus waived any objection now. Moreover, Noble had every opportunity to submit surrebuttal testimony in response to the proposal and failed to do so.

The elimination of the uncollectible expense component of the POR discount is also reasonable and in the public interest. The proposal will result in Duquesne Light recovering all of its uncollectible accounts expense from all customers on a non-bypassable basis (a portion in the RMES and a portion in base rates). Recovering uncollectible expense from all customers on a non-bypassable basis is consistent with how PECO and the FirstEnergy EDCs recover uncollectible accounts expense. It also will avoid the current inequitable treatment of EGS POR

customers who pay for supply-related uncollectible accounts expense through both distribution rates and the POR discount.

Finally, Noble makes several claims that the elimination of the uncollectible accounts expense component of the POR discount will be anti-competitive and discriminatory. There is no evidence in the record to support these statements because Noble failed to present testimony. Further, because Noble elected not to file testimony, the parties could not challenge Noble's claims through discovery, responsive testimony or cross-examination. Accordingly, Noble is precluded from raising these contentions in its objections.

For the reasons explained herein, Noble's objection to the Settlement should be denied.

### **III. ARGUMENT**

#### **A. THE ELIMINATION OF THE POR DISCOUNT FOR UNCOLLECTIBLE EXPENSES WAS PROPERLY RAISED IN THIS PROCEEDING.**

Noble's first objection to the elimination of the POR discount for uncollectible expenses is that this proposal was not made until rebuttal testimony. (Noble Objections, pp. 5-8.) Noble argues that the Commission's regulations prohibit parties from raising new issues or proposals which should have been raised in direct testimony or which substantially vary from direct testimony. 52 Pa. Code §§ 5.243(e)(2) and (3). Noble's argument that the proposal to eliminate the POR discount for uncollectible expense was improperly raised in rebuttal testimony in violation of the Commission's regulations is incorrect and should be denied.

The proposal to eliminate the POR discount for uncollectible expense is directly related to the unbundling issues that were presented in both Duquesne Light's and RESA's Direct Testimony. Duquesne Light made its unbundling proposal in its Direct Testimony. (Duquesne Light St. No. 4, pp. 12-18.) Therein, the Company explained the costs that it was proposing to unbundle and its proposed unbundling effective date. Duquesne Light did not propose to

unbundle uncollectible accounts expense. RESA filed its Direct Testimony in response to Duquesne Light's proposal. Therein, RESA argued that Duquesne Light should unbundle additional costs and specifically argued that Duquesne Light should unbundle approximately \$5.2 million in uncollectible costs. See RESA's Exhibit MW-5 (uncollectible accounts account 904 amount of  $\$12,956,792 \times 40.12\% = \$5,198,265$ ).

In rebuttal, Duquesne Light explained the reasons why it was unreasonable to unbundle uncollectible accounts expense. (Duquesne Light St. No. 3-R, pp. 24-34.) As an alternative to RESA's unbundling proposal, Duquesne Light explained that it would be willing to eliminate the POR discount for uncollectible expenses and recover these costs in the RMES. (Duquesne Light St. No. 3-R, pp. 32-33.) Duquesne Light currently recovers its uncollectible expenses for non-shopping customers from all customers in distribution rates and recovers approximately \$797,000 in uncollectible expense for shopping customers through the POR discount charged to EGSs and reflected in bills by EGSs to their customers. This results in EGS customers paying twice for uncollectible expense – once in base rates and once in EGS charges.

It was reasonable and appropriate for Duquesne Light to make its alternative proposal to eliminate the POR discount for uncollectible expense in rebuttal testimony. This alternative proposal was made in response to RESA's proposal to unbundle all uncollectible expense from base rates. It is common practice for parties to make alternative or counter-proposals in rebuttal testimony in response to proposals made by other parties. *See, e.g., Pa. P.U.C. v. Western Utilities, Inc.*, 1998 Pa. PUC LEXIS 145 \*23, Order entered January 28, 1998. Providing counter-proposals on the record provides an opportunity by the other parties to comment on the record and fosters resolution of issues. In addition, Duquesne Light made its counter-proposal at the first available opportunity, in its rebuttal testimony in response to RESA's proposal to

unbundle uncollectible accounts costs. Duquesne Light's counter-proposal was directly related to the core unbundling issue of how to recover uncollectible expenses from customers in a fair manner.

Further, Noble had every opportunity to challenge the Company's counter-proposal in surrebuttal testimony. Noble argues in its Statement in Opposition that it did not have the opportunity to timely respond to Duquesne Light's rebuttal testimony. (Noble St., p. 7.) This statement is incorrect. Noble could have filed surrebuttal testimony on the same schedule as every other party in the proceeding. In fact, RESA filed surrebuttal testimony regarding this counter-proposal and supported the elimination of the POR discount for EGSs. (RESA St. No. 1-S, pp. 9-10.) Noble has no legitimate reason for failing to file surrebuttal testimony at the same time as the other parties.

The cases cited by Noble in support of its argument that the POR discount issue was improperly raised in this proceeding provide no basis for rejecting the Settlement. Noble cites to *Pa. P.U.C. v. UGI Utilities, Inc.*, 82 Pa. PUC 488; 1994 Pa. PUC LEXIS 137, \*130-33 (Order entered July 27, 1994) ("*UGI Utilities*") for the proposition that the ALJ rejected claims that were first introduced in rebuttal testimony. *UGI Utilities* does not support Noble's argument.<sup>1</sup> In this case, the ALJ and the Commission rejected two completely new expense claims that were introduced in rebuttal testimony. This is not the same as making a counter-proposal to RESA's unbundling proposal that was presented for the first time in RESA's direct testimony. In addition, a party in the *UGI Utilities* case objected to UGI Utilities' proposed adjustments through a Motion to Strike before the close of the record. *Id.* at 129.

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<sup>1</sup> As also explained below, *UGI Utilities* in fact holds that a party cannot wait until after the record is closed to object to an issue, which is what Noble is attempting to do in this proceeding.

Noble also cites to *Pa. P.U.C. v. Equitable Gas Company*, Docket No. R-00050272 (Order entered September 28, 2015) ("*Equitable Gas*") as support for its argument that the POR discount issue was improperly raised. This case also provides no support for Noble's argument. The proposal at issue in *Equitable Gas* involved a new BTU adjustment in a 1307(f) purchased gas cost proceeding. Again, this was a completely new issue and not a counter-proposal related to an outstanding issue in the proceeding that was raised in direct testimony. *Id.* at pp. 45-48. Moreover, the Commission's primary basis for rejecting the issue was that it was raised in a 1307(f) proceeding and not a base rate case. The *UGI Utilities* and *Equitable Gas* cases cited by Noble do not provide a basis for rejecting the Settlement.

**B. NOBLE WAIVED ANY OBJECTION TO CONSIDERATION OF THE COUNTER-PROPOSAL BY FAILING TO OBJECT TO THE ADMISSION OF DUQUESNE LIGHT'S TESTIMONY.**

Even if there were merit to Noble's objection of Duquesne Light's counter-proposal, Noble's procedural objection also is too late and cannot stand. Any objection to the introduction of new evidence in rebuttal testimony must be made before the evidence is admitted into evidence and made part of the record. Noble made no such objection, and both Duquesne Light's rebuttal testimony and RESA's surrebuttal testimony were admitted into the record in this proceeding. It is now too late for Noble to object to the rebuttal and surrebuttal testimony.

In *Pa. P.U.C. v. UGI Utilities, Inc.*, a case cited by Noble as support for its opposition to the Settlement, the Commission stated as follows (quoting from the presiding ALJ):

As for the reasonableness of the amount of the claim, OCA did not raise any question until the briefing stage of this proceeding. We agree with the Company that OCA should not be heard to present this issue in such a manner. As our Commonwealth Court said in *Allegheny Center Associates v. Pennsylvania Public Utility Commission*,

The petitioners failed to question or challenge these expenses at the hearings and the record was

later closed. Instead, the Hospital's proposal to adjust this expense was first contained in its main brief. The ALJ noted that this was the first time a party had contested the litigation expense and thus dismissed the Hospital's adjustment as untimely. The Commission adopted the ALJ's recommendation and found Equitable's claimed expense reasonable. We cannot say that the Commission erred in its determination.

\* \* \*

While it is axiomatic that a utility has the burden of providing the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged. Petitioners thus cannot now challenge what on its face is an appropriate operating expense claim where they failed to produce any contrary evidence or argument in the underlying proceeding. *131 Pa. Cmwlth. 352, 359, 570 A.2d 149, 153 (1990)* (citation omitted). We shall, therefore, determine that the claimed expense is reasonable and recommend denial for the OCA proposed disallowance. (R.D., pp. 72-73)

*UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 137, \*123-24.

The Commission confirmed the ALJ's ruling on this issue, stating as follows:

In addition, the arguments opposing this item presented by the OCA were improperly raised in the proceedings.

*Id.* at \*129.

The cases cited by Noble provide no basis for rejecting the Settlement.

Noble also argues it does not have the opportunity to "brief" the issue. (Noble St. No. 7.) This assertion is mere semantics and should be disregarded. Noble, and all parties, have the opportunity to file Statements in Support of or in Opposition to the Settlement and also to Reply to other parties' Statements. The Statements and Reply Statements are in fact parties' opportunities to brief this issue. Moreover, Noble expressly agreed to suspend the "briefing" schedule and agreed to file Statements in Support Of or Opposition To the Settlement and

Replies to those Statements in a conference call with the ALJ. Noble could have requested to call the Statements and Replies, Briefs and Reply Briefs, or could have requested a different procedure. Noble's argument that it does not have the opportunity to "brief" the contested issue is incorrect and should be dismissed.

**C. THE ELIMINATION OF THE POR DISCOUNT FOR UNCOLLECTIBLE EXPENSES IS REASONABLE AND SHOULD BE APPROVED.**

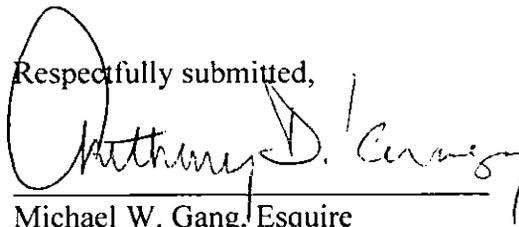
Duquesne Light currently recovers supply related uncollectible expense in two ways. The first is through distribution rates from all customers, and the second is through the POR discount from EGSs that participate in the POR program. The Company explained that the recovery of a portion of uncollectible expenses through the POR discount was the result of a settlement that created its initial POR program in 2006. (Duquesne Light St. No. 3-R, p. 26.)

The Company's methodology for recovering uncollectible expenses for supply costs through both distribution rates and the POR discount is now inconsistent with the Commission-approved method used by other EDCs to recover supply-related uncollectible expenses. PECO recovers supply-related uncollectible expenses in distribution rates. (Duquesne Light St. No. 3-R, p. 31.) The FirstEnergy EDCs recover supply-related uncollectible expenses through a separate, non-bypassable rider that applies to all customers. (Duquesne Light St. No. 3-R, p. 31.) PPL Electric Utilities Corporation ("PPL Electric") on the other hand collects supply-related uncollectible expenses for default service customers through a Merchant Function Charge ("MFC") which is applied as a percentage charge to the Price To Compare ("PTC"). In turn, the same MFC percentage is then applied as a discount to PPL Electric's POR program to recover supply-related uncollectible expenses from EGSs. (Duquesne Light St. No. 3-R, p. 32.) The key component of the uncollectible expense recovery mechanisms for these EDCs is that all customers pay the same average percentage of supplier costs for uncollectible expenses. This is

**IV. CONCLUSION**

WHEREFORE, Duquesne Light Company has demonstrated that the Settlement provision to eliminate the uncollectible expense component of the POR discount and recover these costs in the RMES is just, reasonable, and in the public interest. Duquesne Light has also demonstrated that this proposal was properly raised in this proceeding and that Noble's procedural objections are both erroneous and have been waived. Duquesne Light Company requests that the Honorable Administrative Law Judge Conrad A. Johnson recommend approval and that the Pennsylvania Public Utility Commission approve the Settlement without modification.

Respectfully submitted,



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Noble has prejudiced the parties by failing to file any testimony in the proceeding, and then challenging a settlement provision that was proposed in Duquesne Light's testimony and supported in RESA's testimony. All parties had the opportunity to respond to the Company's proposal to eliminate the POR discount for uncollectible accounts expense in testimony. Noble failed to do so, and should not be permitted to challenge the proposal now. Noble's claims of discrimination and competitive harm could not be examined and challenged by parties on the record, including by cross-examination. Further, Noble claims are completely unsupported by any factual evidence. Noble's argument that the Settlement is discriminatory and anti-competitive should be denied.

St., pp. 10-11.) Noble cites to its Petition to Intervene as support for these statements. Noble's Petition to Intervene was not admitted into the record and is not evidence in this proceeding. In addition, because Noble did not submit testimony, Duquesne Light and the parties had no opportunity to ask discovery, file responsive testimony or conduct cross-examination regarding Noble's level of uncollectible expense (or regarding any of Noble's other claims). The Commission and the parties have no way of knowing this information. It is possible that Noble primarily serves larger customers and has contracts that prevent it from experiencing any or very minimal uncollectible expense. Noble again fails to mention that it could join the POR program to further mitigate its uncollectible expense risk.

Noble also argues that eliminating the uncollectible expense component of the POR will subsidize POR EGSs to the detriment of Noble. Again, there is no record evidence to support this claim. The Company collected only \$797,000 through the POR discount. (Duquesne Light St. No. 3-R, p. 33.) In addition, the uncollectible component of the POR discount is 0.42% for Residential and Small C&I customers and is 0.18% for Medium C&I customers. (Duquesne Light St. No. 3-R, p. 32.) Therefore, the POR discount only collects a very small amount from EGSs serving Medium C&I customers. It is unclear from the record which customer classes Noble primarily serves because Noble submitted no testimony and Duquesne Light did not have an opportunity to conduct discovery, file responsive testimony or conduct cross-examination with respect to Noble's arguments. However, if Noble primarily serves Medium C&I customers, the potential "discrimination" would be minimal at best. Moreover, the POR discount does not even apply to Large C&I customers. Therefore, elimination of the POR discount for uncollectible accounts expense will have no impact on the Large C&I class.

recover uncollectible expenses. Second, Noble fails to recognize that it, or any other EGS, can simply join the POR program and receive the same benefits as participating EGSs.

Noble argues that there is no evidence in the record supporting the reasonableness of the Settlement provision to eliminate the POR discount for uncollectible expense. (Noble St., pp. 9-10.) This statement is incorrect. There is record evidence to show that eliminating the POR discount will make Duquesne Light's uncollectible expense recovery consistent with the way PECO and the FirstEnergy EDCs recover uncollectible expenses. (Duquesne Light St. No. 3-R, p. 31.) There is also record evidence to show that elimination of the POR discount for EGS uncollectible accounts expense will remedy the current inequitable treatment of EGS POR customers who pay for uncollectible accounts expense through both distribution rates and the POR discount. (RESA St. No. 1-S, p. 9.) It is Noble's proposals that are not supported by any evidence in this proceeding.<sup>2</sup>

The elimination of the POR discount for uncollectible expense is supported by substantial record evidence and should be approved.

**D. NOBLE'S CLAIMS THAT ELIMINATION OF THE POR DISCOUNT FOR UNCOLLECTIBLE EXPENSE WILL BE ANTI-COMPETITIVE AND DISCRIMINATORY ARE UNSUPPORTED BY RECORD EVIDENCE.**

In its Statement, Noble argues that elimination of the POR discount for uncollectible expense will be anti-competitive and discriminatory. (Noble St., pp. 10-12.) Noble's claims are not supported by any record evidence and should be dismissed.

Noble first argues that it has built its own billing system and does not participate in the POR program. Noble also states that it is responsible for its own uncollectible expense. (Noble

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<sup>2</sup> In its recitation of the legal standards, Noble recognizes that proposals must be supported by the weight of the evidence. (Noble St., p. 4.) Clearly, the evidence of record supporting the Settlement is undisputed and must prevail.

reasonable because EDCs can only recover uncollectible expenses from customers that are not in default. Uncollectible expenses must be recovered from all customers.

Duquesne Light's current methodology of recovering some supply-related uncollectible expenses through distribution rates (on a non-bypassable basis) from all customers and some supply-related uncollectible expenses through the POR discount from EGSs is inconsistent with how the other EDCs recover supply-related uncollectible expenses. It recovers supply-related uncollectibles through both non-bypassable charges (i.e., distribution rates) and the POR discount. This results in shopping customers paying twice for uncollectible costs. Duquesne Light developed this proposal to eliminate this inconsistency in response to RESA's claims that unbundling all supply-related uncollectible costs was necessary to treat shopping and non-shopping customers equally. The elimination of the POR discount for uncollectible expenses is reasonable because it allows Duquesne Light to recover uncollectible expenses from all customers on a non-bypassable basis. The methodology is consistent with how both PECO and the FirstEnergy EDCs recover uncollectible expenses.

In its Statement in Opposition, Noble argues that elimination of the POR discount for uncollectible expenses and recovery of these costs through the RMES "will unfairly allocate costs among customers, so that customers who have selected suppliers that do not participate in the POR program will be responsible for paying participating EGSs' uncollectible costs." (Noble St., p. 9.) Noble further argues that participating EGSs will avoid collection costs and risks without having to pay for it.

There are several flaws with Noble's analysis. First, Noble fails to recognize that the Settlement proposal will align Duquesne Light with how PECO and the FirstEnergy EDCs

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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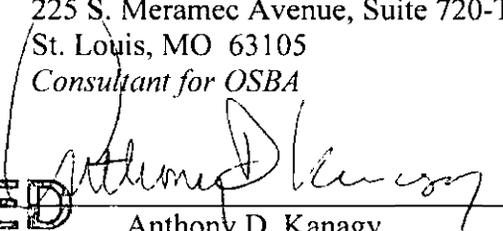
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