BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company : P-2016-2540046

for Approval of its Long-Term :

Infrastructure Improvement Plan :

:

and :

:

Petition of Duquesne Light Company : P-2016-2540046

for Approval of a Distribution :

System Improvement Charge :

**RECOMMENDED DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

This Decision recommends the Public Utility Commission approve the Joint Petition for Settlement submitted in this proceeding by Duquesne Light Company, the Commission’s Bureau of Investigation and Enforcement, and the Office of Consumer Advocate.[[1]](#footnote-1)

HISTORY OF THE PROCEEDING

Duquesne Light Company (DLC or Duquesne Light) filed two separate petitions: one, on April 15, 2016 which seeks to accelerate the repair, improvement and replacement of aging infrastructure beginning January 1, 2017; and one on May 26, 2016 which seeks approval of a Distribution System Improvement Charge (DSIC). Both petitions were docketed at P-2016-2540046.

Duquesne Light, which is a wholly owned subsidiary of Duquesne Light Holdings, Inc., as an Electric Distribution Company (EDC), provides electric distribution, transmission, and provider of last resort services to approximately 588,000 customers in a certified service territory that spans approximately 817 square miles to include the City of Pittsburgh and portions of Allegheny and Beaver Counties in western Pennsylvania. As part of its distribution network, Duquesne Light operates and maintains approximately 5,900 miles of overhead lines, 1,400 miles of underground lines, and 182 substations.

On April 15, 2016, Duquesne Light filed a Petition for Approval of its Long-Term Infrastructure Improvement Plan (LTIIP Petition), with copies being served upon the statutory advocates and all active parties in Duquesne Light’s most recent base rate case[[2]](#footnote-2), in accordance with the Commission’s *Implementation of Act 11 of 2012*, Docket No. M‑2012‑2293611, dated August 2, 2012, and often referred to as the Final Implementation Order.

In May 2016, the Bureau of Investigation and Enforcement (BIE), the Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA) and the Community Action Association of Pennsylvania (CAAP) filed responses.

Then, on May 26, 2016, Duquesne Light filed its Petition of Duquesne Light Company for Approval of a Distribution System Improvement Charge (DSIC Petition) which included a ProForma Supplement No. XXX to Electric – Pa. P.U.C. No. 24 to introduce the DSIC Rider into the Company’s tariff with an effective date of October 1, 2016. The filing was made pursuant to 66 Pa.C.S.A. § 1353 and the Final Implementation Order.

On July 13, 2016, the Commission issued a Secretarial Letter to Duquesne Light requesting more details regarding its LTIIP, specifically in regards to historical baseline infrastructure replacement and capital spending for the categories of eligible property. Duquesne Light responded to the Secretarial Letter on July 25, 2016. Thereafter, on July 28, 2016, the Commission issued another Secretarial Letter extending the review period until September 16, 2016.

On August 11 2016, the Commission issued a third Secretarial Letter requesting further details and clarification in regards to the LTIIP historical and projected baseline expenditures and project categories. Duquesne Light filed a response on August 22, 2016.

On August 25, 2016, Duquesne Light filed a letter with the Commission which attempted to clarify that it should have stated that the initial DSIC effective October 1, 2016 will include eligible plant placed in service during the months of June, July, and August 2016, rather than just July and August as originally stated. Duquesne Light included a revised exhibit DBO‑3, which provided a revised DSIC calculation using the corrected months of June through August as eligible plant.

On August 29, 2016, pursuant to discussion with the Commission, Duquesne Light filed revised tables for its LTIIP that reconciled historical baseline, forecasted, and accelerated spending plans and units from previously submitted versions.

On September 15, 2016, the Commission issued its Opinion and Order approving the Petition of Duquesne Light Company for Approval of its Long-Term Infrastructure Improvement Plan and the Petition of Duquesne Light Company for Approval of a Distribution System Improvement Charge with the following provisions:

1. Duquesne Light was permitted to collect revenues pursuant to its requests in the Petitions effective on October 1, 2016 but subject to refund and recoupment based on a final resolution in this proceeding;

2. The Office of Administrative Law Judge was to conduct a hearing and prepare a Recommended Decision concerning the DSIC-recovery of costs associated with Duquesne Light’s Microgrid Program, and concerning the inclusion of riders in distribution revenues when calculating the DSIC mechanism; and

3. Duquesne Light was to provide an estimate for the number of anticipated new jobs that would be created for specific replacement projects with its revised DSIC tariff and to track that employment in order to provide the information in the future when the DSIC fund information is submitted for annual audit and reconciliation.

Thereafter, on September 20, 2016, Duquesne Light filed Supplement No. 141 to Tariff Electric – PA P.U.C. No. 24 to become effective on October 1, 2016, in compliance with the Commission’s Order, which proposed to implement the Company’s Rider No. 22 DSIC, and to provide estimates for the anticipated number of new jobs.

Letters expressing opposition to the DSIC were received at the Commission from individual customers, who argued against implementation of a DSIC. No objections or comments were received from federal, state or local governmental agencies.

On October 6, 2016, the Office of Administrative Law Judge (OALJ) issued a Notice scheduling the Prehearing Conference for October 17, 2016. On the same date, the presiding officer issued a Prehearing Conference Order which, *inter alia*, required the parties to submit a prehearing memorandum prior to the Prehearing Conference.

The presiding officer conducted a prehearing conference on October 17, 2016 with the following parties represented: Duquesne Light, BIE, OCA, OSBA and CAAP. At the prehearing conference, the parties considered the issues DLC raised in its Petitions, discussed discovery provisions and established a litigation schedule. The parties advocated for the two Petitions to be held in abeyance until after DLC files a petition concerning the Microgrid on March 31, 2017; and after a final disposition in ongoing litigation involving the First Energy companies is issued by the Commission, which the parties alleged would provide guidance concerning how income tax deductions and credits related to the costs included in the DSIC rate should be included in the DSIC calculation.

The presiding officer denied the parties’ request to hold the matters in general abeyance for an indeterminate period. Therefore, after much discussion, the parties agreed to a litigation schedule, and the evidentiary hearing was set to begin at 9:00 a.m. on Tuesday, January 24, 2017. The presiding officer issued the Prehearing Order on October 19, 2016, which memorialized the decisions and discussions between the parties and the presiding officer at the prehearing conference.

Following the prehearing conference, the parties served written testimonies and exhibits upon each other and the presiding officer, and participated in informal discussions with each other.

As a result, on January 19, 2017, counsel for the utility advised the presiding officer that all parties had reached an agreement to resolve all issues. On behalf of all the parties, the utility requested a suspension of the procedural schedule, pending receipt of the signed settlement agreement, with the proviso the scheduled evidentiary hearing would proceed for the admission of the parties’ written statements and exhibits.

On January 24, 2017, the presiding officer conducted the evidentiary hearing at which Duquesne Light, BIE, OCA and OSBA participated. Duquesne Light, BIE and OCA moved to admit various written testimonies and exhibits into the hearing record, which motions were granted. The parties present requested permission to file the fully-executed settlement agreement, with all statements in support attached, on or before Wednesday, March 1, 2017.

In an Order dated January 27, 2017, the presiding officer suspended the litigation schedule and set March 1, 2017 as the due date for submission of a settlement agreement with accompanying statements in support.

On March 1, 2017, the parties filed the Joint Petition for Settlement of All Issues (Settlement) with the Secretary’s Bureau. On March 3, 2017, the presiding officer issued an Interim Order Closing the Hearing Record.

TERMS OF THE SETTLEMENT

The Settlement is an 11-page document containing 36 numbered paragraphs. Appendices A, B and C to the Settlement are the Statements in Support from Duquesne Light, BIE and OCA, respectively. Appendices D and E are the statements of non-opposition of OSBA and CAAP, respectively.

The essential terms of the Settlement are contained in Sections III and IV, Paragraphs 18 through 28:

**III. Settlement**

18. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all issues in this proceeding, is in the public interest. The Joint Petitioners respectfully request that Duquesne Light’s LTIIP and DSIC filings be approved with the following conditions.

19. Duquesne Light has not proposed a detailed microgrid program in its LTIIP, or proposed to include recovery of any microgrid costs in its DSIC at this time. Duquesne Light will not recover any microgrid costs in its DSIC unless and until: (1) Duquesne Light makes a specific microgrid filing with the Commission, if any, and (2) the Commission approves recovery of microgrid costs in the DSIC. This Settlement does not reflect any agreement that microgrid costs are DSIC eligible. In addition, the Settlement does not preclude Duquesne Light from repairing, improving or replacing its existing distribution facilities necessary for reliable grid operations at the Woods Run Facility and nearby locations under its approved LTIIP and recovering such costs under the DSIC. If Duquesne Light makes a filing proposing to recover microgrid costs in the DSIC, all parties reserve their rights to oppose such filing.

20. Duquesne Light will include the Retail Market Enhancement Surcharge, Universal Service Charge, Energy Efficiency & Conservation Surcharge and Smart Meter Charge in distribution revenues when calculating the DSIC for purposes of calculating the DSIC rate cap and will apply the DSIC to these Riders. The State Tax Adjustment Surcharge (STAS) will be excluded from the DSIC calculation, and the DSIC will not be applied to the STAS.

21. The Parties recognize that issues raised by OCA regarding treatment of federal and state income tax deductions in calculating the DSIC charge are currently being litigated before the Commission in the First Energy Companies’ consolidated DSIC proceeding at Docket Nos. P-2015-2568942, P-2015-2508936, P-2015-2508931 and P‑2015-2508948. The Joint Petitioners agree that Duquesne Light will follow Commission Orders regarding whether to exclude or include ADIT in the DSIC calculation and whether or not to adjust the state income tax rate used to calculate DSIC revenue requirement to reflect actual state income taxes paid in future DSIC filings.

**IV. The Settlement is in the public interest**

22. This Settlement was achieved by the Joint Petitioners after an investigation of Duquesne Light’s LTIIP and DSIC filings, including informal and formal discovery and the filing of direct testimony, rebuttal testimony, surrebuttal testimony and rejoinder testimony by a number of the Joint Petitioners. The parties’ testimony fully addressed the issues raised in the Commission’s September 15, 2016 Order. *See* OCA St. No. 1, pp. 3-9; BIE St. No. 1, pp. 2-4; Duquesne Light St. No. 3-R, pp. 2-6; Duquesne Light St. No. 4-RJ, pp. 1-3. With respect to the Commission’s question concerning recovery of Duquesne Light’s microgrid costs through the DSIC, the Settlement provides that Duquesne Light will not recover microgrid costs in its DSIC at this time, but may make a filing based upon specific plans and costs for recovery through the DSIC in the future. Microgrid costs are not included in the LTIIP as filed on April 15, 2016 or the DSIC filed on May 26, 2016.[[3]](#footnote-3) This provision ensures that parties will have an opportunity to examine the reasonableness of any microgrid proposal based upon the specific microgrid plan in a future filing.

23. The Settlement also resolves the Commission’s question regarding which riders to include when calculating distribution revenues for purposes of the DSIC by providing that Duquesne Light will include the Retail Market Enhancement Surcharge, Universal Service Charge, Energy Efficiency & Conservation Surcharge and Smart Meter Charge in distribution revenues when calculating the DSIC rate cap and will apply the DSIC to these Riders. The Settlement also provides that the STAS will be excluded from the DSIC calculation, and the DSIC will not be applied to the STAS in accordance with 66 Pa.C.S. § 1357(d).

24. Further, the Settlement ensures that Duquesne Light’s treatment of federal and state income tax deductions in calculating the DSIC will comply with the Commission’s direction on those issues.

25. Acceptance of the Settlement will avoid the necessity of further administrative proceedings at a substantial cost to the Joint Petitioners.

26. The Settlement has been agreed to by all parties in this proceeding including representatives of residential, small business and low-income customer groups.

27. Approval of this Settlement will allow Duquesne Light to continue recovering eligible investments, as identified in the Company’s LTIIP, through its DSIC based upon a DSIC calculation that the Parties have determined to be fair, reasonable and in accordance with the Commission’s directives regarding the DSIC.

28. Attached as Appendices “A” through “C” are Statements of Support submitted by Duquesne Light, BIE and OCA setting forth the bases upon which they believe the Settlement is fair, just and reasonable and, therefore, in the public interest. Also attached as Appendices “D” and “E” are Letters of Non-Opposition from OSBA and CAAP, respectively.

Conditions of the Settlement are set forth in Paragraphs 29 through 36 which provide, *inter alia*, that the Settlement is conditioned upon the Commission’s approval of the Settlement without modification; is made without any admissions with prejudice to positions that any signatory might adopt in subsequent litigation; may not be cited as precedent; is contingent upon the Commission’s approval of all its terms and conditions; and any signatory reserves the right to withdraw from the Settlement upon written notice, if the Commission does not approve the Settlement, or modifies any of the terms and conditions. Lastly, if the presiding officer recommends approval of the Settlement, the signatories waive the filing of Exceptions.

DISCUSSION

It is the policy of the Commission to encourage settlements. *See,* 52 Pa.Code § 5.231(a). Settlements often eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to its final conclusion, which might include review of the Commission’s decisions by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to a proceeding, as well as the Commission. However, these savings are often a benefit to the utility’s ratepayers by reducing expenses that could be claimed in future base rate cases.

In this proceeding, Duquesne Light sought to recover costs associated with the Company’s microgrid program through its Distribution System Improvement Charge and to determine which riders should be included in distribution revenues when calculating the DSIC. In addition to resolving these issues, the Settlement also addressed OCA’s concerns about income tax deductions and credits.

Position of Duquesne Light Company

Duquesne Light notes that the Commission promotes settlements[[4]](#footnote-4) because settlements reduce the time and expense the parties must expend litigating a case while also conserving administrative resources, and producing results through settlement which are often preferable to those results achieved at the conclusion of a fully-litigated proceeding.[[5]](#footnote-5) DLC acknowledges that before the Commission can accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.[[6]](#footnote-6)

Duquesne Light contends the Settlement reflects a carefully-balanced compromise of the interests of all of the Joint Petitioners. In the Commission’s Order entered September 15, 2016, the Commission referred two issues to OALJ: (1) “DSIC-recovery of costs associated with Duquesne’s Microgrid Program”; and (2) “[t]he inclusion of riders in distribution revenues when calculating the DSIC mechanism.”[[7]](#footnote-7) Duquesne Light asserts the Settlement reached does in fact represent a fair and reasonable compromise of the Joint Petitioners’ positions on these issues.

### 1. DSIC-Recovery of Microgrid Program Costs

Duquesne Light originally identified its microgrid program as a DSIC-eligible project even though it did not include any costs associated with that microgrid program in its LTIIP or DSIC filings. During the proceeding, Duquesne Light explained it would file an amended LTIIP to include a project description and proposed costs if the microgrid project at its Woods Run operations center were further developed and, if the Company sought to recover those costs through the DSIC, it would make a separate filing seeking approval of the project at that later time. Duquesne Light clarified it would need to repair, improve, or replace distribution assets in the geographical footprint of that potential project, even in the absence of its Woods Run microgrid pilot project. Duquesne Light acknowledged both BIE and OCA disputed the inclusion of the microgrid program as a DSIC-eligible project and alleged that there was a lack of information about the project, including estimated costs.

DLC points out that all parties agreed in the Settlement that Duquesne Light did not propose a detailed microgrid program in its LTIIP or propose to include costs associated with that program in its DSIC, and that it would not recover any microgrid costs in its DSIC until two conditions are met: (1) DLC makes a specific microgrid filing with the Commission; and (2) the Commission approves the recovery of microgrid costs in the DSIC. Duquesne Light also notes that the Settlement neither reflects any agreement that the costs are DSIC-eligible nor prevents Duquesne Light from repairing, improving, or replacing distribution facilities at the Woods Run Facility and nearby locations under its LTIIP and then recovering those costs through the DSIC. Lastly, Duquesne Light points out that the parties specifically reserved the right to oppose any future filing, if Duquesne Light ultimately makes a filing that proposes to recover microgrid costs through the DSIC.

Based on the foregoing reasons, DLC opines the Settlement resolves the issues regarding the DSIC-recovery of costs associated with Duquesne Light’s microgrid program in a fair and reasonable manner. Under the Settlement, the microgrid costs are not recoverable under the LTIIP as filed on April 15, 2016, without prejudice to the Company filing an amended LTIIP, and Duquesne Light contends the parties have addressed the recovery of microgrid costs as directed by the Commission in its September 2016 Order.

### 2. Riders Included in the DSIC Calculation

For purposes of calculating the DSIC charge, Duquesne Light specifically excluded the State Tax Adjustment Surcharge (STAS) but included as distribution revenues the following: base distribution charges, Retail Market Enhancement Surcharge, Universal Service Surcharge, Energy Efficiency and Conservation Surcharge, and Smart Meter Charge. Duquesne Light proposed to include revenues from these Riders in the DSIC calculation because these revenues concern its role in providing distribution service and the Commission’s model tariff specifically provides that revenues from distribution service clauses and riders are to be included in the DSIC calculation.[[8]](#footnote-8)

Under the Settlement, revenues from the Retail Market Enhancement Surcharge, Universal Service Surcharge, Energy Efficiency and Conservation Surcharge, and Smart Meter Charge will be included as distribution revenues when calculating the DSIC for purposes of calculating the DSIC rate cap. Duquesne Light will apply the DSIC to these riders but the STAS will be excluded from the DSIC calculation, and the DSIC will not be applied to the STAS.

DLC contends the Settlement fully resolves any issue concerning which riders are to be included as distribution revenues when calculating the DSIC, and removes any doubt concerning the riders that will be included in the Company’s DSIC calculation and directly addresses this issue as directed in the Commission’s September 2016 Order.

### 3. State and Federal Tax Adjustments

OCA raised a concern about the income tax deductions and credits reflected in Duquesne Light’s DSIC calculation pursuant to Act 40 of 2016, and OCA argued accumulated deferred income taxes (ADIT) associated with DSIC-eligible plant should be included in the Company’s DSIC calculation. OCA argues DLC’s actual state income taxes paid should be reflected in the state income tax rate used to calculate the pre-tax rate of return.

Duquesne Light argues that Act 40 only applies in base rate cases and not to the calculation of the DSIC. DLC also contends the Commission previously determined that OCA’s proposed adjustments for ADIT and state income taxes should not be included in the DSIC rate calculation, because ADIT and state income tax deductions are reflected in the DSIC earnings

cap calculation. As such, ADIT and state income taxes are already included in the overall DSIC mechanism.[[9]](#footnote-9)

Duquesne Light points out that, under the Settlement, the parties acknowledged that issues regarding federal and state income tax deductions in calculating the DSIC charge already are being litigated before the Commission. Accordingly, the parties agreed that in DLC’s future DSIC filings, Duquesne Light will follow the Commission’s rulings on whether to exclude or include ADIT and whether to adjust the state income tax rate to reflect actual state income taxes paid, unless modified on appeal.

Duquesne Light contends the Settlement resolves the issues raised by OCA concerning ADIT and state income taxes, and recognizes the Commission will address these issues in another proceeding. By not litigating the issue in this proceeding, DLC contends the Settlement provision advances judicial economy, and ensures that its DSIC filings will comply with the Commission’s orders. Thus, the Settlement is in the public interest and should be approved without modification.

Position of the Bureau of Investigation and Enforcement

BIE notes it is of the opinion that the terms and conditions of the Settlement are in the public interest. As noted by the Commission previously, “[t]he prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”[[10]](#footnote-10) BIE opines the Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”[[11]](#footnote-11) BIE maintains that the proposed Settlement in this proceeding is in the public interest and requests the terms be approved by the ALJ and the Commission without modification.

BIE contends acceptance of this proposed Settlement is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding, especially since the microgrid issue cannot be resolved in the instant proceeding at this time. In addition, acceptance of the Settlement will negate the need to engage in additional litigation including the preparation of multiple levels of testimony as well as main briefs, reply briefs, exceptions and reply exceptions. The avoidance of further rate case expense by settling these issues best serves the interests of DLC and its customers.

1. Microgrid Proposal

BIE points out that initially DLC made reference to its “DSIC-eligible microgrid program,” and that characterization elevated BIE’s concerns that Duquesne Light was seeking preapproval of microgrid costs in this proceeding. In BIE’s view, for microgrid assets to be included in the DSIC, the microgrid must be considered to be “eligible property” or property that is part of a distribution system, pursuant to 66 Pa.C.S.A. § 1351(1), and DSIC recovery must be limited to costs that are reasonably and prudently incurred. To permit preapproval of these microgrid costs – without evidence that the costs to be incurred were reasonable and prudent – would have been inappropriate.

BIE points out that Duquesne Light had not finalized the design and development of its proposed Woods Run microgrid or of any other microgrid project, as of the time of the evidentiary hearing in this matter. BIE contends that – with no details or cost information available in this proceeding to support the reasonableness or prudency of any microgrid program – making any characterization of DSIC-eligibility would be premature.

BIE acknowledges that Duquesne Light has clarified in this Settlement that it is not making any claim for microgrid program costs in its current DSIC petition and Duquesne Light will not recover any microgrid costs in its DSIC unless and until: (1) Duquesne Light makes a specific microgrid filing with the Commission, and (2) the Commission approves recovery of microgrid costs in the DSIC. BIE points out that while the Settlement does not reflect an agreement that microgrid costs are DSIC-eligible, the Settlement does reflect that Duquesne Light is not prohibited from repairing, improving or replacing its existing distribution facilities necessary for reliable grid operations at the Woods Run Facility and nearby locations under its approved LTIIP and recovering such costs under the DSIC. The Settlement does not resolve the issue of whether the costs associated with Duquesne Light’s microgrid program are recoverable through the DSIC, because Duquesne Light is not yet making a claim to recover those microgrid costs.

BIE argues these Settlement terms promote the public interest in several ways. First, Duquesne Light’s agreement to not seek to recover of any microgrid costs – unless and until it makes a specific filing with the Commission and the Commission then approves the costs – will shield ratepayers from paying unreasonable or imprudent costs. Second, this Settlement term respects the Public Utility Code because it preserves the parties’ right to investigate whether any future microgrid costs constitute DSIC-eligible property, which determination is required before Duquesne Light can seek recovery of those costs.[[12]](#footnote-12) Third, the Settlement promotes Duquesne Light’s use of DSIC funding to ensure and maintain adequate, efficient, safe, reliable and reasonable service[[13]](#footnote-13) by not precluding it from repairing, improving or replacing its existing distribution facilities necessary for reliable grid operations. Accordingly, BIE opines the Settlement promotes the public interest by: ensuring that ratepayers do not pay unreasonable or imprudent costs; adhering to the Public Utility Code; and preserving Duquesne Light’s ability to provide safe, reliable, and reasonable service.

2. Inclusion of Riders in Distribution Revenues When Calculating the DSIC

BIE did not take a position on the inclusion of riders in distribution revenues for Duquesne Light’s DSIC calculation. However, BIE noted that it supported the following Settlement term:

Duquesne Light will include the Retail Market Enhancement Surcharge, Universal Service Charge, Energy Efficiency & Conservation Surcharge and Smart Meter Charge in distribution revenues when calculating the DSIC for purposes of calculating the DSIC rate cap and will apply the DSIC to these Riders. The State Tax Adjustment Surcharge (STAS) will be excluded from the DSIC calculation, and the DSIC will not be applied to the STAS.[[14]](#footnote-14)

BIE’s support for this settlement term is predicated on the fact the term comports with the Commission’s model DSIC tariff.[[15]](#footnote-15) BIE avers the public interest is served when utilities correctly calculate their DSICs and do so in a manner that is consistent with Act 11 of 2012.

3. Treatment of Federal and State Income Tax Deductions in DSIC Calculations

BIE did not take a position on the treatment of federal and state income tax deductions in the calculation of Duquesne Light’s DSIC. However, BIE noted it supports the following Settlement term:

The Parties recognize that issues raised by OCA regarding treatment of federal and state income tax deductions in calculating the DSIC charge are currently being litigated before the Commission in the First Energy Companies’ consolidated DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P‑2015-2508931, and P-2015-2508948.  The Joint Petitioners agree that Duquesne Light will follow Commission Orders regarding whether to exclude or include ADIT in the DSIC calculation and whether or not to adjust the state income tax rate used to calculate DSIC revenue requirement to reflect actual state income taxes paid in future DSIC filings.[[16]](#footnote-16)

BIE contends this term serves the interests of conserving resources and of promoting order, certainty, and consistency of Commission decisions. BIE notes that this term explicitly recognizes these same tax issues raised are currently the subject of another Commission proceeding. By including this term in the Settlement, Duquesne Light commits to honoring the Commission Order(s) that results from those proceedings already underway. By adopting this commitment, the Settlement allows the parties, the ALJ, and the Commission to avoid wasting time and resources to litigate and resolve an issue that would be resolved in another proceeding by the end of this proceeding. Additionally, the term promotes order, certainty, and consistency by ensuring that the parties agree to honor the ultimate Commission Order on these issues.

Position of Office of Consumer Advocate

OCA contends the Settlement effectively resolves the issues it raised and considered in response to the initial DSIC Petition filed by Duquesne Light. OCA submits the terms and conditions of the Settlement are in the public interest and should be approved.

1. Duquesne Light’s Microgrid Program Proposal

OCA points out that Duquesne Light indicated in its petitions that it intended to build a microgrid at its Woods Run operations campus, but it did not provide any detailed information regarding the program including, *inter alia*, a schedule, projected expenditures, or categories of plant investment.[[17]](#footnote-17) As a result, the ALJ and parties cannot determine whether the investment is eligible for DSIC recovery. OCA notes, however, that the Settlement clarifies Duquesne Light will not recover any microgrid costs in its DSIC unless and until (1) it makes a specific microgrid filing with the Commission, if any; and (2) the Commission approves the recovery of microgrid costs in the DSIC. This provision is consistent with Duquesne Light’s rebuttal testimony.[[18]](#footnote-18)

The Settlement preserves OCA’s right to oppose such future filings, by affirming that the Settlement does not reflect any agreement that the microgrid costs are DSIC-eligible.

2. Inclusion of Rider Revenues in the DSIC Calculation

OCA notes Duquesne Light did not specify in its initial filings which riders were proposed to be included and excluded for purposes of calculating the DSIC rate. Accordingly, the Settlement specifies which riders will be included and, with that information, confirmed that only revenues derived from distribution service will be included in the DSIC calculation. This clarification in the Settlement resolves OCA’s concern.

3. Federal and State Income Tax Deductions Generated by DSIC Investment

OCA points out that Act 40 took effect on August 11, 2016.[[19]](#footnote-19) That statute provides:

If an expense or investment is allowed to be included in a public utility’s rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

*Id*. (emphasis added).

OCA recommended that federal and state income tax deductions generated by DSIC investment should be reflected in DLC’s DSIC calculations, because a final order in this proceeding will be entered after the effective date of Act 40. Duquesne Light opposed OCA’s recommendation. However, the impact of Act 40 on the treatment of federal and state income tax deductions in the DSIC calculation has been raised already in the First Energy Companies’ consolidated DSIC proceeding at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948. Rather than litigate the same issue again here, the Settlement provides that Duquesne Light will follow the Commission’s directives regarding the effect of Act 40 on the DSIC calculation. OCA submits it is in the interest of all parties, the Commission and the public to reduce or avoid litigation of this legal question. Thus, OCA submits that Paragraph 21 of the Settlement should be approved.

Conclusion

Upon reviewing the terms and conditions of the Settlement, and the Statements in Support submitted by Duquesne Light, BIE and OCA, the Settlement submitted in this case represents a fair, just, lawful, and reasonable resolution of this proceeding, as discussed below. Three issues concerned the parties in this proceeding.

1. Recovery of Microgrid Program Costs through the DSIC

When initially filing its petitions, Duquesne Light referenced its “DSIC-eligible microgrid program,” and in these two yoked proceedings Duquesne Light sought preapproval from the Commission for these microgrid costs. Duquesne Light denied it wanted the costs approved and insisted it intended to file a petition by March 31, 2017 in which it formally would seek approval of the actual proposed costs of the microgrid program. However, as correctly noted by BIE, the microgrid must be considered to be “eligible property” or property that is part of a distribution system, pursuant to 66 Pa.C.S.A. § 1351(1), if those assets are to be included in the DSIC. Furthermore, DSIC recovery is limited to only those incurred costs that are reasonable and prudent. It would have been inappropriate if the Commission permitted Duquesne Light to obtain preapproval of these microgrid costs absent evidence that the costs were reasonable and prudent. Therefore, the Settlement is in the public interest because it specifies Duquesne Light is not making any claim for microgrid program costs and Duquesne Light will not seek to recover any microgrid costs unless and until: (1) Duquesne Light makes a specific microgrid filing with the Commission, and (2) the Commission approves the recovery of microgrid costs in the DSIC.

2. Inclusion of Riders in Distribution Revenues when Calculating the DSIC

Duquesne Light did not specify initially which riders it proposed would be included or excluded for purposes of calculating the DSIC rate. The Settlement clarifies the issue and indicates which riders will be included. As a result, the Settlement confirms that only revenues derived from distribution service will be included in the DSIC calculation. By making this clarification, the Settlement shows Duquesne Light’s DSIC will comport with the Commission’s model DSIC tariff.[[20]](#footnote-20) In addition, the public interest is served, in general, when utilities correctly calculate the DSIC and do so in a manner that is consistent with Act 11 of 2012.

3. Treatment of State and Federal Income Tax Deductions in DSIC Calculation

Federal and state income tax deductions generated by DSIC investment and the impact of Act 40 on the treatment of federal and state income tax deductions in the DSIC calculation are issues that have been raised already in the First Energy Companies’ consolidated DSIC proceedings at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P‑2015-2508948. The parties agreed in the Settlement that, rather than litigate the same issue again here, Duquesne Light will follow the Commission’s directives regarding the effect of Act 40 on the DSIC calculation. This Settlement term – to wait until the legal issue is resolved in a separate proceeding – is in the interest of all parties, the Commission and the public because this “wait and see” approach will at least reduce (if not totally avoid) re-litigation of this legal question.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement submitted by Duquesne Light Company, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocate at Docket No. P-2016-2540046, be approved.

2. That Duquesne Light Company may be permitted to file a tariff or tariff supplement containing the rates, rules and regulations consistent with this Joint Petition for Settlement.

3. That the said tariff or tariff supplement may be filed on less than statutory notice, and may be filed to become effective for service rendered on and after the date on which the Commission’s Order in this case is entered.

4. That upon acceptance and approval by the Commission of the tariff or tariff supplement as being consistent with this Order, the proceeding at Docket No. P‑2016-2540046 shall be terminated, and the record and docket marked closed.

Date: March 8, 2017 /s/

Katrina L. Dunderdale

Administrative Law Judge

1. The other two remaining parties, the Office of Small Business Advocate and the Community Action Association of Pennsylvania indicated they did not oppose the Settlement. [↑](#footnote-ref-1)
2. *See* Docket No. R-2013-2372129. [↑](#footnote-ref-2)
3. The DSIC tariff filed on May 26, 2016 has no specific language authorizing recovery of microgrid costs, and therefore, does not need to be modified under this Settlement. [↑](#footnote-ref-3)
4. *See* 52 Pa.Code § 5.231(a). [↑](#footnote-ref-4)
5. *See* 52 Pa.Code § 69.401. [↑](#footnote-ref-5)
6. Pa. Pub. Util. Comm’n v. York Water Co., Docket No. R-00049165 (Order Entered Oct. 4, 2004); Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Associates, 74 Pa. PUC 767 (1991). [↑](#footnote-ref-6)
7. Petition of Duquesne Light Co. for Approval of its Long-Term Infrastructure Improvement Plan, Docket Nos. P-2016-2540046, *et al.*, p. 40 (Order Entered Sept. 15, 2016) (September 2016 Order). [↑](#footnote-ref-7)
8. Final Implementation Order, Docket No. M-2012-2293611, August 2, 2012. [↑](#footnote-ref-8)
9. *See* Petition of PPL Electric Utilities Corporation for Approval of a Distribution Service Charge, Docket No. P-2012-2325034, Order entered April 9, 2015, pp. 36, 46. [↑](#footnote-ref-9)
10. Pa. Pub. Util. Comm’n v. Philadelphia Electric Company, 60 Pa. PUC 1, 22 (1985). [↑](#footnote-ref-10)
11. Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Associates, 74 Pa. PUC 767, 771 (1991). [↑](#footnote-ref-11)
12. 66 Pa.C.S.A. § 1351. [↑](#footnote-ref-12)
13. 66 Pa.C.S.A. § 1353. [↑](#footnote-ref-13)
14. Joint Petition, at ¶20. [↑](#footnote-ref-14)
15. *Implementation of Act 11 of 2012*, Docket No M-2012-2293611, *Final Implementation Order*, Appendix A (entered on August 2, 2012); OCA St. No. 1, p. 6. [↑](#footnote-ref-15)
16. Joint Petition, ¶21. [↑](#footnote-ref-16)
17. See 52 Pa.Code § 121.3(a). [↑](#footnote-ref-17)
18. See Duquesne St. 3R at 3. [↑](#footnote-ref-18)
19. See 66 Pa.C.S.A. § 1301.1. [↑](#footnote-ref-19)
20. *Implementation of Act 11 of 2012*, Docket No M-2012-2293611, *Final Implementation Order*, Appendix A (entered on August 2, 2012); OCA St. No. 1, p. 6. [↑](#footnote-ref-20)