**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2021-3024750

Office of Consumer Advocate : C-2021-3025538

Office of Small Business Advocate : C-2021-3025462

:

v. :

:

Duquesne Light Company :

**SCHEDULING ORDER**

On April 16, 2021, Duquesne Light Company (Duquesne Light or Company) filed Supplement No. 25 – PA P.U.C. No. 25 to become effective June 15, 2021 seeking an increase in total annual operating revenues for electric service by approximately $115 million, which includes rolling the Distribution System Improvement Charge (DSIC) Rider charges into base rates. If the Company’s entire request is approved, the proposed metered usage rates would increase from $100.12 to $107.85 per month, or by 7.72% for a residential customer using 600 kWh per month.

On April 23, 2021, the Office of Small Business Advocate (OSBA) filed a formal complaint and public statement against the tariff filing, docket number C-2021-3025462, averring, among other things, that upon review of the materials filed by Duquesne Light, those materials may be insufficient to justify the rate increase requested and that Duquesne Light’s present and proposed rates, rules and conditions of service may be unjust, unreasonable, unduly discriminatory and otherwise contrary to law, particularly as they pertain to small business customers. The OSBA further averred that the proposed rates, rate design and cost and revenue allocation are or may be unjust, unreasonable and unlawfully discriminatory in violation of the Public Utility Code, and contrary to appropriate public policy and sound ratemaking considerations. The OSBA also requested that the filing be suspended and investigated and that the proposed new rates and other tariff changes be rejected to the extent they are found to be unlawful, unjust, unreasonable and unduly discriminatory.

On April 23, 2021, the Commission’s Bureau of Investigation and Enforcement (I&E) intervened into this case.

On April 27, 2021, the Office of Consumer Advocate (OCA) filed a formal complaint and public statement against the tariff filing, docket number C-2021-3025538, averring, among other things, that a preliminary examination of Duquesne Light’s rate increase request indicates that the present rates, rules and regulations are not just and reasonable or otherwise proper under the Public Utility Code and applicable ratemaking principles. OCA also avers that Duquesne Light’s proposed charges, increases and changes in rates, rules and programs are or may be unjust, unreasonable and in violation of law, will allow Duquesne Light an opportunity to recover an excessive rate of return on its utility property investment in violation of the Public Utility Code, and otherwise may be contrary to sound ratemaking principles and public policy. The OCA asked that the Commission suspend and investigate the operation of the proposed tariff supplement pursuant to Section 1308(d) of the Public Utility Code, consolidate all complaints filed against the proposed tariff supplement, hold full evidentiary hearings to examine the reasonableness of Duquesne Light’s current rates and its proposed increases in rates, and deny or modify any unjustified proposals. The OCA also asked that public input hearings be held in the affected service territory.

On May 20, 2021, the Commission suspended the filing by operation of law until January 15, 2022 pursuant to Section 1308(d) of the Public Utility Code, unless permitted by the Commission to become effective at an earlier date. The Commission added that investigation and analysis of the proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules and regulations may be unlawful, unjust, unreasonable and contrary to the public interest. The Commission determined that consideration should be given to the reasonableness of Duquesne Light’s existing rates, rules and regulations. The Commission assigned the case to the Office of Administrative Law Judge for the prompt scheduling of hearings as may be necessary culminating in the issuance of a Recommended Decision.

As a result, on May 20, 2021, a hearing notice was issued establishing a telephonic prehearing conference for this matter for Thursday, May 27, 2021 at 10:00 a.m. and assigning us as the presiding officers. A prehearing conference order was also issued on May 20, 2021, setting forth various rules that would govern the prehearing conference.

On May 26, 2021, Nationwide Energy Partners, LLC (Nationwide) filed a formal complaint against the tariff filing, docket number C-2021-3026057, averring, among other things, that based on the terms and interpretation of its tariff provisions relating to master metering for commercial buildings, specifically Tariff Rule 18 and Rule 41, Duquesne Light is depriving certain of its commercial customers of the opportunity to reduce their rates for service and, therefore, Duquesne Light’s current and proposed rates may be contrary to law.

Petitions to intervene have been filed by the Pennsylvania Weatherization Providers Task Force, Inc. (PWPTF), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Natural Resources Defense Counsel (NRDC), United States Steel Corporation (U.S. Steel), and Peoples Natural Gas Company LLC (Peoples Natural Gas).

The prehearing conference convened on May 27, 2021 as scheduled. Michael Zimmerman, Esquire, Anthony Kanagy, Esquire, Tishekia Williams, Esquire, and Emily Farah, Esquire appeared on behalf of Duquesne Light[[1]](#footnote-1); Scott Granger, Esquire appeared on behalf of I&E; Christy Appleby, Esquire appeared on behalf of the OCA; Sharon Webb, Esquire appeared on behalf of the OSBA; Ria Pereira, Esquire appeared on behalf of CAUSE-PA; Barry Naum, Esquire appeared on behalf of U.S. Steel; Joseph Vullo, Esquire appeared on behalf of PWPTF; Andrew Karas, Esquire and Sophia Al Rasheed, Esquire appeared on behalf of the NRDC[[2]](#footnote-2); and Karen Moury, Esquire and Lauren Burge, Esquire appeared on behalf of Peoples Natural Gas.

The purpose of this scheduling order is to memorialize the matters agreed upon at the prehearing conference.

As an initial matter, the formal complaints filed by the OCA and OSBA were formally consolidated with the Commission’s investigation. The complaint filed by Nationwide was not consolidated as it had only been filed the prior day. Duquesne requested until June 4, 2021 to file any response to complaint. No party objected to the petitions to intervene by NRDC, U.S. Steel, CAUSE-PA, or PWPTF. Accordingly, the petitions to intervene were granted, as confirmed in the ordering paragraphs below. However, Peoples Natural Gas’s petition to intervene was not granted because Duquesne Light reserved the right to file a response to the petition by June 4, 2021.

Next, the parties agreed to the following litigation schedule:

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| --- | --- |
| Non-Company Direct Testimony | June 30, 2021 |
| All parties’ Rebuttal Testimony | July 26, 2021 |
| All parties’ Surrebuttal Testimony | August 10, 2021 by noon |
| Rejoinder Outline | August 13, 2021 |
| Hearings | August 16-18, 2021 |
| Main Briefs | September 3, 2021 |
| Reply Briefs | September 13, 2021 |

The evidentiary hearings will be held telephonically and begin at 10:00 a.m.

The parties also discussed the need to modify the Commission’s regulations regarding discovery. The parties agreed that the modifications proposed by the OCA would be adopted with three further modifications made by Duquesne Light. The OCA’s proposed modifications are:

* 1. Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service.
  2. Objections to interrogatories shall be communicated orally within four (4) calendar days of service of the interrogatories; unresolved objections shall be served to the ALJ in writing within six (6) days of service of the interrogatories.
  3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.
  4. Answers to motions to dismiss objections and/or answering of interrogatories shall be filed within three (3) calendar days of service of such motions.
  5. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
  6. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the requests.
  7. Any discovery served after noon (12 p.m.) on a Friday or the day before a holiday will be deemed to have been served on the following business day for purposes of tracking due dates.
  8. All discovery due dates be “in-hand” and that electronic or fax service on the due date will satisfy the “in-hand” requirement.
  9. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests not responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission’s Secretary.

Duquesne Light’s first proposed modification was to #2 so that unresolved objections would be served on the parties and not the ALJs. Duquesne Light’s second proposed modification was to eliminate fax as a service option in #8. Duquesne Light’s third proposed modification was to include an additional requirement that parties’ electronic workpapers and exhibits will be provided in live format (e.g., Excel spreadsheets) within two (2) days of the due date of corresponding testimony. Although there was concern expressed about any expansion of the “standard” discovery modifications by the addition of the requirement to file “live” exhibits, these modifications will be adopted as part of this proceeding.

Duquesne Light, OCA, CAUSE-PA, and NRDC either supported or requested public input hearings. Specifically, Duquesne Light and OCA requested two telephone public input hearings be held. OCA volunteered its call center staff to sign up DLC consumers to testify or listen to the public input hearings and Duquesne Light volunteered to host the two public input hearings remotely via its WebEx software. Commission policy provides at least one public input hearing should be held in a utility’s service area if the Commission determines there is substantial public interest in a rate proceeding. 52 Pa.Code § 69.321(b). We find substantial public interest in this proceeding exists to warrant holding two public input hearings. After discussion, the parties agreed one afternoon and one evening public input hearing should be conducted on June 22. After further investigation, the Office of Administrative Law Judge determined the public input hearings would take place telephonically on June 22, 2021 at 1:00 p.m. and 6:00 p.m.

Duquesne Light is to advertise the public input hearings in a timely fashion and to work with any interested parties in regard to the wording of the public input hearing announcements, and where and how the public input hearing announcements are to be published and/or broadcast. Prior to the initial public input hearing, Duquesne Light is to file with the Secretary’s Bureau, with a copy to the presiding officer, a document which provides the wording of the public input hearing announcement, where it appeared and on what dates.

A discussion was also held regarding Duquesne Light’s motion for protective order filed on April 26, 202. No party indicated opposition to the motion for protective order. Therefore, Duquesne Light’s motion was granted, and a protective order will be issued shortly. The parties are reminded that the treatment of information alleged to be proprietary must be balanced against Commission regulations that also provide that the Commission’s records, including the record of this proceeding, may be accessed by the public. As a result, while the parties can exchange whatever information they allege to be proprietary amongst themselves, they are encouraged to minimize or eliminate submitting for admission into the record material that is marked as proprietary to ensure greatest public access to the record of this proceeding.

Finally, the parties were reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

To the extent there is no settlement, the parties will be required to attach to their briefs the standard uniform tables that conform the parties’ various positions on particular issues. The parties will also be required to propose a common outline for the submission of briefs. Those tables will be provided at the evidentiary hearing in August if necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Office of Consumer Advocate at docket number C-2021-3025538 and the formal complaint filed by the Office of Small Business Advocate at docket number C-2021-3025462 are hereby consolidated with the Commission’s investigation at docket number R-2021-3024750.
2. That the petitions to intervene of the Pennsylvania Weatherization Providers Task Force, Inc., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Natural Resources Defense Counsel, and United States Steel Corporation are granted.
3. That Duquesne Light Company is given until June 4, 2021 to file any answer or response to the Complaint filed by Nationwide Energy Partners, LLC and the Petition to Intervene filed by Peoples Natural Gas Co.
4. That the following schedule is adopted for this proceeding:

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| --- | --- |
| Non-Company Direct Testimony | June 30, 2021 |
| All parties’ Rebuttal Testimony | July 26, 2021 |
| All parties’ Surrebuttal Testimony | August 10, 2021 by 12:00 p.m. |
| Rejoinder Outline | August 13, 2021 |
| Hearings | August 16-18, 2021 |
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1. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officer. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officers no later than 4:30 p.m. on the dates listed. Parties may serve the documents listed above via e-mail to meet this requirement, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
2. That written testimony shall comply with the requirements of 52 Pa.Code §5.412 and shall be marked with numerical, sequential statement numbers.
3. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
4. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373, as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§5.361, 5.371-5.372.
5. That any evidentiary hearing will be held telephonically and will commence at 10:00 a.m. unless changed by the presiding officers.
6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§5.232 and 5.234.
7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
8. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code §5.223(a).

Date: May 28, 2021 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

/s/

John M. Coogan

Administrative Law Judge

**R-2021-3024750 - PA PUBLIC UTILITY COMMISSION et al v. DUQUESNE LIGHT COMPANY**

*Updated 05/27/21*

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1. Jonah Markle and Alexia Porche accompanied Duquesne Light’s attorneys at the hearing. [↑](#footnote-ref-1)
2. Michael Sedena accompanied NRDC’s attorneys at the hearing. [↑](#footnote-ref-2)