

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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COMMERCIAL UTILITY CONSULTANTS,  
INC.,

Complainant

v.

DUQUESNE LIGHT COMPANY,

Respondent

Docket No. C-2008-2079429

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**POST HEARING BRIEF**

**I. INTRODUCTION**

Duquesne Light Company (“Duquesne”) has violated the clear terms of its own tariff by requiring its major industrial customers to pay for historical billing data, while not imposing the same charge on smaller customers. The \$30.00 charge for each screen of information is unjust and unreasonable, as it is unrelated to the actual cost of producing the information. Therefore, Complainant Commercial Utility Consultants, Inc., (“Complainant”) seeks an Order requiring (1) Duquesne to comply with the clear and unambiguous language of its tariff by providing all of its customers – including major industrial users – historical data once each calendar year for no fee; and (2) Duquesne to refund to Complainant all fees paid by Complainant to obtain historical billing data for major industrial users. In the alternative, Complainant seeks an Order directing Duquesne to lower or eliminate the fee it imposes for a customer or its authorized representative to obtain historical billing data so that such fee is just and reasonable within the meaning of the Public Utility Code.

## II. FACTUAL BACKGROUND

Complainant is a utility consulting firm that represents commercial and industrial users of utility services both inside and outside of Duquesne's franchise territory, including approximately 200 large industrial users. Complainant assists each client in saving on its utility expenditures by analyzing the rates, riders, and tariffs applicable to the client's utility billings and making recommendations for savings. To achieve these savings, Complainant obtains a written authorization from its client to obtain historical billing data for the client.

The historical billing data is an essential tool to analyze a client's billing and potential savings. Not only does the data include the total kilowatts used within a given month, the rate charged in that month, and the total amount due, but also, it provides a unique view of the trends in a client's usage. In addition, the historical billing allows Complainant to determine whether there a client was subject to a billing error that would entitle a client to a refund.

After providing written authorizations for the release of information to Duquesne, Complainant requested historical billing data for select clients by an e-mail dated August 21, 2008. *See* Exhibits C-3. Duquesne informed Complainant that it imposed a fee of \$30.00 per screen for the account information. *See* Exhibit C-3. Duquesne reported that the fee is applied in two instances: (1) to all large industrial customers, defined as users whose average 12 month historical demand is greater than 25 kW/H, and (2) to smaller users who have received historical billing data within the past 12 months. At the request of its clients, Complainant paid the substantial fees to retrieve the data. *See* Exhibit C-4.

Now, Complainant seeks a determination that Duquesne is violating its own tariff or that the fees charged are unjust and unreasonable for the service provided.

### **III. LEGAL ARGUMENT**

Duquesne is impermissibly violating its own tariff by requiring its large industrial customers to pay a fee for their own billing information. Duquesne's tariff clearly provides "the Company will provide to a customer or its authorized representative historical data ... one each calendar year for no fee." *See* Exhibit C-1. Despite the clear terms of the tariff, Duquesne maintains that large industrial users are not entitled to historical data for free. Not only is Duquesne contravening its own tariff, but also it is charging its large commercial customers an unreasonable fee of \$30.00 per screen of historical billing data. Even if Duquesne is permitted to charge a fee, this rate is unreasonable, unjust, and unrelated to the expenses incurred in producing the information.

#### **A. Duquesne is misapplying its own tariff.**

Duquesne's imposition of a fee for the production of historical billing data violates the clear and unambiguous terms of its own tariff. Section 46 of Duquesne's tariff states: "The Company will provide to a customer or its authorized representative historical data in accordance with all current regulatory requirements of direct access once each calendar year for no fee." *See* Exhibit "C-1." Although the language contained in the tariff could not be more plain, Duquesne has taken the stance that this language does not apply to major industrial users. Rather, Duquesne has taken the untenable position that only small commercial and residential users—or their representatives—are entitled to historical data for free once a year.

In support of its position, Duquesne hangs its hat on one current public utility regulation, which provides: “[r]esidential and small business customers are entitled to receive at no charge and at least once a year, historical billing data from whomever reads the meter for billing purposes.” 52 Pa. Code §54.6(g). As the Public Utility Commission’s regulation contains no reference to large industrial users, Duquesne concludes that it may charge all other users for historical billing data. This statement could be true, if not for Duquesne’s own tariff, which expressly contradicts Duquesne’s conclusion.

It is well settled that the Public Utility Code mandates a public utility’s compliance with its own tariff. *See* 66 Pa.C.S. § 1303; *PPL Elec. Utilities v. Pa.PUC*, 912 A.2d 386, 399 (Pa. Commw. 2006). Moreover, the rates specified in the tariff are the lawful rates until changed. 66 Pa. C.S. §1303. As set forth above, Duquesne’s tariff could not be more straightforward: “The Company will provide to a customer or its authorized representative historical data... **once each calendar year for no fee.**” *See* Exhibit C-1. The tariff has not been changed, and contains no distinction between large industrial customers and smaller customers. Duquesne’s fee for the production of historical billing data has not been approved by the Public Utility Commission. There is no contradiction between the Public Utility Commission’s regulations and the tariff; rather, Duquesne’s tariff provides a broader service to its customers, by allowing all customers to obtain historical billing at no charge once per year.

As there is no contradiction between the regulation and the tariff, the tariff has not been changed, and the tariff unmistakably provides that a customer – whether large industrial user or small user – entitled to receive historical data once a calendar year for

free, the Complainant requests an order requiring Duquesne to comply with the tariff, and to refund the monies Complainant paid for the production of the data. 66 Pa. C.S. §1312.

**B. Even if Duquesne may charge a fee for historical billing data, the current fee is unreasonable and unjust.**

The \$30.00 charge for historical billing data imposed by Duquesne is unreasonable, unjust, and excessive. The Public Utility Code provides in pertinent part: “Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa.C.S. § 1301. Rates are broadly defined to include “individual, or joint...charge...or other compensation whatsoever of any public utility...made, demanded, or received for any service...” 66 Pa. C.S. §102. Not only is the rate imposed by Duquesne not in conformity with the utility’s own tariff, but also, it is an unreasonable charge for information that is readily available at the push of a button.

Duquesne can hardly assert that the \$30.00 fee is just and reasonable in the face of uncontroverted evidence that no other major utility in Pennsylvania imposes such charges for a customer or its authorized representative to obtain historical billing data. In the past, only one Pennsylvania utility charged a fee for this information, and that utility’s fees were substantially lower: \$6.00 for an initial request on an account, and \$2.00 for each subsequent request. Today, no other utility imposes a charge for historical billing data.

Moreover, the production of the historical billing data is not a time intensive task, and is one where the process may be streamlined. To the contrary, providing the historical billing data involves nothing more than printing out readily available data from Duquesne’s computer database. The process for creating historical billing data is the simple, straightforward, and the same for large industrial customers and smaller

customers: the account representative receives the request for information, accesses the account, determines whether a fee is required, ensures that the proper authorization is received from the client, compiles and sends the information. Duquesne conceded that it could utilize lower level clerical workers to produce the information rather than account manager. To the extent that Duquesne claims that there are mailing costs associated with providing historical billing data, these costs could easily be avoided by simply emailing the information to customers or their authorized representatives.

In addition, the historical billing data is not voluminous (typically no more than 3-4 pages) and any copying or printing charges are *de minimis*. See Exhibit C-4. Specifically, Complainant introduced into evidence a historical billing record which contained three “screens” of information. See Exhibit C-4. For this single sheet of paper, Complainant paid \$90.00. Moreover, Duquesne has even conceded that it is not more burdensome to provide the same historical billing data to larger commercial customers than to small or residential customers.

The imposition of this large fee harms Duquesne’s customers as they seek the most advantageous rates available to them. The customers, which may have multiple accounts with Duquesne, are a captive market and have no choice but to pay the \$30.00 per screen fee for the information. Although Duquesne has a legal obligation to provide the most advantageous rate, it has little to no economic incentive to do so. Rather than encouraging its customers to be pro-active, the high rate charged for information available at the push of a button discourages clients from seeking the information.

Once the commission determines that existing rates are unjust, unreasonable, or in violation of any provision of law, the commission is authorized to determine and fix just

and reasonable rates going forward. 66 Pa. C.S. §1309 (a). Therefore, Complainant requests an order directing Duquesne to lower or eliminate the fees imposed for obtaining historical billing data, so that the fees are just and reasonable.

**IV. CONCLUSION**

In conclusion, Complainant respectfully requests:

(1) an Order directing Duquesne to comply with the clear and unambiguous language of its tariff requiring Duquesne to provide to all of its customers—including major industrial users—and their authorized representatives historical data once each calendar year for no fee;

(2) an Order directing Duquesne to refund to Complainant all fees paid by Complainant to obtain historical billing data for major industrial users; or, in the alternative,

(3) an Order directing Duquesne to lower or eliminate the fee it imposes for a customer or its authorized representative to obtain historical billing data so that such fee is just and reasonable within the meaning of the Public Utility Code.

Date: \_\_\_\_\_

HALBERSTADT CURLEY LLC

By: \_\_\_\_\_

Charles V. Curley  
Kelle A. Kilgarriff  
1100 East Hector Street, Suite 425  
Conshohocken, PA 19428  
610.834.8819 (ph)  
610.834.8813 (fax)

# **EXHIBIT C-1**

## RULES AND REGULATIONS - (Continued)

GENERAL PROVISIONS- (Continued)

## 45.1 SWITCHING PROTOCOLS – (Continued)

information or supply signed written authorization before the change is processed. If during the 10-day waiting period, the Customer elects to rescind its new EGS selection, the Company will notify the rejected EGS of the rescission. In the event the customer rescinds their EGS selection after the 10-day waiting period, the customer will be required to remain with the selected EGS for a minimum of one billing cycle.

**45.2 SUPPLIER SWITCHING OPTIONS** Customers who take Default Service from the Company may switch to an EGS at any time provided such notice is made to the Company in accordance with the switching protocols Rule No. 45.1. If a customer's service with an EGS is scheduled to terminate at some future date, that customer may renew that service with the same EGS or enter into a new contract with another EGS for service without returning to Default Service, provided such notice is made in accordance with the switching protocols. The customer may return to Default Service at the applicable tariff rates in effect at the time service is rendered to the customer. Only the customer may initiate the switch from EGS service to return to the Company's Default Service. The customer must notify the Company by telephone, in person or by written correspondence to initiate the switch to return to Default Service. The Company, however, will permit a customer to return to Default Service in a switch initiated by the customer's EGS through standard EDI procedures in the following circumstances: (1) the customer's failure to pay for service rendered by the EGS, (2) the complete abandonment of service in the Company's service area by the customer's EGS; (3) to remedy a case of inadvertent slamming of the customer, and (4) the expiration of the term of the customer's contract with the EGS, provided that the customer's contract with the EGS is a standard one commonly used by the EGS to provide service to other customers with similar service requirements and the expiration dates of the contract are not otherwise designed to game supply around Default Service rates by returning the customer to Default Service when wholesale energy prices have increased and EGS service to the customer has become uneconomic. Upon receipt of notice from an EGS to switch a customer from Default Service to the EGS, or notice from the customer of its intention to return to Default Service, the Company will provide the customer with a confirmation letter confirming the change in electricity supply unless otherwise instructed by the customer within 10 days.

(C)

**46. PROVISION OF LOAD DATA** The Company will provide to a customer or its authorized representative historical data in accordance with all current regulatory requirements of direct access once each calendar year for no fee. All subsequent requests by the customer, and all requests for historical data by the EGSs or other customer authorized consultant will be provided in accordance with the Supplier Tariff.

**47. TAX INDEMNIFICATION** If Duquesne Light Company becomes liable under Section 2806(g) or 2809(c) of the Public Utility Code, Pa. C.S. §§ 2806(g) and 2809(f), for Pennsylvania state taxes not paid by an Electric Generation Supplier (EGS), the non-compliant EGS shall indemnify Duquesne for the amount of additional state tax liability imposed upon Duquesne by the Pennsylvania Department of Revenue due to the failure of the EGS to pay or remit to the Commonwealth the tax imposed on its gross receipts under Section 1101 of the Tax Report Code of 1971 or Chapter 28 of Title 66.

# **EXHIBIT C-3**

Betsy Jones

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**From:** Joe McGillian [joe@commercialutility.com]  
**Sent:** Tuesday, August 26, 2008 3:13 PM  
**To:** 'Adam M Goldbach'  
**Subject:** RE: FW: Auth for Beitler McKee Optical  
**Attachments:** 46: Provisions of Load data.pdf

Adam:

Thank you very much for the information on the state regulations regarding requests for information about generation supply. I realize that the state regulations require that Duquesne and other utilities provide small business customers the historical billing data for no fee, but nowhere in the regulations did I see where it requires Duquesne or any other utility to charge for this information from customers who are not considered small business customers. For instance, PECO, Met-Ed, Penelec and PPL all provide this information free of charge. PPL used to charge \$6.00 per history but no longer charges a fee. In fact, DLCo is the only major utility in the state that charges anything at all.

Since there is no contradiction in the state regulations and the DLCo Tariff, I would think that the Duquesne Tariff would be the guiding source for how this information is provided. As you know, the DLCo Tariff clearly states that this information will be provided once per year to all customers free of charge. If necessary, please discuss this interpretation with Duquesne's legal department and let me know if they agree.

Thanks again for your cooperation.

Joe

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**From:** Adam M Goldbach [mailto:agoldbach@duqlight.com]  
**Sent:** Tuesday, August 26, 2008 10:53 AM  
**To:** Joe McGillian  
**Subject:** RE: FW: Auth for Beitler McKee Optical

Joe,

That's correct but notice in the your highlighted section it says "in accordance with all current regulatory requirements" and these state regs always trump the DLCo tariff. If you go to the state's site by following the directions below you will see where my explanation came from on why we're charging for this historical data.

Go to the website:

<http://www.pacode.com/>

Click on "Browse" on the left.

Highlight 52 PUBLIC UTILITIES

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and click on Select.

Click on Chapter 54: Electricity Generation Customer Choice

lick on 54.6. Request for information about generation supply.

Section g discusses the requirements.

Click back on 54.2. Definitions, where the small business customer is defined.

*Small business customer*—The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.

That should explain everything but if you still have any questions let me know.

Adam M. Goldbach  
Major Account Manager  
Duquesne Light Company  
2825 New Beaver Avenue  
Pittsburgh, PA 15233-1003  
Mail Drop N6-CS  
Phone: (412) 393-7814  
Fax: (412) 393-5724

"Joe McGillian" <Joe@commercialutility.com>

To: "Adam M Goldbach" <agoldbach@duqlight.com>

cc

08/25/2008 03:31 PM

Subject: RE: FW: Auth for Beitler, McKee, Optical

Adam,

Please see the attached page from the Duquesne tariff stating that "The Company will provide to a customer or its authorized representative historical data ... once each calendar year for no fee." It does not seem to distinguish between small commercial customers and those over 25 KW. Please review and call/email me to discuss.

8/26/08

Thanks,

Joe McGillian, President

Commercial Utility Consultants, Inc.

1556 McDaniel Drive

West Chester, Pa. 19380

Ph: 800-296-2821, 610-431-4400

Fax: 610-431-1023

email: [joe@commercialutility.com](mailto:joe@commercialutility.com)

Website: [www.commercialutility.com](http://www.commercialutility.com)

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**From:** Adam M Goldbach [mailto:[agoldbach@duqlight.com](mailto:agoldbach@duqlight.com)]  
**Sent:** Monday, August 25, 2008 7:44 AM  
**To:** Joe McGillian  
**Subject:** Re: FW: Auth for Beitler McKee Optical

Joe,

The way the regulation is broken down is that residential & small commercial customers may receive historical data once per year at no charge but every one else pays for each request. The threshold for small commercial is under 25kW & Beitler McKee Optical is over this mark so therefore there is a charge for the data even the first time around.

I hope that helps but if you have any other questions please let me know.

Adam M. Goldbach  
Major Account Manager  
Duquesne Light Company  
2825 New Beaver Avenue  
Pittsburgh, PA 15233-1003  
Mail Drop N6-CS  
Phone: (412) 393-7814  
Fax: (412) 393-5724

8/26/08

"Joe McGillian" <joe@commercialutility.com>

08/22/2008 05:32 PM

To <agoldbach@duquign.com>

cc

Subject: FW: Auth for Bellier McKee Optical

Adam,

It was my understanding that the customer or its authorized representative was entitled to historical billing data once per calendar year for no fee. Am I mistaken about this?

Regards,

Joe McGillian, President

Commercial Utility Consultants, Inc

1556 McDaniel Drive

West Chester, Pa. 19380

Ph: 800-296-2821, 610-431-4400

Fax: 610-431-1023

email: [joe@commercialutility.com](mailto:joe@commercialutility.com)

Website: [www.commercialutility.com](http://www.commercialutility.com)

8/26/08

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**From:** Betsy Jones [mailto:betsy@commercialutility.com]  
**Sent:** Friday, August 22, 2008 8:11 AM  
**To:** Joe McGillian  
**Subject:** FW: Auth for Beitler McKee Optical

Hi Joe,

Looks like they want \$30.00. Should I have Pam do a check on Monday? I am attaching the Duquesne bill.

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**From:** Adam M Goldbach [mailto:agoldbach@duqlight.com]  
**Sent:** Friday, August 22, 2008 7:44 AM  
**To:** Betsy Jones  
**Subject:** Re: Auth for Beitler McKee Optical

Good Morning Betsy,

After looking at this account there is a fee required to pull this historical usage data for you which would be \$30 per screen. If you still wish to proceed please mail a check made payable to 'Duquesne Light Co' to my attention and once received I will release this information to you. Again the amount of the check depends on which screens you really need so for instance if you want both the 03-07 & 03-08 then the fee would be \$60.

If you have any questions on this please let me know.

Adam M. Goldbach  
Major Account Manager  
Duquesne Light Company  
2825 New Beaver Avenue  
Pittsburgh, PA 15233-1003  
Mail Drop N6-CS  
Phone: (412) 393-7814  
Fax: (412) 393-5724

"Betsy Jones" <betsy@commercialutility.com>

08/21/2008 02:19 PM

To: "Duquesne" <agoldbach@duqlight.com>  
cc:

Subject: Auth for Beitler McKee Optical

8/26/08

Dear Mr. Goldbach:

Attached please find a signed letter of authorization from Beitler McKee Optical Company in regards to receiving a 12 month billing history for account #3000-002-878-001. Kindly forward a computer printout listing monthly usages, demands and net billings (Formats 03-07, 03-08 and 01-35). In addition, please include (Supplier Choice Screen #15-25) for the above client over the past 12 months. Thank you in advance for your cooperation, should you have any questions, please do not hesitate to call.

Betsy Jones

Administrative Assistant

Phone: 610.431.4400

Toll Free Fax: 866.297.1366

web-site: [www.commercialutility.com](http://www.commercialutility.com)



# **EXHIBIT C-4**

4006811355002 Y CC 069 LST-BL 03 RD CYC 08 BT CYC 08 < \* SERV START 07/1  
 RUNNING GRAPHICS INC STATUS ACTIVE EGS ALI LAST-TRAN 03/2  
 2C RIVER RD RM/RDR 320 000 DISPUTE EXP  
 VERONA PA 15147-1159 412 820 2200 RNTPROP NO:  
 \*\*\*\*\* (01-39) TRANSACTION SPLIT HISTORY \*\*\*\*\* 03/24/08 \*\*\*\*\* 10

DATE	TRAN TYPE	TOTAL AMOUNT	PAYMNT AMOUNT	TRANS AMOUNT	SUPPLIER	SUPPL. AMOUNT	PAYMNT AMOUNT	BALANCE
03-18-2008	BIL			9,000.53	FIRST	9,000.53		9,000.53
02-29-2008	PYM	11,032.19-		8,464.78-	FIRST	8,464.78-		
02-13-2008	BIL			8,464.78	FIRST	8,464.78		8,464.78
01-31-2008	PYM	12,023.49-		9,000.53-	FIRST	9,000.53-		
01-15-2008	BIL			9,000.53	FIRST	9,000.53		9,000.53
12-28-2007	PYM	9,837.74-		7,383.31-	FIRST	7,383.31-		
12-12-2007	BIL			7,383.31	FIRST	7,383.31		7,383.31
11-28-2007	PYM	9,319.70-		7,026.63-	FIRST	7,026.63-		
11-12-2007	BIL			7,026.63	FIRST	7,026.63		7,026.63
10-29-2007	PYM	9,273.09-		7,026.63-	FIRST	7,026.63-		
10-11-2007	BIL			7,026.63	FIRST	7,026.63		7,026.63
09-28-2007	PYM	10,013.90-		7,739.99-	FIRST	7,739.99-		
09-12-2007	BIL			7,739.99	FIRST	7,739.99		7,739.99
08-29-2007	PYM	10,547.48-		8,203.68-	FIRST	8,203.68-		
08-13-2007	BIL			8,203.68	FIRST	8,203.68		8,203.68
07-30-2007	PYM	10,853.52-		8,447.57-	FIRST	8,447.57-		

\*\*\*\* (05-07) COMMERCIAL/INDUSTRIAL BILLING HISTORIES \*\*\*\*\* 03/24/08 \*\*\*\*\* 1030 \*\*\*

LN	RDG DATE	BM	DUE DATE	TOTAL KWH	ELDEM	PF	\$/KWH	AMOUNT
01	03/13/08	03	04/03/08	120960	345.60	N	0.02	\$2576.35
02	02/13/08	02	02/29/08	113760	345.60	N	0.02	\$2567.41
03	01/15/08	01	01/31/08	120960	340.80	N	0.02	\$3022.96
04	12/10/07	12	12/28/07	99360	331.20	N	0.02	\$2454.43
05	11/09/07	11	11/28/07	94560	307.20	N	0.02	\$2293.07
06	10/10/07	10	10/29/07	94560	300.00	N	0.02	\$2276.46
07	09/11/07	09	09/28/07	104160	302.40	N	0.02	\$2273.91
08	08/10/07	08	08/29/07	110400	312.00	N	0.02	\$2343.80
09	07/11/07	07	07/30/07	110400	321.60	N	0.02	\$2405.95
10	06/11/07	06	06/28/07	95040	300.00	N	0.02	\$2247.05
11	05/10/07	05	05/29/07	95520	300.00	N	0.02	\$2247.64
12	04/11/07	04	04/30/07	93600	300.00	N	0.02	\$2245.26
13	03/12/07	03	03/29/07	106560	312.00	N	0.02	\$2339.04
14	02/09/07	02	02/28/07	109440	326.40	N	0.02	\$2435.85
15	01/11/07	01	01/30/07	103200	316.80	N	0.01	\$1478.11

\*\*\*\*\* (01-37) SUPPLIER HISTORY DETAIL \*\*\*\*\* 03/24/08 \*\*\*\*\* 1034 \*\*\*

ENTR	NUMR	SUPPLIER	B	O. RATE	CONSENS DATE	START DATE	END DATE	DIST RATE	REV CLASS	FOUR SIC	PDR PREF
	0003	FIRST	I	FI747	01/10/08	12/11/07					
	0003	FIRST	I	FI984	07/27/07	07/12/07	12/10/07				
	0003	FIRST	I	FI960	05/25/07	05/11/07	07/11/07				
	0003	FIRST	I	FI041	04/25/07	04/12/07	05/10/07				
	0003	FIRST	I	FI937	05/25/06	05/12/06	04/11/07				
	0003	FIRST	S		11/12/02	12/12/02	05/11/06				
	0002	DLCO-UNBON			12/21/98	01/15/99	12/11/02				
	0001	DLCO-EUM				07/15/97	01/14/99				

