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December 21, 2009

BY HAND

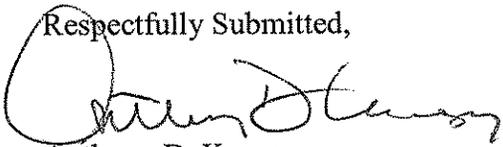
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PA Public Utility Commission
Commonwealth Keystone Building
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PO Box 3265
Harrisburg, PA 17105-3265

**RE: Petition of Duquesne Light Company For Approval of Default Service Plan for the
Period January 1, 2011 through May 31, 2013
Docket No. P-2009-2135500**

Dear Secretary McNulty:

Enclosed please find Duquesne Light Company's Motion to Dismiss Objections and Compel Discovery of the Retail Energy Supply Association in the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

cc: Honorable John H. Corbett Jr.
Certificate of Service

CERTIFICATE OF SERVICE

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

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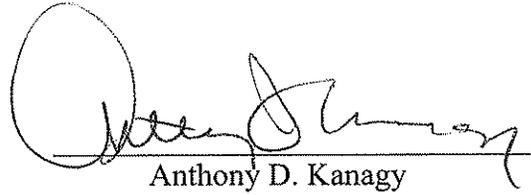
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Date: December 21, 2009



Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company For :
Approval of Default Service Plan for the : Docket No. P-2009-2135500
Period January 1, 2011 through :
May 31, 2013 :

**DUQUESNE LIGHT COMPANY'S
MOTION TO DISMISS OBJECTIONS AND COMPEL DISCOVERY
OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to 52 Pa. Code § 5.342, Duquesne Light Company ("Duquesne Light" or the "Company") hereby files its Motion to Dismiss the Objections of the Retail Energy Supply Association's ("RESA") and to Compel Discovery Responses ("Motion to Compel"). In support thereof, Duquesne Light states as follows:

I. BACKGROUND

1. On November 24, 2009, RESA served its first set of Interrogatories and Requests for Production of Documents ("RESA Interrogatories") on Duquesne Light.
2. On November 25, 2009, Duquesne Light notified RESA's counsel that it was objecting to certain of RESA's Interrogatories. Counsel for the parties then had a discussion on November 25, 2009, wherein the Parties agreed to attempt to informally resolve the Company's Objections. Counsel for Duquesne Light and RESA had subsequent discussions regarding the Company's Objections but were unable to resolve the Objections informally.
3. On December 3, 2009, Duquesne Light filed its written objections in response to RESA's Interrogatories.
4. On December 4, 2009, RESA filed a motion to compel responses to the RESA Interrogatories.

5. On December 9, 2009, Duquesne Light served its Set I Interrogatories and Request for Production of Documents (“Duquesne Light Interrogatories”) on RESA. With limited exception, the Duquesne Light Interrogatories requested the same information from RESA that RESA is seeking from Duquesne Light. RESA is attempting to make certain subjects relevant in this proceeding, including affiliate relationships, past profits, future projections of profits, and market share of affiliates. It is Duquesne Light’s primary position that the information requested in certain of the RESA interrogatories is irrelevant and not calculated to lead to the discovery of relevant information for this proceeding. However, to the extent that Duquesne Light is required to provide this information, Duquesne Light will need to have similar information from the RESA members to be able to respond to parties’ arguments about whether Duquesne Light’s affiliate relationships, past profits, market share and future projections of profits are reasonable.

6. On December 9, 2009, counsel for RESA informed counsel for Duquesne Light that RESA was objecting to certain of Duquesne Light’s Interrogatories. On December 12, 2009, the parties had a discussion regarding RESA’s objections but were unable to resolve them informally.

7. On December 15, 2009, RESA served its written objections to Duquesne Light’s Interrogatories.

8. On December 18, 2009, Administrative Law Judge John H. Corbett, Jr. (the “ALJ”) issued a Third Interim Order Granting In Part and denying in part RESA’s Motion to Compel. In the Third Interim Order, the ALJ ruled that Duquesne Light was not required to answer certain of RESA’s Interrogatories. Therefore, as explained below, Duquesne Light has modified its Interrogatories in a manner that is consistent with the ALJ’s ruling in the Third Interim Order.

II. MOTION TO COMPEL

Duquesne Light Definition of RESA

RESA objected to Duquesne Light's Definition of RESA, which reads as follows:

1. Unless otherwise stated, the term "Retail Energy Supply Association" or "RESA" shall mean, as the context requires: RESA and its members, individually and collectively, and any affiliate or subsidiary of RESA, its members, individually and collectively, and any affiliate or subsidiary of either.

RESA objected to this definition to the extent that it includes RESA's members, affiliates or subsidiaries. Duquesne Light asked RESA this question in response to RESA's Interrogatories which sought affiliate information. In the Third Interim Order, the ALJ granted Duquesne Light's Objection regarding affiliate information. Interim Order, p. 2. Therefore, Duquesne Light agrees not to request information from affiliates of RESA's members.

RESA also objects to Duquesne Light's definition to the extent that it requests information from RESA's members. According to RESA, it is a non-profit corporation that is not affiliated with its members and does not have the ability to require them to provide information. Contrary to RESA's assertions, the RESA members should not be permitted to hide behind the non-profit organization and claim that they are not required to provide discovery information.

RESA only has standing to participate in this proceeding because of its members. In *Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co.*, Docket No. C-902909, 1991 Pa. PUC LEXIS 195, the Commission stated as follows with regard to representational standing:

...this Commission, while acknowledging the concept of representational standing, will still require that the individual members of a representative entity have a direct, immediate, substantial interest in the subject matter....

In addition, in its Petition to Intervene, RESA cited the effect that this proceeding would have on its members as support for its intervention, stating as follows:

The ability of RESA's members to provide electric supply to retail customers in Duquesne's service territory will be specifically and substantially affected by the outcome of this proceeding, which will establish the terms and conditions under which Duquesne will acquire electric supply to serve its Default Service load during the twenty-nine month term of its proposed plan and, thus, the rates against which RESA members must compete to sell electricity to retail customers in Duquesne's service territory.

RESA Petition to Intervene, p. 3.

The RESA members should not be permitted to hide behind the RESA organization to avoid discovery in this case. This violates Duquesne Light's due process rights because Duquesne Light must be able to obtain information from the RESA members to adequately defend itself against RESA's claims. Duquesne Light notes that in the POLR IV proceeding, RESA made the same argument that it should not be required to respond to questions on behalf of individual members, and the presiding ALJ in that proceeding denied RESA's argument and required RESA to provide information on behalf of its individual members.¹

In addition, other state public utility commissions have addressed this very issue. In a 2002 decision from the Arkansas Public Service Commission, the Arkansas Commission stated as follows:

Though creative, WCAGC's [West Central Arkansas Gas Consumers, Inc.] position that its individual members are immune from discovery is unpersuasive and unacceptable. To allow WCAGC to shield its individual participating members from discovery would deny due process to the other parties. All parties appearing before this Commission have a due process right to engage in permissible discovery and all parties have a due process obligation to respond to such discovery.

Accordingly, WCAGC and its individual members now have a choice to make. WCAGC's individual members must submit to the legitimate discovery requests of AOG or WCAGC's intervenor party status will be revoked and its pre-filed testimony and exhibits will be stricken from the record.

¹ The ALJ in the POLR IV proceeding did not issue a written order resolving the discovery dispute but orally addressed the issue on a telephone conference with the parties.

In the Matter of the Application of Arkansas Oklahoma Gas Corporation for Approval of a General Change in Rates and Tariffs, Docket No. 02-024-U, Order No. 16, issued September 26, 2002, 2002 Ark. PUC LEXIS 473.

Likewise, a Florida Public Service Commissioner and Prehearing Officer issued the following decision regarding discovery on individual members of an association.

The FCCA [Florida Competitive Carriers Association] obtains standing based on its members' ability to sue. If relevant discovery could be thwarted simply because an association filed suit rather than the individual members of the association, then the association would not have standing to file suit because it would fail to meet the associational standing criteria set forth in *Florida Home Builders Association, et al., v. Department of Labor and Employment Security*, 412 So. 2d 351 (1982).

In re: Complaint of Florida Carriers Association, Docket No. 020507, Order No. PSC-03-0180-PCO-TL, Issued February 6, 2003, 2003 Fla. PUC LEXIS 103.

As explained above, the RESA members cannot be permitted to hide behind the RESA organization to avoid discovery. This would violate Duquesne Light's due process rights because it would not allow Duquesne Light to obtain information to defend itself against RESA's claims.

Duquesne Light Interrogatory No. 2

RESA objected to Duquesne Light Interrogatory No. 2 which provides as follows:

2. Do all of the above RESA members support RESA's intervention in this proceeding? Please provide supporting documentation, if any, to indicate the support.

RESA objects to this question for several reasons. First, RESA states that this information is not relevant to any claim brought in Duquesne Light's petition nor is it likely to lead to admissible evidence. Duquesne Light is asking this question because it is relevant to claims that RESA has made in its Petition to Intervene regarding the effect of this proceeding on its members and claims

that RESA may make in testimony. Therefore, this question is relevant and may lead to the discovery of admissible evidence. The fact that all of RESA's members may not support RESA's intervention is also relevant to the weight of RESA's claims in this proceeding and to the reasonableness of Duquesne Light's plan.

RESA also objects to the extent that this interrogatory asks for supporting documentation because those documents are not in RESA's possession, custody or control. As explained on pages 3-5 above, this is not a basis for objection by RESA. RESA is only permitted to intervene in this proceeding because of the interests of its members. The RESA members cannot use the RESA organization as a shield from discovery, and the RESA members should be required to provide the requested documents.

RESA also objects to this question to the extent that it seeks documents that are protected by the attorney-client privilege and work product doctrine. Consistent with the ALJ's Third Interim Order, Duquesne Light agrees that the RESA members are not required to produce documents that are subject to the attorney-client privilege and work product doctrine. However, the RESA members should be required to provide all other documents.

Duquesne Light Interrogatory No. 3

RESA objected to Duquesne Light Interrogatory No. 3 which provides as follows:

3. Do all of the above RESA members support the positions RESA will take in this proceeding? Please provide supporting documentation, if any, to indicate the support.

RESA objects to Interrogatory Number 3 for the same reasons that it objects to Interrogatory Number 2. As stated above, RESA's members cannot hide behind the RESA organization to avoid discovery. This question is relevant to the weight of RESA's claims in this proceeding and to the reasonableness of Duquesne Light's plan. However, consistent with its position above and the

ALJ's Third Interim Order, Duquesne Light agrees that the RESA members are not required to produce documents that are subject to the attorney-client privilege and work product doctrine.

Duquesne Light Interrogatory No. 4

RESA objected to Duquesne Light Interrogatory No. 4 which provides as follows:

4. For each RESA member identified in question 1 above, identify all affiliates of such members.

RESA objects to Interrogatory Number 4 on the basis that the identity of its members' affiliates is not relevant to this proceeding. Given the ALJ's ruling in the Third Interim Order that Duquesne Light's affiliates are not required to produce information in this proceeding, Duquesne Light agrees to withdraw this interrogatory.

Duquesne Light Interrogatory No. 5

RESA objected to Duquesne Light Interrogatory No. 5 which provides as follows:

5. For the RESA members and their affiliates identified in Question 1 above, has the Pennsylvania Public Utility Commission, FERC or any other regulatory agency conducted any review of the RESA members' affiliate relationships in the past three years? If so, provide a copy of any agency notices, decisions or orders pertaining to the agency's review. Please also provide a copy of any data responses, internal reports or analyses, or other information by these RESA members to the agency.

RESA objects to Interrogatory Number 5 on the basis that it has not been the subject of any regulatory investigation and to the extent it seeks information regarding RESA's members and affiliates. As explained above, RESA members must be required to answer discovery questions in this proceeding.

RESA argues that RESA's members' affiliate relationships are not relevant in this proceeding. However, RESA is attempting to make affiliate issues relevant in this proceeding.

This question mirrors a question that RESA has asked Duquesne Light regarding its affiliate relationships. Therefore, Duquesne Light needs comparable information from RESA to be able to counter any arguments that RESA or other parties may make about the reasonableness of Duquesne Light's affiliate relationships. RESA should not be permitted to ask questions of Duquesne Light that its members are not willing to answer themselves. This is unreasonable because it would allow RESA to make allegations that Duquesne Light's affiliate relationships are inappropriate when the RESA members may have the same relationship with their affiliates.

In the Interim Order, the ALJ limited the RESA Interrogatory to Duquesne Light to only require Duquesne Light to provide agency notices, decisions or orders pertaining to the agency's review of affiliates relationships in the past three years. Consistent with the ALJ's Interim Order, Duquesne Light agrees to limit this interrogatory to all agency notices, decisions or orders pertaining to any agency's review of the RESA members' affiliate relationships in the past three years.

Duquesne Light Interrogatory No. 6

RESA objected to Duquesne Light Interrogatory No. 6 which provides as follows:

6. Please identify the amount of any profit or loss incurred by the RESA members identified in Question 1 above and their affiliates related to the provision of electric generation supply services in Pennsylvania from 1/1/2008 through the most recent month for which information is available.

RESA claims that this question seeks information that is not relevant to any claim brought in Duquesne Light's petition and that it is not likely to lead to admissible evidence. Similar to the questions above, this question mirrors a question that RESA has asked Duquesne Light regarding past profits or losses. This question seeks relevant information because RESA is attempting to make past profit and loss information relevant in this proceeding. In the Interim Order, the ALJ

ruled that this information is relevant to help quantify the risk that Duquesne Light seeks to pass on to customers. Therefore, information regarding RESA members' profits or losses are relevant to the issue of whether Duquesne Light's risk premium is reasonable. Parties also may argue that Duquesne's past profits are too high or too low and, therefore, RESA members' profits would be relevant to counter these arguments.

RESA also claims that it does not control its members or affiliates and does not have access to these documents. For the reasons explained above, as a matter of due process, RESA's members must answer discovery questions in this proceeding. In addition, Duquesne Light agrees to modify this question to not require RESA's members' affiliates to provide information.

RESA also argues that this question would require its members to assemble financial information that is directly related to specific market activity and pricing and that this raises antitrust and confidentiality concerns that cannot be mitigated. If RESA is correct, then RESA should not be requesting financial information from Duquesne Light because it also relates to specific market activity and pricing with the same confidentiality concerns. In addition, RESA has not explained why it can obtain specific market activity and pricing information from Duquesne and not have the same antitrust concerns that it is alleging would occur if it was required to disclose specific market activity and pricing information for its members. Moreover, if the antitrust concerns are among the RESA members themselves, the RESA members can provide this information to Duquesne Light themselves without providing it to the other RESA members.

RESA also claims that the information would be burdensome to produce. Duquesne Light disagrees with this statement. Each RESA member can produce their own information. This is no more than what RESA is asking Duquesne Light to provide. As explained above, Duquesne Light should not be required to answer discovery questions from RESA in this proceeding that RESA's members themselves are unwilling to answer. Duquesne Light requires the same information from

the RESA members that Duquesne Light is required to provide in order to adequately defend its position and counter arguments from other parties.

Duquesne Light Interrogatory No. 7

RESA objected to Duquesne Light Interrogatory No. 7 which provides as follows:

7. Please identify all RESA members' affiliates which perform any power procurement function, including wholesale power procurement, on behalf of the RESA members identified in Question 1 above. Provide a description of all wholesale power procurement functions provided to these RESA members by their affiliates and provide copies of all contracts related to such power supply procurement.

In the RESA Interrogatories to Duquesne Light, RESA asked for a copy of a procurement contract for Duquesne Light's affiliate, Duquesne Power. In the Third Interim Order, the ALJ ruled that Duquesne Light was not required to provide a copy of this contract because it was not a party to the contract. Consistent with the ALJ's ruling in the Third Interim Order, Duquesne Light withdraws this question.

Duquesne Light Interrogatory No. 8

RESA objected to Duquesne Light Interrogatory No. 8 which provides as follows:

8. Provide copies of any reports or analyses prepared by or on behalf of RESA members identified in Question 1 above and their affiliates regarding the following:
 - a. The financial results related to RESA members' and their affiliates' provision of electric generation supply service in Pennsylvania from 1/1/2008 through the most recent month for which information is available;
 - b. Future projections of financial results related to RESA members' and their affiliates' provision of electric generation supply services in Pennsylvania for the proposed POLR V period (1/1/11 to 5/31/13);

- c. Projected electric generation supply service load and/or market share projections for Duquesne Light's service territory; and
- d. Discussion and/or analyses of electric generation supply procurement and pricing methods for electric supply service provided in Pennsylvania.

RESA objects to Interrogatory Number 8 for several reasons. First, RESA claims that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As with most of the other Duquesne Light Interrogatories above, RESA has requested similar information from Duquesne Light. Therefore, Duquesne Light requires this information from RESA in order to counter other parties' arguments.

RESA also claims that its members and affiliates are not parties in the proceeding. For the reasons explained above, RESA intervention in this proceeding is based on its members' interests and, therefore, the RESA members are required to respond to discovery questions. Also for the reasons explained above, Duquesne Light agrees to modify this question so that RESA's members' affiliates are not required to respond.

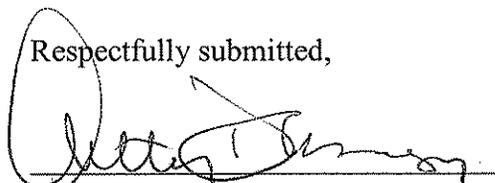
RESA also argues that its members are not regulated in Pennsylvania. First, they are subject to the regulatory authority of the Commission, including licensure and reporting. But, second, this is irrelevant. RESA has intervened as a party in this proceeding. Parties are required to answer discovery. In addition, RESA's intervention is based upon the interests of its members. Therefore, RESA's members are required to respond to discovery.

RESA also claims that the disclosure of information requested in 8(a), 8(b) and 8(c) raises confidentiality and antitrust concerns that cannot be mitigated. If RESA is unable to provide this information for its members due to confidentiality and antitrust concerns, then Duquesne Light should not be required to provide this information to RESA for the same reasons.

With regard to Interrogatory 8(d), in the Third Interim Order, the ALJ ruled that Duquesne Light did not have to provide similar information to RESA because the information was protected by the attorney-client privilege. Because Duquesne Light is not required to provide this information, Duquesne Light agrees to withdraw 8(d).

WHEREFORE, Duquesne Light Company respectfully requests that Administrative Law Judge John H. Corbett, Jr. deny the objections of the Retail Energy Supply Association to Certain Interrogatories of Duquesne Light Company as explained herein and grant this Motion to Compel for the Interrogatories not modified.

Respectfully submitted,



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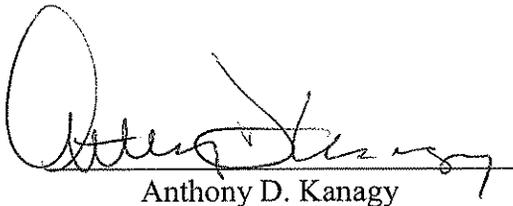
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Dated: December 21, 2009

Attorneys for Duquesne Light Company

CERTIFICATE OF COUNSEL

I certify that I have, on behalf of Duquesne Light Company, in good faith conferred with counsel for RESA in an effort to resolve the above-mentioned discovery disputes informally.



Anthony D. Kanagy