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December 22, 2009

VIA ELECTRONIC FILING

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Petition of Duquesne Light Company for Approval of Smart Meter
Procurement and Installation Plan; Docket No. M-2009-2123948**

Dear Secretary McNulty:

Pursuant to 52 Pa. Code § 5.412, enclosed for filing is the Reply Brief served today on behalf of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. in the above-captioned proceeding.

If you have any questions, please contact me.

Respectfully,



Christopher R. Sharp

CRS/scc
Enclosure

Cc: Honorable Robert P. Meehan (ALJ) (w/enclosure) (Via email and Federal Express)
All parties on Certificate of Service (w/enclosure) (Via email and First Class Mail)

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Duquesne Light Company
for Approval of a Smart Meter
Technology Procurement and
Installation Plan**

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Docket No. M-2009-2123948

**REPLY BRIEF OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.**

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Dated: December 22, 2009

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I. INTRODUCTION & SUMMARY OF ARGUMENT

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, “Constellation”) hereby submit their Reply Brief for consideration by the Administrative Law Judge and the Pennsylvania Public Utility Commission (“Commission”), with regard to the *Smart Meter Technology Procurement and Installation Plan* (“Smart Meter Plan” or “Plan”) filed by Duquesne Light Company (“Duquesne”) on August 14, 2009¹ (with supporting testimony from Duquesne filed on that same date²), in accordance with the Commission’s June 24, 2009 *Implementation Order*,³ as well as Duquesne’s Main Brief filed on December 8, 2009.⁴ Constellation also submitted its Main Brief in the instant proceeding on that same date.⁵

In its Main Brief, Duquesne addresses briefly the issues that Constellation raised in this proceeding. With respect to such issues, Duquesne provided explanations and/or commitments with respect to certain of the deficiencies in its Plan that were identified by Constellation, but failed to address and to meet its burden of proof with respect to at least one important deficiency: the Plan’s failure to provide 15-minute interval data to customers on an *hourly* basis or, at a

¹ *Petition of Duquesne Light Company for Approval of a Smart Meter Technology Procurement and Installation Plan*, Commission Docket No. **M-2009-2123948** (Aug. 14, 2009) (“Duquesne Petition”); and *Duquesne Light Company Smart Meter Technology Procurement and Installation Plan*, Commission Docket No. M-2009-2123945 (Aug. 14, 2009) (the “Smart Meter Plan” or “Plan”).

² *See, generally, Duquesne Light Company Testimony at Duquesne Petition, Exhibits C & D*, Commission Docket No. M-2009-2123948 (Aug. 14, 2009).

³ *Implementation Order*, Commission Docket No. M-2009-2092655 (entered June 24, 2009) (“Implementation Order”).

⁴ *Main Brief of Applicant Duquesne Light Company*, Commission Docket No. M-2009-2123948 (filed Dec. 8, 2009) (“Duquesne Main Brief”).

⁵ *Main Brief of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket No. M-2009-2123948 (filed Dec. 8, 2009) (“Constellation Main Brief”).

minimum, on a *daily* (24-hour) basis, as *required* by the Commission’s Implementation Order. It is in the public interest—and the weight of the evidence in the record supports a Commission decision—to require that Duquesne revise its Plan to include Smart Meters that provide for 15-minute interval data updated and made available on an *hourly* basis for its large commercial and industrial (“Large C&I”) customers.

II. ARGUMENT

THE COMMISSION SHOULD REQUIRE DUQUESNE TO PROVIDE FOR ITS LARGE C&I CUSTOMERS 15-MINUTE INTERVAL DATA UPDATED AND MADE AVAILABLE ON AN HOURLY BASIS OR, AT A MINIMUM, ON A DAILY (24-HOUR) BASIS.

As Constellation also explains in its Main Brief, *Act 129 of 2008* (“Act 129”)⁶ and the Commission’s Implementation Order specifically lay out requirements for all electric distribution companies’ (“EDCs”) Smart Meter technologies, including the type and frequency of data that each EDC’s Smart Meters must provide to customers. The Implementation Order specifically requires that Smart Meter technology implemented by an EDC *must* include as a *minimum* requirement the provision of 15-minute interval data on a daily basis,⁷ but suggests that Smart Meters should provide additional capabilities if it is technologically and economically feasible.⁸

First, despite these facts and the Commission’s direction, Duquesne not only does not explain but hides the fact that in its Plan’s application, it fails to meet the Implementation

⁶ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity_urges_legislature_to_pass_rate_mitigation_bill.html).

⁷ See Implementation Order at pp.16-17.

⁸ Implementation Order at pp.16-17 (stating that EDCs should be able “to upgrade these minimum capabilities as technology advances and becomes economically feasible”) (*emph. added*).

Order's minimum standard. Duquesne seems to believe that this requirement of the Implementation Order is not at all a requirement. As Constellation notes in its Main Brief, this belies the Commission's own language, which states that:

The Commission believes that the smart meter capability requirements *set out in Act 129 are minimal* requirements. The Commission also recognizes that smart meter technology can support more than demand response and pricing programs. Smart meters have the ability to support maintenance and repair functions, theft detection, system security, consumer assistance programs, customer generator net metering, and other programs that increase an EDC's efficiencies and reduce operating costs. Therefore, the Commission *directs* that a covered EDC's smart meter technology *must support* the following capabilities⁹

As one of these *additional* requirements that the Smart Meters included in all EDCs' Smart Meter Plans *must* support, the Commission lists the

[a]bility to provide 15 minute or shorter interval data to customers, EGSs, third parties and the regional transmission organization ("RTO") on a daily basis¹⁰

Duquesne has not provided evidence proving why it would not be in the public interest to provide such data on a *daily* basis, at a minimum, as laid out in and required by the Implementation Order. Therefore, at a minimum, the Commission should require that Duquesne revise its Smart Meter Plan such that, where the Plan provides for 15-minute interval data, such data is updated and provided to customers (and their designated TPSs and EGSs) on a *daily* (24-hour) basis.

⁹ Implementation Order at p.16.

¹⁰ Implementation Order at pp.16-17.

In addition, in regards to Constellation’s proposal that such 15-minute interval data be provided on an *hourly* rather than a *daily* (24-hour) basis, Duquesne in its Main Brief states in part that:

Duquesne disagrees with Constellation’s position on this issue, as different customers have different needs and the costs/benefits need to be analyzed associated with the data retrieval, storage, and providing that level of detail to the customer suggested by Constellation. Constellation acknowledged at the hearing that different customers have different levels of sophistication and need to access data.¹¹

Constellation indeed acknowledges that different customers have different levels of sophistication. However, Duquesne cites to not one piece of evidence in the record—and none exists therein—regarding the costs that would be incurred in order to provide for 15-minute data on an hourly basis for, at least, Large C&I customers. In fact, Duquesne today already has meters installed for Large C&I customers that *collect* data in 15-minute intervals.¹² Moreover, upon questioning from Duquesne, Constellation witness Fein explained that “it is fair to say that the [Large C&I] customers, generally speaking, are more sophisticated in their energy and electricity usage,” and that Large C&I customers “might have more sophistication, or . . . need more [data], say than . . . medium [C&I] customers.”¹³ Duquesne, though, as made no commitment to provide such collected data in a timely fashion.

Again, as Mr. Fein explained to Duquesne counsel, there is no need for Duquesne to wait to address more frequent data for Large C&I customers. Mr. Fein pointed out that:

¹¹ Duquesne Main Brief at p.17.

¹² See Hearing Transcript at pp.96-97 (where Duquesne’s counsel questions Constellation witness Mr. Fein about the provision of 15-minute data to Large C&I customers).

¹³ See Hearing Transcript at p.96.

Considering the fact that at least with the [Large C&I] customers, Duquesne's filing indicates that all of these [Large C&I] meters that satisfy the standard in Act 129 are in place. It would seem that some of the initial issues in areas that I addressed in my testimony are sort of ripe for addressing now, as opposed to waiting, at least in one respect, until June of 2011.

* * *

It seems to me that the infrastructures are in place and it seems like it has been in place for some time. Based upon the testimony that [Duquesne] is filing, [it seems] that some of those issues regarding access to data and frequency of data can be addressed at this point.¹⁴

The record thus is clear that Duquesne has no reason to wait on providing 15-minute interval data on an hourly basis using its *existing* infrastructure for Large C&I customers.

As another reason for disagreeing with Constellation's proposal for 15-minute data on an hourly basis, Duquesne in its main brief relies on the notion that it is unnecessary because "PJM operates all of its pricing and scheduling on an hourly basis," and the false premise that Duquesne should "be consistent [with PJM] and provide hourly data," rather than 15-minute interval data.¹⁵ This reasoning, however, fails to acknowledge the Commission's own statements in the Implementation Order regarding why it may be important for an EDC's Smart Meters to go beyond the Implementation Order's minimum requirements. As explained in the Implementation Order:

The Commission also recognizes that smart meter technology *can support more than demand response and pricing programs*. Smart meters have the ability to support maintenance and repair functions, theft detection, system security, consumer assistance

¹⁴ See Hearing Transcript at pp.92-93.

¹⁵ See Duquesne Main Brief at p.18.

programs, customer generator net metering, and other programs that increase an EDC's efficiencies and reduce operating costs.¹⁶

Constellation in its Main Brief cites to evidence explaining in detail why 15-minute data on an *hourly* basis is important to customers, for reasons consistent with this statement from the Commission. Specifically, as explained in the Constellation Main Brief, providing 15-minute data *on an hourly basis* rather than only on the Commission's minimum daily basis recommendation is in the public interest for customers because:

In today's competitive business environment, all sizes of commercial and industrial customers are thinking about energy as a strategic asset integral to every aspect of the bottom line. The capacity to actively monitor and manage usage and adjust operations accordingly reflects the increasingly sophisticated energy strategies now available . . . [Constellation] and other EGSs are helping customers adapt successfully to this new energy paradigm and positioning them to make the most of the opportunity to participate in the emerging energy marketplace of the 21st Century. Overlaying Smart Meter technologies . . . in our built environment, by virtue of its role in consumption, have the potential to shift our understanding of energy generation, demand and load allocation in an entirely new direction. This shift in direction, however, while *possible* is only *likely* to occur if the proper access to data is available to customers and their EGSs in quick, easy and straightforward manners, and if the data provided by such new Smart Meter technologies is as specific and frequent as possible.¹⁷

Therefore, the evidence in the record supporting 15-minute data on an hourly basis is *consistent* with the Commission's reasons for why going beyond its minimum requirements may be appropriate. The evidence makes clear that it is in the public interest for Duquesne to take this additional step to prepare at least its Large C&I customers for a new energy future,

¹⁶ Implementation Order at p.16 (*emph. added*).

¹⁷ Constellation St. 1 at 9:14 – 10:12.

particularly given the total lack of *any* record evidence to the contrary. For these reasons, the Commission should order Duquesne to revise its Plan to include Smart Meters that provide for 15-minute interval data updated and made available on an *hourly* basis for Large C&I customers.

Constellation proposes the following Ordering Paragraph to that effect:

The Commission hereby **ORDERS** Duquesne to revise its Smart Meter Plan to provide to Large C&I customers and their designated EGSs and TPSs 15-minute interval data, on an hourly basis.

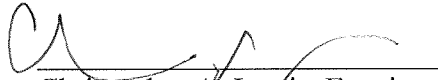
Alternatively, if the Commission does not move to require Duquesne to provide 15-minute data on an hourly basis, Constellation proposes the following Ordering Paragraph:

The Commission hereby **ORDERS** Duquesne to revise its Smart Meter Plan to provide to Large C&I customers and their designated EGSs and TPSs 15-minute interval data, on a daily (24-hour) basis.

III. CONCLUSION

Duquesne's Smart Meter Plan, including Constellation's proposed improvements to data access and frequency herein and in the Constellation Main Brief, is supported by substantial evidence in the record before the Commission. The Smart Meter Plan, coupled with improved access to and frequency of customer data, will encourage customers to adapt successfully to the new energy paradigm in the Commonwealth and, in turn, will better assure that at least Duquesne's Large C&I customers will be well positioned to make the most of the opportunity to participate in the emerging energy marketplace of the 21st Century.

Respectfully Submitted,



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*On Behalf of Intervenors Constellation Energy
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December 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of the foregoing Reply Main filed on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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