



Brian R. Greene  
SELTZERGREENE, PLC  
707 East Main St., Suite 1025  
Richmond, Virginia 23219  
804.672.4542 (Direct)  
[bgreene@seltzergreene.com](mailto:bgreene@seltzergreene.com)

January 11, 2010

**BY 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 Default Service  
Plan for the Period January 1, 2011 through May 31, 2013  
Docket No. P-2009-2135500**

Dear Secretary McNulty:

Attached for electronic filing with the Commission in the above-captioned matter please find the Petition of the Retail Energy Supply Association for Certification of a Discovery Ruling for Interlocutory Review. Copies of this filing are being served per the attached certificate of service.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian R. Greene', enclosed in a light blue rectangular box.

Brian R. Greene

BRG/ps  
Enclosure

c: The Hon. John H. Corbett, Jr. (by e-mail and overnight delivery)  
Victor P. Stabile, Esq. (by e-mail only)  
Certificate of Service

**CERTIFICATE OF SERVICE**

I certify that on January 11, 2010, true copies of the Petition of the Retail Energy Supply Association for Certification of a Discovery Ruling for Interlocutory Review were served upon the following people, in the manner indicated, in accordance with requirements of 52 Pa. Code § 1.54 (relating to service by a participant), by e-mail and first class mail:

Gary A. Jack, Esquire  
Erin H. Creahan, Esquire  
Duquesne Light Company  
411 Seventh Avenue, 16-4  
Pittsburgh, PA 15219  
Phone: (412) 393-1541  
Fax: (412) 393-1418  
[gjack@duqlight.com](mailto:gjack@duqlight.com)  
[ecreahan@duqlight.com](mailto:ecreahan@duqlight.com)

David B. MacGregor, Esquire  
Post & Schell, P.C.  
Four Penn Corner  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: (215) 587-1197  
Fax: (215) 320-4879  
[dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Michael W. Gang, Esquire  
Anthony D. Kanagy, Esquire  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: (717) 731-1970  
Fax: (717) 731-1985  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)

Aron J. Beatty, Esquire  
Jennedy S. Johnson, Esquire  
Jessica J. Horner, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[jjohnson@paoca.org](mailto:jjohnson@paoca.org)  
[jhorner@paoca.org](mailto:jhorner@paoca.org)

Charles Daniel Shields, Esquire  
PA Public Utility Commission  
Office of Trial Staff  
400 North Street, 2<sup>nd</sup> Floor  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Phone: (717) 783-6151  
Fax: (717) 772-2677  
[chshields@state.pa.us](mailto:chshields@state.pa.us)

Pamela C. Polacek, Esquire  
Shelby A. Linton-Keddie, Esquire  
Carl J. Zwick, Esquire  
McNees, Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
[skeddie@mwn.com](mailto:skeddie@mwn.com)  
[czwick@mwn.com](mailto:czwick@mwn.com)

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Mark Hayden, Esquire  
FirstEnergy Solutions  
76 South Main Street  
Akron, OH 44308  
Phone: (330) 761-7735

## SeltzerGreene, PLC

Letter to James J. McNulty  
January 11, 2010  
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Phone: (717) 783-2525  
Fax: (717) 783-2831  
[swebb@state.pa.us](mailto:swebb@state.pa.us)

Gary A. Jeffries, Esquire  
Dominion Retail, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
Phone (412) 237-4729  
Fax: (412) 237-4782  
[Gary.A.Jeffries@dom.com](mailto:Gary.A.Jeffries@dom.com)

Todd S. Stewart, Esquire  
Hawke McKeon & Sniscak LLP  
100 North tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
Phone: (717) 236-1300  
Fax: (717) 236-4841  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

Christopher A. Lewis, Esquire  
Christopher R. Sharp, Esquire  
Melanie J. Tambolas, Esquire  
Blank Rome LLP  
One Logan Square  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998  
Phone: (215) 569-5450  
Fax: (215) 832-5450  
[Lewis@blankrome.com](mailto:Lewis@blankrome.com)  
[Sharp@blankrome.com](mailto:Sharp@blankrome.com)  
[Tambolas@blankrome.com](mailto:Tambolas@blankrome.com)

Fax: (330) 384-3875  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Theodore S. Robinson, Esquire  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217  
Phone: (412) 421-7029  
Fax: (412) 421-6162  
[Robinson@citizenpower.com](mailto:Robinson@citizenpower.com)

Renardo L. Hicks, Esquire  
Judith D. Cassell, Esquire  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
Phone: (717) 255-7364  
Fax: (610) 988-0851  
[rlh@stevenslee.com](mailto:rlh@stevenslee.com)

Respectfully submitted,



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Brian R. Greene (Admitted *Pro Hac Vice*)  
SELTZERGREENE, PLC  
707 East Main Street, Suite 1025  
Richmond, Virginia, 23219  
Tel: 804.672.4542  
Fax: 804.672.4540  
[bgreene@seltzergreene.com](mailto:bgreene@seltzergreene.com)  
*Counsel to the Retail Energy Supply Association*

sg

[www.seltzergreene.com](http://www.seltzergreene.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**NOTICE TO PLEAD**

YOU ARE HEREBY ADVISED THAT, PURSUANT 52 PA. CODE § 5.304,  
YOU MAY FILE A RESPONSIVE BRIEF WITHIN SEVEN (7) DAYS AFTER THE  
DATE OF SERVICE OF THE ATTACHED PETITION. YOUR RESPONSIVE BRIEF  
SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY  
SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL AND THE  
PRESIDING OFFICER AND ALL OTHER PARTIES.

Respectfully submitted,



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Brian R. Greene  
SELTZERGREENE, PLC  
Eighth and Main Building  
707 East Main Street, Suite 1025  
Richmond, Virginia 23219  
Tel. 804.672.4542  
Fax 804.672.4540  
[bgreene@seltzergreene.com](mailto:bgreene@seltzergreene.com)

*Counsel to Retail Energy Supply Association*

Victor P. Stabile  
DILWORTH PAXSON LLP  
112 Market Street, 8th Floor  
Harrisburg, PA 17101  
Tel: 717.236.4812 Ext. 101  
Fax: 717.236.7811  
Email: [vstabile@dilworthlaw.com](mailto:vstabile@dilworthlaw.com)

*Counsel to Retail Energy Supply  
Association*

Dated: January 11, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
FOR CERTIFICATION OF A DISCOVERY RULING  
FOR INTERLOCUTORY REVIEW**

The Retail Energy Supply Association (“RESA”),<sup>1</sup> pursuant to 52 Pa. Code § 5.304, petitions Administrative Law Judge John H. Corbett, Jr. (“ALJ”) to certify for interlocutory review portions of the AL’s ruling<sup>2</sup> that RESA and its individual members – entities that are not parties to this proceeding – are required to answer certain discovery questions posed by the Duquesne Light Company (“Duquesne Light” ).

**I. QUESTION PRESENTED**

1. RESA requests that the ALJ certify for review by the Pennsylvania Public Utility Commission (“Commission”) the following question:

Whether a non-party should be required to respond to discovery propounded by a party to a proceeding and, if so, whether the non-party should be required to disclose to the utility and to retail and wholesale suppliers the amount of the non-party’s past profits or losses related to its provision of electric generation supply services in Pennsylvania?

**II. REASONS FOR INTERLOCUTORY REVIEW**

2. RESA respectfully submits that it is substantially prejudicial to RESA, and legally inappropriate, for its members – e.g., non-parties – to be required to respond to

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<sup>1</sup> RESA’s members include ConEd Solutions; Direct Energy Services, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> See Fourth Interim Order Granting in Part Duquesne Light Company’s Motion to Compel, Docket No. P-2009-2135500 (January 7, 2010) (ordering, *inter alia*, that RESA answer Duquesne Light Interrogatory Nos. 6 and 8(a).

discovery in a formal Commission proceeding. RESA does not control its members, RESA does not possess the documents and information that Duquesne Light is requesting, and RESA simply has no ability to require its members to furnish the information requested.

3. Duquesne Light's due process concerns are misplaced. Pennsylvania law authorizes a party to serve a subpoena on a non-party to obtain information. Thus, there is a mechanism for Duquesne Light to obtain information from non-parties, but Duquesne Light has elected not to use it. The ALJ's order compelling RESA members to respond prejudices RESA, which does not possess this member-specific information and has no means by which to access it absent consent by the member.

4. Information relating to retail suppliers' profits and losses is not relevant to any proposal brought by Duquesne Light in this proceeding. Duquesne Light proposes to procure power for residential default service customers by utilizing bilateral contracts with wholesale suppliers. Retail suppliers are not regulated, are not required to serve customers in Pennsylvania, and only gain customers through arms-length negotiation and contract. Retail suppliers do not have an obligation to serve default service customers in a "least cost" fashion and are not guaranteed cost recovery. Moreover, retail suppliers' business success in other Pennsylvania service territories is not relevant to Duquesne Light's proposals since Duquesne Light's procurement structure is vastly different from those of other Pennsylvania utilities. In short, the profits and losses of retail suppliers, if divulged, would not aid the Commission in determining whether Duquesne Light's proposals are consistent with Pennsylvania law, but would present a substantial hardship on RESA and its members to produce.

5. As stated above, Duquesne Light proposes to utilize bilateral contracts with wholesale suppliers. Disclosure of the requested information would substantially prejudice RESA members' ability to compete in the Duquesne Light service territory because Duquesne Light and retail and wholesale suppliers would be privy to, and have knowledge of, financial information of retail suppliers who must, in the end, compete with the default service rate.

6. Disclosure of the requested information is an unnecessary and unreasonably burdensome intrusion into confidential business matters of RESA and its members. Interlocutory review should be granted to protect the due process rights of non-parties to this proceeding who are being required to disclose proprietary information that is not relevant to the case's outcome, and its disclosure would potentially impact competition levels in Duquesne Light and other Pennsylvania service territories.

WHEREFORE, RESA respectfully requests that the ALJ certify the discovery question presented herein for interlocutory review by the Commission.

Respectfully submitted,



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Brian R. Greene  
SELTZERGREENE, PLC  
Eighth and Main Building  
707 East Main Street, Suite 1025  
Richmond, Virginia 23219  
Tel. 804.672.4542  
Fax 804.672.4540  
[bgreene@seltzergreene.com](mailto:bgreene@seltzergreene.com)  
*Counsel to Retail Energy Supply Association*

Victor P. Stabile  
DILWORTH PAXSON LLP  
112 Market Street, 8th Floor  
Harrisburg, PA 17101  
Tel: 717.236.4812 Ext. 101  
Fax: 717.236.7811  
Email: [stabilvp@dilworthlaw.com](mailto:stabilvp@dilworthlaw.com)  
*Counsel to Retail Energy Supply Association*

Dated: January 11, 2010