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File #: 2267/138784

January 19, 2010

BY HAND

James J. McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

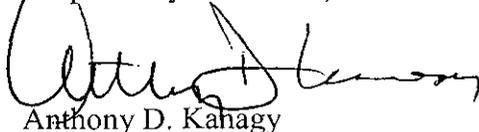
**RE: Petition of Duquesne Light Company For Approval of Default Service Plan for the  
Period January 1, 2011 through May 31, 2013  
Docket No. P-2009-2135500**

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Dear Secretary McNulty:

Enclosed please find Duquesne Light Company's Motion to Dismiss Objections of FirstEnergy Solutions and Compel Responses to Discovery 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

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ALLENTOWN HARRISBURG LANCASTER PHILADELPHIA PITTSBURGH PRINCETON WASHINGTON, D.C.

A PENNSYLVANIA PROFESSIONAL CORPORATION

6713715v1

**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 :

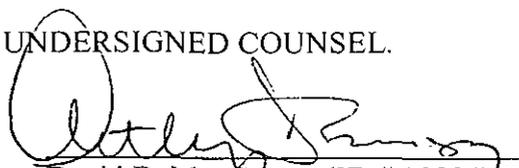
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO THE PREHEARING ORDER IN THE ABOVE-CAPTIONED PROCEEDING, YOU MAY ANSWER THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER 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.



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Dated: January 19, 2010

*Attorneys for Duquesne Light Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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 OF  
FIRSTENERGY SOLUTIONS AND COMPEL RESPONSES TO DISCOVERY**

Pursuant to 52 Pa. Code § 5.342, Duquesne Light Company ("Duquesne Light" or the "Company") hereby files its Motion to Dismiss the Objections of FirstEnergy Solutions ("FES") and to Compel Discovery Responses ("Motion to Compel"). In support thereof, Duquesne Light states as follows:

**I. BACKGROUND**

1. On December 31, 2009, Duquesne Light served its Set I Interrogatories and Requests for Production of Documents ("Duquesne Light Interrogatories") on FES.

2. On Friday, January 8, 2010, counsel for FES notified Duquesne Light that FES needed clarification with respect to the information sought with respect to Interrogatory No. 6 of the Set I Interrogatories and indicated that FES may have concerns with the Interrogatory depending upon the nature of the information being sought. FES notified Duquesne Light of its potential concerns with Interrogatory No. 6 eight days after Duquesne Light served its Set I Interrogatories on FES.

3. On Monday, January 11, 2010, FES served its responses to the Set I Interrogatories on Duquesne Light. In its responses, FES noted that it was objecting to all of Duquesne Light's Interrogatories. However, FES provided responses to all of the questions except Number 6.

4. It does not appear that counsel for FES served its Objections on Administrative Law Judge John H. Corbett, Jr. (the "ALJ").

5. Duquesne Light's counsel subsequently attempted to contact counsel for FES to understand the nature of FES' objections to Question 6. However, to date, the parties have been unable to resolve their differences with respect to this issue.

6. Duquesne Light's Motion to Compel FES to respond to Question 6 is below.

## II. MOTION TO COMPEL

Duquesne Light Interrogatory No. 6:

FES objected to Duquesne Light's Interrogatory No. 6 which provides as follows:

6. Referring to pages 2-3, provide a list of all wholesale competitive solicitations that First Energy Solutions has participated in where it has offered a fixed price full requirements product and has held that fixed price offer open for a period of four months or longer without any mechanism for price adjustment?

FES provided generalized objections to Interrogatory No. 6 with no specific explanation of why or how the information sought in Interrogatory No. 6 meets its generalized objections. For the sake of convenience and because it appears that the objections were not served on the ALJ, Duquesne Light is providing the full text of FES' objections to Interrogatory No. 6:

**Objection:** FirstEnergy Solutions objects to the question on the grounds that the question is unduly burdensome, overbroad, and not narrowly tailored, and would cause unreasonable annoyance, oppression, burden and expense. FirstEnergy Solutions also objects to the question on the grounds that it seeks information that is subject to the work product doctrine, the attorney-client privilege, or other privilege. FirstEnergy Solutions objects on the grounds that the question seeks information that is neither relevant to the subject matter of the proceeding nor likely to lead to the discovery of admissible evidence. FirstEnergy Solutions objects to the question to the extent Duquesne seeks information or documents that are confidential, proprietary, and/or trade secret information protected from disclosure. FirstEnergy Solutions will not provide a response.

**Response:**

**Sponsored By: Mark Travaglianti**

See Objection above.

Duquesne Light responds to each of FES' generalized objections below.

First, FES objects that the question is unduly burdensome, overbroad, not narrowly tailored and would cause unreasonable annoyance, oppression, burden and expense. Duquesne Light completely disagrees with the statements for several reasons. For one, Duquesne Light did not ask FES to list all solicitations in which FES participated. Rather, Duquesne Light limited the question to solicitations where FES offered a fixed price full requirements contract and held the price open for a period of four months or longer without any mechanism for price adjustments. In addition, Duquesne Light believes that the list of solicitations where FES offered this type of product is quite small. Therefore, Duquesne Light disagrees that its request is unduly burdensome or would cause unreasonable annoyance, oppression, burden or expense. Moreover, given the generalized nature of FES' objections, FES has not even provided an estimate of how many solicitations it has participated in that meet this criteria. Therefore, there is no way for Duquesne Light to assess whether FES' claims that the question is burdensome are accurate. Further, Duquesne Light asked a similar question to Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, "Constellation"), and Constellation responded that it was not aware of any wholesale competitive solicitations which required a "hold open" period of four months or longer without any mechanism for price adjustment. This supports Duquesne Light's belief that this question is not unduly burdensome or oppressive.

Second, FES objects to the question on the grounds that it seeks information that is subject to the work product doctrine, attorney client privilege, or other privilege. Again, FES has provided only a generalized objection with no specific explanation of how the information sought in this

question meets this criteria. Moreover, Duquesne Light disagrees that FES' particular bids are subject to the work product doctrine or attorney client privilege. Attorneys may give advice about certain supply offerings, but they do not tell a corporation to bid on a particular supply offering in their role as counsel. Duquesne Light is not asking for documents that were prepared on the advice of counsel but rather for FES to list certain specific wholesale competitive solicitations in which it has participated.

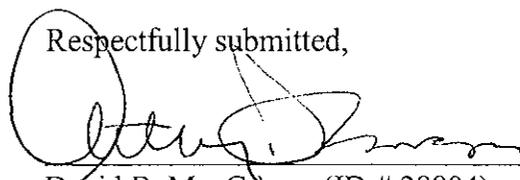
Third, FES argues that the information sought in this question is not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. Contrary to FES claims, the information sought in this question is directly relevant to issues raised in this proceeding, including issues raised by FES. In its testimony in this proceeding, FES argues that Duquesne Light is including "artificially high margins for their proposed fixed rate." FES St. No. 1, pp. 2-3. It is Duquesne Light's position that it is bearing substantial risk by holding its fixed price open over the term of the regulatory review period and therefore, the risk component included in Duquesne Light's fixed price is reasonable. Duquesne Light seeks information from FES regarding solicitations FES has participated in to demonstrate that Duquesne Light is bearing substantial risks by holding its fixed price offer open for an extended time, and therefore, its cost component for risk is reasonable. This question is directly relevant to this proceeding because it may show several things. First, if FES has not bid to offer any products that fit the criteria contained in the question, this is relevant to the weight of FES' claims that Duquesne Light's risk component is too high. In addition, if FES has bid in solicitations such as this, this information will likely lead to further relevant evidence, including the amount of FES' risk premium for offering such products.

Fourth, FES objects to this question to the extent that the question seeks information or documents that are confidential, proprietary and/or trade secret information protected from disclosure. Again, FES has only provided a generalized objection with no specific analysis of how

the information sought in the question meets this criteria. Duquesne Light does not believe that it is appropriate for FES to object based on these criteria. Duquesne Light is willing to enter into a confidentiality agreement with FES to protect any confidential information. Moreover, Duquesne Light has simply requested a list of the solicitations that FES has participated and that meet the criteria. Duquesne Light has not asked for FES' bid price or any other secretive information. In the event Duquesne Light seeks additional information as a result of FES' response, the parties can address the confidentiality of that information at that time.

WHEREFORE, the information sought by Duquesne Light Company in response to Interrogatory No. 6 is clearly relevant in this proceeding regarding FirstEnergy Solutions' and other parties' claims that the risk cost component Duquesne Light Company has included in its fixed price rate is not reasonable. For the reasons explained herein, Duquesne Light Company respectfully requests that Administrative Law Judge John H. Corbett, Jr. deny the objections of FirstEnergy Solutions to Interrogatory No. 6 of Duquesne Light Company's Set I Interrogatories and grant this Motion to Compel.

Respectfully submitted,



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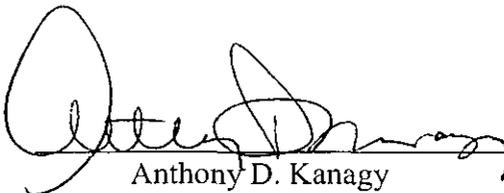
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Dated: January 19, 2010

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 FirstEnergy Solutions in an effort to resolve the above-mentioned discovery disputes informally.



Anthony D. Kanagy

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JAN 19 2010  
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SECRETARY'S BUREAU

## 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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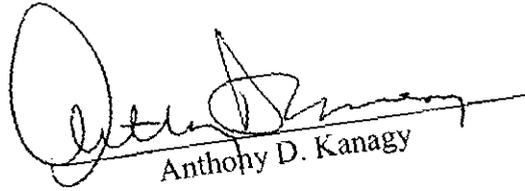
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Date: January 19, 2010



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