



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Fax  
www.postschell.com

Anthony D. Kanagy

akanagy@postschell.com  
717-612-6034 Direct  
717-731-1985 Fax  
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**

Dear Secretary McNulty:

Enclosed please find Duquesne Light Company's Motion to Dismiss Objections of the Retail Energy Supply Association and Compel Responses to Set II 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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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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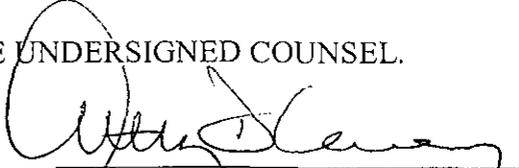
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NOTICE TO PLEAD

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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.

Gary A. Jack (ID # 95066)  
Erin H. Creahan (ID # 91534)  
Duquesne Light Company  
411 Seventh Ave., 16-4  
Pittsburgh, PA 15219  
Phone: 412-393-1541  
Fax: 412-393-1418  
E-mail: gjack@duqlight.com  
E-mail: ecreahan@duqlight.com



David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: dmacgregor@postschell.com

Michael W. Gang (ID # 25670)  
Anthony D. Kanagy (ID # 85522)  
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  
E-mail: mgang@postschell.com  
E-mail: akanagy@postschell.com

Dated: January 19, 2010

*Attorneys for Duquesne Light Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA 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 THE RETAIL ENERGY SUPPLY ASSOCIATION  
AND COMPEL RESPONSES TO SET II 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 The Retail Energy Supply Association (“RESA”) and to Compel Discovery Responses (“Motion to Compel”) to Duquesne Light’s Interrogatories and Requests for Production of Documents Set II (“Set II Interrogatories”) directed to RESA. In support thereof, Duquesne Light states as follows:

**I. BACKGROUND**

1. On December 31, 2009, Duquesne Light served its Set II Interrogatories on RESA. In the Set II Interrogatories, Duquesne Light sought prior default service testimony and other related documents and testimony from RESA, RESA’s witness, Mr. Hudson, and RESA’s members.
2. On January 5 and 6, 2010, counsel for Duquesne Light discussed RESA’s objections to the Set II Interrogatories and attempted to resolve them informally.
3. On January 7, 2010, RESA filed its objections to the Set II Interrogatories.
4. Counsel for Duquesne Light and RESA had subsequent discussions regarding RESA’s objections. On January 11, 2010, counsel for Duquesne Light and RESA agreed to extend the deadline for Duquesne Light to file its Motion to Compel responses to the Set II Interrogatories to January 19, 2010. Counsel for Duquesne Light and RESA spoke to Administrative Law Judge

John H. Corbett, Jr. (the "ALJ") regarding the agreement, and agreements to extend certain other discovery related deadlines, and the ALJ granted these requests.

5. On January 11, 2010, RESA filed responses to the Set II Interrogatories. In its responses, RESA provided testimony for both Mr. Hudson and RESA as requested by Duquesne Light. Therefore, the only unresolved issue with respect to the Set II Interrogatories concerns testimony and related documents for RESA's members.

6. Duquesne Light's Motion to Compel RESA to provide prior default service and other related documents and testimony filed by its members is provided below.

## II. MOTION TO COMPEL

### Duquesne Light Definition of RESA:

RESA objected to Duquesne Light's definition of RESA which provides as follows:

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

RESA objected to this definition to the extent it includes RESA's members. RESA states that it is not affiliated with its members and cannot make them provide information. RESA also states that its members are not subject to the Commission's jurisdiction.

This very issue was addressed in the ALJ's Fourth Interim Order Granting in Part Duquesne Light's Motion to Compel ("Fourth Interim Order") issued on January 7, 2010 in this proceeding. In the Fourth Interim Order, the ALJ held that RESA's members were required to respond to discovery in this proceeding. Specifically, the ALJ ruled:

RESA members should not be permitted to hide behind the shield of the RESA organization to avoid discovery in this proceeding. That practice would violate Duquesne Light's due process rights, because it would be unable to obtain information from RESA members to adequately defend itself against RESA's claims. For this reason, the individual members of RESA are hereby directed to respond to those

interrogatories and requests for documents as hereinafter deemed appropriate.

Therefore, this issue has been decided, and RESA's members are required to respond to discovery requests.

Discovery Questions to RESA Members:

In its Set II discovery, the Company asked RESA to provide responses to the following questions as they relate to RESA's members:

2. Please identify whether RESA has in the last five years filed testimony, comments or provided any expert reports regarding default generation supply service in any proceeding, other than this case. If so, please identify, describe and provide the following:

- (a) Identify the relevant agency, court, case name, and case number;
- (b) Describe the nature and content of all such reports and/or testimony;
- (c) Provide a copy of all such reports and/or testimony; and
- (d) Provide each document supplied to, reviewed by, relied on, or prepared by or on behalf of RESA in connection with the reports and/or testimony.

4. Please identify whether RESA has in the last five years filed testimony, comments or provided any expert reports regarding the same or similar topics as those to be addressed in this proceeding. If so, please identify, describe and provide the following:

- (a) Identify the relevant agency, court, case name and case number;
- (b) Describe the nature and content of all such reports, comments or testimony;
- (c) Provide a copy of all such reports, comments or testimony; and
- (d) Provide each document supplied to, reviewed by, relied on, or prepared by or on behalf of RESA in connection with the reports, comments or testimony.

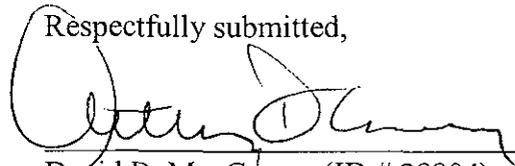
As noted above, RESA has provided responses to these questions for RESA as an organization but not for the RESA members individually. Duquesne Light believes that the RESA's members' testimony is relevant to this proceeding because it may show that individual RESA members have filed testimony that is inconsistent with the positions taken by RESA in this proceeding.

In its objections, RESA states that these questions are overly burdensome. Duquesne Light disagrees with this assertion. Duquesne Light is simply seeking testimony and related documents from RESA's members that are related to issues addressed in this proceeding. In addition, Duquesne Light has limited its request to the past five years. This is a very basic discovery request. Each RESA member can compile its own testimony and related documents. Therefore, these requests are not overly burdensome. Moreover, it is important to note that in its objections, RESA has not even alleged that Duquesne Light's requests are irrelevant.

In its objections, RESA also states that it objects to providing information that is protected by the attorney-client privilege or work product doctrine. Duquesne Light agrees that RESA's members are not required to provide information that is protected by the attorney-client privilege or work product doctrine. Duquesne Light notes that its questions primarily ask for testimony that has been filed with agencies or courts, and the Company does not believe that this testimony would be protected by the attorney-client privilege or work product doctrine.

WHEREFORE, Duquesne Light Company respectfully requests that Administrative Law Judge John H. Corbett, Jr. deny the objections of the Retail Energy Supply Association to Duquesne Light Company's Set II Interrogatories as described herein.

Respectfully submitted,



Gary A. Jack (ID # 95066)  
Erin H. Creahan (ID # 91534)  
Duquesne Light Company  
411 Seventh Ave., 16-4  
Pittsburgh, PA 15219  
Phone: 412-393-1541  
Fax: 412-393-1418  
E-mail: gjack@duqlight.com  
E-mail: ecreahan@duqlight.com

David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: dmacgregor@postschell.com

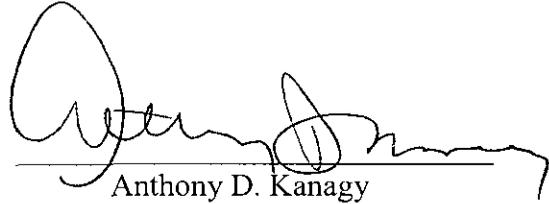
Michael W. Gang (ID # 25670)  
Anthony D. Kanagy (ID # 85522)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: mgang@postschell.com  
E-mail: akanagy@postschell.com

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 the Retail Energy Supply Association in an effort to resolve the above-mentioned discovery disputes informally.



Anthony D. Kanagy

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## 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).

### VIA E-MAIL and FIRST CLASS MAIL

Todd S. Stewart  
Hawke, McKeon & Sniscak LLP  
100 N. 10th Street  
PO Box 1778  
Harrisburg, PA 17101

Charles Daniel Shields  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

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

Tanya J. McCloskey  
Aron J. Beatty  
Jennedy S. Johnson  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Gary A. Jeffries  
Dominion Retail, Inc.  
Suite 400  
501 Martindale Street  
Pittsburgh, PA 15212-5817

Theodore S. Robinson  
Citizen Power  
2121 Murray Avenue  
Pittsburgh, PA 15217

Mark Hayden  
FirstEnergy Solutions  
76 South Main Street  
Akron, OH 44308

Brian R. Greene  
Seltzer Greene, PLC  
707 East Main Street  
Suite 1025  
Richmond, VA 23219

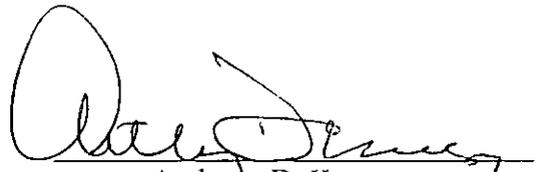
Christopher A. Lewis  
Christopher R. Sharp  
Melanie J. Tambolas  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103

Pamela C. Polacek  
Shelby A. Linton-Keddie  
Carl J. Zwick  
McNees, Wallace & Nurick  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166

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Renardo L. Hicks  
Judith D. Cassel  
Stevens & Lee, P.C.  
17 North Second Street, 16th Floor  
PO Box 11670  
Harrisburg, PA 17108-1670

Date: January 19, 2010



Anthony D. Kanagy