



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
P-2010-2153577

February 8, 2010

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

Re: Petition of Duquesne Light Company to contest finding of non-compliance with the Alternative Energy Portfolio Standards Act 2008/2009 compliance year. Docket No. P-2010-2153577

Dear Secretary McNulty:

Enclosed please find an original and three copies of the Bureau of Conservation, Economics and Energy Planning and Law Bureau Prosecutory Staff's Answer to the Petition of Duquesne Light Company to be filed in the above-captioned proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kriss E. Brown
Assistant Counsel

Enclosures

cc: Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company to :
Contest the Finding of Non-Compliance :
With the Alternative Energy Portfolio :
Standards Act and Modify the Alternative : Docket No. P-2010-2153577
Compliance Payment or, in the Alternative, :
Declare a Force Majeure for Duquesne :
Light Company for the 2008/2009 :
Alternative Energy Compliance Period :

**PENNSYLVANIA PUBLIC UTILITY COMMISSION BUREAU OF
CONSERVATION ECONOMICS AND ENERGY PLANNING AND
LAW BUREAU PROSECUTORY STAFF'S ANSWER TO
PETITION OF DUQUESNE LIGHT COMPANY**

AND NOW the Bureau of Conservation, Economics and Energy Planning (“CEEP”) and the Law Bureau Prosecutory Staff (“LBPS”), by its undersigned counsel and pursuant to Section 5.61(a) of the Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.61(a), hereby files this answer to the Petition of Duquesne Light Company (“Duquesne light”), to contest the Commission’s finding of non-compliance with the Alternative Energy Portfolio Standards Act (“AEPS Act”), and to modify the alternative compliance payment (“ACP”) determination or, in the alternative, declare a force majeure for Duquesne for the 2008/2009 AEPS compliance period (“Petition”) that was filed on January 19, 2010. The LBPS avers as follows:

I. INTRODUCTION AND OVERVIEW

1. Admitted.

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2. Admitted.
3. Admitted.
4. Admitted.
5. The averments in Paragraph 5 are conclusions of law for which no response is required. By way of further answer, the language of the AEPS Act speaks for itself.
6. The averments in Paragraph 6 are conclusions of law for which no response is required. By way of further answer, the language of the AEPS Act and the Commission's regulations speak for themselves.
7. Denied. By way of further answer, LBPS is without sufficient knowledge or information to form a belief as to the truth of the averments made in this Paragraph, therefore, they are denied.
8. Admitted in part and denied in part. By way of further answer, it is admitted that Duquesne Light's Tier 1 AEPS Act obligations for the 2008/2009 AEPS Act compliance year was a total of 114,916 Tier I AECs. It is also admitted that 42,980 Tier I AECs generated by Cadillac Renewable Energy ("Cadillac") was included in the total Tier I AECs submitted for compliance by Duquesne Light. It is further admitted that the Cadillac facility is a Pennsylvania qualified alternative energy source located in Michigan and within the Midwest Independent System Operator ("MISO") control area. LBPS is without sufficient knowledge or

information to form a belief as to the truth of the averment that Duquesne Power procured AECs on behalf of Duquesne Light, therefore, it is denied.

9. Admitted.

10. Admitted.

11. The averments in Paragraph 11 are requests for relief for which no response is required.

12. The averments in Paragraph 12 are requests for relief for which no response is required.

II. ARGUMENT

A. ACCEPTANCE OF CADILLAC CREDITS FOR 2008/2009 AEPS ACT COMPLIANCE PERIOD

13. The averments in Paragraph 13 contain conclusions of law for which no response is required. By way of further answer, it is denied that Duquesne Light retired a sufficient number of eligible Tier I AECs by the close of the true-up period to meet its AEPS Act Tier I requirement for the 2008/2009 AEPS Act compliance year.

14. Admitted in part and denied in part. By way of further answer, it is admitted that an EDC should have a diversified portfolio of AECs. LBPS is without sufficient knowledge or information to form a belief as to the truth of the averment that Duquesne Light's effort to locate numerous sources for AECs was thorough or

robust enough to adequately locate an appropriate number of eligible AECs to meet its AEPS Act obligations, therefore, it is denied.

15. Admitted in part and denied in part. By way of further answer, it is admitted that the Cadillac plant burns wood, in part, to generate electricity, and that Cadillac is registered and certified as a Pennsylvania qualified alternative energy source that is eligible for use by EDCs and EGSs that serve retail customers in the MISO RTO. All other averments contained in this Paragraph related to Cadillac are denied. LBPS is without sufficient knowledge or information to form a belief as to the truth of the averments regarding Cadillac's representations to Duquesne Light, therefore, they are denied. By way of further answer, Duquesne Light is responsible for complying with all relevant provisions of the AEPS Act and therefore, had a duty to determine whether the AECs it purchased, using funds that are recovered from ratepayers, are eligible for use by Duquesne Light to comply with the AEPS Act's requirements. Cadillac is also responsible for complying with relevant portions of the AEPS Act, however, they are not responsible for an EDC's or EGS' duty to procure and retire eligible AECs in compliance with 73 P.S. §§ 1648.3(b) and (c), and 1648.4, as well as, 52 Pa. Code § 75.61.

16. Denied. By way of further answer, LBPS is without sufficient knowledge or information to form a belief as to the truth of the averments made in this Paragraph, therefore, they are denied. By way of further answer, Duquesne Light had the responsibility to conduct proper due diligence to determine whether the AECs it purchased, using funds that are recovered from ratepayers, are eligible for use by Duquesne Light to comply with the AEPS Act's requirements. Duquesne Light has failed to provide a cite to any statute, regulation or legal precedent permitting it to shift its AEPS Act responsibilities and liabilities to another person or entity, therefore, any averment inferring such a shift is denied.

17. Denied in part and admitted in part. By way of further answer, LBPS is without sufficient knowledge or information to form a belief as to the truth of the averments made in this Paragraph that Duquesne Power, through its due diligence determined that the Cadillac plant had been deemed a “qualified facility” in Pennsylvania by the Commonwealth for purposes of the AEPS Act, therefore, they are denied. Regarding Duquesne Light’s responsibility for conducting due diligence and for compliance with the AEPS Act, see LBPS’ response to Paragraph 16 above, which is incorporated herein by reference. It is admitted that under the AEPS Act, an alternative energy facility must apply to the alternative energy credits program administrator (“AEC Administrator”) to be qualified for alternative energy system status in Pennsylvania. *See* 73 P.S. § 1648.3(2)(i) and 52 Pa. Code §§ 75.62, 75.63 and 75.64. It is also admitted that the Commission, through its AEC Administrator, operates and maintains a website entitled, “Pennsylvania AEPS Alternative Energy Credit Program,” at <http://paaeps.com/credit/index.do>, and that this website lists alternative energy systems that have been qualified as alternative energy systems, and that Cadillac is included on that list. All other averments of fact made in this Paragraph are denied. By way of further answer, it is denied that the list contained on the Pennsylvania AEPS Alternative Energy Credit Program website in any way absolves Duquesne Light’s responsibilities under the AEPS Act. In addition, it is denied that the Pennsylvania AEPS Alternative Energy Credit Program website determines eligibility for compliance obligations as it simply provides a list of qualified alternative energy sources to assist EDCs and EGSs in finding and obtaining AECs. It is also denied that the Pennsylvania AEPS Alternative Energy Credit Program website is the only interface available to EGSs and EDCs to determine in what Regional Transmission Organization (“RTO”) control area a certified generator is located. LBPS has attached as Exhibit A to this Answer, a

publicly accessible screenshot of the PJM Generation Attributes Tracking System (“PJM GATS”) Generator database listing for Cadillac Renewable Energy that lists its location as MidWestern States. See <https://gats.pjm-eis.com/myModule/rpt/myrpt.asp?r=229> and search plant name Cadillac Renewable energy.

18. Admitted in part and denied in part. By way of further answer, it is admitted that the Commission selected the PJM GATS as a registry of pertinent information regarding all available AECs, AEC transactions among EDCs and EGSs, the number of AECs sold or transferred and the price paid for the sale or transfer of AECs, and that it is to provide current information on the status of AECs created, sold or transferred within Pennsylvania. See 73 P.S. § 1648.3(e)(8). It is also admitted that PJM GATS does not determine whether a Pennsylvania-compliant AEC is eligible to meet only compliance obligations for EDCs in a particular RTO. By way of further answer, it is denied that the AEPS Act requires that PJM GATS determines whether an AEC is eligible for use for AEPS Act compliance by an EGS or EDC, as the EGS or EDC is responsible for compliance with all applicable provisions of the AEPS Act. LBPS is without sufficient knowledge or information to form a belief as to the truth of the averment made in this Paragraph that Duquesne Power, checked the PJM GATS prior to purchasing the AECs produced by Cadillac, therefore, it is denied.

19. Denied. By way of further answer, LBPS is without sufficient knowledge or information to form a belief as to the truth of the averments made in this Paragraph related to Duquesne Light’s belief that the AECs produced by Cadillac were eligible for use by Duquesne Light for compliance with the AEPS Act, therefore, they are denied. All other averments contained in this Paragraph are

conclusions of law for which no response is required. By way of further answer, it is denied that it was reasonable for Duquesne Light to rely on the sources of information listed in this Paragraph to conclude that any Tier I credits produced by Cadillac would be eligible for use by Duquesne Light to meet its AEPS Act requirements. PJM GATS is simply a registry that tracks the status and ownership of AECs produced by qualified alternative energy systems. Furthermore, the list contained on the Commission's website simply provides a list of qualified alternative energy systems EDCs and EGSs may contact to obtain AECs. Neither the PJM GATS nor the list contained on the Commission's website supersede or absolve Duquesne Light of its responsibilities under the AEPS Act and Duquesne Light has failed to cite to any statute, regulation or legal precedent for such a proposition.

20. Admitted. By way of further answer, while it is admitted that CPM, the Commission's AEPS credit administrator did not provide Duquesne Light with an initial assessment of its compliance status on July 15, 2009, had CPM provided such an initial compliance assessment Duquesne Light would have been informed that they were non-compliant as Duquesne Light had not placed any AECs in its PJM GATS Pa. Portfolio Reserve Subaccount prior to August 29, 2009. By way of further answer, final AEPS Act compliance obligations are determined based on the total amount of MWh retail sales an EDC or EGS had during the compliance year rounded to the nearest MWh. 52 Pa. Code §§ 75.61(b) and (d). PJM GATS does list an EDC's and EGS' total MWh obligation¹ that an EDC and EGS can use to determine, preliminarily, what their AEPS Act compliance obligation is. The AEC Administrator computes final AEPS Act compliance obligations based on final retail sales data provided by EDCs and EGSs. Once the AEC Administrator

¹ This contains total generation that includes line losses that are removed to determine an EDC's and EGS' final retail sales used for AEPS Act compliance.

provides EDCs and EGSs with their final AEPS Act compliance obligations, the EDCs and EGSs can add AECs to their PJM GATS Pa. Portfolio Reserve Subaccount or ask the AEC Administrator to return any excess AECs in their Pa. Portfolio Reserve Subaccount. EDCs and EGSs are required to provide the AEC Administrator all information necessary to verify compliance with the AEPS Act requirements. *See* 52 Pa. Code § 75.64(c)(3).

21. Admitted in part and denied in part. By way of further answer, it is admitted that CPM, the AEC Administrator, sent an e-mail to Duquesne Light on October 2, 2009, indicating recognition that Duquesne Light and its EGS affiliates had, in aggregate, the correct total number of AECs in their three accounts to meet their AEPS Act obligations, however, the AECs were not correctly apportioned to the appropriate EDC or EGS Pa. Portfolio Reserve Subaccount. It is denied that this correspondence constituted a complete and final determination as to whether Duquesne Light used eligible AECs for its AEPS Act compliance obligations. It is the duty of the AEC Administrator to certify, among other things, that each AEC used by an EDC or EGS for compliance was not used for compliance in another state, was not purchased by an individual, business or government body that does not have a compliance obligation, or was generated by an alternative energy system located in the Commonwealth, in the PJM control area or within the RTO control area in which the EDC or EGS served. *See* 52 Pa. Code §§ 75.62(d) and 75.64(d).

22. Admitted in part and denied in part. By way of further answer, Duquesne Light's averment that it at all times material hereto made a good faith effort to obtain the necessary AECs for the 2008/2009 AEPS compliance period is a conclusion of law for which no response is required. If, however, this averment is determined to

contain a factual assertion, it is denied, as its Petition is replete with admissions that it did not conduct due diligence as to the eligibility of the AECs at issue by relying upon other parties for such a determination. It is also denied that CPM, informed Duquesne Light that its obligations were met, see LBPS' answer to Paragraph 21 above, which is incorporated herein by reference. It is denied that on December 23, 2009, CPM "changed its mind" and determined that Duquesne Light was non-compliant. As stated in LBPS' answer to Paragraph 21 above, CPM, the AEC Administrator, had the duty to certify, among other things, that each AEC used by an EDC or EGS for compliance was not used for compliance in another state, was not purchased by an individual, business or government body that does not have a compliance obligation, or was generated by an alternative energy system located in the Commonwealth, in the PJM control area or within the RTO control area in which the EDC or EGS served. See 52 Pa. Code §§ 75.62(d) and 75.64(d). Duquesne Light's request that the Commission approve the use of the Cadillac AECs by Duquesne Light for AEPS Act compliance is a request for relief for which no response is required.

23. The averments in Paragraph 23 contain conclusions of law for which no response is required.

24. The averments in Paragraph 24 are requests for relief for which no response is required.

B. THE COMMISSION SHOULD DECLARE A TIER I FORCE MAJEURE FOR DUQUESNE LIGHT FOR 2008/2009 COMPLIANCE PERIOD

25. The averments in Paragraph 25 are requests for relief for which no response is required. By way of further answer, force majeure is unavailable to Duquesne

Light as it failed to request force majeure within 60 days of the conclusion of the true-up period, see 52 Pa. Code § 75.66(a), nor does it allege facts sufficient to meet the requirements for force majeure found at 73 P.S. § 1648.2 or the Commission's regulations at 52 Pa. Code § 75.66.

26. The averments in Paragraph 26 are conclusions of law for which no response is required. By way of further answer, the language of the AEPS Act and the Commission's regulations speak for themselves.

27. Denied. By way of further answer, the averments in Paragraph 27 are conclusions of law for which no response is required. By way of further answer, the language of the AEPS Act and the Commission's regulations speak for themselves. To the extent that the averments contained in this paragraph contain factual assertions, they are denied. Duquesne Light is obligated under 52 Pa. Code § 75.64(c)(3) to provide all information to the AEC Administrator necessary to verify compliance with the AEPS Act requirements. Duquesne Light did not place its AECs in its PJM GATS Pa. Portfolio Reserve Subaccount until Saturday, August 29, 2009, a mere two days prior to the close of the true-up period. In fact, as of August 29, 2009, Duquesne and its affiliates, Duquesne Power (a POLR supplier) and Duquesne Light Energy (an EGS), had the incorrect number of AECs in each of their PJM GATS Pa. Portfolio Reserve Subaccounts, however, when combined, these three subaccounts had the appropriate number of AECs for Duquesne and Duquesne Power. It was not until October 2, 2009, that Duquesne Light requested PJM GATS to move AECs among the three PJM GATS Pa. Portfolio Reserve Subaccounts so that Duquesne Light had the correct number of AECs. Significantly, it was Duquesne Light who selected what AECs were moved into which PJM GATS Pa. Portfolio Reserve Subaccounts. On October 9, 2009,

Duquesne Light provided the AEC Administrator with a spreadsheet indicating the changes made to each PJM GATS Pa. Portfolio Reserve Subaccount. On November 13, 2009, the AEC Administrator checked Duquesne's PJM GATS Pa. Portfolio Reserve Subaccount and again found an incorrect number of AECs in that subaccount, at which point the AEC Administrator contacted PJM GATS and requested that the correct number of Duquesne Light's AECs be moved into its PJM GATS Pa. Portfolio Reserve Subaccount. On November 17, 2009, the AEC Administrator informed the Director of CEEP that Duquesne Light had used AECs generated by an alternative energy system located in the MISO control area, after which CEEP, with the assistance of the AEC Administrator, conducted an investigation to confirm that Duquesne used ineligible AECs for AEPS Act compliance. Thus, it was Duquesne Light's delays that prevented it from placing the appropriate number of eligible AECs within its PJM GATS Pa. Portfolio Reserve Subaccount prior to the close of the true-up period.

28. The averments in Paragraph 28 are requests for relief for which no response is required.

C. THE LIMITATIONS ON ELIGIBLE ALTERNATIVE ENERGY CREDITS IN SECTION 4 OF THE AEPS ACT VIOLATE THE CONSTITUTION.

28.² Admitted.

29. The averments in Paragraph 29 are conclusions of law for which no response is required.

² The Petition has two Paragraphs numbered 28.

30. The averments in Paragraph 30 are conclusions of law for which no response is required.
31. The averments in Paragraph 31 are conclusions of law for which no response is required.
32. Admitted. By way of further answer, the New York Independent System Operator RTO also operates a portion of the transmission grid in Pennsylvania. Furthermore, as of June 1, 2011, MISO will not be operating any portion of the transmission grid in Pennsylvania. See Federal Energy Regulatory Commission Order Addressing RTO Realignment Request and Complaint at Docket Nos. ER09-1589-000 and EL10-6-000 issued December 17, 2009.
33. The averments in Paragraph 33 are conclusions of law for which no response is required.
34. The averments in Paragraph 34 are conclusions of law for which no response is required.
35. The averments in Paragraph 28 are requests for relief for which no response is required.
36. The averments in Paragraph 36 are conclusions of law for which no response is required.
37. The averments in Paragraph 37 are conclusions of law for which no response is required.

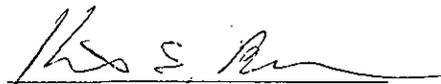
38. The averments in Paragraph 38 are conclusions of law for which no response is required.
39. The averments in Paragraph 39 are conclusions of law for which no response is required.
40. The averments in Paragraph 40 are requests for relief for which no response is required.
41. Denied. By way of further answer, the averments in Paragraph 41 are conclusions of law or requests for relief for which no response is required. By way of further answer, Duquesne Light's averment that it at all times material hereto made a good faith effort to obtain the necessary AECs for the 2008/2009 AEPS compliance year is a conclusion of law for which no response is required. If, however, this averment is determined to contain a factual assertion, it is denied, as Duquesne Light's Petition is replete with admissions that it did not conduct proper due diligence as to the eligibility of the AECs at issue by relying upon other parties for such a determination. It is also denied that CPM informed Duquesne Light that its obligations were met; see LBPS' answer to Paragraph 21 above, which is incorporated herein by reference.
42. Denied. By way of further answer, the averments in Paragraph 41 are conclusions of law or requests for relief for which no response is required. To the extent that the averments contained in this paragraph contain factual assertions, they are denied. Regarding Duquesne Light's averment that as it was not informed of its alleged non-compliance until December 23, 2009, it was precluded from

addressing CPM's determination during the statutory true-up period, the LBPS incorporates herein by reference its answer to Paragraph 21 above.

43. The averments in Paragraph 43 are conclusions of law or requests for relief for which no response is required.

WHEREFORE for all the foregoing reasons, the Bureau of Conservation, Economics and Energy Planning and the Law Bureau Prosecutory Staff respectfully request that this Honorable Commission deny the Petition of Duquesne Light Company to contest the Commission's finding of non-compliance with the Alternative Energy Portfolio Standards Act, and to modify the alternative compliance payment determination or, in the alternative, declare a force majeure for Duquesne for the 2008/2009 AEPS Act compliance period. Or, in the alternative, the Bureau of Conservation, Economics and Energy Planning and the Law Bureau Prosecutory Staff respectfully requests that this Honorable Commission transfer the Petition to the Office of Administrative Law Judge for evidentiary hearings.

Respectfully submitted



Kriss E. Brown
Assistant Counsel
Attorney ID #89036

Robert F. Young
Deputy Chief Counsel

(Counsel for The Bureau of
Conservation, Economics and Energy
Planning and Law Bureau Prosecutory
Staff)

P.O. Box 3265
Harrisburg, PA 17105

Dated: February 8, 2010



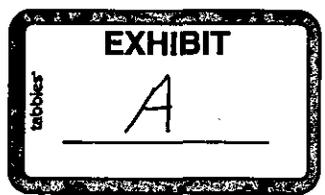
My Account

GATS Generators

Unit ID	Plant Name	Unit Name	Location	Fuel Type	Owner Type	Owner Info	New Jersey	NJ State Number	NJ Eligibility End Date	Maryland	MD State Number	MD Eligibility End Date	District of Columbia	DC State Number	DC Eligibility End Date	Pennsylvania	PA State Number	PA Eligibility End Date	Delaware	DE State Number	DE Eligibility End Date	Illinois	IL State Number	IL Eligibility End Date	Ohio
NON34209	Cadillac Renewable Energy	316x88	Mid-Western States (RFCW)	Wood - Wood/Wood Waste Solids	Owner		N/A			Tier I	MD-30013-WDS-01		N/A		Tier I		PA-29008-WDS-1		N/A			N/A			N/A

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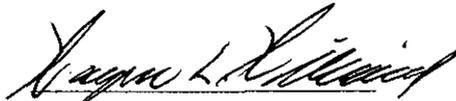
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VERIFICATION

I, Wayne L. Williams, Director, Bureau of Conservation, Economics and Energy Planning, hereby state that the facts set forth in the attached Answer are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsification to authorities.

Date: 2/5/2010

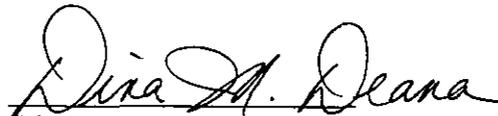

Wayne L. Williams

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VERIFICATION

I, Dina M. Deana, Project Manager, Clean Power Markets, Inc., Alternative Energy Credit program Administrator, hereby state that the facts set forth in the attached Answer are true and correct to the best of my knowledge, information, and belief and that I believe the information I have will prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to the unsworn falsification to authorities.

Date: 2/5/10


Dina M. Deana

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Bureau of Conservation, Economics and Energy Planning and Law Bureau Prosecutory Staff's Answer to the Petition of Duquesne Light Company Docket No. P-2010-2153577 upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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Dated: February 8, 2010