

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

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FEB - 8 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

William R. Lloyd, Jr.  
Small Business Advocate

(717) 783-2525  
(717) 783-2831 (FAX)

February 8, 2010

**HAND DELIVERED**

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

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

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Notice of Intervention, Answer, Verification, Public Statement, and Notice of Appearance, on behalf of the Office of Small Business Advocate in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon E. Webb".

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

Enclosures

cc: Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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Pursuant to 52 Pa. Code §5.61(a), the Office of Small Business Advocate (“OSBA”) files this Answer to the Petition of Duquesne Light Company (“Duquesne” or “Company”) to Contest the Finding of Non-Compliance with the Alternative Energy Portfolio Standards Act and Modify the Alternative Compliance Payment or, in the Alternative, Declare a Force Majeure for Duquesne Light Company for the 2008/2009 Alternative Energy Compliance Period (“Petition”) that was filed with the Pennsylvania Public Utility Commission (“Commission”) on January 19, 2010, and avers the following in support thereof:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interest of small business consumers as a party in proceedings before the Commission.
2. Duquesne is a public utility and an electric distribution company (“EDC”) as defined in Section 102 and Section 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102 and 2803. *See* Petition, para. 4.

3. As an EDC, Duquesne is required to acquire alternative energy credits (“AECs”) in compliance with the Alternative Energy Portfolio Standards Act (“AEPS Act”) 73 P.S. §1648.1-1648.8. *See* Petition, para. 5.

4. Duquesne was served with a Non-Compliance letter from the Commission’s Bureau of Conservation, Economics and Energy Planning which concluded that Duquesne was in violation of Section 4 of the AEPS Act for the 42,980 Tier I AECs it obtained from Cadillac Renewable Energy (“Cadillac”). The non-compliance finding stems from the fact that the Cadillac facility is located within the regional transmission organization (“RTO”) service territory of Midwest Independent System Operator (“MISO”) and not the service territory of the PJM Interconnection, LLC (“PJM”) wherein Duquesne is located. The Non-Compliance Letter imposed an alternative energy compliance payment on Duquesne of \$1,934,100. *See* Petition, para. 8-10.

5. Duquesne’s Petition proposes alternatives to remedy the finding of non-compliance. *See* Petition, para. 11 and 28. One of the alternatives would permit Duquesne to recover the cost of the alternative compliance payment from customers. *Id.*

6. The default service rates for small commercial and industrial customers (“Small C&I customers”) are fixed for three years (from January 1, 2008, through December 31, 2010) pursuant to a stipulation that was approved in Duquesne’s last provider of last resort proceeding (“POLR IV”) at Docket P-00072247 (Order entered June 22, 2007). Specifically, although not truly fixed rates on an individual customer basis, the average POLR rate for Small C&I customers, *i.e.*, customers which have a maximum registered peak demand of less than 25 kW and are served under rate schedules GS/GM and GMH, were fixed. Individual customers in that group were to experience

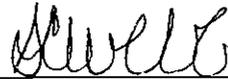
annual rate changes on January 1, 2009, and January 1, 2010, to reflect the phase-out of the demand charge and declining block rates.

7. Also in POLR IV, a stipulation offered comparable protection to medium commercial and industrial customers (“Medium C&I customers”), *i.e.*, customers which have a maximum registered peak demand between 25 kW and 300 kW, for 2008. Those rates subsequently were continued through June 30, 2009, and were modified for July 1, 2009, through December 31, 2010, by the Joint Petition for Settlement of Duquesne’s Petition for Special Permission to File a Tariff on less than 60 days Notice at Docket No P-2008-2079461 (Order entered April 20, 2009) (“Medium C&I Case”). The approved Joint Petition commits Duquesne to provide default service to Medium C&I customers through full-requirements load-following contracts for the period from July 1, 2009, through December 31, 2010. Those load following contracts incorporate the costs of AECs in the wholesale bid prices.

8. Duquesne’s alternative request to recover the alternative compliance payment from customers would alter the default service rates that were approved in the settlements of POLR IV and the Medium C&I Case. Specifically, Duquesne seeks to impose on Small and Medium C&I customers AEC-related costs for which those customers are not liable under those settlements. Duquesne has no authority to modify those previously approved settlements unilaterally.

WHEREFORE, the Office of Small Business Advocate respectfully requests the Commission to direct the Office of Administrative Law Judge to hold hearings and prepare a Recommended Decision on Duquesne's Petition and thereafter to deny any relief which would violate either the POLR IV or the Medium C&I Case settlement.

Respectfully submitted,



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Sharon E. Webb  
Attorney I.D. No. 73995  
Assistant Small Business Advocate

For: William R. Lloyd, Jr.  
Small Business Advocate  
Attorney I.D. No. 16452

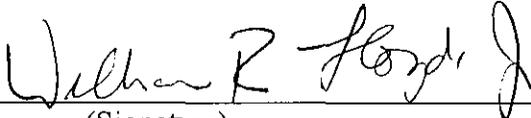
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
(717) 783-2525

Date: February 8, 2010

VERIFICATION

I, William R. Lloyd, Jr., hereby state that the facts set forth herein above 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 a 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 unsworn falsification to authorities).

Date: February 8, 2010

  
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(Signature)

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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** :  
**Compliance Payment or, in the Alternative,** :  
**Declare a Force Majeure for Duquesne Light** :  
**Company for the 2008/2009 Alternative Energy** :  
**Compliance Period** :

Docket No. P-2010-2153577

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SECRETARY'S OFFICE

**PUBLIC STATEMENT OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (the "Act"). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by his initiation of or intervention in any proceeding involving those interests before the Pennsylvania Public Utility Commission ("Commission") or any other agency or court. This public statement relates to the filing today by the Small Business Advocate of an Answer and Notice of Intervention in the above-captioned proceeding that was initiated by Duquesne Light Company ("Duquesne" or "Company") on January 19, 2010.

Duquesne's Petition proposes several alternative remedies for the finding of non-compliance with the alternative energy credit ("AEC") requirements. At least one of those alternatives would increase the rates paid by Duquesne's small and medium commercial and industrial customers. The Small Business Advocate is filing an Answer and Notice of Intervention in order to assure that the Company's small and medium commercial and industrial customers' rates are not unfairly impacted.

Dated: February 8, 2010

**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 Compliance Payment or, in : **DOCKET NO. P-2010-2153577**  
the Alternative, Declare a Force Majeure :  
for Duquesne Light Company for the :  
2008/2009 Alternative Energy :  
Compliance Period :**

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Notice of Intervention, Answer, Verification, Public Statement, and Notice of Appearance, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise indicated) upon the persons addressed below:

Hon. Veronica Smith  
Chief Administrative Law Judge  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
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[verosmith@state.pa.us](mailto:verosmith@state.pa.us)  
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Johnnie E. Simms, Esquire  
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Date: February 8, 2010

  
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Attorney ID No. 73995