

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
Consumer Advocate

March 26, 2010

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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:

Enclosed for filing is the Prehearing Memorandum of the Office of Consumer, in
the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "David T. Evrard".

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

Enclosures

cc: Honorable Katrina L. Dunderdale

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

PREHEARING MEMORANDUM OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. §333, 52 Pa. Code §5.224, and in response to the Prehearing Conference Order issued in the above-captioned matter by Administrative Law Judge (ALJ) Katrina Dunderdale, the Office of Consumer Advocate (OCA) provides this Prehearing Memorandum.

I. INTRODUCTION

On January 4, 2010, the Public Utility Commission's (Commission) Bureau of Conservation, Economics & Energy Planning, issued a letter to Duquesne Light Company (Duquesne or Company) indicating that, based on a review conducted by the Commission's Alternative Energy Portfolio Standards (AEPS) credit administrator, Clean Power Markets ("CPM"), Duquesne Light was in non-compliance for the 2008/2009 AEPS compliance year ("Non-Compliance Letter"). The Non-Compliance Letter stated that, pursuant to Section 4 of the AEPS Act, 73 P.S. § 1648.4, 42,980 of the Tier I Alternative Energy Credits (AECs) purchased to satisfy Duquesne's AEPS Act compliance requirement for the subject year were ineligible because they were procured from an alternative energy source located outside the geographical

boundaries of the Commonwealth and not within the service territory of Duquesne Light's Regional Transmission Organization, PJM. As a result, the Non-Compliance Letter imposed an alternative energy compliance payment of \$1,934,100. The Non-Compliance Letter gave Duquesne fifteen days to file a petition challenging the alternative compliance payment determination.

On January 19, 2010, Duquesne filed the instant Petition contesting the non-compliance determination and seeking to modify the alternative compliance payment, or, in the alternative, requesting the Commission to declare a force majeure applicable to Duquesne for the 2008/2009 compliance year. More specifically, Duquesne requested, in the first instance, that the Commission accept the 42,980 Tier I AECs declared ineligible or, in the alternative, permit Duquesne to acquire an additional 42,980 AECs for the 2009/2010 AEPS compliance period, substitute the ineligible AECs with banked AECs, exchange the ineligible AECs for equivalent AECs procured within the PJM service territory or declare a force majeure for Duquesne for the 2008/2009 AEPS compliance period. If a force majeure is declared, Duquesne asks that the Commission allow the Company the option either to make an alternative compliance payment and recover such payment from customers or comply with its AEPS Act requirement through the purchase of 42,980 additional Tier I AECs in the 2009/2010 compliance period. Petition at 4-5.

On February 8, 2010, the Commission's Law Bureau Prosecutory Staff (LBPS) filed an Answer to Duquesne's Petition, stating that the Petition should be denied. LBPS Answer at 15. Also on February 8, 2010, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Public Statement, and Answer. OSBA's Answer states that Duquesne's alternative proposal to have the Commission declare a force majeure and allow the company the option to make an alternative compliance payment which it would recover from customers would violate

the terms of the settlement entered into by the parties to Duquesne's most recent Provider of Last Resort proceeding, POLR IV, Docket No. P-00072247 (Order entered June 22, 2007). OSBA Answer at 3.

On March 8, 2010, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement.

The matter was assigned to the Office of Administrative Law Judge and further assigned to ALJ Katrina L. Dunderdale for hearings. On February 23, 2010, a prehearing conference notice was issued setting a prehearing conference for April 1, 2010. On February 24, 2010, ALJ Dunderdale issued a Prehearing Conference Order.

II. ISSUES

As noted in the Public Statement which accompanied its Notice of Intervention, the OCA seeks to protect the interests of Duquesne's customers and assure that the provisions of the AEPS Act are followed. Further, the OCA seeks to ensure that Duquesne's customers are charged only for AEC costs that are consistent with the AEPS Act and the Commission's supporting regulations and the Duquesne POLR IV settlement. To that end, the OCA shares the concern of the OSBA with that portion of Duquesne's Petition that proposes to make an alternative compliance payment and recover that payment from customers. Section 75.65(b)(3) of the Commission's regulations, 52 Pa. Code §75.65(b)(3), states explicitly that alternative compliance payments are not recoverable from ratepayers. In addition, like the OSBA, the OCA submits that any attempt to recover an alternative compliance payment from ratepayers may be contrary to the terms of the settlement reached in Duquesne's POLR IV proceeding.

Duquesne's Petition proposes a number of other alternative methods for remedying the Commission's determination of AEPS Act non-compliance, each of which could raise issues or

concerns not immediately discernible. The OCA therefore reserves the right to raise such additional issues should they arise.

III. WITNESSES

The OCA does not presently intend to present a witness in this proceeding. If, however, during the course of the proceeding, the OCA determines that the assistance of an expert witness becomes necessary for the effective presentation of its case, it will immediately so notify Judge Dunderdale and the parties.

IV. SERVICE ON THE OCA

The OCA will be represented in this case by Senior Assistant Consumer Advocate Tanya J. McCloskey and Assistant Consumer Advocate David T. Evrard. Two copies of all documents should be served on the OCA as follows:

David T. Evrard
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V. PROPOSED SCHEDULE

The OCA will cooperate with the other parties to develop an appropriate procedural schedule for this proceeding.

VII. SETTLEMENT DISCUSSIONS

The OCA will participate in any settlement discussions held during the course of this proceeding.

Respectfully Submitted,



David T. Evrard
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Counsel for:
Irwin A. Popowsky
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Dated: March 26, 2010

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CERTIFICATE OF SERVICE

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 :

I hereby certify that I have this day served a true copy of the foregoing document, Prehearing Memorandum of the Office of Consumer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26th day of March 2010.

SERVICE BY E-MAIL and INTEROFFICE MAIL

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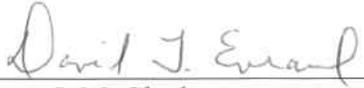
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