



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

March 25, 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 for filing, please find an original and three copies of the Bureau of Conservation, Economics and Energy Planning and Law Bureau Prosecutory Staff's Prehearing Memorandum 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**

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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 :

**PREHEARING MEMORANDUM OF THE PENNSYLVANIA PUBLIC UTILITY
COMMISSION BUREAU OF CONSERVATION ECONOMICS AND ENERGY
PLANNING AND LAW BUREAU PROSECUTORY STAFF**

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in response to the Prehearing Conference Order issued in the above-captioned matter by Administrative law Judge Katrina L. Dunderdale, the Law Bureau Prosecutory Staff, on behalf of the Bureau of Conservation, Economics and Energy Planning provides the following information:

I. INTRODUCTION

On January 4, 2010, Wayne Williams, Director of Conservation, Economics and Energy Planning (CEEP”), issued a letter to Duquesne Light, Inc. (“Duquesne” or “Company”), notifying Duquesne that it had used 42,980 ineligible alternative energy credits (“AEC”) for the 2008/2009 Alternative Energy Portfolio Standards Act (“AEPS Act”) compliance year. This notice informed Duquesne that as the 42,980 AECs were ineligible for use by Duquesne for AEPS Act compliance, Duquesne had a 42,980 AEC deficiency for AEPS Act Tier I compliance. Furthermore, the letter informed Duquesne

that an alternative compliance payment of \$45 was imposed for each AEC Duquesne was deficient, for a total alternative compliance payment of \$1,934,100. Finally, the letter informed Duquesne that they had 15 days to file petition challenging the alternative compliance payment determination.

On January 19, 2010, Duquesne filed a Petition, pursuant to 52 Pa. Code §§ 5.44 and 75.65(c), contesting the Commission's finding of non-compliance with the AEPS 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 year ("Petition"). Petition at 1. Duquesne requests that to the extent that the Commission determines that the 42,980 AECs at issue are not eligible for use by Duquesne for AEPS Act compliance, the Commission should declare force majeure for Duquesne and provide Duquesne with the option of making an alternative compliance payment recoverable from Duquesne's default service customers, or to purchase an additional 42,980 Tier I AECs in the 2009/2010 compliance period. Petition at 17. Duquesne also alleged that the limitations on eligible AECs in Section 4 of the AEPS Act, 73 P.S. § 1648.4, violate the United States Constitution, and as such, the Commission should accept the 42,980 AECs at issue for its compliance with the 2008/2009 AEPS Act compliance year. *Id.*

On February 8, 2010, the Law Bureau Prosecutory Staff ("LBPS"), on behalf of CEEP, filed an answer to Duquesne's Petition ("LBPS Answer"). In its Answer, the LBPS requests that the Commission deny Duquesne's Petition. LBPS Answer at 15.

On February 8, 2010, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention, Answer, Verification, Public Statement and Notice of Appearance ("OSBA Answer"). The OSBA asserts that Duquesne's alternative request to recover

alternative compliance payments from customers would alter the default service rates that were previously approved in settlements. OSBA Answer at 3. The OSBA asserts that Duquesne has no authority to modify the previously approved settlements unilaterally. *Id.* The OSBA requests that the Commission deny any relief that would violate the prior settlements. OSBA Answer at 4.

The above-captioned matter was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Katrina L. Dunderdale for hearings. On February 23, 2010, a prehearing conference notice was issued setting a prehearing conference for April 1, 2010, in Pittsburgh, Pennsylvania, with teleconferencing available in Harrisburg, Pennsylvania. On February 24, 2010, ALJ Dunderdale issued a Prehearing Conference Order,

On March 8, 2010, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention in the above-captioned matter. The OCA asserts that it will seek to ensure that Duquesne’s customers are charged only for AEC costs that are consistent with the AEPS Act and the Commission’s regulations. OCA Notice at 2.

II. ISSUES

Based on an initial analysis of Duquesne’s Petition the LBPS has compiled a list of issues to be addressed in this matter. It is anticipated that other issues may arise during the course of this proceeding. Following is a list of issues that LBPS anticipates addressing during the proceedings:

1. Whether the 42,980 Tier I AECs generated by the Cadillac Renewable Energy facility are eligible for use by Duquesne for compliance with the AEPS Act?
2. Whether the AEPS Act and the Commission's regulations permit Duquesne to substitute other eligible Tier I AECs for the 42,980 ineligible AECs for the 2008/2009 compliance year after the end of the 2008/2009 compliance year true-up period?
 - a. Whether Duquesne had an additional 42,980 eligible Tier I AECs at the close of the 2008/2009 compliance year true-up period?
3. Whether Duquesne can request a declaration of force majeure?
 - a. Whether Duquesne can request a declaration of force majeure 60 days after the close of the 2008/2009 compliance year true-up period?
 - b. Whether Duquesne asserts facts sufficient to support a claim for force majeure?
4. Whether the AEPS Act, the Pennsylvania Public Utility Code or the Commission's regulations permit Duquesne to recover from ratepayers any alternative compliance payments assessed in this proceeding or any other costs associated with alternative energy credits at issue in this proceeding?

III. WITNESSES

The LBPS intends to present the direct testimony of the following witnesses:

Dina M. Deana, LEED AP
Project Manager
Clean Power Markets, Inc.
Phone: (877) 237-7773
deana@cleanpowermarkets.com

Wayne L. Williams, Ph.D, Bureau Director
PA Public Utility Commission
Bureau of Conservation, Economics and Energy Planning
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The LBPS specifically reserves the right to call additional witnesses, as necessary. As soon as the LBPS has determined whether additional witnesses are necessary, all parties of record will be notified.

IV. SERVICE ON LBPS

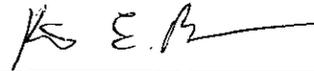
The LBPS and CEEP will be represented in this case by Assistant Counsel, Kriss E. Brown and Deputy Chief Counsel, Robert F. Young. Two copies of all documents should be served on the LBPS and CEEP as follows:

Kriss E. Brown
Assistant Counsel
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V. PROPOSED SCHEDULE

The LBPS will work with Duquesne and other parties in this proceeding to arrive at a mutually agreeable procedural schedule. At this time the parties are working on establishing a mutually agreed upon schedule.

Respectfully submitted



Kriss E. Brown
Assistant Counsel
Attorney ID #89036

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

P.O. Box 3265
Harrisburg, PA 17105

Dated: March 25, 2010

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):

Service by First Class Mail and Email:

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Dated: March 25, 2010