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File #: 2267/143618

October 8, 2010

BY HAND

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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PA PUC  
SECRETARY'S BUREAU

**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 Chiavetta:

Enclosed, for filing, are the original and three (3) copies of the Joint Petition for Settlement in the above-referenced proceeding.

Copies have been provided to the persons in the manner indicated on the Certificate of Service.

Respectfully Submitted,

  
Andrew S. Tubbs

AST/jl

Enclosures

cc: Honorable Katrina L. Dunderdale (*via E-mail & First Class Mail*)  
Certificate of Service

**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 :

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**JOINT PETITION FOR SETTLEMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE

**I.     INTRODUCTION**

The Pennsylvania Public Utility Commission's ("Commission") Bureau of Conservation, Economics and Energy Planning ("CEEP") and Duquesne Light Company ("Duquesne Light"), parties to the above-captioned proceeding (hereinafter collectively referred to as the "Joint Petitioners"),<sup>1</sup> hereby join in this Joint Petition for Settlement ("Settlement") and respectfully request that Administrative Law Judge Katrina L. Dunderdale ("ALJ") and the Commission approve the Settlement as set forth below.

Joint Petitioners have agreed to a settlement that resolves all issues among the parties in the above-captioned proceeding and as to Duquesne's 2008/2009 Alternative Energy Portfolio Standards Act 2008/2009 compliance year. As discussed below, the Settlement provides for, *inter alia*, the implementation of certain additional compliance procedures by Duquesne Light and the reallocation or swap of the alternative energy credits at issue in this proceeding.

In support of this Settlement, the Joint Petitioners state the following:

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<sup>1</sup> The Office of Consumer Advocate and the Office of Small Business Advocate, intervenors in this proceeding, have indicated that they do not oppose the Settlement.

## **II. BACKGROUND**

1. Duquesne Light is a public utility and an electric distribution company (“EDC”) as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803. Duquesne Light furnishes electric distribution and provider of last resort (“POLR”) electric supply services to approximately 579,000 customers throughout its certificated service territory, which includes all or portions of the City of Pittsburgh and Allegheny and Beaver Counties, Pennsylvania.

2. On January 19, 2010, Duquesne Light filed the above-captioned Petition with the Commission. In the Petition, Duquesne Light contested the finding of non-compliance with the AEPS Act, and requested that the Commission modify the alternative compliance payment determination or declare a force majeure for Duquesne Light for the 2008/2009 AEPS compliance period or otherwise grant relief under the instant circumstances.

3. On February 8, 2010, the Commission’s Bureau of Conservation, Economics and Energy Planning (“CEEP”) filed an Answer to the Petition.

4. The Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention on February 8, 2010.

5. The Office of Consumer Advocate (“OCA”) filed a Notice of Intervention on March 8, 2010.

6. An initial Prehearing Conference was scheduled for April 1, 2010. Prior to the initial Prehearing Conference, the parties agreed to a procedural schedule. Prehearing memoranda were filed by Duquesne Light, CEEP, OCA and OSBA wherein the parties identified potential issues and witnesses.

7. The initial Prehearing Conference was held as scheduled on April 1, 2010. At the prehearing conference, ALJ Dunderdale established the litigation schedule. The ALJ also set

forth discovery rules, which included shorter response times than those provided in the Commission's regulations. See 52 Pa. Code §§ 5.341 *et seq.*

8. The parties conducted formal and informal discovery in this proceeding. Pursuant to the established litigation schedule, Duquesne distributed direct testimony on May 28, 2010. CEEP and OSBA distributed direct testimony and exhibits on July 16, 2010. Duquesne Light distributed rebuttal testimony on August 18, 2010.

9. The parties were involved in a number of discussions over the course of these proceedings. As a result of those discussions, Duquesne Light and CEEP reached a settlement of all issues in this proceeding and resolving Duquesne Light's compliance for the 2008/2009 compliance period prior to the date scheduled evidentiary hearings.

10. Under the terms of the Settlement, Duquesne Light will exchange or swap the 42,980 Tier I AECs obtained from Cadillac for the 2008/2009 AEPS Act compliance period with an equal number of eligible Tier I AECs that were generated at facilities located in the Commonwealth and/or at facilities located in the PJM service territory which were submitted by a MISO eligible Pennsylvania EDC or EGS for the 2008-2009 AEPS Act compliance period. As a result of the exchange or swap of the Tier I AECs, the Joint Petitioners agree that Duquesne Light should be found in compliance for the 2008/2009 AEPS Act reporting period.

11. In addition, under the Settlement, Duquesne Light will implement additional internal procedures regarding the procurement and reporting of AECs that will facilitate the timely review of the AECs by the credit administrator for future reporting periods, which, in turn, will ensure that Duquesne has the opportunity to take advantage of its statutory right to a true-up period.

12. Further, Duquesne Light and CEEP note that as of July 2010, the Commission's AEPS website now provides EDCs/EGSs with pertinent information as to extent that Alternative Energy Credits generated by AEPS "qualified facilities" may be eligible to provide AECs in certain RTO service territories due to the geographic limitation set forth in Section 4 of the AEPS Act. 73 P.S. § 1648.4.

13. Duquesne Light and CEEP are in full agreement and respectfully submit that expeditious Commission adoption of the Settlement is in the best interests of all parties and Duquesne Light's customers.

### III. SETTLEMENT

14. The Joint Petitioners agree as follows:

- a. *Duquesne Light agrees to implement additional internal procedures regarding compliance with the AEPS Act. Specifically, Duquesne Light will develop additional procedures to procure AECs produced inside PJM or the Commonwealth of Pennsylvania for all future reporting periods (2009-10 and beyond). In accordance with existing law, Duquesne Light specifically agrees that it will not use or attempt to use for AEPS Act compliance purposes AECs produced in the MISO territory.*
- b. As part of this agreement, Duquesne Light commits to:
  - 1) Require that all contracts for the purchase of AECs for Duquesne Light AEPS Act compliance contain an express provision that the AECs must be generated in PJM or in the Commonwealth of Pennsylvania;
  - 2) Conduct independent due diligence before purchasing any AECs to confirm that the AECs are produced in PJM or the Commonwealth of Pennsylvania;
  - 3) Submit its annual AEC report to the Commission and the AEC Administrator electronically on or before July 1<sup>st</sup> of every year so that the Commission and its AEC Administrator can review the proposed compliance plan of Duquesne Light. The annual report will contain at least the following information on each AEC Duquesne Light intends to use for compliance: Pennsylvania certification number, quantity, vintage, load information (not finalized) and RTO location. (It is

understood that some suppliers may not have supplied all of this information to Duquesne Light by the time of filing and there can be further amendments/supplements to the report.) The AEC Administrator's review of Duquesne Light's compliance plan will not constitute a final determination of Duquesne Light's compliance obligation as only those credits retired by Duquesne Light in its PJM Generation Attribute Tracking System ("GATS") Pennsylvania Portfolio Reserve Subaccount can be used to determine final compliance with the AEPS Act. These reporting procedures will be in effect, until superseded by Commission regulations, orders or other equivalent action by the Commission; and

- 4) Provide training to its employees responsible for AEPS Act compliance on eligibility requirements for Duquesne Light's AECs.
- c. Duquesne Light will reallocate or swap the 42,980 of Tier I AECs generated by Cadillac, purchased by Duquesne Power, on behalf of Duquesne Light, and submitted for purposes of AEPS Act compliance for the 2008-2009 reporting period for an equal number of eligible Tier I AECs generated at facilities located in Pennsylvania or PJM submitted by a MISO eligible Pennsylvania electric distribution company or Pennsylvania electric generation supplier for the 2008-2009 compliance period. Duquesne Light will coordinate the reallocation or swap on paper of the AECs. A list of the specific Tier I AECs being reallocated or swapped on paper and any terms and conditions of the swap is attached as Appendix A to this Settlement Petition.
  - d. Duquesne Light will not increase any of its POLR IV rates, including the rates of medium commercial and industrial customers established in accordance with the Commission's June 22, 2007, Order at Docket No. P-00072247 and the Commission's April 20, 2009, Order at Docket No. P-2008-2079461 as a result of this proceeding.
  - e. This Settlement resolves any and all non-compliance issues for the 2008-2009 compliance period and reporting requirements for Duquesne Light related to AEPS Act compliance for the 2008-2009 compliance period, but does not constitute a determination that any costs and expenses related to Duquesne Light's AEPS Act compliance are reasonable or prudent for cost recovery.
  - f. The Joint Petitioners represent that this settlement is in the public interest as it amicably resolves this proceeding, a proceeding that involves the implementation of a new regulatory regime associated with the AEPS Act. However, the Joint Petitioners agree that the terms of this settlement are not to be interpreted as setting precedent for future AEPS Act compliance periods or future revisions to the Commission's regulations, orders, or equivalent Commission actions.

#### **IV. SETTLEMENT IS IN THE PUBLIC INTEREST**

15. This Settlement was achieved by the Joint Petitioners after an extensive investigation of Duquesne Light's filing, including informal and formal discovery and the distribution of direct and rebuttal testimony.

16. This Settlement reduces the administrative burdens on the Commission and avoids any extensive litigation expenditures because it resolves all of the issues in this proceeding without administrative adjudication.

17. Joint Petitioners have submitted, along with this Settlement Petition, their respective Statements in Support setting forth the basis upon which each believes the Settlement to be fair, just and reasonable and therefore in the public interest. The Joint Petitioners' Statements in Support are attached hereto as Appendices B and C.<sup>2</sup>

#### **V. CONDITIONS OF SETTLEMENT**

18. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of any Order modifying the Settlement.

19. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as full litigation of these proceedings resulting in the establishment of rates that are Commission-made, just and reasonable rates.

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<sup>2</sup> OCA and OSBA letters of non-opposition are attached hereto as Appendices D and E respectively.

20. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. If the Commission does not approve the Settlement and the proceedings continue to further hearings, the Joint Petitioners reserve their respective rights to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any further litigation in these proceedings.

21. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

22. The Commission's approval of the Settlement shall not be construed to represent approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in these and future proceedings involving Duquesne Light.

23. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise, and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in these proceedings if they were fully litigated.

24. This Settlement is being presented only in the context of these proceedings in an effort to resolve the proceedings in a manner which is fair and reasonable. The Settlement is the product of compromise between and among the Joint Petitioners. This Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Settlement.

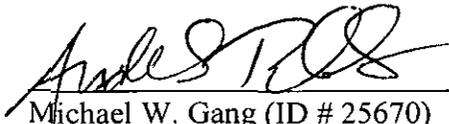
25. If the ALJ adopts the Settlement without modification, the Joint Petitioners waive their individual rights to file Exceptions with regard to the Settlement.

## **VI. CONCLUSION**

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That the Honorable Administrative Law Judge Katrina L. Dunderdale and the Commission approve this Settlement including all terms and conditions herein;
2. That the reallocation or swap of 42,980 of Tier I Alternative Energy Credits generated by Cadillac Renewable Energy and purchased by Duquesne Power, on behalf of Duquesne Light, for an equal number of eligible Tier I Alternative Energy Credits generated at facilities in Pennsylvania or PJM submitted by a MISO eligible Pennsylvania electric distribution company or electric generation supplier for the 2008/2009 compliance period is approved;
3. That Duquesne Light be found compliant for the 2008/2009 Alternative Energy Portfolio Standards Act compliance period;
4. That the instant proceeding at Docket No. P-2010-2153577 shall be marked closed due to the Settlement; and
5. That the Commission enter an Order consistent with this Settlement

Respectfully submitted,

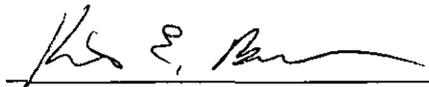


Michael W. Gang (ID # 25670)  
Andrew S. Tubbs (ID # 80310)  
Christopher T. Wright (ID # 203412)  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Date: 10-7-10

Gary A. Jack  
Kelly Geer  
Duquesne Light Company  
411 Seventh Avenue Mail Drop 8-2  
Pittsburgh, PA 15219

For: *Duquesne Light Company*



Robert F. Young  
Kriss E. Brown  
PA Public Utility Commission  
Law Bureau  
Commonwealth Keystone Building  
400 North Street, 3rd Floor West  
Harrisburg, PA 17105-3265

Date: 10/7/10

For: *Pennsylvania Public Utility  
Commission, Bureau of Conservation,  
Economics and Energy Planning*

A

**Paper Transfer from Supplier/EDC to Duquesne**

Year/Month	Certificate Serial Numbers	Quantity	State Certification Number	PA Solar Renewable	PA TierI Renewable	PA TierII Renewable	RPS Period
2006/10	19707 - 2113 to 9660	7,548	PA-39067-WND-I	No	Yes	No	2008/2009
2007/1	23385 - 5 to 18	14	PA-39098-WND-I	No	Yes	No	2008/2009
2007/2	24431 - 39 to 191	153	PA-39098-WND-I	No	Yes	No	2008/2009
2007/3	25442 - 666 to 3327	2,662	PA-39098-WND-I	No	Yes	No	2008/2009
2007/3	24711 - 1 to 8919	8,919	PA-39067-WND-I	No	Yes	No	2008/2009
2007/4	25858 - 1 to 9108	9,108	PA-39067-WND-I	No	Yes	No	2008/2009
2007/5	26667 - 1 to 4209	4,209	PA-39067-WND-I	No	Yes	No	2008/2009
2007/6	27663 - 1 to 330	25	PA-39067-WND-I	No	Yes	No	2008/2009
	<b>Sub Total</b>	<b>32,638</b>					
2008/03	39258-1 to 39258-2350	2,350	PA-46045-WDS-1	No	Yes	No	2008/2009
2008/05	39370-1872 to 39370-9871	<u>8,000</u>	PA-46045-WDS1	No	Yes	No	2008/2009
		<u>10,350</u>					
	<b>TOTAL Transferred to Duquesne</b>	<b>42,988</b>					

**Paper Transfer from Duquesne to Supplier/EDC**

2006/9	19152 - 1 to 9688	9,688	PA-23008-WDS-I	No	Yes	No	2008/2009
2006/9	19152 - 9689 to 22817	13,129	PA-23008-WDS-I	No	Yes	No	2008/2009
2006/9	19152 - 32457 to 39307	6,851	PA-23008-WDS-I	No	Yes	No	2008/2009
2006/8	18061 - 151898 to 162060	10,163	PA-23008-WDS-I	No	Yes	No	2008/2009
2006/8	18061 - 148749 to 151897	<u>3,149</u>	PA-23008-WDS-I	No	Yes	No	2008/2009
	<b>TOTAL Transferred by Duquesne</b>	<b>42,980</b>					

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**B**

**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 : P-2010-2153577  
Duquesne Light Company for the 2008/2009 :  
Alternative Energy Compliance Period :**

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**Law Bureau Prosecutory Staff and  
The Bureau of Conservation, Economics and Energy Planning  
Statement in Support of Settlement in Compliance with 52 Pa. Code § 69.1201.**

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1. On January 4, 2010, Wayne Williams, Ph.D., the Director of the Bureau of Conservation, Economics and Energy Planning issued a Notice of non-compliance with the Pennsylvania Alternative Energy Portfolio Standards Act (AEPS Act) to Duquesne Light, Inc. (Duquesne). This Notice of non-compliance indicated that Commission staff determined that 42,980 Tier I alternative energy credits (AECs) submitted by Duquesne for compliance in the 2008/2009 compliance year were ineligible for use by Duquesne. The Notice of non-compliance further stated that as the 42,980 AECs were ineligible for use by Duquesne, Duquesne was deficient an equal amount of Tier I credits and was assessed a total alternative compliance payment of \$1,934,100.

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SECRETARY'S BUREAU

2. On January 19, 2010, Duquesne filed a Petition contesting the finding of non-compliance with the AEPS Act. The Petition requested that the Commission modify the alternative compliance payment determination or declare a force majeure for Duquesne for the 2008/2009 AEPS Act compliance period.

3. On February 8, 2010, the Bureau of Conservation, Economics and Energy Planning (CEEP) filed an Answer to the Petition.

4. On February 8, 2010, the Office of Small Business Advocate filed an Answer and Notice of Intervention.

5. On March 8, 2010, the Office of Consumer Advocate filed a Notice of Intervention.

6. CEEP and Duquesne conducted formal and informal discovery. In addition, Duquesne distributed the direct testimony of Anthony F. Pekny (Duquesne Light Company St. No. 1) and Gary S. Page (Duquesne Light Company St. No. 2) on May 28, 2010. CEEP distributed the direct testimony of Wayne L. Williams, Ph.D. (CEEP Statement 1) and Dina M. Deana (CEEP Statement 2) on July 16, 2010. OSBA distributed the direct testimony of Brian Kalcic (OSBA St. No. 1) also on July 16, 2010. Duquesne distributed the rebuttal testimony of Anthony F. Pekny (Duquesne Light Company St. No. 1-R) on August 18, 2010. All of the above-referenced testimony, along

with the accompanying exhibits were submitted into the record on August 30, 2010, in accordance with the August 27, 2010 Interim Order.

7. The Joint Settlement is the result of numerous settlement discussions between CEEP and Duquesne over the course of these proceedings. The Law Bureau Prosecutory Staff (LBPS) and CEEP staff assert that approval of this Settlement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201.

8. Under this Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and this Commission's regulations. These factors are: (1) Whether the conduct at issue was of a serious nature; (2) Whether the resulting consequences of the conduct at issue were of a serious nature; (3) Whether the conduct at issue was deemed intentional or negligent (may only be considered when evaluating litigated cases); (4) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (5) The number of customers affected and the duration of the violation; (6) The Compliance history of the regulated entity that committed the violation; (7) Whether the regulated entity cooperated with the Commission's investigation; (8) The Amount of the civil penalty or fine necessary to

deter future violations; (9) Past Commission decisions in similar situations; and (10) other relevant factors. 52 Pa. Code § 69.1201(c).

9. When applied to settled cases, the Commission will not apply the standards as strictly as it will in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

10. The first factor considered under the policy statement was whether Duquesne’s conduct was of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Neither the LBPS nor the CEEP staff found evidence of any fraud or misrepresentation in Duquesne’s actions taken to comply with the AEPS Act during the 2008/2009 AEPS Act compliance period.

11. The second factor considered under the policy statement was whether the resulting consequences of Duquesne’s actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). While the LBPS and CEEP staff found areas in which Duquesne could

improve its management and oversight of AEC procurement and AEPS Act compliance obligations, the settlement terms set forth specific commitments by Duquesne that address and improve Duquesne's management and oversight of AEC procurement and AEPS Act compliance. These specific commitments include the addition of language to all contracts for the purchase of AECs that require that the AECs purchased must be generated in PJM or in the Commonwealth of Pennsylvania. Duquesne further commits to conducting independent due diligence before purchasing AECs to confirm that the AECs were produced in PJM or the Commonwealth of Pennsylvania. Duquesne also commits to submitting to the AEC Program Administrator and CEEP, for review, a proposed compliance plan by July 1 of every year. Finally, Duquesne commits to provide training to its employees responsible for AEPS Act compliance on AEC eligibility requirements for Duquesne.

12. The third factor considered is whether Duquesne made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As outlined in Paragraph 11 above, Duquesne commits to modifying its internal policies and procedures to address the conduct at issue and prevent similar conduct in the future.

13. The fourth factor considered is the number of customers affected and the duration of any violation by Duquesne. 52 Pa. Code § 69.1201(c)(5). LBPS and CEEP staff note that AEPS Act compliance does not directly affect the safety or reliability of electric service to customers, thus, the direct impact on customers is not an issue in this matter. LBPS and CEEP staff note that this was the first and only AEPS Act compliance period in which Duquesne used ineligible AECs for AEPS Act compliance.

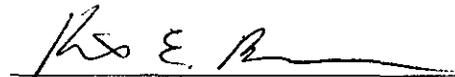
14. The fifth factor considered is Duquesne's compliance history. 52 Pa. Code § 69.1201(c)(6). As noted above in Paragraph 13, this was the first and only AEPS Act compliance period in which Duquesne used ineligible AECs for AEPS Act compliance.

15. In the process of negotiating this Settlement Agreement, all of the other factors set forth in Section 69.1201 were considered including: the Company's cooperation with the Commission, and the actions necessary to deter and prevent future violations of the AEPS Act compliance obligations. Specifically, the LBPS and CEEP staff note that they found no evidence of active concealment of AEPS Act non-compliance, nor attempts to interfere with the investigation of Duquesne's AEPS Act compliance for the 2008/2009 AEPS Act compliance period. Furthermore, LBPS and CEEP staff believe that Duquesne has demonstrated a willingness to improve its management and oversight of AEC procurement and AEPS Act compliance.

16. Prosecutory Staff believes that the efforts of Duquesne, LBPS and CEEP staff in negotiating this joint settlement have resulted in a fair and equitable settlement that is in the public interest. The Commission has consistently encouraged settlements to avoid the cost, expense and time of litigation. The parties submit that the Joint Settlement Agreement is in the public interest because it effectively addresses the areas of Duquesne's management and oversight of AEC procurement and AEPS Act compliance that led to the issuance of the Notice of non-compliance. This Joint Settlement Agreement takes into consideration Duquesne's compliance record in relation to AEPS Act. In addition, this Joint Settlement Agreement avoids the time and expense of litigation that would entail hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. Finally, as a result of this Joint Settlement, Duquesne will modify its internal management and oversight procedures to ensure that its uses eligible AECs for compliance with the AEPS Act in the future.

17. Therefore, LBPS believes this Settlement Agreement meets the standards set forth in the Commission's policy statement at 52 Pa. Code § 69.1201 and its decision in *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000), and specifically *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Dec. 20, 2000).

Respectfully submitted:



Kriss E. Brown  
Assistant Counsel  
Law Bureau Prosecutory Staff

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: October 8, 2010

C



## II. BACKGROUND

Duquesne Light is a public utility and an electric distribution company (“EDC”) as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803. Duquesne Light furnishes electric distribution and provider of last resort electric supply services to approximately 579,000 customers throughout its certificated service territory, which includes all or portions of the City of Pittsburgh and Allegheny and Beaver Counties, Pennsylvania. Duquesne Light’s service territory is located within the service territory of PJM Interconnection, LLC (“PJM”), a regional transmission organization (“RTO”) as defined by Section 2 of the AEPS Act. 73 P.S. § 1648.2.

Pursuant to the AEPS Act, EDCs are required, *inter alia*, to acquire alternative energy credits (“AECs”) in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers in a reporting period. 73 P.S. § 1648.3. Pursuant to the AEPS Act and the Commission’s regulations implementing the same, Duquesne Light was required to derive certain percentages of its total annual sales to electric customers from designated alternative energy sources for the 2008/2009 AEPS compliance year.

For the 2008/2009 AEPS compliance year, Duquesne Light acquired its wholesale power and AECs through the procurement services provided by its affiliate, Duquesne Power. On behalf of Duquesne Light, Duquesne Power procured a total of 114,916 Tier I AECs, the amount required to meet Duquesne Light’s Tier I AEPS obligations for the 2008/2009 AEPS compliance year. Included in this total were 42,980 Tier I AECs generated by Cadillac Renewable Energy (“Cadillac”).

The Cadillac facility possesses a certificate issued by the Commonwealth, qualifying it as a Pennsylvania alternative energy source. The Cadillac facility burns wood, in part, to generate electricity and is located in Michigan within the RTO service territory of Midwest Independent System Operator (“MISO”). Michigan is a state that has facilities in both PJM and MISO.

Pursuant to Section 3 of the AEPS Act, the Commission developed “a registry of pertinent information regarding all available alternative energy credits.” 73 P.S. § 1648.3(e)(8). The Cadillac plant was listed on the Commission’s website as a qualified facility. However, during the time relevant to the 2008/2009 AEPS compliance year, the Commission’s website did not indicate or otherwise provide notice that the AECs generated by Cadillac would only be eligible for an EDC located within the MISO service territory.

The Commission determined that PJM’s Generator Attribute Tracking System (“PJM GATS”) would be used to record and track generation of credits by generators as well as compliance by load serving entities. The Cadillac facility was a registered facility in PJM GATS at the time of Duquesne Power’s purchase of the credits and its production is recorded in the GATS system. However, during the time relevant to the 2008/2009 AEPS compliance year, the PJM GATS did not advise or otherwise provide notice that the AECs generated by Cadillac would only be eligible for an EDC located within the MISO service territory.

*The 2008/2009 AEPS compliance period was the first full reporting period for Duquesne Light, which was before the first full reporting period of many other Pennsylvania utilities. Duquesne Light’s reporting period for the 2008/2009 compliance period ended on May 31, 2009. Duquesne Light did not register its AECs for the 2008/2009 AEPS compliance period with the PJM GATS until August 29, 2009.*

The Commission's regulations provide that the AEPS credit administrator, Clean Power Markets ("CPM"), is to issue an initial assessment of compliance within 45 days from the end of the reporting period, *i.e.*, July 15, 2009. See 52 Pa. Code § 75.64(c). However, Duquesne Light did not receive an initial assessment on July 15, 2009.<sup>1</sup>

The true-up period for Duquesne Light's 2008/2009 AEPS compliance period ran from May 31, 2009 through September 1, 2009. 73 P.S. § 1648.3(e)(5). CPM was required to issue a final assessment within 15 days from the end of the true-up period, *i.e.*, September 16, 2009. See 52 Pa. Code § 75.64(c)(2). Duquesne Light was not provided with a final assessment on September 16, 2009.

On October 2, 2009, Duquesne Light received an assessment from the Commission's credit administrator, indicating that Duquesne Light and its affiliates met their obligations for the 2008/2009 AEPS compliance period. However, on January 4, 2010, Duquesne Light received a letter from CEEP, indicating that, based on a review conducted by the Commission's AEPS credit administrator, Duquesne Light was not in compliance for the 2008/2009 AEPS compliance year ("Non-Compliance Letter"). The Non-Compliance Letter concluded that, pursuant to Section 4 of the AEPS Act, 73 P.S. § 1648.4, the 42,980 Tier I AECs obtained from Cadillac were ineligible for Duquesne Light's AEPS Act compliance 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 RTO, PJM. The Non-Compliance Letter imposed an alternative energy compliance payment of \$1,934,100 (\$45 for each Tier I AEC obtained from Cadillac).

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<sup>1</sup> The Commission's AEPS regulations currently do have a deadline for the registering of AECs. As noted above, Duquesne Light acknowledges that it did not register its AECs with the PJM GATS until August 29, 2009. Therefore, had the Company received a timely initial assessment from CPM, it would have been found to be non-compliant.

On January 19, 2010, Duquesne Light filed the above-captioned Petition to contest 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 Light for the 2008/2009 AEPS compliance period. CEEP filed an Answer on February 8, 2010. The Office of Small Business Advocate ("OSBA") filed an Answer and Notice of Intervention on February 8, 2010, and the Office of Consumer Advocate ("OCA") filed a Notice of Intervention on March 8, 2010.

The Parties engaged in numerous settlement discussions over the course of the proceedings. As a result of those discussions, Duquesne Light and CEEP (collectively "Joint Petitioners") reached a settlement of all issues in this proceeding and resolved Duquesne Light's compliance for the 2008/2009 AEPS compliance period prior to the date scheduled for evidentiary hearings.

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. P.U.C. v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. P.U.C. v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). The Settlement reflects a carefully balanced compromise of the interests in this proceeding. For the reasons set forth below, the Settlement is just and reasonable and should be approved.

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST.**

This Settlement was achieved by the Joint Petitioners after an extensive investigation of Duquesne Light's filing, including informal and formal discovery and the distribution of direct and rebuttal testimony. The Settlement reflects a carefully balanced compromise of the Joint Petitioners interests in this proceeding. The fact that the Joint Petitioners have reached an agreement on the issues in this proceeding clearly demonstrates that the Settlement is in the public interest and should be approved. Further, approval of this Settlement will reduce the administrative burdens on the Commission and avoid litigation expenditures because it resolves all of the issues in this proceeding without administrative adjudication. As explained below, approval of the Settlement is in the public interest because it promotes the spirit and purpose of the AEPS Act, as well as resolves issues related to the statutory requirements of the AEPS Act and errors in the actual program used by the Commission.

#### **A. The Exchange of AECs Promotes the Purpose of the AEPS Act.**

Under the terms of the Settlement, the Joint Petitioners agree that Duquesne Light will exchange or swap the 42,980 Tier I AECs obtained from Cadillac for the 2008/2009 AEPS Act compliance period with an equal number of eligible Tier I AECs that were generated at facilities located in the Commonwealth and/or at facilities located in the PJM service territory which were submitted by a MISO eligible Pennsylvania EDC or EGS for the 2008-2009 AEPS Act compliance period. As a result of the exchange or swap of the Tier I AECs, the Joint Petitioners agree that Duquesne Light should be found in compliance for the 2008/2009 AEPS Act reporting period.

The Settlement is in the public interest because it promotes the purpose of the AEPS Act. As explained by the Commonwealth Court, "the purpose of AEPS is to encourage the creation and use of energy from alternative sources." *ARIPPA v. Pa. P.U.C.*, 966 A.2d 1204, 1214 (Pa.

Cmwlth. 2009). Section 4 of the AEPS Act limits eligible AECs to those generated within the Commonwealth or within an RTO that operates within the Commonwealth. 73 P.S. § 1648.4. Clearly, the intent of the Act is to promote the development of environmentally sound alternative energy sources that will provide environmental benefits within the Commonwealth.

The Cadillac facility burns wood, in part, to generate electricity. Cadillac has been registered and certified by the Commonwealth of Pennsylvania as a qualified alternative energy system and, therefore, qualified to generate AECs for use in Pennsylvania. Cadillac is located within the service territory of an RTO that operates within the Commonwealth. Additionally, the Cadillac facility is located in Michigan, a state that, similar to Pennsylvania, has facilities in both PJM and MISO. Thus, the 42,980 Tier I AECs obtained from Cadillac clearly promote the development of environmentally sound alternative energy sources that provide environmental benefits within the Commonwealth and within the service territory of an RTO that operates within the Commonwealth.

If the 42,980 Tier I AECs procured from Cadillac are not accepted, they will be worthless and cannot be resold. Their vintage is June 2006-May 2007 and, thus, these AECs have expired. Under the terms of the Settlement, Duquesne will be permitted to exchange these MISO AECs for AECs, which were generated in the Commonwealth or the PJM service territory, that were submitted by a MISO eligible EDC or EGS. Accordingly, the credits purchased by Pennsylvania EDCs and EGSs will be reallocated and meet the requirements of the AEPS Act as interpreted by the Commission.

Further, as explained more fully below, Duquesne Light made a good faith effort to meet its AEPS requirements for the 2008/2009 AEPS compliance period and reasonably relied on the information available from the Commonwealth, PJM GATS, and the Commission to conclude

that the 42,980 Tier I AECs procured from Cadillac would be eligible to meet Duquesne Light's requirements for the 2008/2009 AEPS compliance period. The exchange set forth in the Settlement avoids penalizing Duquesne Light for such reasonable reliance. The exchange will avoid the waste of the 42,980 Tier I AECs procured from Cadillac, while at the same time promoting the purpose of and compliance with the AEPS Act.

**B. Duquesne Light's Commitments Will Ensure Proper Reporting of AECs.**

Under the terms of the Settlement, Duquesne Light will implement additional internal procedures to ensure that all AECs procured for future reporting periods (2009-10 and beyond) will be produced inside the PJM service territory or the Commonwealth of Pennsylvania. Duquesne Light also will submit its annual AEC report to the Commission and the Commission's AEPS credit administrator electronically on or before July 1st of every year so that the Commission and its credit administrator can review the proposed compliance plan of Duquesne Light. The Settlement is in the public interest because it will help to clarify procedures to enforce the statutory requirements of the AEPS Act and assist the Commission in completing its obligations under the AEPS Act.

Under Section 3 of the AEPS Act, the Commission or the administrator is required to "develop a registry of pertinent information regarding all available alternative energy credits." 73 P.S. § 1648.3(e)(8). At the time relevant to the 2008/2009 AEPS compliance period, neither the Commission's website nor the PJM GATS identified which Pennsylvania "qualified facilities" generate only MISO eligible AECs. Clearly it is pertinent to advise or otherwise provide notice that the listed "qualified facilities" on the Commission's website and PJM GATS may only be eligible to provide AECs in certain RTO service territories due to the geographic limitation set forth in Section 4 of the AEPS Act. 73 P.S. § 1648.4. Indeed, such information

becomes even more pertinent when the qualified facility is located in a state that has facilities in both PJM and MISO service territories, such as Cadillac.

Duquesne Light made a good faith effort to meet its AEPS requirements for the 2008/2009 AEPS compliance period and reasonably relied on the information available from the Commonwealth, PJM GATS, and the Commission to conclude that the 42,980 Tier I AECs procured from Cadillac would be eligible to meet Duquesne Light's requirements for the 2008/2009 AEPS compliance period. Indeed, the Commission similarly has found such reliance to be reasonable:

The AECs transferred were generated in Michigan, which contains both PJM and MISO service areas. JS 44. The transferred AECs were identified by the AEC Transfer Interface as eligible to meet Tier I compliance obligations in Pennsylvania. JS 45. The GATS AEC Transfer Interface indicated only that the Transferred Tier I AECs would be eligible to meet Tier I obligations in Pennsylvania. JS 46. Based upon these stipulated facts, we do not believe that Constellation had reason to perform further inquiry or testing to verify the quality of the AECs transferred.

*Petition of Constellation NewEnergy, Inc. For Withdraw, or in the Alternative Modification, of Notice, of Noncompliance With Alternative Energy Portfolio Standards Act 2008/2009 Compliance Year, Docket No. P-2010-2153657, Slip Op. at p. 27 (August 20, 2010) ("Constellation AEPS Order").*

Further, the lack of timely assessments denied Duquesne Light its statutory right to a true-up period. Duquesne Light's reporting period for the 2008/2009 compliance period ended on May 31, 2009. Although Duquesne Light did not register its AECs with the PJM GATS until August 29, 2009, the credit administrator, CPM, was required to issue an initial assessment within 45 days from the end of the reporting period, *i.e.*, July 15, 2009. *See* 52 Pa. Code § 75.64(c). Duquesne Light was not provided with an initial assessment on or before July 15, 2009.

The statutory true-up period for Duquesne Light's 2008/2009 AEPS compliance period ran from May 31, 2009 through September 1, 2009. 73 P.S. § 1648.3(e)(5). It is during this period that companies, found to be non-compliant after the initial assessment, are provided with the opportunity to become compliant. As explained by the Commission, the evaluation of AECs must be completed in sufficient time for an EDC or EGS to true-up its AEC compliance obligations by September 1:

We agree with the ALJ that the current program does not afford a meaningful opportunity for correction because a qualitative evaluation of the credits is not performed prior to the expiration of the true-up period. Without a qualitative evaluation of the AECs submitted by each EDC and EGS, the Program Administrator simply cannot determine the level of compliance or non-compliance with the provisions of the AEPS Act. We believe that the Program Administrator should have its quantitative and qualitative analysis completed in sufficient time for an EDC or EGS to true-up its AEC compliance obligations by September 1. By completing this dual analysis and providing time for EDCs and EGSs to true-up their compliance obligations prior to September 1, will avoid any due process concerns that may arise. Accordingly, we shall direct the Program Administrator to complete a dual analysis by a date that will provide adequate time for EDCs and EGSs to true-up their compliance obligations prior to September 1.

*Constellation AEPS Order, Slip Op. at p. 26.*

As Duquesne Light did not receive an initial assessment on July 15, 2009, Duquesne Light was denied the opportunity to become compliant under the AEPS Act. Moreover, on October 2, 2009, CPM informed Duquesne Light that it was compliant. Therefore, even though Duquesne Light did not register its credits by May 31, 2009, it did so on August 29, 2009, and CPM's October 2, 2009 "initial assessment" was that Duquesne Light was compliant.

The AEPS Act also requires that a final assessment be issued within 15 days from the end of the true-up period, *i.e.*, September 16, 2009. *See* 52 Pa. Code § 75.64(c)(2). Duquesne Light was not provided with a final assessment on September 16, 2009. Rather, it was not until

January 4, 2010, that Duquesne Light received the Non-Compliance Letter from CEEP, indicating that Duquesne Light was not compliant for the 2008/2009 AEPS compliance year. The January 4, 2010 Non-Compliance Letter reversed the October 2, 2009 “initial assessment” that Duquesne Light was in compliance with AEPS Act. This after-the-fact reversal of CPM’s earlier assessment failed to provide Duquesne Light with timely notice of the alleged non-compliance and denied Duquesne Light its statutory right to a true-up period. As a result, Duquesne was denied notice and the opportunity to make up for any identified shortfalls in order to obtain compliance with the AEPS Act.

As explained by the Commission, the credit administrator is required to complete its analysis of AECs by a date that will provide adequate time for EDCs and EGSs to true-up their compliance obligations prior to September 1. *Constellation AEPS Order*, Slip Op. at p. 26. Duquesne Light’s commitments under the Settlement to implement additional internal procedures regarding the procurement and reporting of AECs will facilitate the timely review of the AECs by the credit administrator for future reporting periods and provide Duquesne Light with its statutory right to a true-up period. For these reasons, the Settlement is in the public interest because it helps resolve issues related to the statutory requirements of the AEPS Act and errors in the actual program used by the Commission.

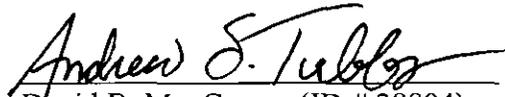
#### **IV. CONCLUSION**

Based on the foregoing, the Settlement is in the public interest and should be approved. The Settlement was achieved after considerable investigation of investigation of Duquesne Light's filing, through both discovery and submission of testimony by Joint Petitioners in this proceeding. If approved, the Settlement will reduce the amount of expense and effort that will be required by the Joint Petitioners and the Commission to bring this matter to a conclusion. Furthermore, the Joint Petitioners and the Commission will be able to avoid the substantial effort and expense that would be incurred in continuing to litigate this proceeding, including preparation for and participation in hearings, preparation of briefs, reply briefs, exceptions, and replies to exceptions.

The Settlement is the result of compromise. Each of the agreements set forth in the Settlement resolves a dispute fairly and without the expense and uncertainty associated with litigation. Duquesne Light accordingly fully supports the Settlement, and urges the presiding Administrative Law Judge Katrina L. Dunderdale and the Commission to approve the Settlement without modification.

WHEREFORE, Duquesne Light Company respectfully request that the Honorable Administrative Law Judge Katrina L. Dunderdale and the Commission approve the Settlement, including all terms and conditions thereof, and that the Commission enter an order finding Duquesne Light Company compliant for the 2008/2009 Alternative Energy Portfolio Standards Act compliance period and terminate the proceeding.

Respectfully submitted,



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Dated: October 8, 2010

*Attorneys for Duquesne Light Company*



COMMONWEALTH OF PENNSYLVANIA



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Consumer Advocate

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October 7, 2010.

Honorable Katrina L. Dunderdale  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Suite 220, Piatt Place  
301 Fifth Avenue  
Pittsburgh, PA 15222

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 Judge Dunderdale:

The purpose of this letter is to advise you that the Office of Consumer Advocate (OCA) has reviewed the Settlement Agreement reached in the above-captioned proceeding (as reflected in the Joint Petition for Settlement filed by Duquesne Light Company and the PUC's Bureau of Conservation, Economics and Energy Planning) and does not oppose the Settlement.

Respectfully Submitted,

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

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

cc: Parties of Record

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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OCT - 8 2010

OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

William R. Lloyd, Jr.  
Small Business Advocate

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

October 8, 2010

Hon. Katrina Dunderdale  
Administrative Law Judge  
Pa. Public Utility Commission  
301 Fifth Avenue - #220  
Pittsburgh, PA 15222

**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 Judge Dunderdale:

The Office of Small Business Advocate ("OSBA") does not object to the Joint Petition of Settlement ("Settlement") filed in the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon E. Webb".

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

Enclosures

cc: Rosemary Chiavetta, Secretary

Parties of Record

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL & FIRST CLASS MAIL**

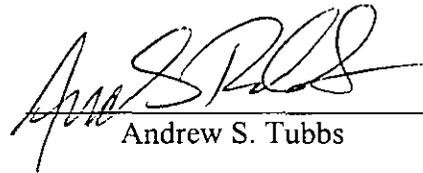
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SECRETARY'S BUREAU

Date: October 8, 2010

  
\_\_\_\_\_  
Andrew S. Tubbs