

PENNSYLVANIA UTILITY LAW PROJECT

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January 7, 2011

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg , PA 17105-3265

**Re: Duquesne Light Company Universal Service and Energy Conservation Plan
for 2011-2013
Docket No. M-2010-2161220**

Dear Secretary Chiavetta:

Please accept for filing in the above captioned proceeding the following Reply Comments of the Pennsylvania Utility Law Project (PULP). A Certificate of Service is attached.

Thank you for your assistance, and please feel free to contact me directly should you have any questions.

Very truly yours,



Patrick M. Cicero

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Duquesne Light Company Universal Service
and Energy Conservation Plan for 2011 through
2013

Docket No. M-2010-2161220

CERTIFICATE OF SERVICE


I hereby certify that I have today served a true copy of the Reply Comments of the Pennsylvania Utility Law Project upon the parties listed below, in accordance the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL

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VIA E-MAIL AND FIRST CLASS MAIL

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Dated: January 7, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Duquesne Light Company Universal :
Service and Energy Conservation Plan : Docket No. M-2010-2161220
for 2011-2013 Submitted in Compliance :
with 52 Pa. Code § 54.74**

**REPLY COMMENTS OF THE PENNSYLVANIA UTILITY LAW PROJECT
Concerning the Tentative Order entered November 23, 2010 and the Comments of
the Office of Consumer Advocate**

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Dated: January 7, 2010

I. Background and Introduction

In accordance with the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations at 52 Pa. Code §§ 62.1-62.8, on February 25, 2010, Duquesne Light Company ("Duquesne" or "Company") filed with the Secretary the Duquesne Light Company Universal Service and Energy Conservation Plan for 2011-2013 ("Plan"). The Company subsequently filed three amendments to the Plan on the following dates: March 31, May 13 and August 5, 2010, the final version. On November 23, 2010, the Commission entered a Tentative Order approving Duquesne's Plan and solicited comments from interested parties. Comments were filed by Duquesne, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), and the Pennsylvania Utility Law Project ("PULP")

PULP, as part of the nonprofit Pennsylvania Legal Aid Network, provides statewide representation, advice, and support in energy and utility matters on behalf of low-income, residential utility customers. PULP respectfully submits these Reply Comments on behalf of the low-income consumers we represent in response to the Comments filed by the OCA and others.

Approval by the Commission of Duquesne's proposed 2011-2013 Universal Service Plan is subject to the Plan meeting the requirements set forth in the Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"), 66 Pa. C.S. § 2801 *et seq.* which became effective on January 1, 1997; the *Universal Service and Energy Conservation Reporting Requirements* (USEC Reporting Requirements) at 52 Pa. Code §§ 54.1-54.9; the LIURP regulations at 52 Pa. Code §§ 58.1-58.18; the directives articulated by the Commission in the CAP Policy Statement at 52 Pa. Code §§ 69.261-69.267; the Final Investigatory Order entered December 18, 2006 to Docket No. M-00051923; as well as in other relevant Secretarial letters, Commission rules, policies and Orders.

The universal service provisions of the Competition Act tie the affordability of electric service to a customer's ability to pay for that service and place the responsibility to ensure that such service is appropriately funded and available in each electric distribution territory upon the Commission. 66 Pa. C.S. § 2804(9). The statutory goals of universal service are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service. Universal service includes customer assistance programs, usage reduction programs, service termination protections and consumer education. 66 Pa. C.S. § 2803.

II. Reply Comments

All of the parties urge the Commission to delay approval of the Plan pending final settlement of its base rate case, Docket No. R-2010-2179522, which deals with, among other things, Duquesne's response to the Department of Public Welfare's ("DPW") policy change regarding the application of LIHEAP Cash grants. In the base rate case, the parties, including OCA, have negotiated a settlement that would have Duquesne adopt a CAP-Plus plan under which the asked to pay amounts for CAP customers would be increased to cover the value of the LIHEAP grants received by Duquesne that had formerly been used to help subsidize universal programs in general, rather than being allocated to individual accounts.

In its comments in support of a CAP-Plus plan, OCA wrote in a footnote:

The OCA submits that it is unreasonable to establish a program such as CAP that sets a customer's bill at an affordable level using ratepayer subsidies and then provides *an additional* subsidy to lower that affordable bill even further. This is the practical effect of DPW's policy change. The CAP plus program represents a way of addressing the DPW policy without imposing an additional subsidy on non-CAP ratepayers.

(OCA Comments, Dec. 23, 2010, at 4 n. 1 (emphasis in original).) PULP submits that the position taken by OCA, as stated in this footnote, is incorrect. First, the proposed Duquesne CAP plan is not based on a percent of income, which would take into consideration a CAP participant's ability to pay. Instead, Duquesne uses a bill reduction formula, which while staggered to reflect different discount levels for different incomes, does not mean that the payment arrived at through this formula will be *per se* affordable. For instance, if a customer's income is 50% FPIG, Duquesne proposes that the customer pays 45% of the normal budget bill amount; however, if the customer's income is 51% of FPIG, the customer is required to pay 65% of the normal budget bill. Thus, a 1% increase in income means that the customer must pay a 20% increase in their bill. This is a more arbitrary increase than a percent of income system which is tailored to individual household income and caps payment at a presumptively affordable level. Thus, the basis for OCA's assertion that a CAP payment is *per se* affordable, especially under the plan proposed by Duquesne, is flawed.

Second, the subsidy provided through DPW by way of a LIHEAP Cash grant is designed to allow low-income folks to pay their home energy costs during the winter heating season. It is a program funded through federal and state money, not through ratepayers of the utility. PULP submits that OCA's position that low-income households who participate in a CAP should bear the entire responsibility to make up this revenue through higher CAP payments because some CAP customers receive additional assistance by virtue of a wholly separate federal and state program is misplaced. The fact that utilities have been for years using money meant to go directly to low-income families to instead subsidize their Universal Service plans, but now cannot do so, should not result in an extra burden on those least able to afford the increase. Under the CAP-Plus plan proposed by Duquesne and OCA, the burden of making up the lost

revenue from the LIHEAP grants falls on all CAP customers regardless of whether they get a LIHEAP Cash grant or not. For those CAP customers who do not receive a LIHEAP Cash grant, the effect of this proposal will be to increase an already only marginally affordable payment, and may very well cause them to default. This is particularly problematic because of the inability of the Commission to negotiate a subsequent payment agreement for CAP customers. *See* 66 Pa. Cons. Stat. § 1405(c). PULP submits that the fairer thing to do would be to spread the cost of Duquesne's loss of LIHEAP money which it had previously used to subsidize the CAP program, over the entire pool of rate payers with an additional surcharge on all customers, CAP and non-CAP alike.

III. Conclusion

PULP thanks the Commission for this opportunity to submit Reply Comments concerning the Duquesne Light Universal Service Plan for 2011-2013. PULP reiterates its original comments, and respectfully requests that the Commission approve the Company's proposals to initiate an automatic enrollment component as part of its Customer Assistance Program ("CAP") and change the manner in which it applies LIHEAP Cash grants to CAP customers' accounts, in order to comply with the Pennsylvania Department of Public Welfare's (DPW) new policy requiring that LIHEAP Cash grants be applied to a CAP customer's "asked to pay amount." However, PULP asks the Commission not to approve a CAP-Plus plan where the burden of making up lost LIHEAP revenue is disproportionately placed on CAP customers who can least afford an increase in their home energy burden. Finally, PULP requests that the Commission, prior to final approval, require Duquesne to modify its Plan by setting consumption limits at 125% of historic usage; setting maximum CAP Credit levels at Consumer Price Index

adjusted levels; and completing a full LIURP Needs Assessment with recommendations for LIURP program growth based upon need.

Respectfully submitted,



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