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File #: 146634

May 5, 2011

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

**RE: Joint Application for All of the Authority and the Necessary Certificate(s) of Public Convenience to Transfer the Interests and Shares in DQE Holdings LLC, currently owned by DUET Investment Holdings Limited, to Epsom Investment Pte Ltd, a subsidiary of GIC Infra Holdings Pte Ltd, and to Approve the Resulting Change in Control of Duquesne Light Company and DQE Communications Network Services LLC - Docket Nos. A-2010-2213369 & A-2011-2221461**

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Dear Secretary Chiavetta:

Enclosed is the Joint Petition for Approval of Settlement of All Issues in the above-referenced proceeding.

Copies will be provided to the persons in the manner indicated on the certificate of service.

Respectfully Submitted,

Michael W. Gang

MWG/skr  
Enclosures

cc: Honorable Mark M. Hoyer (*via e-mail & first class mail*)  
Certificate of Service

**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**

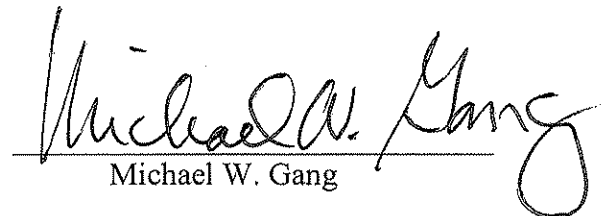
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Brian Kalcic  
Excel Consulting  
225 S. Meramec Avenue, Suite 720-T  
St. Louis, MO 63105

Date: May 5, 2011

  
Michael W. Gang

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for All of the Authority and :  
the Necessary Certificate(s) of Public :  
Convenience to Transfer the Interests and : Docket Nos. A-2010-2213369  
Shares in DQE Holdings LLC, currently : A-2011-2221461  
owned by DUET Investment Holdings :  
Limited, to Epsom Investment Pte Ltd, a :  
subsidiary of GIC Infra Holdings Pte Ltd, and :  
to Approve the Resulting Change in Control :  
of Duquesne Company and DQE :  
Communications Network Services LLC :

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**JOINT PETITION FOR APPROVAL OF SETTLEMENT OF ALL ISSUES**

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TO ADMINISTRATIVE LAW JUDGE MARK A. HOYER:

**I. INTRODUCTION**

Duquesne Light Company (“Duquesne”), DQE Communications Network Services LLC (“Network Services”), Epsom Investment Pte Ltd (“Epsom”), DUET Investment Holdings Limited (“DUET”), Diversified Utility and Energy Trust No. 3 (“DUET3”),<sup>1</sup> the Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”), all parties to the above-captioned proceeding (hereinafter, collectively “Joint Petitioners”), hereby join in this Joint Petition for Approval of Settlement of All Issues (“Settlement”) and respectfully request that Administrative Law Judge Mark A. Hoyer (the “ALJ”) and the Commission approve the above-captioned Joint Application (“Joint Application”) consistent with the terms and conditions set forth in this Settlement. This Settlement represents a full settlement of all issues

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<sup>1</sup> Hereinafter, Duquesne, Network Services, Epsom, DUET, and DUET3 will collectively be referred to as the “Applicants.”

between and among all parties to the instant proceeding. In support of the Settlement, the Joint Petitioners state the following:

## **II. BACKGROUND**

1. Duquesne is a “public utility” and an “electric distribution company” as those terms are defined in Sections 102 and 2803 of the Public Utility Code, 66 Pa. C.S. §§ 102, 2803. Duquesne provides electric distribution, transmission, and provider of last resort services to approximately 580,000 customers throughout its service territory, which includes all or portions of Allegheny and Beaver Counties, Pennsylvania. Duquesne is wholly-owned by Duquesne Light Holdings, Inc. (“DLH”), which, in turn, is wholly-owned by DQE Holdings LLC (“DQE Holdings”).

2. DQE Holdings is a limited liability company organized and existing pursuant to the laws of Delaware. DQE Holdings was formed by a group of six (6) investment entities (the “Investor Consortium”) to acquire DLH and its subsidiaries. The Investor Consortium is comprised of the following equity ownership interests: (1) DUET (28.95%); (2) Macquarie Infrastructure Partners, investing through CLH Holdings, GP (“MIP”) (22.12%); (3) Industry Funds Management, investing through IFM Global Infrastructure (Cayman) Fund (22.8%); (4) GIF2-MFIT United Pty Limited (13.3%); (5) Motor Trades Association of Australia Super, investing through MTAA Superannuation Fund (Duquesne Holdings) Infrastructure Trust (6.6%); and (6) State Super, investing through Duquesne Utilities Trust (6.2%). With the exception of DUET, the investment entities that make up the Investor Consortium are private investment funds that are not publically traded on any open market.

3. The Macquarie Group directly or indirectly manages or co-manages the majority of the investment funds of the Investor Consortium, including MIP, DUET, and GIF2-MFIT

United Pty Limited, which collectively own 64.3% of the equity interest in DQE Holdings.<sup>2</sup> The Macquarie Group is one of the world's largest owners and managers of infrastructure assets, managing over \$88 billion in infrastructure assets around the world. Community infrastructure investments managed by the Macquarie Group include assets in the energy, water, transportation, airport, social infrastructure, and telecommunications sectors.

4. DUET is incorporated in Victoria, Australia. DUET, together with three Australian trusts -- Diversified Utility and Energy Trust No 1 ("DUET1"), Diversified Utility and Energy Trust No 2 ("DUET2"), Diversified Utility and Energy Trust No 3 ("DUET3") -- are part of a quadruple-stapled security that is publically traded on the Australian Securities Exchange (ASX:DUE) the ("DUET Group"). The securities of the DUET Group are stapled and must trade, and otherwise be dealt with, together.<sup>3</sup> The DUET Group owns utility assets in Australia and its only asset in the United States is its investment in DQE Holdings.

5. Government of Singapore Investment Corporation Pte Ltd ("GIC") is a global investment management company which was incorporated in 1981 to manage Singapore's foreign reserves. GIC is wholly-owned by the Government of Singapore. The infrastructure and private equity investment arm of GIC is GIC Special Investments Pte Ltd ("GIC SI").

6. GIC SI invests in private equity and infrastructure assets through an investment holding company known as GIC Ventures. GIC Infra Holdings Pte Ltd ("GIC Infra"), a wholly-owned subsidiary of GIC Ventures, is the holding company for infrastructure investments. Epsom is a wholly-owned subsidiary of GIC Infra, and is the investment vehicle used for the

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<sup>2</sup> The 64.3% equity interest in DQE Holdings includes DUET's 28.95% ownership interest in DQE Holdings, which is jointly managed by AMP Capital Holdings Limited, which is independent of the Macquarie Group, and Macquarie Capital Group Limited, a wholly-owned subsidiary of the Macquarie Group.

<sup>3</sup> Stapled securities are comprised of securities in two (or more) separate entities that have to be traded as a single stapled security.

purposes of acquiring DUET's and DUET3's interests in DQE Holdings as proposed in the pending transaction.

7. On September 28, 2010, DUET, AMPCI Macquarie Infrastructure Management No. 2 Limited, a company incorporated in Victoria, Australia, solely in its capacity as responsible entity of DUET3, and Clevedon Investment Pte Ltd ("Clevedon") entered into a Purchase and Sale Agreement for the sale of DUET's and DUET3's interests in DQE Holdings, subject to regulatory approvals. The Purchase and Sale Agreement was later assigned by Clevedon to its affiliate, Epsom.

8. Under the terms of the Purchase and Sale Agreement, DUET will transfer its 16,363.765 Class A interests in DQE Holdings ("Shares"), representing a 28.95% equity interest in DQE Holdings, to Epsom. In addition, pursuant to the Purchase and Sale Agreement, DUET3 will transfer to Epsom a promissory note, dated as of June 20, 2007, made by DQE Holdings, as borrower thereunder, in favor of DUET3, as lender thereunder, in the original principal amount of USD \$201,227,372. ("Promissory Note"). The Proposed Transaction will result in the transfer of DUET's 28.95% shareholder interest in DQE Holdings to Epsom.

9. On December 2, 2010, the Applicants filed with the Commission the Joint Application requesting all necessary approvals authorizing the transfer by sale of all of DUET's and DUET3's shares and interests in DQE Holdings to Epsom. If approved, the proposed transaction will result in the change of the "controlling interest" in Duquesne as defined by the Commission's Policy Statement at 52 Pa. Code § 69.901.

10. On December 22, 2010, OSBA filed a Notice of Appearance, Notice of Intervention and Protest, and a Public Statement.

11. On December 23, 2010, a Notice of Appearance was filed on behalf of OTS.

12. On December 29, 2010, a Protest was filed by OCA.
13. On January 20, 2011, the Applicants filed and served an amendment to the Joint Application to add Network Services as an applicant which was docketed at Docket No. A-2011-2221461. Network Services is a certificated competitive access provider throughout the Commonwealth of Pennsylvania.
14. On January 21, 2011, the Applicants served the following prepared direct testimonies and accompanying exhibits: Direct Testimony of Richard Riazzi, Applicants' Statement No. 1; Direct Testimony of David J. Bartholomew, Applicants' Statement No. 2; Direct Testimony of Christopher Curtain, Applicants' Statement No. 3; and the Direct Testimony of Andrew M Chapman, Applicants' Statement No. 4.
15. On January 31, 2011, the Commission issued a Secretarial Letter assigning the Joint Application to the Office of Administrative Law Judge and identifying certain areas to be addressed in this proceeding ("Commission's Directed Questions").
16. On February 23, 2011, the Applicants served the Supplemental Direct Testimony of Richard Riazzi, Applicants' Statement No. 1 Supplemental, which provided the Applicant's responses to the Commission's Directed Questions.
17. On March 2, 2011, the Commission's Office of Administrative Law Judge issued a Notice scheduling a prehearing conference in the above-captioned matters for March 29, 2011. An initial Prehearing Conference was conducted by the ALJ on March 29, 2011. The Joint Petitioners each filed a prehearing memorandum identifying potential issues and witnesses. The ALJ issued a subsequent Prehearing Order on March 31, 2011, that established a litigation schedule, provided for the service of documents, addressed the subject of a public input hearing,

identified issues and discovery modifications, discussed settlement and stipulation, addressed cross-examination and provided for the form and content of briefs.

18. The Joint Petitioners undertook extensive formal and informal discovery, prior and subsequent to the initial prehearing conference.

19. On April 19, 2011, OSBA served OSBA Statement No. 1, Direct Testimony of Brian Kalcic. On April 20, 2011, OCA served OCA Statement No. 1, Direct Testimony of Matthew I. Kahal and accompanying exhibits.

20. Settlement discussions were held which produced a settlement in principle of all issues on April 26, 2011. On April 27 2011, the Joint Petitioners advised the ALJ of the settlement in principle and, at the request of the Joint Petitioners, the ALJ suspended the evidentiary hearings and the remainder of the procedural schedule.

21. In conjunction with this Settlement, the Joint Petitioners have entered into a Stipulation for Admission of Evidence into the record in lieu of the need to do so at a subsequent hearing. The Joint Petitioners reserve the right to present further testimony and exhibits, and to cross-examine witnesses at evidentiary hearings if further litigation of this proceeding is required.

22. The Settlement terms and conditions are set forth in the in next section.

### **III. SETTLEMENT**

23. The following terms and conditions of this Settlement reflect a carefully balanced compromise of the interests of each of the Joint Petitioners involved in this proceeding. The Joint Petitioners unanimously agree and assert that the Settlement, which resolves all issues, is in the public interest. In addition, the Joint Petitioners agree that the Joint Application, as amended by the Settlement's terms and conditions, collectively address the issues raised by the

Commission's Directed Questions. The Joint Petitioners respectfully request that the Joint Application, as modified by the Settlement, be approved in its entirety subject to the terms and conditions of this Settlement as specified herein.

24. Upon approval of this Settlement as presented, the Commission shall issue certificates of public convenience authorizing the transfer by sale of all of DUET's and DUET3's shares and interests in DQE Holdings to Epsom, and grant all other approvals as may be appropriate, customary or necessary to carry out the Proposed Transaction set forth in the Joint Application as modified by this Settlement.

25. The Applicants agree that all terms and conditions embodied in the settlement of the merger of DLH, parent of Duquesne, with a subsidiary of DQE Holdings, approved by the Commission on April 24, 2007, at Docket Nos. A-110150F0035 and A-311233F0002 ("2007 Merger Settlement"), that remain in force, shall become terms and conditions of this instant Settlement, as amended herein.

**A. RATE ISSUES**

26. The following rate provision from the 2007 Merger Settlement remains in force:

- (a) Section B (2): Joint Petitioners agree that all aspects of the acquisition premium and transaction costs, including third party consultants, financial advisory services and due diligence costs as set forth in the response to OCA Set III-21, attached hereto as Appendix "A," including all related tax effects, will be excluded from future distribution and transmission rates.

27. The Joint Petitioners agree to the following additional rate provision as part of this Settlement:

- (a) No expenses or costs associated with the Epsom purchase from DUET are eligible for inclusion in Duquesne's cost of service or any customer rates (including transmission service rates). This includes any acquisition premium. Joint Applicants aver that the proposed transaction will have no accounting or tax effects on Duquesne

28. Section B(3) of the 2007 Merger Settlement, which previously expired, will be reinstated and modified as set forth below.

- (a) Section B(3) of the 2007 Merger Settlement approved by the Merger Order pertaining to recovery of any cost of capital premium caused by the Merger is affirmed and extended two years (from five years to seven years from the Merger closing, May 31, 2007).
- (b) In addition, Duquesne shall not claim, for 7 years following the Merger closing, May 31, 2007, any increase in its cost of capital due to any downgrading of Duquesne debt as a direct result of the Merger or the acquisition of DUET's interests by GIC.

**B. CORPORATE COST ALLOCATIONS**

29. The following corporate cost allocation provisions from the 2007 Merger Settlement remain in force:

- (a) Section I (1): Duquesne's corporate cost allocations will include a rent charge for the percentage of space occupied by employees who provide services to an affiliate, and a supplies charge for supplies the employee may use in providing services to affiliates.
- (b) Section I (2): Duquesne's corporate cost allocations will provide that all costs incurred by DLH, including any costs allocated from Duquesne to

DLH, will be allocated, to the extent appropriate, to other Duquesne affiliates.

- (c) Section I (3): Duquesne's corporate cost allocations will include appropriate charges to all affiliates for costs incurred on their behalf by DLH for letters of credit and sureties and will allocate appropriate charges associated with the DLH revolving credit agreement.

**C. CORPORATE STRUCTURE AND RING FENCING PROTECTIONS**

30. The following ring-fencing provisions from the 2007 Merger Settlement remain in force:

- (a) Section E (1): From and after the effective date of this Settlement, Duquesne shall not: (1) guarantee the debt or credit instruments of DLH or any affiliate not regulated by the Commission, except as approved by the Commission upon a determination that such guarantee provides net benefits to customers; (2) grant a mortgage or other lien on any property used and useful by Duquesne in providing retail utility service to the public subject to the Commission's jurisdiction, except for the financing needs of Duquesne; or (3) make any loan or otherwise extend credit to DLH or any affiliate not regulated by the Commission for a term of one year or more, except as approved by the Commission upon a determination that such loan or credit extension provides net benefits to customers.
- (b) Section E (2): DQE Holdings will not permit a change in ownership among the members of DQE Holdings without prior Commission approval

if such change would result in a change in control under the then-applicable Commission standards.

- (c) Section E (3): Duquesne will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code.
- (d) Section E (4): Duquesne shall provide the OTS, OCA and OSBA with a copy of its annual reports filed with the Securities and Exchange Commission.
- (e) Section E (6): Duquesne agrees to continue to have outstanding separately issued debt held by investors not affiliated with Duquesne or its affiliates, unless the Commission authorizes to the contrary.
- (f) Section E (7): DLH and its subsidiaries, including Duquesne, will provide, upon request, to OTS, OCA and OSBA access in connection with rate proceedings and other proceedings before the Commission, where relevant, to presentations given by DLH and its subsidiaries to common stock, bond, or rating analysts. Such material will be accorded confidential treatment.
- (g) Section E (8): Duquesne's long term debt ratio as a percent of total capitalization shall not exceed 60% absent approval from the Commission. Any request for approval will be considered on an expedited basis, if so requested.

- (h) Section E (9): Duquesne shall notify the Commission of its intention to declare a special cash dividend to DLH, at least 30 days before declaring the dividend.
- (i) Section E (10): The CEO of DLH will be a member of the board of DQE Holdings, and will also chair a management committee which will contain representatives of both the senior management team and the Macquarie Consortium.

31. The Joint Petitioners agree to the following additional ring-fencing provisions as part of this Settlement:

- (a) DLH shall maintain, and cause its subsidiaries including Duquesne to maintain, separate books and financial records.
- (b) DQE Holdings will maintain corporate organizational and financial policies sufficient to permit Duquesne to continue to meet requirements to maintain its own credit ratings, separate from its parent.
- (c) Upon request from the Commission, Duquesne shall supply copies of information that it has submitted to credit rating agencies.
- (d) Unless the Commission grants approval to the contrary, for a period of three years from the closing with regard to sale of DUET's interests to Epsom, Duquesne shall not make a dividend payment to its parent if doing so causes its debt ratio as a percentage of total capitalization, as defined in Duquesne's current bank credit agreement, to exceed 60 percent, or if its debt ratio as so defined at the time of dividend declaration or payment exceeds 60 percent.

- (e) DLH and its subsidiaries shall remain organized in a manner that provides corporate separation of regulated and non-regulated activities.
- (f) The Applicants agree that they will continue to comply with Section 1102(a)(3) of the Public Utility Code requiring the approval of changes in control, as interpreted by the Commission's Policy Statement-Utility Stock Transfer under 66 Pa.C.S. § 1102(a)(3). Epsom agrees that it will not increase its voting interest in DQE Holdings beyond the 28.95% approved by the Commission in this proceeding unless Epsom obtains the Commission's approval of an acquisition increasing that voting interest or a determination by the Commission that approval is not required. Any acquisition of a voting interest in DQE Holdings by any parent or affiliate of Epsom shall be counted in applying the provisions of this condition.

32. The Joint Petitioners agree to the following additional capital structure provision as part of this Settlement:

- (a) Epsom agrees to tender to DQE Holdings, for redemption, the Promissory Note (the "Promissory Note") from DQE Holdings to DUET3, which will be acquired by Epsom at closing, no later than 30 days after the closing. Duquesne confirms that (i) pursuant to a Transaction Agreement dated December 9, 2009, to which DQE Holdings and each of its Members is a party, all the Promissory Notes will be tendered to DQE Holdings within thirty (30) calendar days of the closing and the tender by Epsom, and (ii) upon tender, DQE Holdings will redeem all of the Promissory Notes and the proceeds of such redemptions will simultaneously be reinvested in

DQE Holdings as equity capital contributions with no change in the voting interests of the Members of DQE Holdings.

**D. RELIABILITY AND CUSTOMER SERVICE**

33. The following reliability and customer service provisions from the 2007 Merger Settlement remain in force:

- (a) Section F (3): Nothing contained herein is intended to limit the authority of the Commission to consider quality of service pursuant to Sections 523 and 526 of the Public Utility Code in setting Duquesne's rates, or the Bureaus of the Commission from performing their duties and making recommendations, including recommendations regarding fines for failure of Duquesne to provide safe and reliable service.
- (b) Section F (4): Duquesne will maintain operating locations and field offices in its territory, and staffing levels, as appropriate, to provide safe and reliable service, consistent with good utility practices. In addition, Duquesne acknowledges that the change in ownership resulting from this transaction is not an extraordinary circumstance under the existing Collective Bargaining Agreement.

34. In addition, Section F(2) of the 2007 Merger Settlement, which previously expired, will be reinstated and modified as set forth below.

- (a) Duquesne agrees to the following Quality of Service Plan ("Service Plan") during the period from January 1, 2012 through December 31, 2013, or, if later, until the Commission order is entered in Duquesne's next base rate case. The Service Plan establishes the following metrics and reporting requirements to allow for the monitoring of the quality of service provided

by Duquesne and to identify any significant changes to Duquesne's reliability and service levels:

<b>Quality of Service Plan</b>	
Performance Area Index	Metrics
<b>Reliability</b>	
SAIFI (12 Month)	1.17
CAIDI (12 Month)	108
<b>Customer Service<sup>4</sup></b>	
The percent calls answered within 30 seconds	77% (for 2012) 78% (for 2013)
The average busy out rate	0.3%
The average call abandonment rate	4%
Percent of residential bills not rendered once every billing cycle	0.01%

- (b) Duquesne will provide a report each year to the Commission, OCA, OTS and OSBA identifying its performance and the metrics in the Service Plan set forth in the above table. Duquesne will also include in its report its performance in the areas of: Number of Residential Customer disputes not issued a report within 30 days; Residential Termination Rate (terminations per 1000 residential customers); Justified Residential Payment Arrangement Request Rate; and Justified Residential Consumer

<sup>4</sup> Duquesne is currently implementing new technology infrastructure to support smart meter deployment including a new customer care and billing system. The new system is scheduled to go live in 2013. Duquesne anticipates that it may experience temporary performance degradation in the identified customer service metrics during the go live period in 2013 followed by an improvement curve. Any performance degradation resulting from implementing the new customer care and billing system shall not be used to determine whether Duquesne's service levels are equal to or better than the customer service metrics set forth above.

Complaint Rate. However, such reported metrics are not considered as part of the Service Plan for purposes of this provision.

- (c) Duquesne agrees that, in any year during the effective period of the Service Plan, if its reliability or service levels are not equal to or better than the reporting metrics set forth in the Service Plan, Duquesne will provide the Commission, OCA, OTS and OSBA with a report that will identify the reasons for the variance and identify any management actions that Duquesne intends to undertake in response to any variation. Duquesne will then convene a collaborative with OCA, OTS and the OSBA to discuss such report. The Commission may, upon motion of any Party or upon its own motion, open a formal proceeding concerning reliability or service.
- (d) If following such a collaborative, OTS, OCA or OSBA request a proceeding before the Commission, Duquesne will not oppose the initiation of such a proceeding; however Duquesne reserves the right to oppose the initiation of the proceeding if it is being initiated as a result of Duquesne exceeding one but not both of the reliability metrics set forth above. Duquesne also reserves the right to oppose the initiation of such an investigation should the identified service decline result from implementation of the new customer care and billing system.

**E. REPORTING AND ACCESS TO BOOKS AND RECORDS**

35. The following provision from the 2007 Merger Settlement remains in force:

- (a) Section D (1): Upon written request, Duquesne and its subsidiaries will provide the Commission, the OTS, the OCA and the OSBA reasonable

access to the books and records, officials and staff of DLH and its subsidiaries in Pittsburgh, Pennsylvania. However, nothing set forth herein shall constitute or be interpreted as a waiver by DLH or its subsidiaries of its right to raise traditional discovery objections to any such requests, including, but not limited to, objections on the basis of relevance and privilege. In addition, before responding to any such requests, DLH and its subsidiaries shall be permitted to require the imposition of protections they deem necessary to prohibit disclosure of proprietary or confidential information.

36. Section E(5) of the 2007 Merger Settlement, which previously expired, will be reinstated and modified as set forth the below.

- (a) Section E(5) of the 2007 Merger Settlement approved by the Merger Order requires annual reporting which ended March 31, 2010. Annual reporting covering 2012 and 2013 will be reinstated and will end on March 31, 2014. Duquesne will provide the Commission and the Parties GIC's most recent published report on the Management of the Government's Portfolio until such time as the Commission grants approval to the contrary.

**F. LOW INCOME PROGRAMS**

37. The following provision from the 2007 Merger Settlement remains in force:

- (a) Section G (1): Duquesne will continue to fund its Customer Assistance Program ("CAP") consistent with its needs analysis.

38. The following provisions from the 2007 Merger Settlement, which previously expired, will be reinstated and modified as set forth below.

- (a) Section G(4) of the 2007 Merger Settlement approved by the Merger Order terminated on December 31, 2009. This provision will be reinstated in this Settlement as Duquesne agrees not to transfer LIURP funds collected during the period 2012 through 2013 to other universal service programs.
- (b) Section G(5) of the 2007 Merger Settlement approved by the Merger Order terminated on December 31, 2009. This provision will be reinstated in this Settlement as Duquesne agrees that it will make all reasonable efforts to expend LIURP funding available each calendar year. Subject to any necessary approval by the BCS, Duquesne will agree to raise the income eligibility needs to 200% of the federal poverty level, and/or expand outreach efforts, and/or increase the numbers of customers served. Duquesne will advise the universal service collaborative of the status of LIURP expenditures on a quarterly basis during the period 2012 through 2013.

**G. COMMUNITY COMMITMENT**

39. The following provision from the 2007 Merger Settlement remains in force:

- (a) Section C (1): DQE Holdings and the Macquarie Consortium, and its investors, will continue to maintain Duquesne's corporate headquarters in Pittsburgh, Pennsylvania. All of the corporate functions will be performed and maintained at such headquarters so that Duquesne and its management team will continue to be locally based. DQE Holdings agrees not to move Duquesne's headquarters outside Duquesne's service territory without advance approval of the Commission.

40. Section H(1) of the 2007 Merger Settlement provides, and is hereby revised, as follows:

(a) Section H(1) of the 2007 Merger Settlement provides:

For a period of five (5) years, Duquesne will provide corporate contributions and community support in southwestern Pennsylvania at least at levels substantially comparable to the levels provided by the Company in 2006. (For 2006, that is approximately \$2.9 million). In addition, Duquesne will continue to match customer contributions to the Dollar Energy Fund with shareholder dollars up to \$375,000.

(b) Section H(1) of the 2007 Merger Settlement approved by the Merger Order concerning community support will be extended for two years beyond the originally agreed-upon five years, for a total of seven years, from the Merger closing, May 31, 2007. For this revised period, Duquesne will contribute \$375,000 annually to the Dollar Energy Fund and attempt to obtain customer matching contributions equal to that amount.

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

41. As stated in the ALJ's Prehearing Order issued March 31, 2011, it is the Commission's policy to encourage 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 valuable administrative resources. The Commission has also referenced that settlement results are often preferable to those reached at the conclusion of a fully litigated proceeding. *See id.* § 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. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners further assert that the instant Settlement is in the public interest because, with the conditions imposed herein, the Proposed Transaction will provide substantial affirmative public benefits.

42. There were no customer protests against the Joint Application. The Settlement resolves all issues in the instant proceeding between the Joint Petitioners.

43. The Joint Petitioners will provide their individual perspectives regarding the Settlement in their respective Statements in Support, which are attached hereto as “**Appendices B through E.**”

#### V. CONDITIONS OF THE SETTLEMENT

44. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Settlement without modification. If the Commission modifies the Settlement, any of the Joint Petitioners may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the 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 an Order modifying the Settlement.

45. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights to evidentiary hearings, submission of additional testimony and exhibits, cross-examination of witnesses, briefing, and argument of their respective positions. The Settlement is made without any admission against, or

prejudice to, any position that any of the Joint Petitioners may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

46. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any of the Joint Petitioner's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

47. If the ALJ adopts the Settlement without modification, the Joint Petitioners waive their right to file Exceptions.

## **VI. CONCLUSION**

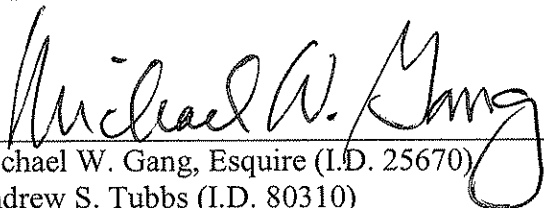
WHEREFORE, Duquesne Light Company, DQE Communications Network Services LLC, Epsom Investment Pte Ltd, DUET Investment Holdings Limited, Diversified Utility and Energy Trust No. 3, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate, by their respective counsel, respectfully request as follows:

(a) That Administrative Law Judge Mark A Hoyer recommend approval of, and the Commission approve, without modification, this Joint Petition for Approval of Settlement including all terms and conditions thereof; and,

(b) That the Commission issue certificates of public convenience evidencing approval under Section 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a)(3), of the transfer by sale of all of DUET Investment Holdings Limited and Diversified Utility and Energy Trust No. 3 shares and interests in DQE Holdings LLC to Epsom Investment Pte Ltd, a direct wholly-owned subsidiary of GIC Infra Holdings Pte Ltd and an indirect wholly-owned subsidiary of Government of Singapore Investment Corporation (Ventures) Pte Ltd, and approval

of the resulting change in control of Duquesne Light Company and DQE Communications Network Services LLC.

Respectfully submitted,



Date:

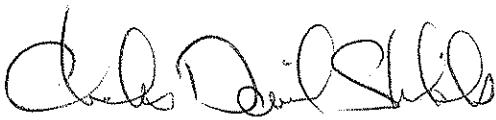
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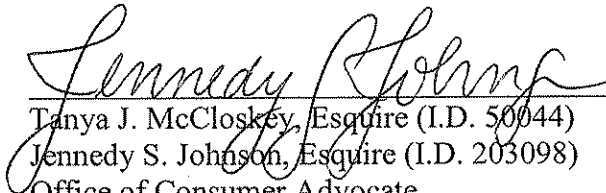


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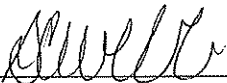


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*For Office of Small Business Advocate*

# Appendix A

Duquesne Light Company and  
DQE Communications Network Services, LLC  
Docket Nos. A-110150F0035 and A-311233F0002

OCA-III-21  
Sponsor: CHRIS LESLIE  
Page 1 of 1

**RESPONSES TO OFFICE OF CONSUMER ADVOCATE  
INTERROGATORIES – SET III**

21. Please provide a detailed statement of the transaction costs associated with this acquisition. Does Duquesne intent to seek rate recovery for any transaction costs from retail or wholesale (i.e., transmission) utility customers?

**RESPONSE:**

A detailed schedule of estimated transaction expenses as of the date of signing is included below. Duquesne does not intend to seek rate recovery for any of the transaction costs listed below.

<u>Estimated Transaction Costs</u> <sup>1</sup>	
Third Party Consultant Costs	8,525
Financial Advisory	29,808
Duquesne Due Diligence Costs	5,000
<u>Total Estimated Transaction Costs</u>	<u>43,433</u>

1. Numbers reflect Macquarie's estimate of transaction costs at signing (7/5/06), and are likely to differ based on actual invoices  
2. Macquarie pre-signing estimate of transaction costs incurred by Duquesne

## Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judge  
Mark A. Hoyer

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Joint Application for All of the Authority :  
and the Necessary Certificate(s) of Public :  
Convenience to Transfer the Interests and : Docket Nos. A-2010-2213369  
Shares in DQE Holdings LLC, currently : A-2011-2221461  
owned by DUET Investment Holdings :  
Limited, to Epsom Investment Pte Ltd, a :  
subsidiary of GIC Infra Holdings Pte Ltd, :  
and to Approve the Resulting Change in :  
Control of Duquesne Light Company and :  
DQE Communications Network Services :  
LLC :

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**STATEMENT OF JOINT APPLICANTS  
IN SUPPORT OF THE JOINT PETITION FOR  
APPROVAL OF SETTLEMENT**

---

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Limited, and Diversified Utility and Energy  
Trust No. 3*

May 5, 2011

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**I. INTRODUCTION AND BACKGROUND**

Duquesne Light Company (“Duquesne” or the “Company”), DQE Communications Network Services LLC (“Network Services”), Epson Investment Pte Ltd (“Epsom”), DUET Investment Holdings Limited (“DUET”), and Diversified Utility and Energy Trust No. 3 (“DUET3”), (hereinafter, collectively “Applicants”), by and through their attorneys, Post & Schell, P.C., filed the above-captioned Joint Application, as later amended to add Network Services, seeking approvals to transfer a controlling interest in Duquesne and Network Services (the “Joint Application”). The Joint Application seeks the issuance of certificates of public convenience by the Pennsylvania Public Utility Commission (“Commission”), pursuant to 66 Pa.C.S. §§ 1102 and 1103, authorizing the transfer by sale of all of DUET’s and DUET3’s 28.95% interest and shares in DQE Holdings LLC (“DQE Holdings”), which indirectly owns Duquesne and Network Services, to Epsom, a direct wholly-owned subsidiary of GIC Infra Holdings Ptd Ltd (“GIC Infra”) and an indirect wholly-owned subsidiary of Government of Singapore Investment Corporation (Ventures) Pte Ltd (“GIC Ventures”), (the “Proposed Transaction”). The Applicants hereby file this Statement in Support (“Statement in Support”) of the Joint Petition for Approval of Settlement (“Settlement”) in the above-captioned Joint Application proceedings. For the reasons explained below, the Applicants represent that the Proposed Transaction, as modified by the terms and conditions of the Settlement, is in the public interest and should be approved without further condition or modification.

Duquesne is a “public utility” and an “electric distribution company” as those terms are defined in Sections 102 and 2803 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2803. Duquesne provides electric distribution, transmission, and provider of last resort services to approximately 580,000 customers throughout its service territory, which includes all or portions of Allegheny and Beaver Counties, Pennsylvania. Duquesne is wholly-owned by Duquesne Light Holdings,

Inc. (“DLH”), which, in turn, is wholly-owned by DQE Holdings. (Applicants’ Statement No. 1, pp. 2-3.)

DQE Holdings is a limited liability company organized and existing pursuant to the laws of Delaware. DQE Holdings was formed by a group of six (6) investment entities (the “Investor Consortium”) to acquire DLH and its subsidiaries. The Investor Consortium is comprised of the following equity ownership interests: (1) DUET (28.95%); (2) Macquarie Infrastructure Partners, investing through CLH Holdings, GP (“MIP”) (22.12%); (3) Industry Funds Management, investing through IFM Global Infrastructure (Cayman) Fund (22.8%); (4) GIF2-MFIT United Pty Limited (13.3%); (5) Motor Trades Association of Australia Super, investing through MTAA Superannuation Fund (Duquesne Holdings) Infrastructure Trust (6.6%); and (6) State Super, investing through Duquesne Utilities Trust (6.2%). With the exception of DUET, the investment entities that make up the Investor Consortium are private investment funds that are not publicly traded on any open market. (Applicants’ Statement No. 4, p. 3.)

The Macquarie Group directly or indirectly manages or co-manages the majority of the investment funds of the Investor Consortium, including MIP, DUET, and GIF2-MFIT United Pty Limited, which collectively own 64.3% of the equity interest in DQE Holdings.<sup>1</sup> After closing of the Proposed Transaction, investment funds managed by the Macquarie Group will collectively own 35.39% of the equity interest in DQE Holdings. (Applicants’ Statement No. 4, p. 6.)

The Macquarie Group is one of the world’s largest owners and managers of infrastructure assets, managing over \$88 billion in infrastructure assets around the world. Community

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<sup>1</sup> The 64.3% equity interest includes DUET’s 28.95% ownership interest in DQE Holdings, which is jointly managed by AMP Capital Holdings Limited, an entity that is not affiliated with the Macquarie Group, and the Macquarie Capital Group Limited, a wholly-owned subsidiary of the Macquarie Group.

infrastructure investments managed by the Macquarie Group include assets in the energy, water, transportation, airport, social infrastructure, and telecommunications sectors. The Macquarie Group's infrastructure investment philosophy is to: invest strategically for the long-term in quality infrastructure and related assets; take a partnership approach, working with strong existing management teams to support overall performance; bring specialist international networks and global resources to support business growth; and manage its various assets responsibly and profitably for the long-term. (Applicants' Statement No. 4, p. 5.)

DUET is incorporated in Victoria, Australia. DUET, together with three Australian trusts -- Diversified Utility and Energy Trust No 1 ("DUET1"), Diversified Utility and Energy Trust No 2 ("DUET2"), Diversified Utility and Energy Trust No 3 ("DUET3") -- are part of a quadruple-stapled security that is publicly traded on the Australian Securities Exchange (ASX:DUE) the ("DUET Group"). The securities of the DUET Group are stapled and must trade, and otherwise be dealt with, together.<sup>2</sup> (Applicants' Statement No. 2, p. 3.)

DUET is the largest individual shareholder in DQE Holdings, which is DUET's sole asset in the United States. DUET and DUET3 collectively hold interests in DQE Holdings as follows: (a) DUET owns a 28.95% Class A ownership voting interest in DQE Holdings; and (b) DUET3 owns rights as a lender to DQE Holdings under a \$201,227,372 promissory note. The DUET Group also has majority ownership in some of Australia's key, regulated energy utility businesses. (Applicants' Statement No. 2, p. 4.)

Government of Singapore Investment Corporation Pte Ltd ("GIC") is a global investment management company which was incorporated in 1981 to manage Singapore's foreign reserves.

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<sup>2</sup> Stapled securities are comprised of securities in two (or more) separate entities that have to be traded as a single stapled security.

GIC is wholly-owned by the Government of Singapore and manages funds on behalf of the Government of Singapore. GIC manages in excess of USD \$100 billion in investments and is now among the world's largest fund management companies. GIC invests internationally in equities, fixed income, foreign exchange, commodities, money market, alternative investments, real estate and special investments including infrastructure investments. (Applicants' Statement No. 3, pp. 3-4.)

The infrastructure and private equity investment arm of GIC is GIC Special Investments Pte Ltd ("GIC SI"). GIC SI is one of the world's largest and most experienced private equity investment managers, and is an established investment manager in the infrastructure market, with a long-term buy and hold strategy. GIC SI invests in private equity and infrastructure assets through an investment holding company known as GIC Ventures. GIC Infra Holdings Pte Ltd ("GIC Infra"), a wholly-owned subsidiary of GIC Ventures, is the holding company for infrastructure investments. Epsom Investment Pte Ltd ("Epsom") is a wholly-owned subsidiary of GIC Infra, which is the investment vehicle used for the purposes of acquiring DUET's and DUET3's interests in DQE Holdings as proposed in the pending transaction. (Applicants' Statement No. 3, pp. 4-5.)

On September 28, 2010, DUET, AMPCI Macquarie Infrastructure Management No. 2 Limited, a company incorporated in Victoria, Australia, solely in its capacity as responsible entity of DUET3, and Clevedon Investment Pte Ltd ("Clevedon") entered into a Purchase and Sale Agreement for the sale of DUET's and DUET3's interests in DQE Holdings, subject to regulatory approvals. The Purchase and Sale Agreement was later assigned by Clevedon to its affiliate, Epsom. (Applicants' Statement No. 3, pp. 5-6.)

Under the terms of the Purchase and Sale Agreement, DUET will transfer its 16,363.765 Class A interests in DQE Holdings (“Shares”), representing a 28.95% equity interest in DQE Holdings, to Epsom. In addition, pursuant to the Purchase and Sale Agreement, DUET3 will transfer to Epsom a promissory note, dated as of June 20, 2007, made by DQE Holdings, as borrower thereunder, in favor of DUET3, as lender thereunder, in the original principal amount of USD \$201,227,372. (“Promissory Note”). The Proposed Transaction will result in the transfer of DUET’s 28.95% voting interest in DQE Holdings to Epsom. (Applicants’ Statement No. 3, pp. 6-7.)

On December 2, 2010, the Applicants filed with the Commission the Joint Application requesting all necessary approvals authorizing the transfer by sale of all of DUET’s and DUET3’s interests and shares in DQE Holdings to Epsom. (Applicants’ Exhibit No. RR-2.) If approved, the proposed transaction will result in the change of the “controlling interest” in Duquesne as defined by the Commission’s Policy Statement at 52 Pa. Code § 69.901, because DUET holds the largest voting interest in DQE Holdings and such interest exceeds 20%. Nevertheless, DUET has, and subsequently GIC SI, through Epsom will have, no ability to control DQE Holdings because a 28.95% voting interest constitutes only a minority shareholder interest in DQE Holdings. On January 20, 2011, the Applicants filed and served an amendment to Joint Application to add Network Services as an applicant at Docket No. A-2011-2221461. Network Services is a certificated competitive access provider throughout the Commonwealth of Pennsylvania.

The following parties either protested the Joint Application or intervened in the proceeding: the Commission’s Office of Trial Staff (“OTS”), the Office of Consumer Advocate

("OCA"), and the Office of Small Business Advocate ("OSBA") (together with Applicants, collectively "Parties").

Because of the nature of the transaction, the Parties agreed to a delayed date for filing of other Parties' testimony and an extended period for discovery and settlement negotiations. The Parties engaged in discovery, held numerous settlement discussions, and exchanged settlement proposals and counter-proposals. As a result of the discussions and the efforts of the Parties to examine the issues raised, a Settlement in Principle of all issues was reached shortly after the filing of other Parties direct testimony and prior to the dates set for the evidentiary hearings. On April 27, 2011, the Parties advised the Honorable Administrative Law Judge Mark A. Hoyer ("ALJ") of the Settlement in Principle and, at the request of the Parties, the ALJ suspended the procedural schedule.

On May 11, 2011, the Applicants, OTS, OCA, and OSBA (hereinafter, collectively Joint Petitioners") filed a Joint Petition for Approval of Settlement ("Settlement"). On the same date, the Parties filed a Stipulation of Evidence with regard to the admission by stipulation of testimonies and exhibits served during the course of the proceeding.

## **II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND MEETS OR EXCEEDS ALL REQUIRED STANDARDS**

Applicants submit that the Proposed Transaction described in the Purchase and Sale Agreement and the Joint Application, subject to the terms and conditions contained in the Settlement, will affirmatively promote the public interest in a substantial way, as required by *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972). In addition, the Proposed Transaction, as modified by the terms and conditions of the Settlement, addresses and satisfies the issues and areas of concern identified by the Commission in its January 31, 2011

Secretarial Letter ( the “Commission’s Directed Questions”). Further, the Settlement also satisfies the ten public interest considerations that the Commission set forth in its Order in *Application of Penn Estates Utilities, Inc.*, Docket No. A-210072F0003, *et al.* (Oct. 2, 2006) (regarding factors to be considered in acquisitions by investment funds). Finally, as required by Section 2811(e) of the Public Utility Code , 66 Pa. C.S. § 2811(e), the Proposed Transaction, subject to the terms and conditions contained in the Settlement, will not result in any anti-competitive or discriminatory conduct, including unlawful exercise of market power in the retail natural gas supply market.

Initially, the fact that the Settlement is unopposed, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest -- particularly given the diverse interests of the Parties and the active role they have taken in this proceeding. Moreover, the Settlement was achieved only after a comprehensive investigation of the transaction proposed in the Joint Application. In addition to informal discovery, Applicants responded to numerous formal discovery requests, many of which had multiple subparts. OSBA and OCA filed testimony in support of their respective positions. Moreover, the Parties participated in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement. Finally, the Parties in this proceeding, and their counsel, have considerable experience in acquisition proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus in this proceeding on the settled issues.

The Settlement reflects a carefully balanced compromise of the interests of Duquesne, its customers, and the Joint Petitioners. For the reasons more fully explained below, the Proposed Transaction as modified by the Settlement is in the best interest of and will produce substantial

benefits for Duquesne and its customers. Therefore, the Applicants respectfully request that the ALJ recommend that the Commission approve, and that the Commission approve, the Joint Application subject to the terms and conditions contained in the Settlement, without modification. The Applicants submit this Statement in Support to explain the numerous reasons that support these conclusions.

**A. The Commission Policy Favors Settlement**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that 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. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). For the following reasons, the Applicants believe that the Proposed Transaction, as modified by the Settlement, meets all required standards and is just, reasonable, and in the public interest. The Settlement therefore should be approved without modification.

**B. The Proposed Transaction, Subject To The Terms And Conditions Contained In The Settlement, Meets All Required Standards**

The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). This standard requires the Commission to find that the Proposed Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util.*

*Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).<sup>3</sup> The Applicants submit that all criteria necessary for approval of the Proposed Transaction pursuant to the Public Utility Code have been met, and that the Proposed Transaction will benefit Duquesne's customers, employees, and the communities it serves.

As explained in more detail below, the Proposed Transaction, as modified by the Settlement: (1) will not produce any unreasonable adverse effect on rates; (2) will not result in any anti-competitive or discriminatory conduct; (3) meets all required standards; (4) will affirmatively promote the public interest in a substantial way; (5) satisfactorily answers the Commission's Directed Questions; and (6) satisfies the ten *Penn Estates* public interest considerations. For these reasons, as more fully explained below, the Applicants request that the Proposed Transaction, as modified by the terms and conditions of the Settlement, be approved without further condition or modification.

#### **1. Effect On Rates**

Duquesne's base rates are currently governed by a tariff that was approved by the Commission on February 24, 2011, at Docket Number R-2010-2179522. Duquesne's Provider of Last Resort rates for the period January 1, 2011 through June 30, 2013, are to be determined pursuant to procedures contained in the Commission Order of July 30, 2010, at Docket No. P-2009-2135500. The Proposed Transaction, as modified by the Settlement, maintains Duquesne's

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<sup>3</sup> The "substantial public interest" standard is satisfied by a preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007). Further, the substantial public benefit test does not require that every customer receive a benefit from the Proposed Transaction. *Popowsky*, at 617-18, 937 A.2d at 1061.

tariff as presently in effect and as amended from time to time in accordance with the law. Therefore, the Proposed Transaction will have no effect on rates.

Further, under the terms of the Settlement, Duquesne agrees that all aspects of the acquisition premium and transaction costs, including third party consultants, financial advisory services, and due diligence costs, including all related tax effects, will be excluded from future distribution and transmission rates. (Settlement ¶ 26(a).) Duquesne also will not claim any increase in the cost of capital as a direct result of the transaction or due to any downgrading of Duquesne's debt as a direct result of the 2007 Merger or the Proposed Transaction for a period ending May 31, 2014. (Settlement ¶ 28.)

## **2. Effect On Competition**

Under Section 2811(e) of the Public Utility Code, the Commission, in conjunction with the proper exercise of its authority to approve the acquisition of an electric distribution utility, is to consider whether such transaction is likely to result in anticompetitive or discriminatory conduct, including unlawful exercise of market power, which will prevent retail customers from obtaining the benefits of a properly functioning and effectively competitive retail electric market. 66 Pa.C.S. § 2811(e).

The Proposed Transaction, as modified by the Settlement, will not result in anti-competitive or discriminatory conduct in the wholesale and retail electric market in Pennsylvania. The Proposed Transaction will result in replacing DUET with Epsom. Neither the remaining members of the Investor Consortium, nor any entity directly or indirectly managed by GIC, provide public utility or electric generation services in Pennsylvania beyond the scope of the Proposed Transaction. Therefore, the Proposed Transaction, as modified by the Settlement, will not reduce or otherwise affect competition in the retail market for electric generation service. (Applicants' Statement No. 1-S, p. 16.)

### 3. **Epsom Has The Technical, Legal, And Financial Fitness To Own And Operate Duquesne**

Under Sections 1102 and 1103 of the Public Utility Code, 66 Pa.C.S. §§ 1102, 1103, the Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally, and financially fit. *See Seaboard Tank Lines*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). Under the Proposed Transaction, Duquesne would be indirectly owned by Epsom, which is controlled by GIC SI. For the reasons explained below, Epsom and GIC SI are technically, legally, and financially fit to indirectly own Duquesne, as required by Section 1102 and 1103 of the Public Utility Code.

#### a. **Technical Fitness**

GIC SI and Epsom are technically fit to own and Duquesne. Epsom is a wholly-owned subsidiary of GIC Infra, which is a wholly-owned subsidiary of GIC Ventures, and is managed by GIC SI. GIC SI is one of the world's largest and most experienced private equity investment managers, and is an established investment manager in infrastructure assets. These investments include the following regulated utility and infrastructure assets: Oncor Electric Delivery Co., a Texas based electric transmission and distribution company; Kelda Group, a water and waste water utility in the United Kingdom; AEI, an emerging market energy infrastructure company with operations in 16 countries; and Epic Energy, an Australian natural gas pipeline company. Through the Proposed Transaction, Duquesne will be able to draw upon GIC SI's experience with utility and other infrastructure investments around the world, together with experience of the other remaining members of the Investment Consortium. (Applicants' Statement No. 3, pp. 10-11.) GIC SI also is a strong supporter of the Investor Consortium's philosophy to maintain the excellent, highly skilled management team in place at Duquesne and support them with the

capital necessary to maintain the existing operational excellence. (Applicants' Statement No. 3, p. 12.)

For these reasons, GIC SI and Epsom have the technical fitness to replace DUET as a member of the Investor Consortium and, in conjunction with the current Duquesne management and employees, will continue to have the managerial and utility experience necessary to support Duquesne's continued successful operation in the public interest.

**b. Legal Fitness**

GIC SI and Epsom are legally fit to own Duquesne. These entities have the legal right to acquire DUET's interests in DQE Holdings. In addition, these entities comply with all federal and state laws of the United States, and other countries in which they have activities. Epsom, as a wholly-owned subsidiary of GIC Infra and an indirect subsidiary of GIC Ventures, has engaged outside law firms to handle various specialized matters, including matters related to the compliance requirements with various regulatory bodies. (Applicants' Exhibit No. RR-2, pp. 19-20.) For these reasons, Epsom, as a wholly-owned subsidiary of GIC Infra and an indirect subsidiary of GIC Ventures, is legally fit to acquire an equity interest in Duquesne and support the continued successful operation of Duquesne.

**c. Financial Fitness**

Through GIC and GIC SI, Epsom has access to substantial long-term capital. GIC was established in 1981 with the sole purpose of managing the Government of Singapore's foreign reserves. GIC is now one of the world's largest fund managers, managing well over USD \$100 billion of assets internationally, including in the United States, in a wide range of asset classes. The fundamental purpose of GIC is to invest for the benefit of its client, the Government of Singapore, in order to preserve and enhance the purchasing power of Singapore's reserves. GIC

is purely a financial investor and strives to achieve good, long-term returns for its client. (Applicants' Statement No. 1, pp 3-4.)

GIC SI controls the private equity and infrastructure investments of GIC. (Applicants' Statement No. 1, pp 4-5.) GIC SI takes a long-term view of its portfolio investments in infrastructure. (Applicants' Statement No. 1, pp 8-9.) GIC SI's financial strength, investment strategy, and experience as an investor in other utilities make it an ideal investor in Duquesne to replace the DUET Group.

#### **4. The Proposed Transaction Provides Substantial Affirmative Public Benefits**

The Proposed Transaction, as modified by the terms and conditions of the Settlement, will provide substantial, affirmative benefits that will further the public interest, including, but not limited to: (1) replacing one owner seeking to sell its interests in the company, driven by market and operating demands to redeploy capital, with a new owner that is an experienced and committed long-term investor with access to capital; (2) enhancing the ring-fencing of Duquesne; (3) committing to customer service and reliability metrics; (4) improving Duquesne's programs offered to assist its income disadvantaged customers and other customers that may have difficulty paying their bills; and (5) committing to being a long-term contributor to southwestern Pennsylvania. Each of these substantial affirmative benefits from the Proposed Transaction are summarized below.

##### **a. Replacement of One Owner and Availability of Capital**

One of the primary benefits of the Proposed Transaction is that it will provide Duquesne with access to capital in order to continue to provide excellent and cost effective service to its customers through its plant, equipment, and operations. Under the ownership of the Investor Consortium, Duquesne has been able to make substantial capital investments necessary to

provide safe, reliable, and efficient service to its customers. However, in order to continue to provide and improve these services to customers, the Company continues to need access to both debt and equity capital for funding of its capital programs -- including distribution system, infrastructure, and transmission improvements and additions. (Applicants' Statement No. 1, pp. 9-12.) Further, as explained to the Commission in the Company's 2010 rate case, at Docket No. R-2010-2175222, Duquesne requires access to both debt and equity capital to fund its pension plan. (Applicants' Statement No. 1, p. 12.)

The DUET Group currently holds a 28.95% interest in DQE Holdings as follows: (1) DUET owns a 28.95% Class A voting interest in DQE Holdings, which is the largest voting interest in DQE Holdings; and (2) DUET3 owns rights as a lender to DQE Holdings under a USD \$201,227,372 promissory note. (Applicants' Statement No. 2, pp. 4-5.) The DUET Group also has majority ownership in some of Australia's key, regulated energy utility businesses. (Applicants' Statement No. 2, p. 4.) The DUET Group is required to make substantial capital investments in its utility assets in Australia, including investments in the electric distribution network of United Energy Distribution and investments necessary to meet regulatory requirements.<sup>4</sup> (Applicants' Statement No. 2, pp. 7-10.) Further, the DUET Group's investors, many of which are pension and institutional income funds and retiree retail investors, are yield-focused and expect stable levels of distributions.<sup>5</sup> (Applicants' Statement No. 2, pp. 10-11.)

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<sup>4</sup> To meet regulatory requirements, the DUET Group is required to reallocate its capital to invest in its Australian utility assets in order to increase peak network capacity, for the purposes of fire prevention, and the deployment of smart meter technology. (Applicants' Statement No. 2, pp. 7-10.)

<sup>5</sup> The DUET Group consists of four securities that are stapled together and trade on the Australian Securities Exchange. Unlike private equity and infrastructure investors, the DUET Group's investors expect stable and consistent distributions and dividends. The DUET Group's  
(Continued on next page...)

Given the concurrent demands for capital from Duquesne and DUET's Australian utility investments, the DUET Group has determined that it is in the best interest of both the DUET Group and Duquesne for the DUET Group to take the steps necessary to divest its only asset in the United States and redeploy its capital to meet the substantial capital requirements of its Australian investments. (Applicants' Statement No. 2, pp. 6-7, 11.)

The Proposed Transaction, as modified by the Settlement, will replace one owner seeking to sell its interests in the company, driven by market and operating demands to redeploy capital, with a new owner that is both an experienced and committed long-term investor with access to capital available to invest in Duquesne over the long term. (Applicants' Statement No. 1, p. 14.) The acquisition of DUET Group's interest in DQE Holdings by Epsom will provide a benefit to Duquesne, its employees, and its customers because GIC SI, through Epsom, has an investment strategy that prioritizes long-term investments and because it has access to substantial amounts of long-term capital. (Applicants' Statement No. 3, p. 9.)

In addition, under the Proposed Transaction, DUET3 will transfer to Epsom a promissory note, dated as of June 20, 2007, made by DQE Holdings, as borrower thereunder, in favor of DUET3, as lender thereunder, in the original principal amount of USD \$201,227,372. The replacement of DUET with Epsom will permit the planned conversion of the promissory notes from DQE Holdings to the investors at a much earlier date than the planned date of August 2013. (Applicants' Statement No. 4, p. 9.) Under the Settlement, Epsom agrees to tender to DQE Holdings, for redemption, the promissory note from DQE Holdings to DUET3, which will be acquired by Epsom at closing, no later than 30 days after the closing. Duquesne confirms that:

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(...continued from previous page)

distributions and dividends are paid semi-annually to its investors for the periods ending June 30 and December 31. (Applicants' Statement No. 2, p. 10.)

(i) pursuant to a Transaction Agreement dated December 9, 2009, to which DQE Holdings and each of its Members is a party, all the promissory notes will be tendered to DQE Holdings within thirty (30) calendar days of the closing and the tender by Epsom; and (ii) upon tender, DQE Holdings will redeem all of the promissory notes and the proceeds of such redemptions will simultaneously be reinvested in DQE Holdings as equity capital contributions with no change in the voting interests of the Members of DQE Holdings. (Settlement ¶ 32.)

Following the replacement of DUET and DUET3 with Epsom, the Investor Consortium will be comprised solely of private investors with similar strategies of investing in long-term infrastructure and without short-term yield requirements. The Investor Consortium will continue its commitment to the long-term ownership, management, and development of important infrastructure assets of Duquesne. (Applicants' Statement No. 3, pp. 11-12.) The Commission has previously concluded that the financial services provided by the Investor Consortium result in a public benefit without impairing the technical, managerial, or financial fitness of Duquesne or the services and rates it provides to its customers. *See Application of Duquesne Company for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code Approving the Acquisition of DLH by Merger*, Docket No. A-110150F0035, *et seq.* (April 24, 2007) ("2007 Merger").

**b. The Settlement Provides for Enhanced Ring-Fencing**

Another important benefit of the Proposed Transaction, as modified by the Settlement, is that the ring-fencing provisions adopted in conjunction with the 2007 Merger will be both reconfirmed and enhanced. In the Settlement, Applicants have agreed that the following ring-fencing provisions from the 2007 Merger Settlement remain in force:

- (a) Section E (1): From and after the effective date of this Settlement, Duquesne shall not: (1) guarantee the debt or credit instruments of DLH or

any affiliate not regulated by the Commission, except as approved by the Commission upon a determination that such guarantee provides net benefits to customers; (2) grant a mortgage or other lien on any property used and useful by Duquesne in providing retail utility service to the public subject to the Commission's jurisdiction, except for the financing needs of Duquesne; or (3) make any loan or otherwise extend credit to DLH or any affiliate not regulated by the Commission for a term of one year or more, except as approved by the Commission upon a determination that such loan or credit extension provides net benefits to customers.

- (b) Section E (2): DQE Holdings will not permit a change in ownership among the members of DQE Holdings without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards.
- (c) Section E (3): Duquesne will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code.
- (d) Section E (4): Duquesne shall provide the OTS, OCA and OSBA with a copy of its annual reports filed with the Securities and Exchange Commission.
- (e) Section E (6): Duquesne agrees to continue to have outstanding separately issued debt held by investors not affiliated with Duquesne or its affiliates, unless the Commission authorizes to the contrary.

- (f) Section E (7): DLH and its subsidiaries, including Duquesne, will provide, upon request, to OTS, OCA and OSBA access in connection with rate proceedings and other proceedings before the Commission, where relevant, to presentations given by DLH and its subsidiaries to common stock, bond, or rating analysts. Such material will be accorded confidential treatment.
- (g) Section E (8): Duquesne's long term debt ratio as a percent of total capitalization shall not exceed 60% absent approval from the Commission. Any request for approval will be considered on an expedited basis, if so requested.
- (h) Section E (9): Duquesne shall notify the Commission of its intention to declare a special cash dividend to DLH, at least 30 days before declaring the dividend.
- (i) Section E (10): The CEO of DLH will be a member of the board of DQE Holdings, and will also chair a management committee which will contain representatives of both the senior management team and the Macquarie Consortium.

(Settlement, ¶ 30.) Further, the Applicants have agreed that the following additional ring-fencing provisions are adopted by this Settlement:

- (a) DLH shall maintain, and cause its subsidiaries including Duquesne to maintain, separate books and financial records.

- (b) DQE Holdings will maintain corporate organizational and financial policies sufficient to permit Duquesne to continue to meet requirements to maintain its own credit ratings, separate from its parent.
- (c) Upon request from the Commission, Duquesne shall supply copies of information that it has submitted to credit rating agencies.
- (d) Unless the Commission grants approval to the contrary, for a period of three years from the closing with regard to sale of DUET's interests to Epsom, Duquesne shall not make a dividend payment to its parent if doing so causes its debt ratio as a percentage of total capitalization, as defined in Duquesne's current bank credit agreement, to exceed 60 percent, or if its debt ratio as so defined at the time of dividend declaration or payment exceeds 60 percent.
- (e) DLH and its subsidiaries shall remain organized in a manner that provides corporate separation of regulated and non-regulated activities.
- (f) The Applicants agree that they will continue to comply with Section 1102(a)(3) of the Public Utility Code requiring the approval of changes in control, as interpreted by the Commission's Policy Statement-Utility Stock Transfer under 66 Pa.C.S. § 1102(a)(3). Epsom agrees that it will not increase its voting interest in DQE Holdings beyond the 28.95% approved by the Commission in this proceeding unless Epsom obtains the Commission's approval of an acquisition increasing that voting interest or a determination by the Commission that approval is not required. Any

acquisition of a voting interest in DQE Holdings by any parent or affiliate of Epsom shall be counted in applying the provisions of this condition.

(Settlement ¶ 31.) The above-described ring-fencing of Duquesne will protect the Company's regulated transmission and distribution business from other activities of DQE Holdings' subsidiaries. (Applicants' Statement No. 1-S, pp. 10-12.)

**c. The Settlement Reinstates Customer Service and Reliability Metrics**

Another substantial affirmative benefit of the Proposed Transaction, as modified by the Settlement, is that Duquesne commits to a Quality of Service Plan ("Service Plan") during the period from January 1, 2012 through December 31, 2013. The Service Plan reestablishes and enhances service and reliability metrics established in the approval of the 2007 Merger that expired on December 31, 2009.<sup>6</sup> The Service Plan also reestablishes reporting requirements to allow for the monitoring of the quality and reliability of service provided by Duquesne and to identify any significant changes to Duquesne's reliability and service levels. (Settlement ¶ 34.) Duquesne has committed to specific performance standards for the following performance indicators:

- (a) SAIFI (12 Month);
- (b) CAIDI (12 Month);
- (c) Call Center: % calls answered w/in 30 seconds;
- (d) Call Center: Average Busy-out Rate;
- (e) Call Center: Average Call Abandonment Rate;
- (f) Percent of bills not rendered once every billing period.

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<sup>6</sup> All of the service and reliability metrics previously agreed to in the 2007 Merger Settlement have been met and in most cases exceeded. (Applicants' Statement No. 1, pp. 11-12.)

(Settlement ¶ 34(a).) Duquesne will maintain operating locations and field offices in its territory, and staffing levels as appropriate to provide safe and reliable service consistent with good utility practices. (Settlement ¶ 33(b).)

Duquesne also commits to provide a report each year to the Commission, OTS, OCA, and OSBA identifying its performance and the metrics in the Service Plan. Duquesne agrees that, in any year during the effective period of the Service Plan (from January 1, 2012 through December 31, 2013), if its reliability or service levels are not equal to or better than the reporting metrics set forth in the Service Plan, Duquesne will provide the Commission, OCA, OTS and OSBA with a report that will identify the reasons for the variance and identify management actions that Duquesne intends to undertake in response to any variation. Duquesne will then convene a collaborative with OCA, OTS, and OSBA to discuss such report. (Settlement ¶ 34(b)-(c).)

**d. Commitment to Low Income Programs**

Another substantial benefit of the Proposed Transaction, as modified by the Settlement, is the continued commitment of Duquesne to programs offered to assist its income disadvantaged customers and other customers that may have difficulty paying their bills. Duquesne will continue to fund its Customer Assistance Program (“CAP”) consistent with its needs analysis. (Settlement ¶ 37.) Duquesne also agrees not to transfer Low Income Usage Reduction Program (“LIURP”) funds collected during the period 2012 through 2013 to other universal service programs. (Settlement ¶ 38(a).) Further, Duquesne will make all reasonable efforts to expend LIURP funding available each calendar year. Subject to any necessary approval by the Commission’s Bureau of Consumer Services, Duquesne also will agree to raise the income eligibility needs to 200% of the federal poverty level, and/or expand outreach efforts, and/or increase the numbers of customers served. (Settlement ¶ 38(b).)

e. **Continued Community Commitment**

Duquesne and its employees are committed community partners that support a wide array of community activities designed to strengthen the economic and cultural vitality of its service territory. (Applicants' Statement No. 1, p. 3.) The acquisition of DUET's interest in DQE Holdings by GIC SI, through Epsom, will serve to maintain the presence of Duquesne in the community, as GIC SI supports the Investor Consortium's commitment to maintaining Duquesne's headquarters in Pittsburgh. Like the Investor Consortium, GIC SI is committed to maintaining Duquesne's active role in supporting the communities in southwestern Pennsylvania. (Applicants' Statement No. 3, pp. 12-13.)

Further, Duquesne Light agrees that it will continue to provide approximately \$2.9 million in corporate contributions and community support in southwestern Pennsylvania through April 24, 2014. Duquesne also will continue to contribute \$375,000 annually to the Dollar Energy Fund through May 31, 2014, even if customers do not match this level of contribution. (Settlement ¶ 40.) The approval of the Proposed Transaction will benefit the Pittsburgh region by continuing to ensure the future viability of a Pennsylvania-based good corporate citizen and its employees.

**III. THE SETTLEMENT SATISFIES THE COMMISSION'S DIRECTED QUESTIONS**

In its January 31, 2011 Secretarial Letter, the Commission identified specific issues and areas of concern to be addressed by the Parties. As explained below, the Proposed Transaction, as modified by the terms and conditions of the Settlement, satisfies the Commission's Directed Questions.

**A. The Proposed Transaction Will Have No Impact On The Corporate Structure Of DQE Holdings**

The Proposed Transaction will have no impact on the corporate structure of DQE Holdings and its subsidiaries. The only change resulting from the sale of DUET's 28.95% interest in DQE Holdings is the replacement/substitution of the two DUET directors on the DQE Holdings Board of Managers with two Epsom directors. Through the Settlement, Epsom agrees that it will not increase its voting interest in DQE Holdings beyond the 28.95% approved by the Commission in this proceeding unless Epsom obtains the Commission's approval of such acquisition or a determination by the Commission that approval is not required. The Settlement also confirms that any acquisition of a voting interest in DQE Holdings by any parent or affiliate of Epsom shall be counted in applying this condition. (Settlement ¶ 31(f).)

Further, the Proposed Transaction will not create a more leveraged organization. As explained more fully below, the Settlement commits to limits on Duquesne's use of leverage and other capital structure protections. (See Section IV.H, *infra*.) Duquesne's long-term debt ratio as a percent of total capitalization shall not exceed 60%, absent approval from the Commission. (Settlement ¶ 30(g).)

In addition, the acquisition by Epsom of DUET Group's interest substantially advances the agreement by the Members of DQE Holdings to tender for redemption, the promissory notes from DQE Holdings, and upon tender DQE Holdings will redeem all of the promissory notes and the proceeds of such redemptions will simultaneously be reinvested in DQE Holdings as equity capital contributions. (Settlement ¶ 32; see also Section II.B.4.a, *supra*.)

**B. The Sale Of DUET's Interest In DQE Holdings To Epsom Will Not Impact The Corporate Decision Making Process Of DQE Holdings**

The replacement of DUET with Epsom will not change or impair the current corporate governance of Duquesne, DLH or DQE Holdings. (Applicants' Statement No. 1, p. 14.) DQE

Holdings is currently owned by six (6) investment entities that comprise the Investor Consortium, with each entity having separate equity ownership interests. The voting interests in DQE Holdings are determined by the equity interests separately held by each member of the Investor Consortium. Each member of the Investor Consortium holds, acts, and votes its interests independently today, and will continue to do so after the replacement of DUET with Epsom. (Applicants' Statement No. 4, p. 3.)

While there currently are four Macquarie affiliated entities with 64.3% ownership interests in DQE Holdings, each has its own governance and decision making structure and is ultimately responsible to a different group of investors.<sup>7</sup> Each of these representatives on the Board has a fiduciary obligation to the investment fund which each represents on the Board. There is no voting agreement among the investment funds managed by the Macquarie Group to vote the shares of those investment funds, but rather each investment fund holds and votes its respective shares in DQE Holdings independently. The Funds managed by the Macquarie Group can, and do, form different views with respect to the matters considered by the DQE Holdings Board. Each member votes independently today, and will continue to do so in the future based on what it believes is best for its fund and Duquesne in the long term. (Applicants' Statement No. 4, pp. 3, 6-7.)

The sale of DUET Group's interest in DQE Holdings to Epsom will not impact the corporate decision making process of DQE Holdings. DUET's existing two board members will be replaced by two board members selected by Epsom. The Epsom representatives will have the same authority to vote the 28.95% voting interest as DUET's current representatives now have.

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<sup>7</sup> DUET is jointly managed by AMP Capital Holdings Limited, an entity that is not affiliated with the Macquarie Group, and the Macquarie Capital Group Limited, a wholly-owned subsidiary of the Macquarie Group. (Applicants' Statement No. 2, p. 6.)

A 28.95% interest in DQE Holdings will not give Epsom, after closing of the Proposed Transaction, any affirmative control over the activities of either the DQE Holdings or Duquesne. Nor will it provide Epsom the ability to control certain major corporate activities, such as business planning or dividend policy, as DUET does not currently have such control. (Applicants' Statement No. 4, pp. 7-8.)

In addition, pursuant to the Commission-approved 2007 Merger Settlement, the Chief Executive Officer of Duquesne is a member of the board of DQE Holdings and also chairs a management committee that contains representatives of both the senior management team and the Investor Consortium. This commitment is being renewed in the ring-fencing provisions of the Settlement as explained previously. (See Section II.B.4.b, *supra*.)

Further, Duquesne's Board of Directors recently established the Governance and Regulatory/Public Affairs Committee to assist the Board in setting policies representing good practice with respect to organizational governance, including the operation of the Board, and provide oversight and assistance regarding community relationships and regulatory activities undertaken by the Company. In addition, an Independent Manager has recently been appointed to the Board of DQE Holdings. (Applicants' Exhibit No. RR-2, pp. 26-27.) Finally, Duquesne agrees to provide the Commission and the Parties with GIC's most recent published report on the Management of the Government's Portfolio until such time as the Commission grants approval to the contrary. (Settlement ¶ 36(a).)

**C. The Government Of Singapore Will Not Have An Impact On The Decision Making Process On The Corporate Board Of Directors**

GIC manages funds on behalf of the Government of Singapore. The Government of Singapore provides guidance and direction to GIC by establishing investment objectives, investment horizon and risk parameters for the portfolio managed by GIC. However, the

Government of Singapore does not direct GIC's investment decisions nor is it engaged in the day-to-day operations of GIC or its investments. (Applicants' Statement No. 3, pp. 3-7.)

**D. All The Conditions Of The Settlement Agreement Which Transferred Control Of Duquesne Light Holdings To DQE Holdings Have Been Met**

All the conditions of the Settlement Agreement, approved by the Commission in the 2007 Merger Settlement, concerning transfer of control of DLH and Duquesne to DQE Holdings and the Investor Consortium, have been met. (Applicants' Statement No. 1-S, pp. 9-10; Applicants' Exhibit No. RR-1Supp.) In particular, all of the service and reliability metrics previously agreed to have been met, and in most cases, exceeded. (Applicants' Statement No. 1, pp. 11-12.) In addition, Duquesne has just concluded its first post merger rate case and achieved a settlement of all parties that has recently been approved by the Commission. *Pa. Pub. Util. Comm'n v. Duquesne Light Company*, Docket No. R-2010-2179522 (Order entered Feb. 24, 2011). Further, under the Settlement of this proceeding, the Applicants have agreed that all conditions, approved by the Commission in the 2007 Merger Settlement, which remain in force, are conditions of this Settlement. Finally, the Applicants have agreed that many of the conditions from the 2007 Merger Settlement, which have or are about to expire, shall be renewed or reinstated for certain periods of time. (Settlement ¶ 25.)

**E. Duquesne Will Be Ring-Fenced From The Investment Consortium And Its Affiliates**

As explained above, Duquesne will continue to be ring-fenced and these measures are enhanced by this Settlement. (See Section II.B.4.b, *supra*.) These ring-fencing measures will adequately protect Duquesne's regulated transmission and distribution business from other activities of DQE Holdings' subsidiaries. (Applicants' Statement No. 1-S, pp. 10-12.)

**F. The Proposed Transaction Will Have A Positive Financial Impact**

With regard to the financial impact, the Proposed Transaction, as modified by the Settlement, will financially strengthen Duquesne. As noted above, pursuant to the Proposed Transaction, Duquesne, its employees, and its customers will receive an immediate benefit by replacing DUET, an owner seeking to sell its interests in the company, driven by market and operating demands to redeploy its capital, with GIC SI and Epsom, a new owner that is both an experienced and committed long-term investor with access to capital. (See Sections II.B.3, II.B.4.a, *supra*)

Further, the availability of funds for future infrastructure investment will improve as a result of the Proposed Transaction. Duquesne will be making substantial capital expenditures to install and support smart meter technology. (Applicants' Statement No. 1, p. 11.) Through the Proposed Transaction, as modified by the Settlement, Duquesne will replace a capital-constrained owner with a new owner without such capital constraints.<sup>8</sup> (See Section II.B.4.a, *supra*.) Epsom, together with the remainder of the Investor Consortium, will provide Duquesne with access to capital to make the necessary capital expenditures. These expenditures will include the installation and support for smart meter technology. (See Applicants' Statement No. 1, pp. 13-15; Applicants' Statement No. 1-S, pp. 13-16; Applicants' Statement No. 3, p. 7; and Applicants' Statement No. 4, pp. 8-9.)

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<sup>8</sup> The DUET Group has majority ownership in some of Australia's key, regulated energy utility businesses. To meet regulatory requirements, the DUET Group is required to reallocate its capital to invest in its Australian utility assets in order to increase peak network capacity, for the purposes of fire prevention, and the deployment of smart meter technology. (Applicants' Statement No. 2, pp. 7-10.)

**G. The Proposed Transaction Will Have No Impact On Wholesale And Retail Competition For Pennsylvania's Electric Generation Suppliers**

As explained above, the Proposed Transaction, as modified by the Settlement, will not result in anti-competitive or discriminatory conduct in the wholesale and retail competition for Pennsylvania's electric generation suppliers. (See Section II.B.2, *supra*.)

**IV. THE SETTLEMENT SATISFIES THE PENN ESTATES CRITERIA**

In addition to the above-mentioned substantial affirmative benefits, the Proposed Transaction, as modified by the Settlement, satisfies the ten public interest considerations that the Commission set forth in its Order in *Application of Penn Estates Utilities, Inc.*, Docket No. A-210072F0003, *et al.* (Order entered October 2, 2006), as summarized below.

**A. Capital Will Continue To Be Expended For Ongoing Operations**

As explained above, GIC SI, through Epsom, is well-suited to acquire the DUET Group's interests in Duquesne because, among other things, its investment strategy prioritizes long-term investments and because it has access to long-term capital. (See Sections II.B.3, II.B.4.a, *supra*.) Continued access to long-term capital will enhance Duquesne's ability to improve customer satisfaction, service provided to customers, and its infrastructure, while maintaining reasonable and competitive rates. (Applicants' Statement No. 1, p. 14.) Under the Proposed Transaction, as modified by the Settlement, Duquesne commits to dedicate resources sufficient to provide safe and reliable service, consistent with good utility practices. (Settlement ¶ 33(b).) These commitments are further supported by specific reliability and service metrics. (Settlement ¶ 33.)

**B. Corporate Governance Will Not Be Impaired**

The Proposed Transaction will have no impact on the corporate structure of DQE Holdings to Epsom and its subsidiaries or the structure and operations of the DQE Holdings

Board of Managers. The only change resulting from the sale of DUET's 28.95% interest in DQE Holdings is the replacement/substitution of the two DUET directors on the DQE Holdings Board of Managers with two Epsom directors. As explained above, the voting interests in DQE Holdings are determined by the equity interests separately held by each member of the Investor Consortium. Each member of the Investor Consortium holds, acts, and votes its interests independently through their respective board positions. (*See* Section III.B, *supra*.)

While acquisition of DUET's 28.95% interest by EPSOM in DQE requires prior approval by the Commission, a 28.95% interest will not give Epsom, after closing of the Proposed Transaction, any affirmative control over the activities of either the DQE Holdings or Duquesne Board, nor will Epsom have rights to control any major corporate activities, such as business planning or dividend policy, as DUET does not currently have such control. (*See* Section III.B, *supra*.)

**C. GIC SI and Epsom Intend To Be A Long-Term Owner Of Duquesne**

GIC SI, through Epsom, intends to be a long-term owner of Duquesne. GIC SI is one of the world's largest and most experienced private equity investment managers, and is an established investment manager in the infrastructure market. (Applicants' Statement No. 3, p. 7.) GIC SI takes a long-term view of its portfolio investments in infrastructure. Duquesne is well-suited for GIC SI's portfolio because it is a well-established, highly regarded business that has experienced and highly respected management and employees. Further, as a regulated utility, Duquesne is an attractive infrastructure investment that fits within GIC SI's investment strategy as it is expected to generate relatively stable and predictable returns, underpinned by long-life, high-value physical assets. (Applicants' Statement No. 3, pp. 7-8.)

Further, the Applicants will not permit a change in ownership or control in Duquesne without prior Commission approval if such change would result in a change in control under the then-applicable Commission standards. (Settlement ¶ 31(f).)

**D. GIC SI Has Substantial Experience In Owning Utilities**

Under the terms of the Proposed Transaction, as modified by the Settlement, all of DUET's and DUET3's interests and shares in DQE Holdings will be acquired by Epsom. Epsom is a wholly-owned subsidiary of GIC Infra, which is a wholly-owned subsidiary of GIC Ventures, and is managed by GIC SI. GIC SI has the managerial and utility experience to own Duquesne. GIC SI is one of the world's largest and most experienced private equity investment managers, and is an established investment manager in the infrastructure market, with a long-term buy and hold strategy. GIC SI's infrastructure investments include user demand assets such as airports, seaports and highways; regulated assets including those in water and power distribution; and competitive assets such as power plants. (Applicants Statement No. 3, p. 4.)

Included in these commitments are several regulated utility and infrastructure assets, including:

**Oncor Electric Delivery Co.:** Oncor operates the largest electricity delivery distribution and transmission system in Texas, providing power to 3 million electric delivery points over more than 117,000 miles of distribution and transmission lines.

**Kelda Group:** Kelda Group is the parent company of Yorkshire Water. Kelda is the 5th largest water and wastewater utility in the United Kingdom and provides service to 4.7 million people, almost 2 million households and 140,000 businesses in the Yorkshire and Humber Region of North East England.

**AEI:** AEI is an emerging market energy infrastructure company with operations in 16 countries and approximately 11,500 employees. Its interests in a group of 50 energy companies include Power Generation, Power Distribution, and Natural Gas Transportation and Distribution.

**Epic Energy:** An Australian natural gas pipeline company that owns and operates approximately 1,500 miles of high pressure

natural gas pipelines across Queensland, South Australia and Western Australia. GIC invested in equity warrants issued by HDIF (Epic's listed parent) as well as secured, index-linked, mezzanine debt for Epic.

(Applicants' Statement No. 3, pp. 10-11.) Through the Proposed Transaction, Duquesne will be able to draw upon GIC SI's experience with utility and other infrastructure investments around the world, together with the experience from the other members of the Investment Consortium, in support of the existing highly regarded management team of Duquesne.

Further, in addition to the expertise GIC SI brings to Duquesne, GIC SI is a strong supporter of the Investor Consortium's philosophy to maintain the excellent, highly skilled management team in place at Duquesne and support them with the capital necessary to maintain the existing operational excellence. (Applicants' Statement No. 3, p. 12.) Accordingly, GIC SI's financial strength, its investment strategy, and its experience with ownership of other utilities make it an ideal partner for Duquesne and the Investment Consortium to replace DUET.

**E. Duquesne's Existing Presence In Southwestern Pennsylvania Will Be Retained**

The acquisition of DUET's interest in DQE Holdings by GIC SI, through Epsom, will serve to maintain the presence of Duquesne in the community, as GIC SI supports the Investor Consortium's commitment to maintaining Duquesne's headquarters in Pittsburgh, Pennsylvania. (Settlement ¶ 39(a).) Like the Investor Consortium, GIC SI is committed to maintaining Duquesne's active role in supporting the communities in southwestern Pennsylvania. (Applicants' Statement No. 3, pp. 12-13.) Further, Duquesne Light agrees that it will continue to provide approximately \$2.9 million in corporate contributions and community support in southwestern Pennsylvania through April 24, 2014. Duquesne also will continue to contribute \$375,000 annually to the Dollar Energy Fund through May 31, 2014. (Settlement ¶ 40.)

**F. There Will Not Be Complex Affiliated Relationships Involved**

Duquesne and DQE Holdings will adhere to the ring-fencing measures provided in the Settlement. (Settlement ¶¶ 31-32; *see also* Section II.B.4.b, *supra*.) These ring-fencing measures will adequately protect Duquesne's regulated transmission and distribution business from other activities of DQE Holdings' subsidiaries. (Applicants' Statement No. 1-S, pp. 10-12.) Duquesne will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code. (Settlement ¶ 30(c).)

**G. Fees Paid To And Services Performed By Affiliates**

Duquesne will seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code. (Settlement ¶ 30(c).) Duquesne's corporate cost allocations will provide that all costs incurred by its affiliates, including any costs allocated from Duquesne to DLH, will be allocated, to the extent appropriate, to other Duquesne affiliates. Duquesne's corporate cost allocations will include appropriate charges to all affiliates for costs incurred on their behalf by DLH for letters of credit and sureties and will allocate appropriate charges associated with the DLH revolving credit agreement. (Settlement ¶ 29(c).)

**H. The Settlement Commits To Limits On Duquesne's Use Of Leverage And Other Capital Structure Protections**

Duquesne's long term debt ratio as a percent of total capitalization shall not exceed 60% absent approval from the Commission. (Settlement ¶ 30(g).) Further, the Settlement provides that Duquesne shall notify the Commission of its intention to declare a special cash dividend to DLH, at least 30 days before declaring the dividend. (Settlement ¶ 30(h).) The Settlement also provides, unless the Commission grants approval to the contrary, that for a period of three years from the closing of the sale of DUET's interests to Epsom, Duquesne shall not make a dividend

payment to its parent if doing so causes its debt ratio as a percentage of total capitalization, as defined in Duquesne's current bank credit agreement, to exceed 60 percent, or if its debt ratio as so defined at the time of dividend declaration or payment exceeds 60 percent. (Settlement ¶ 31(d).) In addition, the acquisition by Epsom of DUET Group's interest in DQE Holdings will substantially advance the agreement by the Members of DQE Holdings to tender for redemption, the promissory notes from DQE Holdings. Upon tender DQE Holdings will redeem all of the promissory notes and the proceeds of such redemptions will simultaneously be reinvested in DQE Holdings as equity capital contributions. (Settlement ¶ 32).

#### **I. The Settlement Ensures Transparency On Corporate Structure Issues**

Duquesne agrees to maintain reasonable accounting controls and pricing protocols to govern transactions with affiliates, and provide the Commission, OTS, OCA, and OSBA reasonable access to the books, records, and personnel of Duquesne's affiliates. (Settlement ¶ 35.) Duquesne also will provide the OTS, OCA and OSBA with a copy of annual reports filed with the Securities and Exchange Commission. (Settlement ¶ 30(d).) Finally, Duquesne will provide the Commission and the Parties GIC's most recent published report on the Management of the Government's Portfolio until such time as the Commission grants approval to the contrary. (Settlement ¶ 36.)

#### **J. Epsom Is Creditworthy**

Under the terms of the Proposed Transaction, as modified by the Settlement, all of DUET's and DUET3's interests and shares in DQE Holdings will be acquired by Epsom. Epsom is a wholly-owned subsidiary of GIC Infra, which is a wholly-owned subsidiary of GIC Ventures, and is managed by GIC SI. (Applicants' Statement No. 3, p. 18.) GIC SI controls the private equity and infrastructure investments of GIC. (Applicants' Statement No. 1, pp 4-5.) GIC was established in 1981 with the sole purpose of managing the Government of Singapore's

foreign reserves.<sup>9</sup> GIC is now one of the world's largest fund managers, managing well over USD \$100 billion of assets internationally, including in the United States, in a wide range of asset classes. (Applicants' Statement No. 1, pp 3-4.) Through GIC and GIC SI, Epsom has the financial strength, investment strategy, and experience as an investor in other utilities that make it an ideal investor in Duquesne to replace the DUET Group.

## V. CONCLUSION

Based on the foregoing, the Proposed Transaction described in the Purchase and Sale Agreement and the Joint Application, subject to the terms and conditions contained in the Settlement, is necessary or proper for the service, accommodation, convenience, or safety of the public, as required by Section 1103 of the Public Utility Code, 66 Pa. C.S. § 1103. The Proposed Transaction, subject to the terms and conditions contained in the Settlement, will affirmatively promote the public interest in a substantial way, as required by *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972).

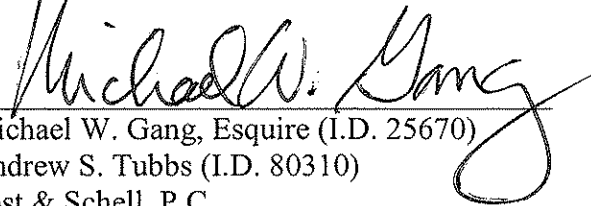
Each of the components of the Settlement are integral and critical, and any revision to the Settlement would likely upset the carefully constructed balance that will permit the acquisition pursuant to the terms of the Purchase and Sale Agreement and that will deliver substantial public benefits to customers.

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<sup>9</sup> The Singapore government has been rated AAA by Standard and Poor's since 1995. It is also currently rated Aaa by Moody's and AAA by Fitch. Each of the major ratings agencies continues to rate Singapore as stable.

WHEREFORE, Duquesne Light Company, DQE Communications Network Services LLC, Epson Investment Pte Ltd, DUET Investment Holdings Limited, and Diversified Utility and Energy Trust No. 3 respectfully request that Administrative Law Judge Mark A Hoyer recommend approval of, and the Pennsylvania Public Utility Commission approve, the Joint Application subject to the terms and conditions of the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



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Communications Network Services LLC, Epson  
Investment Pte Ltd, DUET Investment Holdings  
Limited, and Diversified Utility and Energy  
Trust No. 3*

May 5, 2011

## Appendix C

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application for All of the Authority :  
and the Necessary Certificate(s) of Public :  
Convenience to Transfer the Interests and :  
Shares in DQE Holdings LLC, currently :       Docket Nos.   A-2010-2213369  
owned by DUET Investment Holdings :                               A-2011-2221461  
Limited, to Epsom Investment Pte Ltd, a :  
subsidiary of GIC Infra Holdings Pte Ltd, :  
and to Approve the Resulting Change in :  
Control of Duquesne Light Company and :  
DQE Communications Network :  
Services, LLC :

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STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
IN SUPPORT OF THE  
JOINT PETITION FOR SETTLEMENT

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The Pennsylvania Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement (Settlement or Joint Petition) in the above docket, respectfully requests that the terms and conditions of the Settlement be approved by the Administrative Law Judge and the Pennsylvania Public Utility Commission (PUC or Commission). The OCA respectfully submits that the proposed Settlement is in the public interest and is in the interest of the customers of the Duquesne Light Company (Duquesne or Company).

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

Through its Application filed on December 2, 2010, Duquesne Light Company (Duquesne), Epsom Investment Pte Ltd (Epsom), DUET Investment Holdings Limited (DUET) and Diversified Utility and Energy Trust No. 3 (DUET3) (collectively, Applicants) requested all

necessary approvals from the Commission authorizing the transfer by sale of all DUET and DUET3 interests and shares in DQE Holdings LLC (DQE) to Epsom, a direct wholly-owned subsidiary of GIC Infra Holdings Pte Ltd (GIC Infra) and an indirect wholly-owned subsidiary of Government of Singapore Investment Corporation Pte Ltd (GIC Ventures).

Duquesne Light is a certificated electric distribution company (EDC) and a default service provider (DSP) serving customers in western Pennsylvania. Duquesne Light is wholly-owned by Duquesne Light Holdings (DLH). DQE Holdings, LLC (DQE) is the owner of DLH and consists of a group of six investment entities (collectively, the Investor Consortium). DUET is a member of the Investment Consortium and is the largest individual shareholder in DQE with a 28.95% Class A ownership interest. DUET's affiliate, DUET3, owns rights as a lender to DQE under a \$201 million promissory note. The Macquarie Group (Macquarie) manages 64.3% of the equity interests in DQE, including those held by DUET. If the proposed Application is approved, Epsom would acquire DUET's 28.95% equity interest in DQE as well the promissory note held by DUET3. As a result, the Government of Singapore would become the indirect owner of the largest individual equity interest in Duquesne Light, and Macquarie would no longer manage this interest.

The OCA filed a Protest and Notice of Intervention on December 29, 2010. A Protest was also filed by the Office of Small Business Advocate (OSBA) and a Notice of Appearance was filed by Charles Daniel Shields and Carrie Wright on behalf of the Office of Trial Staff (OTS).

Through its Intervention, the OCA sought to protect the interests of Duquesne's customers by requesting that the Pennsylvania Public Utility Commission (Commission) investigate and hold full hearings regarding the Application and impose such terms and

conditions upon the proposed acquisition as are necessary to ensure that the Application meets the statutory requirements.

Following extensive discovery, on April 19, 2011, the OCA submitted the prepared written Direct Testimony of Mathew I. Kahal, OCA Statement No. 1. Among other things, Mr. Kahal recommended in his direct testimony that the Company reaffirm and extend certain commitments made in the 2007 Merger with Macquarie (Macquarie Settlement), implement additional ring fencing measures, and provide notification to the Commission of changes in the Government of Singapore's investment policies or in Epsom's ownership percentage.

In accordance with Commission policy supporting settlements, the parties engaged in extensive negotiations. As a result of those discussions, the parties reached a Settlement of all the issues raised in this proceeding. The Settlement represents a reasonable resolution of the OCA's concerns presented in its testimony. The OCA submits that, for the reasons stated below, the Settlement is in the public interest.

## II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

### A. Ring Fencing

OCA witness Kahal testified that the while DLC appears at the present time to be financially sound, DLH and the consolidated DQE are not as strong. OCA St. 1 at 20. DLC is financially controlled by a very highly leveraged corporate organization, which may partly reflect the manner in which the Investor Consortium chose to finance the 2007 DQE/DLC acquisition. This appears to have affected DLC's credit rating. OCA St. 1 at 21. In light of these financial issues, Mr. Kahal suggested that the following provision be adopted:

I recommend certain new ring fencing enhancements which I believe are consistent with Commission policy in this area:

- The provision of information that has been provided to credit rating agencies and securities analysts, if requested by the Commission;
- The maintenance of corporate separation between DLC utility operations and DLH non-utility operations sufficient to ensure that DLC maintains its own credit ratings;
- A dividend or other payment restriction to the parent when doing so causes the total debt ratio to exceed 60 percent (or if the total debt ratio already exceeds 60 percent).

OCA St. 1 at 21-22.

The Settlement addressed Mr. Kahal's concerns by providing specific ring fencing provisions as well as a dividend payment restriction. The Settlement adopts the ring fencing provisions from the Macquarie Settlement, see Joint Petition at ¶ 30, and includes the following new provisions:

- (a) DLH shall maintain, and cause its subsidiaries including Duquesne to maintain, separate books and financial records.
- (b) DQE Holdings will maintain corporate organizational and financial policies sufficient to permit Duquesne to continue to meet requirements to maintain its own credit ratings, separate from its parent.

- (c) Upon request from the Commission, Duquesne shall supply copies of information that it has submitted to credit rating agencies.
- (d) Unless the Commission grants approval to the contrary, for a period of three years from the closing with regard to sale of DUET's interests to Epsom, Duquesne shall not make a dividend payment to its parent if doing so causes its debt ratio as a percentage of total capitalization, as defined in Duquesne's current bank credit agreement, to exceed 60 percent, or if its debt ratio as so defined at the time of dividend declaration or payment exceeds 60 percent.
- (e) DLH and its subsidiaries shall remain organized in a manner that provides corporate separation of regulated and non-regulated activities.
- (f) The Applicants agree that they will continue to comply with Section 1102(a)(3) of the Public Utility Code requiring the approval of changes in control, as interpreted by the Commission's Policy Statement-Utility Stock Transfer under 66 Pa.C.S. § 1102(a)(3). Epsom agrees that it will not increase its voting interest in DQE Holdings beyond the 28.95% approved by the Commission in this proceeding unless Epsom obtains the Commission's approval of an acquisition increasing that voting interest or a determination by the Commission that approval is not required. Any acquisition of a voting interest in DQE Holdings by any parent or affiliate of Epsom shall be counted in applying the provisions of this condition.

Joint Petition at ¶ 31. These provisions address Mr. Kahal's concerns by ensuring the financial soundness of Duquesne as well as protecting it from any potentially adverse financial impacts of non-regulated affiliate operations. As such, the OCA submits that these provisions of the Settlement are in the public interest and in the interest of Duquesne's ratepayers.

B. Reporting Requirements

Mr. Kahal testified that a system of progress reporting should accompany the transaction given the lack of experience in the U.S. with foreign governments, through investment funds, taking over large utility companies. OCA St. 1 at 22-23. The Settlement provides that Duquesne will provide the Commission and the statutory parties (OTS, OSBA and OCA) with access to the books, records, Securities and Exchange Commission filings, staff,

officers and presentations to financial analysts for the utility and its subsidiaries. Joint Petition at ¶ 35. Further, beginning in March 2012 and continuing through March 2014, Duquesne will also provide an annual report to the Commission as to the status of all commitments made in this Settlement. Joint Petition at ¶ 36. Importantly, Duquesne will also provide the Commission and Parties GIC's most recent published report on the Management of the Government's Portfolio until the Commission grants approval to the contrary. Id. These provisions are intended to ensure that the Commission and the statutory parties will retain reasonable access to the books and records of Duquesne and its subsidiaries under the new corporate structure and that any changes in investment goals will be known to the Commission that the impact on Duquesne can be assessed.

The OCA submits that the corporate structure, governance and transparency issues that were identified by the OCA and its expert witness have been adequately resolved through the Settlement. As such, the OCA submits that these provisions of the Settlement are in the public interest and in the interest of Duquesne's ratepayers.

C. Rate Issues

OCA witness Kahal testified that, as was agreed to in the Macquarie Settlement, recovery from customers of transaction costs and other costs arising from the transaction should be prohibited in distribution rates. OCA St. 1 at 17-18. The Settlement both affirms Section B(2) from the Macquarie Settlement that provides that all aspects of the acquisition premium and transaction costs will be excluded from future rates and specifically states that no expenses or costs associated with the Epsom purchase from DUET are eligible for inclusion in Duquesne's cost of service or any customer rates (including transmission service rates). This includes any acquisition premium. Joint Petition at ¶¶ 26 and 27. Further, the proposed transaction will have

no accounting or tax effects on Duquesne. Joint Petition at ¶ 27. These provisions ensure that the new owners of Duquesne, and not its ratepayers, will be responsible for the costs incurred to achieve this transaction.

Mr. Kahal further testified that, with regards to cost of capital, customers should be protected against any increase in the DLC cost of capital. OCA St. 1 at 19. The Settlement provides that, for at least two years after this transaction closes, Duquesne will not claim any increase in its cost of capital as a result of this transaction. Joint Petition at ¶ 28. This provision ensures that Duquesne's ratepayers will not be subject to higher financial costs as a result of this transaction.

The OCA submits that the rate issues accompanying this proposed transaction as identified by its expert witness, Mr. Kahal, have been adequately addressed in the Settlement. Accordingly, the OCA submits that these provisions of the Settlement are in the public interest and in the interest of Duquesne's ratepayers.

D. Community Commitment

The Settlement incorporates two provisions from the Macquarie Settlement that ensure that Duquesne will continue its commitment to the community. The Settlement provides that Duquesne's corporate headquarters will remain in Pittsburgh. Joint Petition at ¶ 39. The Settlement further provides that Duquesne will contribute \$375,000 annually to the Dollar Energy Fund for at least the next two years and will attempt to obtain customer matching contributions equal to that amount. Joint Petition at ¶ 40. Additionally, the Settlement provides that Duquesne will provide corporate contributions and community support in southwestern Pennsylvania at least at levels substantially comparable to that provided by the Company in 2006 (approximately \$2.9 million). Id. These provisions ensure that Duquesne will remain a

Pittsburgh-based company and that its level of community involvement will continue to be robust.

E. Reliability And Customer Service

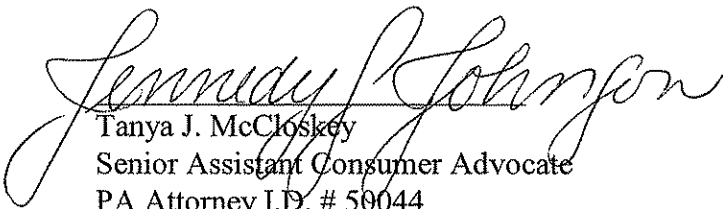
The Settlement provides that Duquesne will adhere to a Quality of Service Plan, during the period from January 1, 2012 through December 31, 2013, that establishes certain metrics and reporting requirements to allow for the monitoring of the quality of service provided by Duquesne and to identify any significant changes to Duquesne's reliability and service levels. Joint Petition at ¶¶ 33-34. These metrics will also serve to improve call center performance, raising the percent of calls answered with 30 seconds to 77% in 2012 and 78% in 2013. Joint Petition at ¶ 34.

The Settlement provides that Duquesne will provide an annual report to the Commission and the statutory parties on its level of performance for the metrics contained in the Quality of Service Plan. Duquesne will provide additional information to the Commission and the statutory parties as to any metrics that fall below the agreed-to standards and will also submit the Company's plan to address such variances. In addition, the Settlement provides for a streamlined process to obtain Commission review of the Company's quality of service, should such a proceeding become necessary. Joint Petition at ¶¶ 33-34. These provisions will ensure that Duquesne's historic reliability and customer service metrics will remain at high levels.

### III. CONCLUSION

For all of the reasons set forth herein, the OCA submits that the proposed Settlement is in the public interest. The OCA respectfully requests that the Administrative Law Judge and the Public Utility Commission approve the terms and conditions of the Joint Settlement Petition.

Respectfully submitted,



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Dated: May 4, 2011  
142482

## Appendix D

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for All of the Authority and :  
the Necessary Certificate(s) of Public :  
Convenience to Transfer the Interests and : Docket Nos. A-2010-2213369  
Shares in DQE Holdings LLC, currently : A-2011-2221461  
owned by DUET Investment Holdings :  
Limited, to Epsom Investment Pte Ltd, a :  
subsidiary of GIC Infra Holdings Pte Ltd, and :  
to Approve the Resulting Change in Control :  
of Duquesne Light Company and DQE :  
Communications Network Services LLC :

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**OFFICE OF TRIAL STAFF  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR APPROVAL  
OF SETTLEMENT OF ALL ISSUES**

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**TO ADMINISTRATIVE LAW JUDGE MARK A. HOYER:**

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission, ("Commission") by and through its Senior Prosecutor Charles Daniel Shields, Prosecutor Carrie Wright and Chief Prosecutor Johnnie E. Simms, hereby respectfully submits that approval of the terms and conditions of the foregoing Joint Petition for Approval of Settlement of All Issues ("Joint Petition") is in the public interest and will result in an affirmative public benefit. OTS considers the Settlement embodied in the Joint Petition to represent a fair, just, reasonable and equitable balance of the interest of Duquesne Light Company ("Duquesne"), a Pennsylvania jurisdictional electric distribution company and its customers. In support of this statement, OTS provides as follows:

1. All the instant active parties to this proceeding participated in the settlement discussions and have agreed upon the terms and conditions of the Settlement as set forth in the Joint Petition.

2. OTS is charged with representing the public interest in Commission proceedings having an impact upon rates and other matters as directed to participate by the Commission. This OTS representation of the public interest includes balancing the interests of both ratepayers and the affected utility or utilities. OTS has vigorously represented the public interest at all times during this application proceeding because, inter alia, the proposal, if authorized, will result in a change of the "controlling interest" in Duquesne as defined by the Commission's Policy Statement at 52 Pa. Code § 69.901 and could eventually have an effect upon the utility rates charged to customers.

3. During the course of this instant proceeding leading up to the submission of the instant Settlement, OTS (1) conducted a thorough review of the Joint Application and supporting information, discovery responses, and the submitted testimony and exhibits of the parties; (2) contributed to the forthright discussions amongst the parties during settlement discussions, and (3) ultimately determined that the scope and nature of the negotiated settlement terms and conditions detailed in the foregoing Settlement and attachments warrant approval of the Joint Petition by the ALJ and the Commission.

4. OTS considers Commission approval of the terms and conditions of the Settlement as submitted to have the same effect as full and complete litigation and further

recognizes that final resolution of this proceeding by approval of the Settlement shall represent approval of the underlying Epsom purchase from DUET.

5. OTS agrees that the foregoing terms and conditions of the Settlement render its approval to be in the public interest and to provide substantial affirmative public benefits for a number of reasons, including the following:

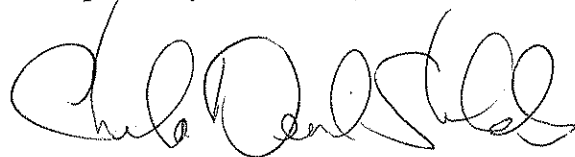
- (a) the settlement provides for commitments by the Joint Applicants that are intended to ensure that ratepayers will not be adversely affected by the transaction;
- (b) the settlement avoids the necessity of further administrative and possible appellate court proceedings, which would have been at substantial cost to the involved parties and the Applicants ratepayers and thereby conserves time and expenses for all involved;
- (c) the settlement provides that all terms and conditions embodied in the 2007 of DLH with a subsidiary of DQE Holdings at docket Nos. A-110150F0035 and A-311233F0002 that remain in force will become terms and conditions of this settlement;
- (d) the settlement provides that Duquesne and its subsidiaries will allow adequate access to books and record to the Commission OTS, OCA, and OSBA. Further, the annual reporting requirement from the 2007 Merger Settlement has been reinstated for the years 2012 through March 31, 2014;
- (e) the settlement contains a number of provisions designed to ensure that the financial integrity of Duquesne is maintained and not placed at any additional risk as a result of the transaction. The ring-fencing provisions listed in section C.29 identify provisions from the 2007 Merger Settlement that are intended to remain in force for this transaction. These include not permitting a change in ownership that would result in a change in control without Commission approval, prior notification to the Commission of any intention to declare a special cash dividend and allowing OTS, OCA, and OSBA adequate access to presentations given by DLH and its subsidiaries to common stock, bond or rating analysts. Section C. 30 identifies further ring-fencing protections the Joint Applicants have agreed to.

These include maintaining separate books and financial records. Duquesne has also agreed that for a period of three years from closing, Duquesne will not make a dividend payment to its parent if doing so would cause its debt ratio as a percentage of total capitalization to exceed 60%;

- (f) the settlement contains a commitment by Duquesne to report yearly to the Commission, OCA, OTS and OSBA identifying performance and metrics in its Service plan. Further if reliability and service levels are not equal to or greater than the metrics set forth in the Service Plan, Duquesne has agreed to provide a report to the same parties identifying why this has occurred and the actions that will be undertaken to respond to this variance;
- (g) the settlement contains a commitment to continue provisions related to low-income programs that were included in the 2007 Merger Settlement. Duquesne has agreed to fund its Customer Assistance Program consistent with its needs allowance. Further Duquesne has agreed not to transfer LIURP funds collected during 2012 through 2013 to other universal service programs; and
- (h) the settlement contains a provision that Duquesne's corporate headquarters will remain in Pittsburgh, Pennsylvania. Duquesne has agreed not to move its corporate headquarters outside Duquesne's service territory without Commission approval.

The Office of Trial Staff has been thoroughly involved in the instant proceeding. OTS reiterates that it fully supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge Mark A. Hoyer recommend, and the Commission subsequently approve without modification, the proposed Settlement as set forth in the foregoing Joint Petition.

Respectfully submitted,



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Charles Daniel Shields  
Senior Prosecutor

Carrie Wright  
Prosecutor

Johnnie E. Simms  
Chief Prosecutor

Office of Trial Staff  
Pennsylvania Public Utility Commission  
Post Office 3265  
Harrisburg, Pennsylvania 17105-3265

Dated: May 2, 2011

## Appendix E

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Joint Application for All of the Authority :  
and the Necessary Certificate(s) of Public :  
Convenience to Transfer the Interests :  
and Shares in DQE Holdings LLC, :  
currently owned by DUET Investment :       Docket No. A-2010-2213369  
Holdings Limited, to Epsom Investment :  
Pte Ltd, a subsidiary of GIC Infra :  
Holdings Pte Ltd, and to Approve the :  
Resulting Change in Control of :  
Duquesne Light Company :**

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**OFFICE OF SMALL BUSINESS ADVOCATE  
STATEMENT IN SUPPORT**

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**I.     Introduction**

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a notice of intervention and protest against the Joint Application which was filed in the above-captioned proceeding by Duquesne Light Company (“Duquesne Light”), Epsom Investment Pte Ltd (“Epsom”), and DUET Investment Holdings Limited (“DUET”) and Diversified Utility and Energy Trust No. 3 (“DUET3”) (collectively, the “Joint Applicants”). In the filing, the Joint Applicants are seeking approval to transfer certain interests and shares in DQE Holdings LLC, thereby causing a change of control of the Duquesne Light Company (“Joint Application”).

The OSBA actively participated in the proceeding, issuing discovery and filing testimony. The OSBA also participated in the negotiations that led to the proposed settlement, and is a signatory to the Joint Petition for Approval of Settlement of All Issues (“Joint Petition”). The OSBA submits this statement in support of the Joint Petition.

## **II. Filing Background**

On December 2, 2010 a Joint Application was filed in the above-captioned proceeding, seeking approval to transfer certain interests and shares in DQE Holdings LLC, thereby causing a change of control of the Duquesne Light Company.

Duquesne Light is a certificated electric distribution company (“EDC”) and a default service provider (“DSP”) in western Pennsylvania. Duquesne Light is wholly-owned by Duquesne Light Holdings, Inc. (“DLH”). Joint Application, at ¶¶7-8.

DQE Holdings, LLC (“DQE”) is the owner of DLH. Joint Application, at ¶9. DQE was formed by a group of six investment entities (“Investor Consortium”) to acquire DLH. Joint Application, at ¶10.

DUET is an Australian corporation and a member of the Investor Consortium. DUET is the largest individual shareholder in DQE, with a 28.95% Class A ownership interest. In addition, its affiliate, DUET3, owns rights as a lender to DQE under a \$201,227,372 promissory note. Joint Application, at ¶¶ 10 and 12.

The Macquarie Group (“Macquarie”) directly or indirectly manages the majority of investment funds of the Investor Consortium, including DUET. Collectively, the investment funds managed by Macquarie own 64.3% of the equity interest in DQE. Joint Application, at ¶11.

The Government of Singapore Investment Corporation Pte Ltd (“GIC”) is wholly-owned by the Government of Singapore and manages funds on behalf of the Government of Singapore. Joint Application, at ¶13.

GIC Special Investments Pte Ltd (“GIC SI”) is the infrastructure and private equity investment arm of GIC. Joint Application, at ¶15. GIC SI invests in private equity and infrastructure assets through GIC Ventures, which is an investment holding company owned by Minister of Finance (Incorporated) (“MOF”). MOF was created by statute to own and administer assets of the Government of Singapore. Joint Application, at ¶¶15-16. In turn, GIC Ventures owns GIC Infra Holdings Pte Ltd (“GIC Infra”), which is a holding company for infrastructure investments. GIC Infra owns Epsom Investment Pte Ltd (“Epsom”), which is one of the Joint Applicants. Joint Application, at ¶16.

Epsom would acquire DUET’s 28.95% equity interest in DQE. In addition, DUET3 would transfer the aforementioned \$201,227,372 promissory note to Epsom. Joint Application, at ¶¶19-20. As a result, the Government of Singapore would become the indirect owner of the largest individual equity interest in Duquesne Light.

Because of the transfer of DUET’s equity interest to Epsom, the Macquarie Group would no longer manage investment funds owning a majority of the equity interest in DQE and, indirectly, in Duquesne Light. Specifically, the Macquarie Group would manage investment funds owning only 35.39% of the equity interest in DQE and, indirectly, in Duquesne Light. Joint Application, at ¶11.

### III. Legal Requirements

#### A. General Standard

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), requires that the Commission issue a certificate of public convenience as a legal prerequisite for the transfer or acquisition of certain property. The statute provides, in pertinent part, as follows:

(a) Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\* \* \*

(3) For any public utility or an affiliated interest of a public utility as defined in section 2101 ... to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), provides the statutory standard for granting a certificate of public convenience, as follows:

A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

In *City of York*, the Pennsylvania Supreme Court provided the legal standard for granting a certificate of public convenience under Section 1103(a) in public utility merger and acquisition cases. Specifically, the Supreme Court stated:

[A] certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger .... [T]hose seeking approval of a utility merger [are required to] demonstrate more than the mere absence

of any adverse effect upon the public .... [T]he proponents of a merger [are required to] demonstrate that the merger will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.

*City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972).<sup>1</sup>

Under Section 1103(a), “[t]he commission, in granting such certificate [of public convenience], may impose such conditions as it may deem to be just and reasonable.” Consistent with Section 1103(a), the Commission has held that “[i]n order to ensure that a proposed merger is in the ‘public interest,’ the Commission may impose conditions on its granting of the certificate of public convenience.” *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, Docket No. A-110300F0095, 2001 Pa. PUC Lexis 23 (Order entered June 20, 2001). Consequently, by imposing conditions pursuant to Section 1103(a), the Commission may approve a transaction which would not meet the *City of York* standard without those conditions.

The Pennsylvania Supreme Court applied Section 1103(a) in deciding the appeal of the Commission’s decision regarding the Verizon/MCI merger. *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 937 A.2d 1040 (Pa. 2007). The Supreme Court stated that “while in some circumstances conditions may be necessary to satisfy the Commission that public benefit sufficient to meet the requirement of Section 1103(a) will ensue, even where the PUC

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<sup>1</sup> Although *City of York* involved a merger, its holding is also applicable to an acquisition or other form in which control is transferred. Section 1102(a)(3), which imposes the certificate of public convenience requirement, makes no distinction based on whether property is acquired by the “sale or transfer of stock,” a “consolidation,” a “merger,” a “sale,” or a “lease.”

finds benefit in the first instance, Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable.”<sup>2</sup>

Through its ruling in *Popowsky*, the Court provided further guidance on the evidentiary findings the Commission is required to make before approving a merger or acquisition.

Specifically, the Court opined that:

the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission’s finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.<sup>3</sup>

In other words, the applicants are required to prove the likelihood of “substantial” affirmative public benefits and to do so by a preponderance of the evidence.

In both *City of York* and *Popowsky*, the Supreme Court simply concluded that there was substantial evidence to support the Commission’s finding that the proposed transaction would provide affirmative public benefits. The Supreme Court did not hold that it would have been error if the Commission had found that the benefits were proven by a preponderance of the evidence but that the transaction should be denied because those benefits were not “substantial.” In other words, even if the Commission finds (by a preponderance of the evidence) that a transaction would yield affirmative public benefits, the Commission is not permitted to approve that transaction unless it finds that the benefits would be *substantial*.

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<sup>2</sup> *Popowsky*, 937 A.2d at 1057.

<sup>3</sup> *Popowsky*, 937 A.2d at 1057.

Moreover, the Supreme Court emphasized in *Popowsky* that the Commission is required to weigh the detriments of a transaction against the transaction's affirmative benefits, in order to determine if the merger would produce *net* public benefits. Specifically, the Supreme Court stated as follows:

We also differ with the OCA's suggestion that the PUC's analysis of the effect of the Verizon /MCI merger on competition is immaterial to its assessment of public benefit. In line with the DOJ and FCC assessments, competitive impact is a substantial component of a rational net public benefits evaluation in the merger context. That the ultimate determination may be that the impact is modest, minimal, or non-existent does not negate the necessity of undertaking the examination in the first instance or remove the factor from the weighing and balancing process. Significantly, in terms of the net public benefits arising out of corporate consolidation, anticompetitive effects may offset or negate advantages and result in a denial of regulatory approval. Indeed, it is for this very reason that large merger transactions are so highly regulated.<sup>4</sup>

Consistent with the "net" benefits test, the Commission has recognized that a change of control has both benefits and detriments which must be balanced as part of the process for determining whether the transaction should be approved. For example, in a recent merger proceeding, the Commission specifically stated:

The proposed transaction, like all transactions that are presented for our approval, has advantages and disadvantages. On balance, we find the advantages outweigh the disadvantages.<sup>5</sup>

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<sup>4</sup> *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. at 610-611, 937 A.2d at 1056-1057 (Pa. 2007).

<sup>5</sup> *Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc. for Approval of the Indirect Transfer of Control to CenturyTel, Inc.*, Docket No. A-2008-2076038 (Order entered May 2, 2010) at 22.

#### **IV. Special Standard**

In addition to the standards governing the review of all proposed changes of control, there are special statutory requirements applicable to reviewing such a transaction in the electric industry.

Specifically, Section 2811(e)(1) of the Public Utility Code, 66 Pa. C.S. §2811(e)(1), imposes a duty on the Commission regarding “anticompetitive” conduct and “the unlawful exercise of market power,” as follows:

In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

In addition, Section 2811(e)(2) provides in pertinent part, as follows:

. . . If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

#### **V. OSBA’s Issues of Concern**

In its protest the OSBA identified two issues of substantial concern which would have potentially justified the rejection of the Joint Application unless appropriate conditions were

added to the certificate of public convenience. First, approval and implementation of the proposed transaction would make a foreign government the *de facto* owner of the largest equity interest in DQE, thereby effectively making that foreign government the largest individual equity owner of Duquesne Light. Second, Macquarie would no longer be managing the investments of the owners of a majority of the equity in DQE, which could lead to changes in the philosophy under which Duquesne Light has been operating.

In view of the highly-publicized financial crises facing numerous foreign governments, the OSBA stated in its protest that the Commission should not approve the Joint Application without a thorough review of the impact on ratepayers of effectively making the Government of Singapore the largest single equity investor in Duquesne Light. First, it is possible that any financial crisis confronting the Government of Singapore could expose Epsom's ownership interest in DQE to creditors of the Government of Singapore. Second, it is possible that Epsom's response to such a financial crisis would be to seek larger dividends from Duquesne Light or to encumber the assets of Duquesne Light, thereby indirectly providing revenues to the Government of Singapore or its creditors that would otherwise be available to maintain quality distribution service. Third, Macquarie's ability to restrain any effort by Epsom to obtain higher dividends or encumber the assets of Duquesne Light could be significantly undercut by the fact that Macquarie would manage the investments of the owners of less than 40% of the equity in DQE.

In his testimony, OSBA witness Brian Kalcic generally reviewed the claims of the Joint Applicants with respect to the affirmative public benefits that would be provided by the proposed

transaction. Additionally, Mr. Kalcic analyzed select provisions of the transaction and presented the OSBA's recommendations for conditions.<sup>6</sup>

The Joint Application presented a list of claimed affirmative public benefits that the Joint Applicants believe would result from the proposed transaction. As summarized by Mr. Kalcic, those benefits are as follows:<sup>7</sup>

- a) provide Duquesne with access to capital to enable it 'to continue to provide excellent and cost efficient services to its customers through its plant, equipment, and operations';
- b) retain the existing DQE ownership group's current corporate governance philosophy of maintaining Duquesne's highly skilled management team, and supporting the team with the capital necessary to maintain operational excellence;
- c) maintain Duquesne's corporate headquarters in Pittsburgh, Pennsylvania;
- d) replace a shareholder seeking to sell its interests in DQE with a new shareholder that is both an experienced and committed long-term investor with access to capital to invest in Duquesne over the long term; and
- e) permit Duquesne 'to continue its current planned funding levels of its infrastructure improvement plan, and continue to expand its universal service programs.'

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<sup>6</sup> OSBA Statement No. 1.

<sup>7</sup> OSBA Statement No. 1 at 2 *citing the Joint Application for Certificates of Public Convenience Authorizing Approval of Transfer of Interests and Shares in DQE Holdings LLC Pursuant to Section 1102(a)(3)* ("Joint Application") at 21-26.

As Mr. Kalcic further testified, the Joint Application did not attempt to quantify any of the above referenced claimed benefits.<sup>8</sup> Instead, as he pointed out, many of the claimed benefits simply retained or maintained things that are already required under Duquesne's current corporate structure.<sup>9</sup>

**A. Analysis of Settlement**

**1. Ring-Fencing**

The Joint Petition affirmatively extends some of the protections agreed to in the settlement of the merger of DLH, the parent of Duquesne Light, with a subsidiary of DQE Holdings, approved by the Commission on April 24, 2007, at Docket Nos. A-110150F0035 and A-311233F0002 ("2007 Merger Settlement").

Based on the Joint Application, it was not clear to the OSBA that Duquesne's proposed corporate structure would prevent the Investor Consortium (including Epsom) from using Duquesne Light's utility assets to secure debt that was either unrelated (or unnecessary) to the provision of utility service by the electric distribution company ("EDC"). As Mr. Kalcic explained, Duquesne Light currently fits within DQE's corporate structure as follows:

Duquesne is currently a subsidiary of Duquesne Light Holdings, Inc. ('DLH'), which is a direct, wholly-owned subsidiary of DQE. DQE is currently owned by a group of six (6) entities (i.e., the 'Investor Consortium'), which includes DUET.

The proposed sale of DUET's interests and shares of DQE to Epsom would not appear to change the existing relationship between Duquesne and DLH. However, since Epsom is an indirect

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<sup>8</sup> OSBA Statement No. 1 at 3.

<sup>9</sup> OSBA Statement No. 1 at 3.

wholly-owned subsidiary of the Government of Singapore Investment Corporation Pte Ltd, the approval and implementation of the proposed transaction would make a foreign government the *de facto* owner of the largest equity interest in DQE (and effectively the largest individual equity owner of Duquesne).

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**Q. Does DLH control any subsidiaries other than Duquesne?**

A. Yes. It is my understanding that DLH controls any number of unregulated subsidiaries, and that DLH would continue to control such subsidiaries after the proposed sale.

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**Q. Would the proposed transaction affect the philosophy under which Duquesne has been managed?**

A. Possibly. The Macquarie Group ('Macquarie') manages the investments of several funds that currently own voting interests in DQE, including DUET. Collectively, the investment funds managed by Macquarie own 64.3% of the equity interest in DQE. Because of the transfer of DUET's equity interest to Epsom, Macquarie would no longer manage investment funds owning a majority of the equity interest in DQE and, indirectly, in Duquesne. Specifically, Macquarie would manage investment funds owning only 35.39% of the equity interest in DQE and, indirectly, in Duquesne. Although the Applicants claim that there would be no change in management philosophy, nothing in the proposed transaction would shield Duquesne's ratepayers from possible negative consequences if that representation turns out to be inaccurate.<sup>10</sup>

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<sup>10</sup> OSBA Statement No. 1 at 4-5.

Mr. Kalcic further testified that, in the absence of ring-fencing provisions, it would be possible for the EDC's assets to be leveraged for reasons unrelated to the provision of utility service. Specifically, Mr. Kalcic testified as follows:

The Applicants claim that one of the primary benefits of the proposed transaction is providing Duquesne with continued access to capital. If that were indeed the case, it would make no sense to permit the Applicants to saddle Duquesne and its ratepayers with responsibility for debt that does not serve an EDC-related purpose.

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I recommend that the Commission condition approval of the proposed transaction on continued adherence to the above ring-fencing provisions, [i.e., the ring-fencing provisions in the 2007 Merger Settlement] so that Duquesne would not be responsible for any debt, unless such debt were to serve an EDC-related purpose. The explicit inclusion of such a condition would avoid any possible argument that the current ring-fencing protections expire if the entities in the Investor Consortium change (e.g., when DUET is replaced by Epsom).<sup>11</sup>

The Joint Settlement both incorporates and extends the ring-fencing protections from the 2007 Merger Settlement, thereby protecting the EDC's assets and ratepayers from funding unrelated corporate functions.<sup>12</sup>

## 2. Performance Metrics

In addition to proposing structural changes to mitigate any possible diminution in the quality of service to ratepayers, Mr. Kalcic also recommended a procedure for enforcing Duquesne Light's service obligations. Specifically, Mr. Kalcic recommended as follows:

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<sup>11</sup> OSBA Statement No. 1 at 5-6.

<sup>12</sup> Joint Settlement at Para. 29-31.

Service reliability is determined, in large part, by the level of a utility's spending on capital improvements and system maintenance. If, for example, Duquesne's earnings were to be diverted to pay higher dividends to DQE's ownership group (rather than fund critical system maintenance and/or improvements), Duquesne's overall quality of service could decline from present levels.

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**Q. How is a utility's reliability performance typically measured?**

A. An electric utility's reliability performance is measured by a number of performance indices, including the Customer Average Interruption Duration Index ('CAIDI'), the System Average Interruption Frequency Index ('SAIFI') and the System Average Interruption Duration Index ('SAIDI'). Counsel informs me that the above indices, along with the formulae that are used to compute a utility's score on each index, are defined in 52 Pa. Code §57.192.

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**Q. How could the Commission utilize the above performance measures to insure that ratepayers do not suffer an erosion in service quality as a result of the proposed sale?**

A. I would recommend that a 10% worsening (year-to-year) in either the CAIDI, SAIFI or SAIDI performance measure *automatically* trigger a Commission investigation to determine: a) the cause(s) of such a worsening; b) the steps necessary to remediate the situation; and c) an appropriate financial penalty.<sup>13</sup>

The Joint Petition incorporates Mr. Kalcic's recommendation by setting forth a specific quality of service plan (for the period from January 1, 2012 through the later of December 31,

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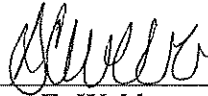
<sup>13</sup> OSBA Statement No. 1 at 7.

2013, or until the Commission order is entered in Duquesne Light's next base rate case).<sup>14</sup> The Joint Petition also establishes a procedure (including a Commission investigation) to address Duquesne Light's failure to achieve the elements of that plan.

**VI. Conclusion**

For the reasons set forth in the Joint Petition, as well as the additional factors that are enumerated in this statement, the OSBA supports the Joint Petition and respectfully requests that the ALJ and the Commission approve the Joint Petition in its entirety.

Respectfully submitted,



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<sup>14</sup> Joint Settlement at Para. 33.