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August 30, 2012

Via Electronic Filing

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

**RE: Energy Efficiency and Conservation Program
Docket No. P-2012-2320334**

Dear Secretary Chiavetta:

Enclosed for filing is Duquesne Light Company's Petition to Intervene in PECO Energy Company's Petition for Evidentiary Hearing.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tishekia Williams', written over a horizontal line.

Tishekia Williams
Senior Counsel, Regulatory

Enclosures

cc: Certificate of Service
Administrative Law Judge Elizabeth Barnes
David Defide, Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation :
Program : **Docket No. P-2012-2320334**
:

**DUQUESNE LIGHT COMPANY
PETITION TO INTERVENE**

Pursuant to 52 Pa.Code. §§5.71-5.76 and Pennsylvania Public Utility Commission (“Commission”) Final Implementation Order (“Implementation Order”) entered August 3, 2012 in the above captioned docket, Duquesne Light Company (“Duquesne Light” or the “Company”) petitions the Commission to intervene PECO Energy Company’s Petition for Evidentiary Hearing. In support of this request, the Company states the following:

I. BACKGROUND

1. Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Commission to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania. Duquesne Light is also an electric distribution company (“EDC”) and a default service provider as those terms is defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803. Duquesne Light provides electric distribution service to approximately 579,000 customers.

2. The complete name and address of the Petitioner are:

Duquesne Light Company
411 Seventh Avenue
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3. Duquesne Light's attorney in this matter is:

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Counsel for Duquesne Light is authorized to receive all notices and communications regarding this proceeding and requests that the Commission and all parties of record serve copies of all discovery requests and answers, correspondence, Commission Orders and any documents issued in this proceeding on counsel for Duquesne Light at the above address.

II. INTRODUCTION

4. On October 15, 2008, Governor Rendell signed into law Act 129 of 2008 ("Act 129"), which took effect on November 14, 2008. Among other things, Act 129 requires electric distribution companies (EDCs) in Pennsylvania with at least 100,000 customers to file energy efficiency and conservation ("EE&C") plans. *See* 66 Pa.C.S. § 2806.1(b).

5. Pursuant to 66 Pa. C.S. §2806.1(a), the Commission is required to establish an EE&C Program, including a procedure for approving EDC EE&C plans, a process to evaluation the EE&C Program as a whole and each EDC EE&C plan, and a process by which recommendations can be made for additional consumption reduction measures, among other things. The Commission is also required to evaluate the costs and benefits of the EE&C Program by November 30, 2013, and every five years thereafter. 66 Pa. C.S. §2806.1(c)(3).

6. On March 1, 2012 the Commission issued a Secretarial Letter soliciting comments on a variety of issues related to the development and implementation of Phase II of the EE&C Program.

7. The Commission also held a stakeholder meeting on March 16, 2012, to provide parties an opportunity to address issues presented in the March 1, 2012 Secretarial Letter.

8. On May 10, 2012, the Commission issued a Tentative Implementation Order (“Tentative Order”) in this docket outlining its proposed standards for Phase II of the EE&C program, which will begin June 1, 2013. Interested parties, including each Pennsylvania EDC subject to the EE&C provisions of Act 129 filed comments to the Tentative Order.

9. On August 3, 2012, the Commission entered its Implementation Order to establish binding guidelines and standards for Phase II EE&C programs. In response to due process concerns raised by PECO Energy Company (PECO Energy) in its comments to the Tentative Order, the Implementation Order included a process whereby EDCs were permitted to petition the Commission for an evidentiary hearing. Specifically, pages 30-31 of the Implementation Order provides:

“...the Commission will tentatively adopt the EDC specific consumption reduction targets set forth in Table 1 above, subject to challenge by an EDC in accordance with the process described below. These consumption reduction targets will become final for any EDC that does not petition the Commission for an evidentiary hearing by August 20, 2012. ... The scope of any such proceeding will be narrow and limited to the consumption reduction requirement issue.”

10. On or about August 20, 2012, PECO Energy petitioned the Commission for an evidentiary hearing. In its petition, PECO Energy alleges that the Commission made a number of errors in its Implementation Order.¹ Consistent with the Implementation Order, PECO Energy

¹ In footnotes 3-5 the petition, PECO Energy raises a number of arguments unrelated to its individual consumption reduction targets. PECO Energy states that the Commission “exceed[ed] its statutory authority under Section 2806.1, fail[ed] to adhere to applicable precedent and [made] findings and conclusions that are arbitrary and capricious or not supported by substantial evidence.” PECO Energy also notes that it “fundamentally disagrees” with the Commission’s approach to setting EDC-specific targets and that the Commission improperly converted a spending CAP into a mandate that EDCs must spend every dollar. Finally, PECO Energy argues that the Commission further undermined the statutory spending limit by endorsing alternative funding mechanism for DR programs. Inasmuch as PECO Energy is not requesting relief regarding these issues, Duquesne Light has no interest in these issues.

requested an evidentiary hearing to address the two issues that impact its individual consumption reduction targets. The two issues include 1) allocation of funds for direct load control and other Demand Response (“DR”) programs, and 2) the Commission’s alleged overstatement of allowable spending.

11. Duquesne Light does not have an interest in the allocation of funding between consumption reduction and DR programs within PECO Energy’s EE&C plan as the issue will not likely impact Duquesne Light’s Phase II EE&C plan development and implementation.²

12. Conversely, Duquesne Light has a direct interest in the allowable spending issue that is not adequately represented by others parties. Any determination made by the Commission in response to PECO Energy’s allegations would be binding on Duquesne Light. Therefore, Duquesne Light seeks to intervene and to participate as a full party in this proceeding.

III. GROUNDS FOR GRANTING DUQUESNE LIGHT INTERVENOR STATUS

13. The Commission regulations at 52 Pa. Code. § 5.72 state in relevant part:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

² To the extent necessary, Duquesne Light will address any potential DR measures and associated funding issues that it may implement in its Phase II EE&C plan to be filed by November 1, 2012. Duquesne Light understands that the Implementation Order provides EDCs with three options as it relates to Phase II DR Programs. First, EDCs may continue residential DR programs using Act 129 EE&C funding within the established budgets. Specifically, page 41 of the Implementation Order states “EDCs may continue, under the Act 129 EE&C Program, residential demand response curtailment measures, such as direct load control programs, that will be cost effective if continued.” Second, EDCs may pursue cost effective DR programs under 66 Pa. C.S. §1505(b) and recover all prudent and reasonable costs in accordance with 66 Pa. C.S. 1319. *See* Implementation Order, p. 42. Finally, EDCs may discontinue any DR program until such time that the Commission affirmatively establishes that DR programs have been cost effective, which a pre-requisite for establishing additional DR requirements. 66 Pa.S.C. §2806,1(d)(2), Implementation Order p. 42-43.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

...

13. Among other things, a key issue to be decided in this proceeding is whether the Implementation Order is *ultra vires* insofar as it permits EDCs to include electric generation supplier (“EGS”) revenue in the EDC allowable spend.

14. PECO Energy asserts that section 2806.1(g) of Act 129 provides that the total cost of any plan required under this section shall not exceed 2% of the electric distribution company’s total annual revenue as of December 31, 2006. PECO Energy further asserts that section 2806.1(m) defines “electric distribution company’s total annual revenue” as amounts *paid to* electric distribution company for generation, transmission, distribution, and surcharges by retail customers, which should exclude EGS revenues which are merely passed through. *See* PECO Energy Petition for Evidentiary Hearing, p. 8, ¶17-18.

15. By including EGS revenues in the EDCs total annual revenue, PECO Energy essentially argues that the Commission improperly interpreted sections 2806.1(g) and 2806.1(m) of Act 129, or exceeded the scope of the powers granted by the statute. *Id at* ¶18. PECO Energy contends that EGS dollars should be removed, and the consumption targets reduced proportionately because the Phase II formula employed to set consumption reduction targets makes the targets directly dependant on available funding. *Id at* ¶8, 15.

16. Additionally, PECO Energy states that the Commission improperly calculated the EDC consumption reductions targets using a formula that makes the targets a function of allowable spending levels, and that the established spending levels fail to consider changes that have occurred in the energy markets since 2006. *Id. at* p. 8, ¶17, p. 9-10, ¶20.

17. As previously stated, the allowable spending arguments articulated in PECO Energy's petition have broad policy implications applicable to Duquesne Light.

18. Indeed, in its comments filed November 3, 2008, Duquesne Light requested that the Commission exclude shopping customers from the definition of retail customers, or alternatively permit EDCs with significant shopping to include EGS revenues in the 2% spending CAP. Duquesne Light stated:

“At year-end 2006, the date used for the calculation of the 2% expenditure limit, Duquesne had 46.5% of its load served by EGSs. Penn Power had the next highest percentage of load served by EGSs at 4.3%. PECO had 3.1%, Met Ed/Penelec 1.14%, PPL 0.1% and Allegheny Power and UGI each had no load served by alternate suppliers. Therefore the basis for Duquesne's investment in energy efficiency and conservation plans has significantly less generation revenues than the other PA EDCs due to the competitive shopping occurring in the Duquesne service territory. Failure to make an adjustment will penalize the success of the competitive market in the Duquesne territory. Thus, if the Commission were to include other EGS' customers in the Duquesne service territory as part of the definition of “retail customers,” (which Duquesne does not recommend), then at least in order to provide parity to electric utility customers across the state, the revenues of Duquesne should be adjusted upward pro forma to take into account all the generation sales that occurred in the EDC's service territory and not just the generation sales made by the default service provider, Duquesne.”

19. Given the shopping levels in Duquesne Light's territory, removal of EGS revenues would reduce Duquesne Light's Phase II EE&C plan budget by more than \$15,000,000.

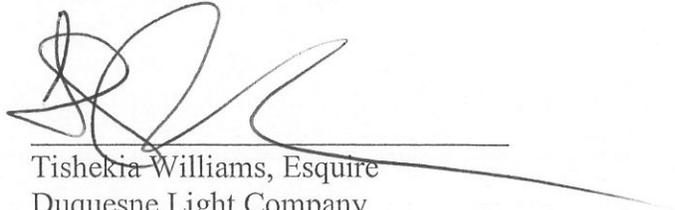
20. It is likely that the Commission will address whether EGS revenues may continue to be included in EDCs budgets for Phase II based on the plain language of Act 129, as well as the other arguments set forth by PECO Energy on allowable spending limits.

21. Given the nature of the arguments advanced by PECO Energy, any finding on this issue would be applicable to Duquesne Light and will impact its ability to meet the targets currently established in the Implementation Order, unless the targets are in fact reduced.

REQUESTED RELIEF

WHEREFORE, for all of the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission approve the instant Petition to Intervene.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tishekia Williams', is written over a horizontal line. The signature is stylized and extends to the right of the line.

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Dated August 30, 2012

VERIFICATION

I, David Defide, Manager of Customer Programs, Duquesne Light Company, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief, and that I expect that Duquesne Light Company will be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 related to unsworn falsification to authorities.

Dated: August 30, 2012



David Defide
Manager of Customer Operations
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ENERGY EFFICIENCY AND CONSERVATION PROGRAM : **DOCKET NO. P-2012-2320334**
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Duquesne Light Company's Petition to Intervene in PECO Energy Company's Petition for Evidentiary Hearing has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant):

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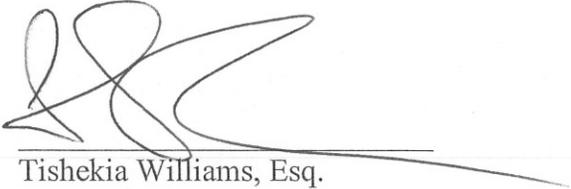
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