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VIA HAND DELIVERY

James J. McNulty, Acting Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

Re: Application of Duquesne Light Company for approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104C

Dear Mr. McNulty:

Enclosed please find the original and three (3) copies of the Petition of the Duquesne Industrial Intervenors ("DII") for Amendment of the Procedural Schedule in the above-referenced proceeding. As noted in the Petition, DII requests expedited consideration of the Petition because it deals with the filing of answering testimony by intervenors and complainants on November 7, 1997. A copy of the Petition was forwarded directly to the presiding Administrative Law Judge John H. Corbett, Jr.

As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served. Please date stamp the extra copy of this transmittal letter and kindly return for our filing purposes.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Pamela C. Polacek*
James P. Dougherty
Pamela C. Polacek

DOCUMENT
FOLDER

Counsel to the Duquesne Industrial Intervenors

PCP/clc

Enclosures

c: Certificate of Service
Administrative Law Judge John H. Corbett, Jr. (via facsimile and first class mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

NOV 05 1997

Duquesne Industrial Intervenors

v.

Docket No. R-00974104C

Duquesne Light Company

Application of Duquesne Light Company
for Approval of Restructuring Plan Under
Section 2806 of the Public Utility Code

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PETITION FOR AMENDMENT OF
PROCEDURAL SCHEDULE

TO THE HONORABLE, ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR.:

Pursuant to Section 5.41 of the Regulations of the Pennsylvania Public Utility Commission ("Commission"), 52 Pa. Code § 5.41, the Duquesne Industrial Intervenors ("DII")¹ hereby petitions this Honorable Commission for amendment of the procedural schedule for the above-captioned proceeding regarding the restructuring filing of the Duquesne Light Company ("Duquesne"). In support thereof, DII states as follows:

1. On August 1, 1997, Duquesne filed with the Commission and served on the parties of record in its most recent base rate case its Restructuring Plan. This filing consisted of the responses to the Commission's Filing Guideline Order entered on February 13, 1997, at Docket No. M-00960890F0003² and thirteen direct testimony statements with accompanying exhibits.

DOCUMENT
FOLDER

¹Other active parties have indicated support and concurrence with this Petition (e.g., the Office of Trial Staff, the City of Pittsburgh, Hospital Shared Services, Administrative Resources, Inc., and the Environmentalists). We expect parties will file statements in support (or in opposition) to this Petition.

²Electric Utility Restructuring Filings Made Pursuant to 66 Pa.C.S. § 2806(e), Docket No. M-00960890F0003, Order entered on February 13, 1997 ("Filing Order").

2. The filing was assigned to Administrative Law Judge ("ALJ") John H. Corbett, Jr., who convened an Initial Prehearing Conference on September 4, 1997. Subsequently, the parties in the proceeding held an informal telephonic conference for the establishment of a procedural schedule. The agreed upon procedural schedule was confirmed by a Prehearing Order issued by the ALJ on September 10, 1997.

3. On or around October 20, 1997, Duquesne forwarded to the active parties in the proceeding a packet consisting of eleven revised exhibits,³ revised workpapers supporting some of those exhibits, and responses and/or revised responses to 24 interrogatories served upon Duquesne by four separate parties. A six-page explanation of the changes purportedly reflected in the revised exhibits was also included.

4. Pursuant to the existing procedural schedule, the intervenors' and complainants' direct/answering testimony should be served in-hand to all parties on November 7, 1997.

5. On October 27, 1997, DII contacted counsel for Duquesne and requested that Duquesne agree to a reasonable extension of the procedural schedule in order for DII to have sufficient time to analyze the revisions and modify its anticipate answering testimony to address the revised exhibits. Counsel for Duquesne informed DII that Duquesne would comment on the request for an extension of the procedural schedule upon review and analysis of the instant Petition.

6. DII hereby requests that the Commission amend the procedural schedule to provide an additional two weeks for the submission of answering testimony.⁴ DII requests that the new date

³The revised exhibits included the following: DJC-3; DJC-4; DJC-6; DJC-7; MGK-3; MGK-7A; MGK-7B; RLN-1; RLN-2; RLN-5; and, RLN-6.

⁴DII takes no position at this time on the effect that the two-week extension should have on the remainder of the procedural schedule. DII suggests that the ALJ convene a telephonic conference to discuss the remainder of the schedule.

for filing answering testimony by November 21, 1997.⁵ DII requests expedited consideration of this petition for amendment of the procedural schedule. Expedited consideration is necessary because, as of the date of filing this petition, the parties have ten days to deliver answering testimony in-hand on November 7, 1997, pursuant to the currently effective procedural schedule.

7. The revised exhibits represent the crux of Duquesne's restructuring filing. Exhibit DJC-3 is Duquesne's revenue requirements and net book value forecast. Exhibit DJC-4 is Duquesne's market price projection and contribution margin projection of the high and low market price scenarios intended to show that Duquesne will not over recover its "stranded costs." DJC-4 also includes the Company's regulatory asset claim. The other revised exhibits and workpapers purportedly reflect a flow through of the changes made to DJC-3 and 4. Although Duquesne provided an explanation of the purported changes reflected in the revised exhibits and claims that the revisions relate "only to arithmetic errors or updates and do not modify the fundamental elements of Duquesne's Customer Choice Plan," the parties cannot reasonably be expected to rely upon these assertions regarding the central exhibits of the Duquesne filing.

8. An extension of time is necessary to enable the parties to conduct a thorough review of the revised exhibits. Because the revised exhibits are central to the Duquesne restructuring filing, much of the preparation and analysis of these exhibits conducted thus far in the preparation of answering testimony must be modified with the data from revised exhibits. The DII consultants are in the process of assessing the exact changes made by Duquesne and whether additional changes should have been made to those or other exhibits. Considering the currently-imposed time

⁵It should be noted that a second prehearing conference was scheduled to be held on October 21, 1997, which all parties agreed should be canceled. DII consented to the cancellation with no knowledge of or indication from the Company of the substantial scope of the revisions reflected in the revised exhibits.

constraints, the need to reanalyze the exhibits also limits the time the consultants can spend reviewing and evaluating other aspects of the filing. Furthermore, the parties may be precluded from presenting testimony on aspects or flaws in the revised exhibits that are not discovered until after the submission of answering testimony. 52 Pa. Code § 5.243(e). Requiring the parties to definitively respond to the entire Duquesne filing without having a sufficient opportunity to review revised exhibits that are central to that filing may preclude the parties from having a meaningful opportunity to be heard and to participate in this proceeding.

9. In addition, the revision of the exhibits at this late stage leaves an insufficient opportunity before the scheduled submission of answering testimony to propound discovery on Duquesne regarding the revised exhibits. Even if DII received responses within the required 10-day turn around established in the Prehearing Order in this proceeding, DII would not receive responses in time to incorporate those responses into its answering testimony.⁶

10. Furthermore, although the explanation accompanying the revised exhibits admits that, with the revisions, Duquesne will show a stranded "benefit" at the end of year 2005 (if its "high market price" scenario comes to fruition), Duquesne has not proposed in the supplemental response to change its restructuring plan in order to ensure that it does not over-recover any "stranded costs." Duquesne states that it will make an adjustment, if appropriate, in its rebuttal testimony and that the Company "looks forward to constructive intervenor comments on the valuation procedure that would further this goal." However, the intervenors will be unable to supply constructive comments in answering testimony because of the limited time to analyze the revised exhibits.

⁶DII notes that its analysis of the entire filing has been hampered by the Company's late filed responses to interrogatories in-hand within the required time frame.

11. Moreover, the DII consultants received on October 27, 1997, a new set of diskettes regarding revised Exhibits DJC-3 and 4 that were forwarded because the original diskettes of the revised exhibits may have contained errors. Even assuming that the revisions to the exhibits reflect only "arithmetic errors or updates," the only practical manner in which the revisions can be analyzed is by means of the diskette versions of the exhibits. Obviously, the forwarding of diskettes by the Company that contained (or may have contained) errors further compounds the difficult situation in which Duquesne has placed the other parties by its untimely revision of these exhibits.

12. In addition, Duquesne may have been less than diligent in performing the revisions and forwarding the revised exhibits to the parties. Duquesne generally indicated in the Company's response to OCA Interrogatory Set I Numbers 45, 50, and 53 that the Company planned to make revisions to certain exhibits. Those interrogatory responses were forwarded to the parties on *September 16, 1997, five weeks before the revised exhibits were given to the parties.* Because of the Duquesne delay, the parties have only **18 days** to analyze the revised exhibits, and revise, finalize and deliver testimony to the other participants. This time frame for response by the parties is further shortened by the requirement that the testimony be in-hand on November 7, 1997, which dictates that the testimony must actually be finalized and ready to be copied one or two days prior to the in-hand date.

13. In addition, some of the changes reflected in the revised exhibit, namely the revisions to the budget for operation and maintenance expense and capital projections at the Duquesne plants, arguably should have been included in the original filing. In order to fully comply with the Filing Order, the Company should have performed any budget revisions in anticipation of the

filing of the Restructuring Plan on August 1, 1997. The other parties to the proceeding should not be penalized for Duquesne's lack of forethought by being forced to respond to revised exhibits without having adequate time to review those changes.

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Commission on an expedited basis amend the procedural schedule in Duquesne restructuring proceeding to allow for the submission of answering testimony by intervenors and complainants on November 21, 1997.

Respectfully submitted,

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Dated: October 28, 1997

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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