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KJR

September 29, 1997

James J. McNulty
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Harrisburg, PA 17105-3265

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SEP 29 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Re: Duquesne Light Company
Docket No. R-00974104

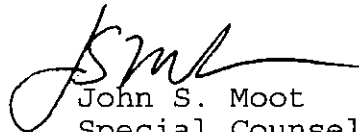
Dear Mr. McNulty:

Enclosed is an original and three copies of an Answer to Motion to Compel of Duquesne Light Company in this proceeding. I am providing a copy to Presiding Judge Corbett and opposing counsel by facsimile and a copy to all persons on the service list by regular mail.

I also have enclosed two additional copies and request that your office time-stamp them and return them in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Sincerely,



John S. Moot
Special Counsel to
Duquesne Light Company

Enclosure
cc: All parties

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION SEP 29 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

Pennsylvania Public Utility)
Commission)

v.)

Docket No. R-00974104

Duquesne Light Company)
Application for Approval of)
a Restructuring Plan Pursuant)
to 66 Pa. C.S. § 2806(d))

**DOCUMENT
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ANSWER TO MOTION TO COMPEL

Pursuant to the Prehearing Order, Duquesne Light Company ("Duquesne") hereby submits an answer to the motion to compel of Hospital Shared Services and Administrative Resources, Inc. ("HSS/ARI").¹ The motion to compel seeks "all documents Duquesne created or caused to be created in the process of drafting, legislative deliberation, and enactment, as well as signing of the 1996 Pennsylvania Electricity Generation Customer Choice and Competition Act." HSS/ARI Interrogatory No. 13.

The motion should be denied because the documents requested are not relevant to this case. This case

¹ The Prehearing Order provides that an answer to a motion to compel must be filed within three days of service of the motion. The HSS/ARI motion was served by facsimile on Duquesne Friday evening, September 26, 1997, and therefore Duquesne is filing a response today by facsimile.

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involves the application of the Customer Choice Act, not "drafts" of the Act or documents relating to such drafts. HSS/ARI do not dispute this, but argue instead that the requested information is relevant because Duquesne's witnesses "volunteered" testimony regarding "their understanding" of the Act. Motion at 2. This argument misses the mark. Duquesne's witnesses testified regarding the manner in which Duquesne's restructuring plan complies with the Act. That is the central issue in this case. The testimony did not, however, discuss drafts of the Act or memoranda regarding such drafts, nor did it purport to divine an unspoken legislative "intent" against which the Act should be interpreted in this case. Each witness applied the words of the Act.

The motion to compel simply fails to comprehend this distinction. It contends that "[i]f Duquesne, or its witnesses, had an interpretation of [1] a proposed draft of the Act, or [2] the Act as enacted, that is inconsistent with interpretations of the Act . . . contained in the testimony filed in this proceeding, such information clearly is relevant to assessing the weight to be given the Duquesne witnesses' present claims." Motion at 3 (emphasis added). Of course, HSS/ARI are correct that prior inconsistent statements by Duquesne's


witnesses regarding the Act "as enacted" are relevant and discoverable. But, for whatever reason, that information was not sought in HSS/ARI Interrogatory No. 13. Rather, the interrogatory requests documents "created in the process of drafting, legislative deliberation, and enactment [of the Act]." The undersigned has noted this several times to HSS/ARI and has offered to provide documents related to prior inconsistent statements regarding the Act itself, but HSS/ARI has declined this offer.

The motion to compel also should be denied as contrary to public policy. The Act was drafted through a collaborative process involving the key stakeholder interests in the state. This process was successful in producing a single piece of legislation that was passed without amendment. Granting the HSS/ARI motion would put this collaborative process at issue in this case. Duquesne respectfully contends that a trial on such matters -- which, to be fair, must include documents of all participating stakeholders -- is inconsistent with the very nature of the process that produced legislation that was widely supported by all participating stakeholders. In any event, as indicated, the information is not even remotely relevant to this case.

WHEREFORE, for the foregoing reasons, the motion to compel should be denied.

Respectfully submitted,

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Special counsel for
Duquesne Light Company


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility)
Commission)
)
v.) Docket No. R-00974104
)
Duquesne Light Company)
Application for Approval of)
a Restructuring Plan Pursuant)
to 66 Pa. C.S. § 2806(d))

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, via first class mail, upon the participants on the attached service list in accordance with Section 1.54 of the Commission's regulations.

Dated this 29th day of September, 1997.



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September 30, 1997

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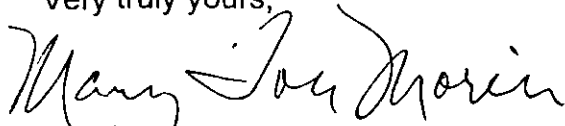
RE: Application of Duquesne Power & Light Company for Approval of its Restructuring Plan,
Docket No. R-00974104

Dear Mr. McNulty:

Enclosed please find our Certificate of Service which details our mailing of the Environmentalists' 2nd Set of Data Requests to the Company, in the above-docketed proceeding upon the parties of record, in the manner and on the dates indicated.

Also enclosed is an 'office copy' which we would appreciate having time-stamped and returned to us in the envelope provided.

Very truly yours,



Mary Lou Morin
Secretary to
Alan J. Barak and Roger E. Clark
Attorneys for the Environmentalists

enclosure

Application of Duquesne Power & Light
Company for Approval of its
Restructuring Plan

DOCKETED
OCT 14 1997

Docket No. R-00974104

CERTIFICATE OF SERVICE

I hereby certify that I have, this the 26th day of September, 1997, served the foregoing documents, the Environmentalists' Data Requests to the Company, Set 2 (Q's 68 - 144) in the above-referenced dockets upon the persons listed below, in the manner specified and on the dates indicated.

011801

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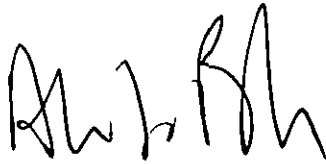
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