

COMMONWEALTH OF PENNSYLVANIA



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November 7, 1997

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PROTHONOTARY'S OFFICE

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

Dear Prothonotary:

Enclosed is a certificate of service pursuant to 52 Pa. Code §5.412(f) for filing the direct testimony and exhibit of Mr. Brian Kalcic in the above docket labeled OSBA Statement No. 1.

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

Sincerely,

Karen Oill Moury
Deputy Small Business Advocate

Enclosure

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne :
Light Company For Approval :
Of Its Restructuring Plan : Docket No. R-00974104
Under Section 2806 Of The :
Public Utility Code :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Direct Testimony and Exhibit of Brian Kalcic, labeled OSBA Statement No. 1, on behalf of the Office of Small Business Advocate in the manner indicated upon the persons addressed below:

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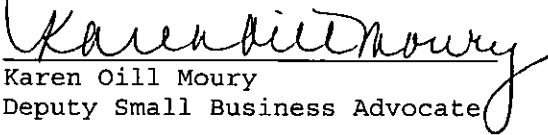
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Date: November 7, 1997

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**RE: Application of Duquesne Light Company for Approval of its Restructuring Plan
Under Section 2806 of the Public Utility Code, Docket No. R-00974104**

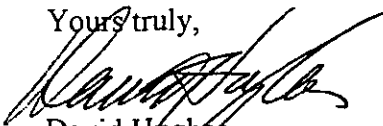
Dear Mr. McNulty:

Enclosed, please find for filing, Direct Testimony Statements Number 1 and 2, submitted on behalf of David Hughes in the above captioned matter.

Copies have been served on active parties of record, as indicated in the attached Certificate of Service.

Thank you for your attention to this matter.

Yours truly,



David Hughes
4037 Ludwick St.
Pittsburgh, PA 15217
(412) 421-4163

Enclosures (5)

DOCUMENT
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BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION

APPLICATION OF DUQUESNE LIGHT COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2808 OF THE PUBLIC UTILITY CODE

DOCKET NO. R-00974104

PREPARED DIRECT TESTIMONY AND EXHIBITS OF:

DAVID HUGHES

NOVEMBER 7, 1997

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Q. Please state your name and address

A. David Hughes, 4037 Ludwick St., Pittsburgh, PA 15217

Q. On whose behalf are you testifying?

A. For myself

Q. Please describe your background and involvement with the restructuring issue?

A. I have a masters degree in education with training in research methods. I have been involved in electric utility regulatory issues since 1986. I was an intervenor in the Public Utilities Commission of Ohio (PUCO) Prudence and Rate Base cases dealing with the Perry 1 and Beaver Valley 2 generating units. I testified at the PA Public Utility Commission (PUC) in the Rate Base case (R-870651) also dealing with Perry 1 and Beaver Valley 2. I filed a Formal Complaint (C-945953) at the PA PUC in June, 1994 asking that the PUC investigate the just and reasonableness of Duquesne Light Company (Duquesne) rates. I averred that Duquesne's Perry 1 and BV 2 units were economic excess capacity and operating cost overruns at the plants, particularly at the Perry 1 facility, precluded Duquesne from giving rate payers rate relief.

Q. What was the outcome of the Formal Complaint?

A. I was granted a hearing and submitted testimony, but was never given a hearing. The PUC issued an Order on September 14, 1996, granting a stay in the proceeding, stating that I could raise my concerns in the instant restructuring proceeding.

Q. What is the purpose of your testimony today?

A. I will be discussing the history of the decision to build the Perry 1 and BV2 generating units, the PA PUC rate base case decision that found these units to be "economic excess capacity", and the subsequent operation of these units.

Q. Please discuss the historical issues you wish to address

A. First, let me review the various reasons Duquesne has proffered for its decision to build Perry 1 and BV2: (1) Duquesne has averred that the PUC "ordered" them to build Perry 1 and BV 2, (2) as a result of the Clean Air Act and the Fuel Use Act, the company had no alternative to building nuclear units, and (3) projected increase in steel industry load required the addition of the Perry and BV2 capacity.

Q. Please discuss the question of whether Duquesne was ordered to build these units.

A. In testimony before the PUC, James Lahtinen, Manager, Economic Analysis, Rates and Regulatory Affairs for Duquesne, stated that:

Moreover, book investments and regulatory assets reflect, in part, the result of prior regulatory actions (no matter how well intentioned) that *imposed* additional burdens and responsibilities onto IOU's. (emphasis added).¹

It is clearly inequitable to require IOUs to bear costs that were *imposed* under a previous regulatory arrangement...(emphasis added).²

In a supplemental brief filed May 1, 1996, Duquesne again made the argument that the company was ordered to build these units. Duquesne claims that the "Perry Unit 1 and other nuclear plants were commenced in the early 1970's" as a result of PUC Order 138, (Exhibit 1) dated March 13, 1972, and

Thus, it is clear that at the time Perry Unit 1 was constructed, the Company had no meaningful alternatives, as evidenced by the Commission's *orders*, other than to construct *that* facility. Simultaneous to *ordering* new construction, the Commission itself undertook to insure that excess capacity would not be constructed. (emphasis added).³

Duquesne, as a regulated public utility, was *legally required* to make the investment that was reasonably believed at the time to be necessary to provide generation capacity to serve the public. (emphasis added)⁴

The Commission was concerned (Order 138, p.4) as to "whether or not an electric energy shortage will develop..." However, there is nothing in these documents, or any other document that I could find, that indicate that the Commission ever *ordered* Duquesne to build Perry 1 and BV2. In fact, Order 138 was primarily concerned with the capacity on the PJM system as a result of the black outs on the east coast in the mid 1960's.

Q. Please discuss whether environmental laws required Duquesne to build these units.

A. Duquesne has stated that it decided to build Perry and BV2 because it had no other alternative, given the requirements of the Clean Air Act and the Fuel Use Act. James Lahtinen again:

During the late 1970s and early 1980s, the Fuel Use Act restricted the burning of natural gas and oil for electric production, thereby encouraging investments in baseload nuclear generation.⁵

¹ *Investigation Into Electric Power Competition*, PUC Docket No. I-00940032, November 10, 1994, p. 48.

² *Id.* p. 49

³ *David Hughes v. Duquesne Light Company*, PUC Docket No. C-00945953, May 1, 1996, p. 31

⁴ *Id.* p.32

⁵ *Id.* at 2, p.48

In a January 1997 issue of Executive Report magazine, DLC CEO David Marshall stated:

One of the differences between a company like PECO and Duquesne and Allegheny Power is the kinds of investment choices they had back in the time of the energy crisis. At the time, all of our customers and the PUC encouraged us to build these nuclear plants. They were the only real alternatives in the urban areas under the Clean Air Act.⁶

The problem with these statements is that the company is citing as reasons for deciding to build Perry and BV2, events that occurred several years **after** the decision was made to build the units. The "Energy Crisis" was in 1973-74. The Clean Air Act amendments dealing with power plants were passed in 1977. The Fuel Use Act was enacted in 1978. Duquesne's decision to build the plants had to have been made at least by 1971, the date the company publicly announced their plans to build Perry and BV2. In addition, there was an alternative at the time; and in fact, DLC was building the Bruce Mansfield coal facilities at the same time that it was constructing Perry and BV2. There is no available evidence that the environmental reasons, that DLC now gives for its decision to build these nuclear units, were part of the company's deliberations (in the late 1960's) about the type of plant to build. The response of company witness Irvin to David Hughes's Interrogatories (DHI), 01-01, in the instant proceeding, confirm this finding. The forming documents of CAPCO, including the "Memorandum of Understanding" dated September 14, 1967, make no mention of the need to build nuclear fueled generation because of environmental regulation.

Q. Please discuss the issue of demand for Perry 1 and BV2 capacity addition.

A. DLC claims that they decided to build Perry and BV2 for the expected increase in demand from the steel industry. Witness Clayton stated in his testimony in the instant proceeding:

Throughout the 1970's, various steel companies had informed Duquesne that they intended to add significant high load factor over the next several years. With these and other additions it was expected that the company's total load would approach 3300 megawatts. All indications were that the company was deficient in baseload capacity and would have to make significant capacity additions in order to fulfill its public service obligation to meet this demand. Consequently, Duquesne had approximately 3600 megawatts of capacity in service or under construction and over 400 megawatts on the drawing board (Perry Units No. 1 and No. 2 were under construction and Erie Nuclear Units No. 1 and No. 2, and Davis Bessie Units No. 2 and No. 3 were in the planning and design stages.⁷

⁶ Executive Report, January, 1997, p.21

⁷ DLC Restructuring Plan, August 1, 1997, Vol. 1, p.5.

David Marshall, again in the January 1997 Executive Report:

It was a time too when the steel industry was clamoring for more electric arc furnaces and our legal obligation was to be able to meet these forecasts.⁸

First, I would like to report that the company's response to the discovery in this regard was inadequate and has hampered the preparation of this part of my testimony. What I am about to say must, at this writing, be considered preliminary until the requested information is made available for review. In any event, the problem with the "steel industry" argument is that Duquesne made the decision to build these units long before the company knew of any plans on the part of the steel industry to add to their load. Indeed, the company's response to the relevant discovery (DHI 01-18) supports my contention that a potential increase in steel industry load was not a factor in the decision to build the two units. The company's treasurer Mr. Clayton states:

[Q]uotes from the Chairman's letters demonstrate that the Company expected significant industrial sales growth from at least as far back as 1975 and up until 1981 and that subsequent to 1981 the Company experienced significant loss of industrial load.⁹

With respect to steel industry additions, 200,000 Kw for the J& L Steel Corporation (1977 and 1978) and 170,000 Kw (two 85,000 Kva arc furnaces) for Crucible Steel (1980) are specifically mentioned in the Chairman's letters. This is a total of 370Mw of load expected to be in place by the early 1980's. Also in 1978 the Company predicted its average annual load growth to be 4%.¹⁰

Remember that the decision to build the units would have to have been made before they were publicly announced in 1971. In a "supplemental" response to DH 01-18, the company provided copies of correspondence between the company and various industrial customers. The supplemental response arrived too late for detailed analysis for this testimony, but a cursory review of the information indicates that most of the correspondence is from 1974 through 1982. Again, long after the decision to build Perry and BV2. I will address this response in detail in my surrebuttal.

As of this writing I have also not received a response to DH 01-17, wherein I asked for the company's long range forecasting data. I believe the data will show that Duquesne's own forecasting shows that there was no justification for the decision to build these two nuclear units. I will provide testimony in this regard upon reception of the requested information.

⁸ Id. at 6

⁹ Response to DH 01-18, p2

¹⁰ Id.

Q. Given this analysis, what would your conclusion be with regard to the reason the DLC decided to build Perry and BV2?

A. I can only speculate on what factors caused the CAPCO companies to decide to build these (and other) units. I can state, unequivocally, that Duquesne has presented no evidence that the reasons given today were part of the decision making process when Duquesne decided to build Perry and BV2. The Commission did not order the company to make this investment. Environmental regulation did not force the nuclear option as the only available alternative at the time. Therefore I can only conclude that the company freely chose to build these units.

Q. Are there any additional historical issues you would like to address?

A. Yes. I would like to address Duquesne's claim that the "collapse" of the steel industry left the Company with unneeded or excess capacity. In numerous documents, Duquesne has claimed that the loss of load due to the decline of steel production did two things: (a) it caused an increase in retail electric rates, and (b) it left the company with excess generation capacity. According to James Lahtinen:

Investors neither shared in the gain of superior projects nor absorbed the economic penalty for prudently conceived and constructed investments which failed to meet expectations. Duquesne lost significant load (600 mw) during the recession of the 1980s as numerous high load factor steel customers closed down at the time major investments in baseload nuclear units were well on the way to completion. Regulatory changes after Three Mile Island, double digit inflation, and interest rates ultimately caused these new plants to come on-line at significantly higher cost than originally anticipated. Higher cost spread over a diminished base of sales resulted in large increases in the price of electricity for retail customers (pp.48 & 49).

First of all, the company's shareholders have done very well over the years since these two units have been rate based. Jonathan Muehl's testimony (David Hughes, Statement 2) makes this clear. It is also clear that the primary cause of rate increases was not the loss of industrial load, but the inclusion in rates of Perry 1 and BV2. When announced, the two units were projected to cost \$795 million and go on line in 1978 (BV2) and 1979 (Perry 1). The units went into commercial operation in November of 1987 at a combined cost of \$9.436 billion. These cost overruns, more than any other factor, account for the company's high rates. Indeed, the rate increase in the base rate case (1988, R-870651) alone represented a dramatic increase in residential customer rates. If you take Lahtinen's argument to its logical conclusion, once the company's "base of sales" increase, rates should come down. Duquesne's sales did increase, but its base rates have not come down. As Exhibits Nos. 2 & 3 show, the loss of industrial load was eventually offset by

an increase in residential, commercial and off-system sales. With the exception of the 1982-83 recession, kWh sales have steadily increased. Revenues too, have increased steadily and appear not to have been significantly affected by either the 82-83 recession or the loss of industrial load. It is fair to assume that had there not been a decline in steel production, Duquesne's revenues might have increased at a higher rate than they did. But that assumes that the diversification of the region's economy would have occurred even though the economy was steel based. There is no way to predict what would have happened to the regional economy had the decline in steel production not occurred. The point is, and Jonathan Muehl's testimony (David Hughes Statement 2) makes this quite evident, Duquesne has done very well without the industrial load it had prior to 1982.

As mentioned above, I will address whether Duquesne's forecast of demand justified the addition of the Perry 1 and BV2 capacity when I receive the requested forecasting data.

Q. Please address the Commission's decision in the company's last rate case.

A. In its Opinion and Order for R-870651, the Commission determined that Duquesne failed to meet its burden of proof that the Perry 1 and BV2 capacity would provide an economic benefit to ratepayers. The Commission had three options available to deal with the fact that Perry 1 and BV2 were "economic excess capacity". At the time, Duquesne was in the process of a sale-leaseback arrangement on BV2. The Commission ordered a three year disallowance of the return on Duquesne's common equity investment in the leased plant, or a total \$147 million disallowance. The Commission disallowed a return on the company's investment in El Rama 1 & 2 to account for the Perry 1 excess capacity, or a \$31 million disallowance. The Commission could have disallowed a return on the Perry 1 investment and thus saved rate payers \$702 million.¹¹

Q. What is the significance of the Commission's decision in the base rate case?

A. The Commission rightly determined that Duquesne had failed to prove that these new units would provide an economic benefit to rate payers. We now have 10 years of op-

¹¹ The disallowance for BV2 was made in A-110150, September 25, 1987. A return on the investment in El Rama 1 & 2 was disallowed for the Perry capacity.

ration of Perry 1 and BV2, and unfortunately the predictions that these units would be uneconomical have turned out to be true. Section 1323 of the Public Utility Code requires that the unit(s) must “*produce annual economic benefits which will exceed the total annual cost of the plant during the test year or within a reasonable period following the test year.*” Clearly, what makes these units uneconomic is their exceedingly high construction costs. As mentioned above, cost to build Perry 1 and BV2 were 900% over projections. However, subsequent operation and maintenance (O&M) costs were supposed to off-set the high construction costs. At least for Perry, that never happened. The testimony I submitted in my complaint case details the poor operating performance of Perry in 1993 and 1994. (See Exhibit 4). Perry’s poor operating performance caused Duquesne to take the unusual step of intervening in Perry operator, The Cleveland Electric Illuminating Company’s (CEI) last rate case in Ohio. Duquesne submitted testimony in that case complaining that: “*Perry has consistently exceeded its budget and its financial performance continues to be a drain on the resources of all plant owners.*”¹² Duquesne’s own testimony in the Ohio case shows Perry O&M for the years 1993-1996 alone was \$250 million over budget.¹³

It was primarily Perry’s poor operating performance in 1993 and 1994 that caused me to file a Formal Complaint at the Commission in June, 1994. I wanted the Commission, under the auspices of section 1322 of the Public Utility Code, to conduct an investigation into the excessive outages at Perry to determine if rate relief, in excess of the ECR adjustment the Commission already made, was appropriate. The Commission had conducted a similar investigation into the extended outages at the Peach Bottom unit and ordered a rate adjustment in that case¹⁴

Q. How do your complaint issues fit into this restructuring proceeding?

A. The Commission agreed to give me a hearing on my complaint. I submitted testimony on March 20, 1996, supporting my complaint and was subsequently cross examined by Duquesne. Duquesne never responded to my testimony. Instead, the company appealed to the full Commission for “Review of a Material Question” and on September 14, 1996, the Commission granted a stay in the proceeding. The Commission ordered that I could raise my concerns in the instant restructuring proceeding. The Commission is now

¹² Pre-filed Testimony of Duquesne Light Company, PUCO Docket No. 95-300-EL-AIR, December, 4, 1995, p. 11.

¹³ *Id.*

attempting to determine how the retail electric generation industry should make the transition to a competitive generation market. In arguing against Duquesne's motion to have the complaint dismissed or made a part of the instant proceeding, I averred that the restructuring proceeding is prospective and that since my complaint dealt with rates in effect in 1994, it was not an appropriate subject for this proceeding. The Commission did not agree, so here we are. I believe the Commission can still make a determination as to the just and reasonableness of Duquesne's current rates.

The Commission has not conducted a full review of Duquesne's rates since the last rate base case in 1988. My complaint essentially asks that the Commission investigate Duquesne's rates to determine if the rates approved in 1988 are just and reasonable in 1994. I believe I presented sufficient evidence to warrant such an investigation and the Commission did agree to hear the case. It would seem to me appropriate, that before the Commission can determine the just and reasonable level of stranded cost recovery, the Commission should make a decision with regard to the issues I raised in my complaint.

Q. Please summarize your testimony

A. Duquesne has argued that its current rates are just and reasonable because: (1) it was ordered to build Perry 1 and BV2, (2) environmental laws required Duquesne to build Perry and BV2, and (3) an expected increase in industrial load justified the additional capacity. I have shown that the decision to build these units was freely made. I believe that, with the information requested in DHI 01-17, I will be able to show that even Duquesne's own long range forecast did not demonstrate the need for this additional capacity. I have also shown that the loss of industrial load has been off-set by substantial increases in other customer sales. In addition, in the base rate investigation, the Commission determined that these units represent economic excess capacity.

Q. Is there anything else you wish to add?

A. Yes. DLC argues that the Commission has already determined that the decision to build Perry 1 and BV2 was "prudent" and therefore has a right to a full return on this investment. As an intervenor in prudence cases, it is my understanding that when the Commission investigates the prudence of an investment, what the Commission is actually attempting to determine is whether the construction expenditures were prudently in-

¹⁴ PA PUC v. Philadelphia Electric Co., Docket No. M-880183, February 11, 1988.

curred. This enables the Commission to quantify the addition to rate base should it decide to rate base the unit(s). To be rate based, the unit must meet the "used and useful" standard, i.e. (a) the unit's production capacity must be needed, and (b) the unit must provide an economic benefit to rate payers; it will save rate payers money. As mentioned above, the Commission determined that both of these units failed the economic capacity test. **Therefore, these plants are not being made uneconomical as a result of deregulation, they were economical from their first day of operation.** In addition, just because a unit was rate based, does not mean that the investors have a guaranteed right to a return on that investment. The Commission has the authority to make a determination, at appropriate junctures, as to whether an investment should continue to be charged to rate payers. I believe we are at just such a juncture.

Q. Please state any recommendations you would like the Commission to consider

A. The Commission missed an opportunity to prevent the excessive cost overruns associated with the construction of Perry and BV2 from being charged to rate payers in 1988. I testified in the base rate case, asking the Commission not to charge rate payers for these excessive cost overruns. When it became clear that O & M costs would not be as low as projected, I filed my Formal Complaint in 1994, asking the Commission to investigate whether Duquesne's rates are just and reasonable. The Commission decided that the instant proceeding would be the appropriate place to make this determination. The investigation now underway presents yet another opportunity for the Commission to address the issue of the just and reasonableness of Duquesne's base rates. I believe that my testimony, along with the testimony of Jonathan Muehl, makes a strong case that it would be inappropriate for the Commission to continue to charge rate payers for Duquesne's uneconomic investment in Perry 1 and BV2, once the transition to retail choice begins. If the Commission determines that there should have been rate relief beginning in June, 1994, it can do one of three things: (1) order a refund to customers retroactive to June, 1994, or (2) order that Duquesne's future revenues for distribution include a disallowance equal to the relief warranted, or (3) reduce Duquesne's "stranded cost" recovery by an amount equal to the amount of relief the Commission determines to be appropriate.

Q. Does this conclude your testimony?

A. Yes.

INVESTIGATION DOCKET NO. 138

In re: Investigation upon the Commission's own motion to determine the need for additional electric generating and transmission facilities during the next decade.

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RECEIVED PROTHONOTARY'S OFFICE

ORDER

BY THE COMMISSION, MARCH 13, 1972:

The threat of a continued shortage of electric power in Pennsylvania and nearby states is a matter of considerable concern to the Commission. As a result of the northeast blackout on November 9, 1965, this Commission has worked with commissions of other states and the Federal Power Commission to stimulate the electric power utility companies in the development of plans for increasing generating capacity to meet anticipated load growth and future demands. Such demands presumably will be further increased by the present shortage of natural gas, a matter discussed in our February 1, 1972 order at Investigation Docket No. 124, published in Pennsylvania Bulletin 256, promulgated after public notice and hearings.

On February 14, 1966 an invitation was extended to all Pennsylvania electric companies to attend a meeting in Harrisburg on March 3, 1966 to review in depth the present and future electric power supply situation within each company's operating territory and participation in power pools. This meeting revealed that load growth had exceeded the companies forecasts and this conservative attitude had resulted in a serious installed capacity situation with most companies, making them extremely dependent on the resources of power pool interconnections.

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DAVID HUGHES EXHIBIT NO. 1

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which may affect the demands for electric power during the next several decades:

1. A developing trend to conserve the use of electric service, and a moratorium on the promotion of total electric residential living units.
2. Environmental regulations at both federal and state levels could limit the ability of the electric utility industry to meet forecasted demands for power.

It is incumbent upon the Commission to determine whether or not an electric energy shortage will develop and have an adverse effect upon the electric utility industry or if the industry's construction program calls for excessive capital investment at the expense of existing rate paying customers. It is hypothetical that such programs will attract prospective customers who may be denied energy from gas suppliers and further distort the demand for power.

Under the circumstances it appears that a required review by order will be more satisfactory and comprehensive than the past procedure whereby an informal review was held by the Commission and reports lacking uniformity were submitted by the participating electric companies. It is appropriate for the Commission to review the revised plans of electric utilities for plant construction because the amount of money actually being spent to meet environmental standards was unforeseen when plant additions were first projected. The Commission will consider the possible adoption of a system of regular review of plans for plant expansion by electric utility companies; THEREFORE,

IT IS ORDERED:

1. That each electric public utility subject to our jurisdiction continue to file with the Commission statements of its generating capacity and estimated customer demand requirements, as well as energy furnished during the prior calendar year. The reports are to be filed on or before

May 1, 1972 and May 1 of each succeeding year. The foregoing is to be furnished in the form to be prescribed by the Commission.

2. That each such company file with the Commission on or before May 1, 1972 and May 1 of each succeeding year a forecast of its expected annual load growth for the next ten years on an individual and not system basis in the form to be prescribed by the Commission.

3. That each such company file with the Commission on or before May 1, 1972 a schedule of generating plant and transmission line additions necessary for each such utility to meet forecasted load requirements during the said 10 year period.

4. That each such company file with the Commission on or before May 1, 1972 and May 1 of each succeeding year a summary of existing generating plants and the capital investment for pollution abatement equipment to bring each plant into compliance with federal, state and local pollution regulations. The summary shall include a statement of the estimated annual operating cost of this equipment.

5. That each such company file with the Commission on or before May 1, 1972 and May 1 of each succeeding year estimated construction costs of new and proposed generating plants and the capital investment necessary for pollution abatement equipment, including a statement of the estimated annual operating cost of this equipment.

6. That each such company file with the Commission on or before May 1, 1972 and May 1 of each succeeding year a copy of the company's report submitted to the Federal Power Commission on FPC Form 12*

7. That the Commission schedule public hearings at times and places to afford all interested persons an opportunity to present testimony on these matters. All interested persons will please notify the Commission in writing in advance.

FPC Form 714 Annual Electric Control and Planning Area Report
Form 715 Ann Trans. Planning & Eval Report

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8. That Pennsylvania Department of Environmental Resources, Pennsylvania Department of Commerce, Pennsylvania State Planning Board, Pennsylvania Office of State Planning and Development, and other state and local government officials, as well as groups and individuals concerned with the issues raised herein, be and are hereby invited to submit written statements on or before May 1, 1972 and, if they so desire, set forth requests for the opportunity to testify at the hearings to be scheduled for the purposes aforesaid.

9. That this order be published in the Pennsylvania Bulletin forthwith.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

George A. Bloom
Chairman

ATTEST:
Will Fetters
Secretary

POOR ORIGINAL

March 13, 1972

Order 138

In view of the influence of power pools, a joint meeting was held on March 31, 1966 in Philadelphia with the commissions of Delaware, District of Columbia, Maryland and New Jersey to analyze the purpose and operation of the PJM Interconnection. * Efforts to reassure commission representatives that capacity was capable of meeting expected loads and still maintain adequate reserves was not accepted with confidence. The companies and public were warned by the Commissions that according to our predictions a desperate situation was developing that within the near future could result in possible blackouts and customer load curtailment. The companies were told that immediate preparations should be made to increase installed capacity until a reliable reserve of 20% above forecasted loads was reached.

The companies reluctantly agreed to accept the commissions' proposals and institute construction programs that would hopefully reinforce existing capacity with new generation before another disastrous interruption occurred. Unfortunately the companies' efforts were hopelessly late and another massive interruption occurred on June 5, 1967.

On June 19, 1967 another meeting was held in Philadelphia with member companies of the PJM Interconnection and representatives of the same commissions. The companies were told that excuses were unacceptable now that the condition we had feared was a reality and there was insufficient reliable capacity and transmission lines to meet customer demands. Emphasis was placed on the immediate need for protective devices to isolate local disturbances and prevent widespread cascading type interruptions that had been experienced twice already. The companies agreed to install automatic load shedding devices as a result of this meeting and conceded that additional capacity was needed and would be included in construction schedules under revision.

* DUQUESNE IS NOT PART OF PJM

To reaffirm the commissions' suspicions, a joint meeting was held in Philadelphia on October 6, 1967 to explore the possibility of an independent engineering study of the PJM Interconnection. After considerable deliberation among the commissions a contract was signed with Commonwealth Associates, Inc., in February 1968 to begin a study and advance an opinion on the capacity-load-reserve picture for the PJM Interconnection.

On September 16, 1969 Commonwealth Associates presented to the Commissions and PJM member companies an analysis of the interconnection system with recommendations to avert the expected capacity deficiency. The picture presented was more dire than expected and the immediacy of the situation suggested that the companies must install combustion turbines to avert another interruption until the new base load capacity was installed. The companies were told that the commissions wanted 2000 megawatts of combustion turbine capacity immediately. After deliberation the companies responded that 1200 megawatts was more reasonable because the cost would exceed \$100,000,000 for this amount of generation.

The value of these conferences and recommendations has been demonstrated repeatedly because the combustion turbines have carried the electric companies through two perilous summers of capacity shortage without a major interruption and have reduced disturbances to minor voltage reductions for short periods of time. Capacity has now increased from 17,826 megawatts in 1965 with 9% reserve to 34,842 megawatts in 1972 with 21% reserve through the combined efforts of the commissions and cooperation of the electric utility companies.

The Commission is now concerned about whether current plans are satisfactory to meet projected future needs for electric power. At the same time, the Commission is aware of two possible changes in conditions

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DAVID HUGHES STATEMENT 2
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PENNSYLVANIA PUBLIC UTILITY COMMISSION
NOTARY'S OFFICE

APPLICATION OF DUQUESNE POWER COMPANY FOR
APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

DOCKET NO. R-00974104

PREPARED DIRECT TESTIMONY AND
EXHIBITS OF

JONATHAN D. MUEHL

SUBMITTED ON BEHALF OF:
DAVID HUGHES

NOVEMBER 7, 1997

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Q. Please state your name and address.

A. My name is Jonathan D. Muehl. My address is 856 Ridgefield Ave, Pittsburgh, PA 15216.

Q. On whose behalf are you testifying?

I am testifying on behalf of David Hughes.

Q. Please describe your background and experience in electric utility issues.

I have a joint masters degree in business and public policy from the Carnegie Mellon School of Industrial Administration and the Heinz School of Public Policy. I am also a Chartered Financial Analyst. I am co-founder of the Coalition for Improving Electric Rates and have spent the last year and a half analyzing Duquesne's financial status. I have published perspectives on the restructuring issue in the Pittsburgh Post Gazette.

Q. What is the purpose of your testimony today?

I will present the perspective of a consumer trained in matters of business and public policy on the issue of stranded cost mitigation.

Q. Is there an overarching theme to your testimony?

A. Yes. I will present evidence to support my view that Duquesne Light has had ample opportunity to mitigate a much greater portion of its stranded costs than it has. Revenue that could have been used to offset stranded cost mitigation (via accelerated depreciation, or by writing down the value of the stranded assets) has instead been used to provide the shareholders of Duquesne Light with a rate of return greatly in excess of that justifiable by sound public policy.

Q. How can it be argued that Duquesne Light has not mitigated its stranded costs as much as it could have?

There are a variety of ways in which one could approach the question of the extent to which Duquesne Light could have, but has not, mitigated its stranded costs. One approach would be to look at savings they have realized through a variety of steps to improve their operating efficiency (e.g., staff reductions), and then examine the extent to which those savings have been applied to stranded cost mitigation. After all, the rates allowed by the PUC should not permit companies to operate in an inefficient manner. When companies weed out inefficiencies, they are merely eliminating costs that should not have been allowed in their rate base in the first case. Those savings should therefore accrue to the consumers.

Q. Is this the approach you will be using?

Although the approach I just described has some theoretical justification, it would be difficult or impossible to accumulate all of the data necessary to support it. Instead, I will argue that a convenient proxy for the determination of the stranded costs Duquesne Light could have, but did not mitigate can be found in examining the total return of Duquesne Light stock over a recent period. Specifically, I will examine the total return of Duquesne Light stock over the ten years

period from September 30, 1987 through September 30, 1997, and compare it to what might be deemed a reasonable rate of return for shareholders.

Q. What is your justification for using this approach?

My logic is as follows. A regulated monopoly can manage its total return. It can do so in several ways. First of all, it has control over both its rates and its dividends. Every dividend it pays represents a transfer of wealth from its rate-payers to its shareholders. (Nor is it a voluntary transfer, given the regulated entity's monopoly status.) The publicly traded regulated entity also has control over the number of its shares that are outstanding. Not only can it pay out dividends as a way of transferring cash to its shareholder, it can buy back stock as well. In fact, in an environment where capital gains are treated more favorably than dividend income, the repurchase of stock may well represent a more favorable way of rewarding its shareholders.

Similarly, if a publicly traded company like Duquesne Light seeks to mitigate its stranded costs without jeopardizing its financial position, it has several alternatives other than raising rates. These alternatives in effect represent a reduction in the return to its shareholders to the potential future benefit of its rate-payers. As seen above, it can reduce its cash flow to its shareholders by 1.) not increasing its dividend, or 2.) reducing its dividend. In addition, it can preserve or augment cash for cash flow purposes by 1.) not buying back its stock from its shareholders, or 2.) issuing additional stock.

Q. Could you clarify the relationship between the mitigation of stranded costs and the shareholder's rate of return?

A. A simple and effective way for a company to mitigate its stranded costs is to accelerate the depreciation of its stranded assets, or to simply write down the value of those assets. Where those assets have a book value significantly in excess of their market value, either approach can bring their book value down to their market value rapidly. Stranded costs associated with the investment are thereby quickly reduced or eliminated.

Q. What effect will this have on the company's financial position?

A. The speed at which an asset is depreciated will have little immediate effect on cash flow, and thus will not effect the ability of the company to meet its financial obligations.

Q. Why do you say that there will be little immediate effect?

A. The speed at which a company depreciates its assets is a book entry only. The money required to construct the asset has already been borrowed and spent. However, from a psychological point of view, the company may find it harder to justify high dividends and/or stock buy-backs if its income statement is showing losses as a consequence of accelerated depreciation or a significant write down of asset value.

Q. What would be the longer term effect of depreciating the assets more rapidly?

A. Once the assets are fully depreciated, if there is no immediate need to replace them (as there would not be in an accelerated depreciation or write-down scenario), the company is going to

suddenly appear to be more profitable. It will cease to have a depreciation expense associated with that asset, and consequently net income will be higher.

For a regulated entity, this may mean enforced rate reductions. With an income statement that is suddenly much more profitable, the company may be required to lower its rates.

Q. What effect would this have on the company's ability to serve its customers?

Unless the regulators thought that the company was guilty of gross negligence, it seems reasonable to expect that the lower rates set by the regulators would still allow the company sufficient cash flow to continue serving its customers.

Q. What effect would this have on the company's ability to reward its shareholder?

If regulators were to reduce the company's rates, it is probable that the shareholder's total rate of return on their holdings would suffer in contrast to a scenario in which the rates weren't lowered.

Q. Would it be fair to the shareholders to force down their rate of return?

A. This gets to the question of what is a fair rate of return for the shareholders, and to the crux of my argument. Moving from the theoretical to the specific, the critical question with respect to Duquesne Light becomes: could Duquesne have mitigated its stranded costs to a greater degree than it has and still have provided its shareholders with a reasonable return?

To answer this question, we must look at the total return to Duquesne Light's shareholders. From September 30, 1987, to September 30, 1997, the total return to Duquesne Light's shareholders, annualized, was 19.63%. (This total return assumes reinvestment of dividends in Duquesne Light stock.) In contrast, here is the annualized total return for some other markets:

Market	Annualized Return
1.) S&P 500 Index Total Return (9/30/1987 – 9/30/1997)	14.75%
2.) S&P Electric UtilityCo. Index Total Return (9/30/1987 – 9/30/1997)	11.09%
3.) Lehman Aggregate Bond Index Total Return (9/30/1987 – 9/30/1997)	9.48%
4.) U. S. Government 10 Year Bond Yield on 9/30/87 plus 2% ¹	11.59%
5.) 90 Day Treasury Bill Yield (9/30/1987 – 9/30/1997) plus 2% ¹	7.59%
6.) Duquesne Light Total Return (9/30/1987 – 9/30/1997)	19.63%
¹ I've added 2% as a risk premium to Duquesne Light investors.	

Now let us consider an investor with \$1 invested in Duquesne Light stock on September 30, 1987. If we calculate the value of his investment on September 30, 1997 by $\$1 \times ((1.1963)^{10})$, we can see that his dollar has grown in value to \$6.0035, for a profit of \$5.0035. Next let us consider the profit (calculated in the same manner) of the investors in the above markets.

Market	Profit
1.) S&P 500 Index Total Return (9/30/1987 – 9/30/1997)	2.9585
2.) S&P Electric Utility Co. Index Total Return (9/30/1987 – 9/30/1997)	1.8625
3.) Lehman Aggregate Bond Index Total Return (9/30/1987 – 9/30/1997)	1.4737
4.) U. S. Government 10 Year Bond Yield on 9/30/87 plus 2%	1.9940
5.) 90 Day Treasury Bill Yield (9/30/1987 – 9/30/1997) plus 2%	1.0784
6.) <i>Duquesne Light Total Return</i> (9/30/1987 – 9/30/1997)	5.0035

As of the end of September 30, 1987, the total investment of Duquesne Light's common shareholders in its stock (as measured by price per share times total common shares outstanding) was \$932,267,250. Let us now consider the profit that those shareholders realized in their stock, using the simplifying assumption that they held their stock for the ten year period, and reinvested all dividends. This number can be derived by multiplying \$932,267,250 by 5.0035, from the above table. The answer is \$4,664,599,185. (Remember that this is the profit only. It has the initial investment netted out of the amount the initial investment would have grown to.)

Now let's compare that profit with the profit that the total September 30, 1987 investment of \$932,267,250 in the above listed markets would have earned.

Market	Profit
1.) S&P 500 Index Total Return (9/30/1987 – 9/30/1997)	2,758,112,659
2.) S&P Electric Utility Co. Index Total Return (9/30/1987 – 9/30/1997)	1,736,347,753
3.) Lehman Aggregate Bond Index Total Return (9/30/1987 – 9/30/1997)	1,373,882,246
4.) U. S. Government 10 Year Bond Yield on 9/30/87 plus 2%	1,858,940,896
5.) 90 Day Treasury Bill Yield (9/30/1987 – 9/30/1997) plus 2%	1,005,357,002
6.) <i>Duquesne Light Total Return</i> (9/30/1987 – 9/30/1997)	4,664,599,185

Now, finally, let's look at the excess that the Duquesne Light investors earned in profit over investors in the other markets (that is, the difference between the Duquesne profit and the other markets' profit.)

Market	Duquesne Excess Profit
1.) S&P 500 Index Total Return (9/30/1987 – 9/30/1997)	1,906,486,526
2.) S&P Electric Utility Co. Index Total Return (9/30/1987 – 9/30/1997)	2,928,251,432
3.) Lehman Aggregate Bond Index Total Return (9/30/1987 – 9/30/1997)	3,290,716,939
4.) U. S. Government 10 Year Bond Yield on 9/30/87 plus 2%	2,805,658,289
5.) 90 Day Treasury Bill Yield (9/30/1987 – 9/30/1997) plus 2%	3,659,242,183

The evidence of the above table seems to me to be clear. By a variety of reasonable measures of a fair return to Duquesne Light shareholders, the total return they have achieved over the past ten years has excessive, considering Duquesne's status as a protected monopoly. This excess profit is money that should be netted out of Duquesne Light's calculation of stranded costs, as it represents a transference of wealth from rate-payers to shareholders in excess of that which would be reasonable for a regulated utility.

Which of the above markets is the most reasonable one to use in the determination of the amount that should be netted from Duquesne Light's stranded costs? In my view, given the protected status Duquesne Light has enjoyed as a monopoly, the first measure – the S&P 500 – is too generous. I believe a strong argument can be made for either the second or the fourth measure: the return of the S&P 500 Electric Companies Index total return, or the yield as of September 30, 1987 on the 10 year government bond plus 2%.

In any case, by any of the above measures, Duquesne Light has rewarded its investors very generously at the expense of its rate-payers. This excess reward to its investors could have, and should have, been used to mitigate its stranded costs. The situation is one which, in my view, demands correction.

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DAVID HUGHES, EXHIBIT NO. 2

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Revenues by Customer (thousand of \$)

Year	Res.	Comm.	Industr.	Street	Misc.	Total
1966	43,332	37,546	42,570	3243	653	127,345
1967	45,336	39,376	41,596	2930	621	129,859
1968	48,011	42,214	43,445	3113	599	137,382
1969	50,937	44,926	47,090	3224	691	146,858
1970	57,744	51,565	50,021	3503	794	163,627
1971	66,197	62,278	59,209	3965	1310	192,909
1972	72,490	67,892	68,392	4389	1917	215,080
1973	79,113	75,047	80,274	4763	2557	241,754
1974	97,319	96,577	114,416	6054	2652	317,018
1975	121,497	123,701	138,577	7374	3277	394,426
1976	127,515	130,804	148,493	7289	3667	418,268
1977	143,299	147,433	171,174	8286	5054	475,246
1978	167,338	173,768	205,149	9942	5917	562,114
1979	176,744	185,701	232,389	10,370	6142	611,346
1980	196,400	209,686	250,295	11,052	7104	674,537
1981	223,146	243,304	300,166	12,383	7116	786,015
1982	238,496	263,374	225,292	13,240	6060	746,462
1983	267,110	290,370	221,107	14,357	7401	860,345
1984	280,647	314,129	244,970	14,689	7340	861,775
1985	286,260	335,012	225,692	25,447	N/A	872,411
1986	297,520	347,364	178,425	27,435	N/A	850,744
1987	299,562	345,585	165,550	25,289	N/A	835,986
1988	318,552	362,012	171,779	31,382	N/A	883,725
1989	346,142	403,506	181,781	43,015	N/A	883,725
1990	375,608	450,278	201,197	47,813	N/A	1,074,956
1991	442,349	509,711	208,491	58,540	N/A	1,213,151

Source: Duquesne Light Company Annual Reports

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Sales by Customer (millions of kWh)

Year	Residential	Commercial	Ind.	Off -Syst.	Total
1965	1620	2278	4,153	8,134	
1966	1731	2342	4433	506	8,640
1967	1838	2453	4227	(11)	8,629
1968	1987	2701	4512	683	9,312
1969	2142	2909	4962	815	10,127
1970	2303	3137	4756	186	10,313
1971	2391	3333	4855	366	10,679
1972	2475	3456	5445	808	11,487
1973	2610	3634	6181	56	12,543
1974	2575	3564	6346	65	12,608
1975	2665	3699	5674	(444)	12,164
1976	2693	3769	5925	352	12,516
1977	2813	3909	6182	518	13,034
1978	2825	3702	5908	(389)	12,645
1979	2778	3866	6546	676	13,321
1980	2876	4020	6272	(24)	13,297
1981	2858	4065	6582	351	13,634
1982	2853	4163	3902	2596	11,038
1983	2905	4257	3717	327	11,317
1984	2918	4393	4148	1019	12,582
1985	2848	4537	3522	1981	12,989
1986	2957	4724	2734	2136	12,650
1987	3065	4899	2918	2486	13,466
1988	3156	5055	3302	2797	14,401
1989	3119	5145	3221	2170	13,739
1990	3078	5236	3296	1830	13,524
1991	3285	5450	3042	2979	14,840
1992	3069	5358	3059	4060	15,629
1993	3231	5490	3046	2821	14,672
1994	3219	5563	3256	3212	15,334
1995	3378	5729	3237	2975	15,403

Source: Duquesne Light Company Annual Reports

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DAVID HUGHES, 97 NOV 12 AM 10:21

RECEIVED)
Complainant's OFFICE)

v.)

Docket No. C-00945953

DUQUESNE LIGHT COMPANY,)

Respondent)

INITIAL HEARING TESTIMONY OF DAVID HUGHES
MARCH 20, 1996

TO THE HONORABLE COMMISSION:

I INTRODUCTION

I have been a Duquesne Light ratepayer for almost 30 years and have never been late on a bill payment. On June 14, 1994 I filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) regarding what I consider to be unjust and unreasonable Duquesne Light Company(DLC) electric rates. As the graph in Fig. 1 shows, Duquesne's rates are high. The question then becomes: Why are Duquesne's rates so high? There is no doubt that the real reason Duquesne's rates are so high is the result of the company's \$1.4 billion investment in the Beaver Valley II and Perry nuclear units. And it is one of the great injustices of utility regulation that Duquesne ratepayers are forced to pay \$150 million for Perry II, abandoned by Duquesne in 1994 at 60% completion. However, this complaint cites the poor operating performance of the Perry I unit in 1993 and 1994 as a major factor in DLC rates being unjust and unreasonable.

The information I have obtained from Duquesne Light Company during the discovery process makes it perfectly clear that my concerns are justified. Indeed things are worse than I realized. There can be no doubt that the Perry Plant was not used

and useful for 205 days in 1993 and 105 days (190 minus 85 days for a scheduled refueling outage) in 1994. In addition, there can be no doubt that the Perry Plant is economic excess capacity, representing a financial drain on Duquesne and placing an undue burden on Duquesne ratepayers. Perry was particularly uneconomical in 1993 and 1994, with capacity factors nearly half of what they should be and operation and maintenance(O&M) costs about 50% to 90% above what they should average. The most telling indicator of Perry's poor performance is the fact that Perry's cost (\$0.0485) per kilowatt hour(KWh) was nearly double available alternative generating sources and almost three times more than available replacement power(\$0.0167). Finally, it is clear from the data, that Duquesne does not need the Perry Plant and there is no justification for continuing to charge ratepayers for this uneconomical and unneeded generating unit. One has to wonder then, why the DLC doesn't unload Perry. After reviewing the data, I submit that there are probably two reasons why DLC keeps Perry in the rate base: (1) DLC, like all nuclear utilities, is very concerned, and rightly so, about potential decommissioning costs when a big nuclear unit like Perry is closed. Thus it is easier to avoid dealing with that nightmare by keeping the plant in operation and continue to build up the fund for that contingency, and (2) keeping Perry in the rate base, regardless of operating performance, is the only way DLC can recapture its investment in Perry. Thus, DLC ratepayers pay unnecessarily high rates; rates that, considering all of the above, are unjust and unlawful. There is so much information that supports my complaint it becomes necessary to select out the most noteworthy.

II PERRY WAS NOT USED AND USEFUL IN 1993 and 1994

The Pennsylvania Public Utility Code (s.1315)states clearly that:

...no electric utility property shall be deemed used
and useful until it is presently providing actual ut-
ility service to the customer

The Perry Nuclear Plant had five non-refueling outages in 1993, causing it to be out of service for 205 days. Its Availability Factor was 44% and its Capacity Factor was 38.8%, compared to the industry average of 71.2%. In 1994, Perry was down for 190 days, (85 days for scheduled refueling), with an Availability factor of 47% and a Capacity Factor of 44.3%.¹ This record is appalling, especially when Perry is compared to other Duquesne generating units and to similar nuclear generating units (See Fig. 2 and 2a) and to Duquesne's projections, (see bellow).²

¹ DLC Pre-filed testimony in Public Utility Commission of Ohio Case No. 95-300-E.L.-AIR, p.6.

² DLC Energy Cost Rate filings with the PA PUC for 1994 and 1995

	1993	Projected	Actual	1994	Projected	Actual
Capacity Factor		81.71%	38.81%		88.98%	44.80%
Availability Factor		74.59%	39.73%		85.79%	45.21%

In addition, Perry has a very high Forced Outage Rate (FOR) compared to similar plants (see Fig. 3). The 1993 industry average FOR for nuclear plants was 8.3%. The FOR average for plants similar to Perry was 14.3%. The Perry FOR was a whopping 37.8%. As Fig. 3 indicates, the Perry's FOR for 1994 is 1.3%. This figure is deceiving because Perry shut down on February 5, 1994 for a scheduled refueling outage that was to last 85 days and actually lasted 190 days. Thus the low FOR. If you consider that Perry was forced to remain out of service for 105 days beyond expectations then the FOR is really much higher.

The point is simple. Perry was not producing electricity for Duquesne's customers for 205 days in 1993 and 105 days in 1994. These were not scheduled refueling outages and **had Perry not had so many problems these outages would not have been necessary** (see the attached newspaper articles). Therefore, Perry was not used and useful for that time. Accordingly DLC ratepayers should not have to pay for Perry for the time it was unnecessarily out of service (205 days) in 1993 and (105 days) in 1994. An Energy Cost Rate (ECR) adjustment to ratepayers monthly bills of \$1.56 in 1994 and \$0.01 in 1995 is not sufficient relief. I request that the Commission remove Perry from rate base for the period it was not used and useful in 1993 and 1994 and adjust customer rates accordingly.

III PERRY IS ECONOMIC EXCESS CAPACITY

Section 1323 of the PA Public Utility Code states:

...a rebuttal presumption is created that a unit or units or a portion thereof shall be determined to be excess unless found ...to produce annual economic benefits which will exceed the total annual cost of the plant during the test year or **within a reasonable period following the test year** (emphasis added). *66 Pa. C.S. s. 1323.*

In 1988 intervenors in the Perry ratebasing case predicted that Perry would not be an economic benefit to DLC ratepayers. However, because the plant was new, intervenors could only estimate their projections. Now we have eight years of Perry operation to examine and the evidence is overwhelming that Perry represents

economic excess capacity. By every available measurement, Perry's operating performance in 1993 and 1994 (that is in the little time that it was operating), particularly when compared to similar nuclear plants, is terrible. **And the double-edged sword here is the fact that while Perry's capacity factors were spiraling downward, O&M costs were skyrocketing.**

1) In the ratebase case (R-870651) Duquesne claimed that the addition of Perry would result in annual fuel savings of \$10.5 million (see Fig.4).³ And remembering that a generating unit can only be considered to not be economic excess capacity if its total annual economic benefits exceed its total annual costs, here are the actual annual savings attributed to Perry along with the annual cost of plant, Duquesne's share, (13.74 % of Perry):

	Annual Savings ⁴	Operation, Maintenance and fuel costs ⁵
1987\$	704,000	\$ 3,407,000
1988	1,973,200	29,979,000
1989	2,123,600	32,675,000
1990	4,600,200	32,155,000
1991	3,710,700	28,255,000
1992	6,253,300	26,305,000
1993	2,687,900	21,929,000
1994	<u>3,164,000</u>	<u>36,224,000</u>
Total	\$25,700,000	\$210,929,000

This represents a loss to Duquesne of \$185,759,000 to 1994.

2) Perry Operation and Maintenance(O&M) costs are too high. Estimates for Boiling Water Reactor(BWR) annual non-fuel O&M costs range from \$85 million⁶ to about \$120million.⁷ If you average these two estimates, (\$102.5 million), **Perry O&M costs are about 50%(1993) to 90%(1994) above what they are supposed to be.** In 1993, Perry's non-fuel O&M costs were \$148.4 million.⁸ Duquesne claims its share of these costs were \$15,363,000. In 1994, Perry's non-fuel O&M costs totalled a whopping \$190 million.⁹ Duquesne claims it's share of O&M costs for 1994

³ From DLC response to interrogatory 02-12

⁴ DLC response to interrogatory 01-05

⁵ DLC response to interrogatories 02-10 and 03-02

⁶ *A Comprehensive Assessment of the Strategic Planning Process of the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Hagler Bailly Consulting, November 1, 1995, p.3-6.

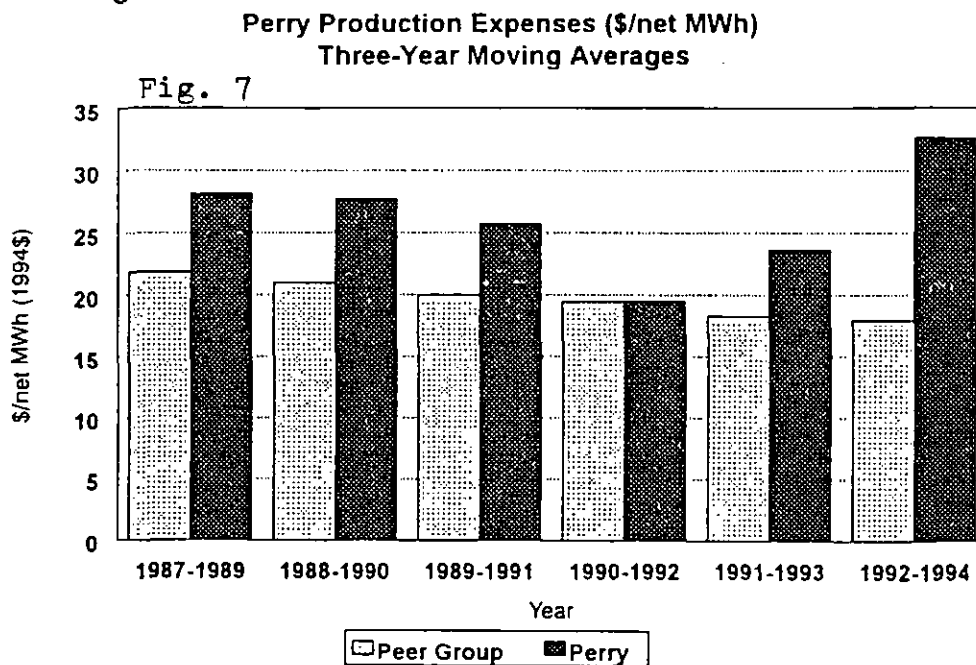
⁷ *An Analysis of Nuclear Plant Operating Costs: A 1995 Update*, U.S. Energy Information Agency, April 1995 p.15.

⁸ *Staff Report of Investigation, Public Utilities Commission of Ohio*, Case No. 95-300-EL-AIR, p.218.

⁹ Id

skyrocketed to \$28,468,000. And according to the Energy Information Agency(EIA), real O&M costs are probably 30% higher than reported. Fig.5 shows that according to the EIA, Perry ranks 52 out of 66 plants with one of the worst levels of O&M costs.¹⁰ If we include the 1994 record O&M costs, Perry's ranking would likely be even lower.

3) These exceedingly high O&M costs naturally have led to overly high costs per Megawatt Hour(\$/MWH). Fig. 6 shows that, according to a DLC survey, when measuring \$/MWH, Perry is one of the worst plants of its kind, ranking 17 out of 23 plants.¹¹ Perry's \$35.91/MWH three year (1992-1994) average is double that of Hope Creek (\$16.98/MWH), a General Electric Mark I reactor similar to the Perry reactor. And Perry is significantly higher than Clinton (\$24.49/MWH), A GE Mark III, just like Perry. As Fig.7 below graphically displays, for the same period, Perry's production costs are double what they should be.¹² These figures are worse for Perry if 1992 data is not averaged in.



4) Even Duquesne Light admits that Perry is uneconomical. Duquesne took the unusual step of intervening in the Cleveland Electric Illuminating Company(CEI) rate case (No. 95-300-EL-AIR) currently pending in Ohio. In recent testimony before the Public Utility Commission of Ohio(PUCO), Duquesne more than supports my complaint, they validate it. Duquesne complains to the PUCO that:

¹⁰ Id at 9, p.12

¹¹ Id at 1

¹² Id at 8, p.3-7

- (a) In 1993, Perry O&M and Capital costs "exceeded original projections by \$45 million."¹³
- (b) In 1994, Perry O&M and capital costs "exceeded original projections by \$97 million"¹⁴
- (c) Perry's fourth refueling outage scheduled for 90 (actually it was 85) days at a cost of \$28.7 million, lasted 190 days and eventually cost \$94 million.¹⁵

According to Duquesne, "Perry has consistently exceeded its budget and its financial performance continues to...be a drain on the resources of all plant owners".¹⁶ And as Fig. 8 makes clear, this excessive spending is projected to continue into 1997. According to Duquesne's PUCO testimony, **Perry will exceed its original O&M and capital cost projections by more than \$250 million**; Duquesne's share of that is \$35 million. ¹⁷ Duquesne claims that ratepayers will not have to pay these costs. There are two major problems with this argument. First, when Duquesne requests its next rate increase, these costs will impact its financial condition and thus its revenue requirement. Ratepayers will have to pay whatever is left of these costs. But more importantly, if these extra costs didn't exist, if Perry wasn't draining Duquesne's financial resources, ratepayers would undoubtedly see relative benefits, including true rate reduction. Indeed, one of Duquesne's partners in Perry, Ohio Edison, did just that for its ratepayers last year. And what is truly frustrating about this is the fact that Duquesne really doesn't need Perry's 161(4) generating capacity.

IV DUQUESNE DOESN'T NEED PERRY

1) According to Duquesne's 1994 and 1995 Integrated Resource Plan(IRP), the Company has "abundant", "underutilized" and "reliable" base load generation sources¹⁸ and expects to have sufficient capacity through 2004.¹⁹

2) Perry represents only 6% of Duquesne's net system capacity (164MW of 2819MW). **On June 16, 1994, Duquesne experienced its all-time record peak demand of 2,535MW and Perry was out of service.**

¹³ Id. at 8.

¹⁴ Id.at 1, p.8

¹⁵ Id. p.9

¹⁶ Id.

¹⁷ Id. p.11

¹⁸ DLC 1994 Integrated Resource Plan (IRP) p.2 and 13-24; 1995 IRP, pp.3 and 15-3.

¹⁹ DLC 1995 IRP, pp. 5 and 23.

3) In 1993, when Perry was down 205 days, Duquesne was still able to sell 2.8 billionKWh (19% of sales) to other utilities.²⁰

4) In the base rate case No.R-870651 Duquesne claimed to have 400MW of tie-in capacity. Now according to its 1994 and 1995 Integrated Resource Plans(IRP), Duquesne has 6,000MW of interconnected and transfer capacity. Add to this 93MW of interruptable load and 65MW Demand Side Management(DSM) savings. But most important, Duquesne has 567MWs of "environmentally clean", "reliable" cold-reserve capacity with the Brunot Island Combined Cycle(BICC) and Phillips facilities, giving Duquesne 6,725MW total available generating capacity **above** its own 2,819MW system capacity. This is not an electric utility in desperate need of any generating capacity, particularly from a poor performer like Perry. With demand estimated to grow only 1.2% annually²¹ for the foreseeable future, Duquesne should have no problem meeting its responsibilities without the Perry burden.

5) Duquesne could close Perry today-**actually it is closed today**-and there will be no problem. It will be cheaper, in fact, if Duquesne unloaded Perry and either makes use of its cold reserve capacity, or buys power as needed, or even builds a new combined cycle(CC) facility.Examples using Duquesne's figures show that Perry is more expensive than either a new CC unit, or Brunot, or Phillips; and remember, Perry provides less generating capacity than these other units.²²

	Perry(1994) (161MW)	Phillips(1986) (300MW)	Brunot(1985) (267MW)	New CC Unit (300MW)
Installed cost/KW	\$4,219	\$345.12	\$205.30	\$500-\$550
Non-Fuel O&M/KW	\$159.00	\$ 25.21	\$ 4.33	\$ 15.62
Total cost/ Kwh	\$ 0.057	\$ 0.049 ²³	\$ N/A ²⁴	\$ 0.039

Unlike its opinion of the Perry Plant, DLC thinks very highly of its cold reserve units. In its 1994 IRP, Duquesne says: "The Phillips Power Station is a highly reliable, cost-competitive" unit that "has been carefully maintained while in cold reserve status" and

²⁰ DLC 1994 IRP, p.2.

²¹ Id

²² These figures are based on information in DLC FERC forms, DLC response to interrogatory 02-16 and from *Annual Energy Outlook*, Energy Information Agency, January 1996, p. 32.

²³ According to the EIA current coal prices for this region are \$0.015 which would reduce Phillips costs.

²⁴ Too small to measure.

"can be reactivated at a cost which, including remaining book value, is competitive with a new combined cycle facility".²⁵ DLC says: "The major competitive advantage offered by the Brunot Island facility in the marketplace is low price. The reactivation cost for the entire combined cycle plant, including book value, is substantially below the cost of a new simple cycle peaking turbine. The Brunot Island combustion turbines alone can be reactivated at a cost below most demand-side management or conservation programs."²⁶

6) Perry can't compete in terms of operating availability either:

	Perry		Phillips ²⁷
1993	44%	1985	79%
1994	47%	1986	86%

7) Ratepayers would be better off if Duquesne unloaded Perry and purchased power as needed. As Fig. 9 shows, in the winter of 1993-94, Perry's O&M cost three times available replacement power.²⁸ However, records indicate that DLC usually buys power in hot weather. According to DLC, Perry cost \$27,559,707 in 1993, even though it was out of service for 205 days. Replacement power costs for that time period were \$669,000. Perry cost DLC a record \$40,833,881 in 1994, even though the plant was down for 190 days. Replacement power costs for that period totalled \$3,000,000. As Fig. 10 clearly shows, DLC bought power only in June, July and August. Perry was down all of June and July and over half of August. Thus we are talking about costs of tens of millions of dollars for Perry v. a few hundred thousand or millions of dollars if Perry were out of the rate base, we had a very hot summer, and DLC did not reactivate its cold reserve units. To simplify, **replacement power costs in 1993(\$0.016) and 1994(\$0.017) were almost three times cheaper per KWh than Perry(\$0.04-\$0.06)**. We can see then that if Perry were permanently taken out of service, and Duquesne did not utilize any of its cold reserve capacity, it would still be cheaper for ratepayers were Duquesne to purchase power as needed.

8) Duquesne claims in its 1994 and 1995 IRP that it expects to have to purchase power less than 100 hours per year.

²⁵ Id. p.13-24.

²⁶ Id.

²⁷ Last two full years of operation

²⁸ *A Roll of the Dice: NRC's Efforts to Renew Reactor Licenses*, Public Citizen, April 1995, p.21.

V CONCLUSION

Whether Duquesne purchases power when necessary, or reactivates Brunot or Phillips, or builds a new CC generating unit, there is no question that more economical alternatives to Perry power exist. Duquesne admits in its testimony before the PUCO that Perry is uneconomical and a drain on the company's resources. Perry I, without doubt, represents economic excess capacity on the Duquesne system and (along with the prohibitive construction costs of Perry I and II and Beaver Valley II), is the main culprit in causing Duquesne's rates to be 85% above some surrounding service territories.

The information provided in this testimony, **most of which is information provided by Duquesne Light**, makes it abundantly clear that the Perry Nuclear Power Station does not provide an economic benefit to Duquesne ratepayers and that **Perry prevents Duquesne from giving its ratepayers true rate reduction**. The meager 1994 and 1995 ECR adjustments have not alleviated the burden Duquesne ratepayers bear as a result of this uneconomical electric generating source. Again, Perry was not used and useful for 205 days in 1993 and 105 days in 1994. Perry is economic excess capacity. Because of Perry, DLC rates are too high and thus unjust and unlawful.:

I respectfully ask the Commission to take the necessary action, now, to give DLC ratepayers just and lawful electric rates. I recommend the following remedies for the Commission's consideration.

VI SUGGESTED REMEDIES

- 1) Recognizing that with cheaper alternatives available, the Perry Plant will never be competitive, declare Perry economic excess capacity, and remove Perry from Duquesne's rate base.
- 2) Declare Perry not used and useful for 205 days in 1993 and 105 days in 1994 and disallow an equity return on Perry based on that timeframe; or
- 3) Reduce Duquesne Light rates by \$19.4 million, Duquesne's share of excessive O&M and capital costs for Perry in 1993 and 1994²⁹ ; or reduce DLC rates by the amount Perry I O&M costs were above average O&M costs for similarly constructed generating units, or \$12,562,009 (DLC share).³⁰

²⁹ \$19.4 million is 13.7% of \$141.4million, the amount Perry I O&M went over budget/goal for 1993 and 1994, as shown in Fig. 9.

³⁰ Id at 10

- 4) Recognize that ECR adjustments are not performance incentives and
 - (a) institute a Performance-based Incentive Plan (PIP) that has real rewards and penalties, and
 - (b) require Duquesne to perform annual cost/ benefit analyses on their nuclear units. (According to the IRP, Duquesne currently does this for its fossil fuel units).

- 5) *Perform annual Commission investigations to determine whether Duquesne has any economic excess capacity and disallow any unit that represents economic excess capacity.*

To conclude, the information provided in this testimony proves conclusively that the Perry Plant does not provide an economic benefit to DLC ratepayers, and that for 205 days in 1993 and 105 days in 1994 the Perry plant was not used and useful. In addition, DLC really doesn't need Perry. It would be a prudent management decision if DLC were to unload Perry and either reactivate some of its cold reserve capacity or *purchase power when necessary*. This would permit DLC to give its ratepayers the true rate reduction they deserve.

It is only fair that DLC ratepayers get relief from the unfair burden the Perry Power Plant places on them. The ECR adjustments made in 1994 and 1995 are simply not sufficient relief considering the potential rate reductions that would be possible if DLC wasn't paying double what it should be paying for Perry. Considering all of this, I am convinced that the Commission should find that the Perry Plant is economic excess capacity and remove it permanently from DLC rate base. Short of that, the least the Commission should do is to declare the Perry Plant not used and useful for 205 days in 1993 and 105 days in 1994, and disallow a return on that basis. To do anything less would be to permit DLC to earn an excessive return on the fair value of its other used and useful property while Perry was out of service in 1993 and 1994. It is criminal that, for so long, DLC ratepayers have had to pay excessively high rates. It is especially unfair that we have to pay high rates for a generating unit like the Perry Plant. It is now time for the Commission to make a long overdue mid-course correction in the DLC nuclear investment saga. Enough is enough.

DAVID HUGHES, Complainant

Date

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

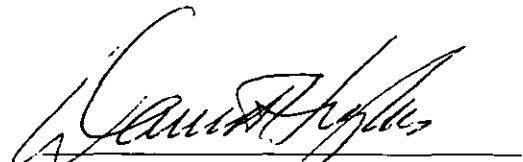
Application of Duquesne Light Company for Approval)
of its Restructuring Plan Under Section 2806 of the)
Public Utility Code)

DOCKET NO. R-00974104

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Direct Testimony, Statements
Numbers 1 and 2, filed on behalf of David Hughes, upon all parties of record in this proceeding
In accordance with the requirements of 52 Pa. Code, Section 1.54 (relating to service by a parti-
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November 7, 1997

Honorable John H. Corbett, Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

VIA FEDERAL EXPRESS

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

Dear Judge Corbett:

Enclosed are copies of the following direct testimony on behalf of Duquesne Industrial Intervenors ("DII") concerning the above-referenced proceeding:

DII Statement No. 1 — Direct Testimony and Exhibits of Stephen J. Baron
DII Statement No. 2 — Direct Testimony and Exhibits of Randall J. Falkenberg
DII Statement No. 3 — Direct Testimony and Exhibits of Lane Kollen

Enclosed also, under separate cover, are the workpapers of all three DII witnesses.

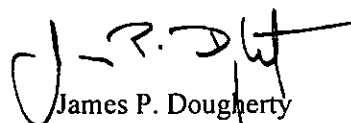
Also enclosed is a computer diskette containing the statements in Wordperfect 6.1 format.

As evidenced by the attached Certificate of Service, parties to this proceeding have been duly served.

Very truly yours,

McNEES, WALLACE & NURICK

By


James P. Dougherty
Pamela C. Polacek

DOCUMENT
FOLDER

Counsel to Duquesne Industrial Intervenors

JPD:mas

Enclosures

c: John G. Alford, Acting Secretary (Transmittal Letter/Certificate of Service Only) via Hand Delivery
KA126\02497.25\CORBETT1.LTR

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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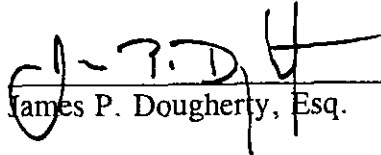
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Dated this 7th day of November, 1997, in Harrisburg, Pennsylvania.

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November 7, 1997

VIA FEDERAL EXPRESS

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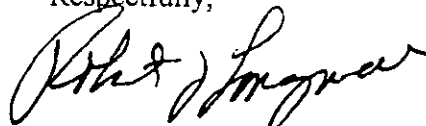
RE: Application of Duquesne Light Company for
Approval of a Restructuring Plan Pursuant to 66 Pa.
C.S. § 2806(d); Docket No. R-00974104

Dear Judge Corbett:

Enclosed please find two copies of Enron Power Marketing, Inc.'s direct testimony in the above referenced matter. As indicated on the attached certificate of service, all parties of record have been served.

If you have any questions, please contact me.

Respectfully,



Robert J. Longwell
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

LRJ/jlg
Enclosures

cc: Parties of Record (w/enc)

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DSH:10339.1

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below via Facsimile/Hand Delivery/Federal Express/First Class Mail, postage pre-paid in Harrisburg, PA.

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Date: November 7, 1997

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ALJ HEARING REPORT

Docket No. R-00974104
R-00974104C0001-C0002
 Case Name PA Public Utility Commission
 v.
Duquesne Light Company
 Location Beaver Falls
 Date November 12, 1997
 ALJ Corbett
 Reporting Firm Halbert Assoc.

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES NO

Hearing held YES NO

Testimony taken YES NO

Transcript due YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days as scheduled

RECORD CLOSED YES NO

KJR DATE _____

Briefs to be Filed YES NO

DATE _____

BENCH DECISION YES NO

REMARKS:

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Re: *Application of Duquesne Light Company for
Approval of Restructuring Plan,
Docket No. R-00974104*

Dear Mr. Moot:

Hospital Shared Services ("HSS") and Administrative Resources, Inc. ("ARI") hereby provide their objections to the First Set of Interrogatories of Duquesne Light Company ("Duquesne") which were served upon HSS/ARI on November 11, 1997. We will be happy to discuss these objections with you at your earliest convenience.

I. Objections to Instructions and Definitions

Instruction A: This instruction would provide a continuing obligation upon HSS/ARI to supplement responses during the pendency of this matter. HSS and ARI object to this instruction as being unduly burdensome. HSS and ARI will update responses until the record is closed consistent with any ethical obligation to do so.

Instruction B: This instruction states that in responding to each request, "HSS shall furnish all such information or documents as are known to its employees, representatives, agents, attorneys, investigators, and experts, unless such information is privileged from discovery." HSS and ARI object to this instruction as overbroad, unduly burdensome, costly and requiring a time-consuming investigation. HSS and ARI will question employees or officers who may reasonably be expected to have information responsive to these interrogatories. In addition, HSS/ARI's witness Robert B. Weisenmiller will provide responsive, non-privileged information consistent with the guidelines described herein.

WAS01:44523.2

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John S. Moot, Esquire
November 13, 1997
Page 2

Instruction F: This instruction requests, *inter alia*, that responses be made in writing "under oath." HSS and ARI object to this instruction insofar as it deviates from the obligations imposed by 52 Pa. Code § 5.342(a), which does not require responses to be made under oath.

Definition F: This definition is of the term "employee." Insofar as the definition of "employee" includes "past" employees, HSS and ARI object to this definition as overbroad, burdensome and requiring a time-consuming investigation not likely to produce relevant information. HSS and ARI will not seek out and question past employees.

Definition K: This definition is of the terms "relate to" or "concerning." HSS and ARI generally object to interrogatories using the terms "relate to" and "concerning" as overbroad, burdensome, and requiring a time-consuming investigation. Indeed, Duquesne has objected to interrogatories served upon it on precisely these grounds. *See* Appendix A hereto.

II. Objections to Specific Interrogatories

Interrogatory No. 12: Subpart (b) of this interrogatory requests that HSS and ARI "[i]dentify all contract terms, and provide the necessary contractual language, that HSS believes should have been added to the PSA to eliminate distortions of market value." HSS and ARI object to subpart (b). HSS/ARI's testimony raises issues concerning the RFP that currently cannot be addressed by additional contract language. Therefore, the basis for this interrogatory is without foundation. Further, HSS/ARI object to a request to draft contract language.

Interrogatory No. 21: Subpart (a) of this interrogatory requests that Dr. Weisenmiller describe his "experience with power marketers, including identifying all occasions on which [he] discussed hedging strategy with a marketer," and "to [i]dentify the marketer with whom the discussion took place and the marketer's employee that was a party to the discussion." HSS and ARI object to subpart (a) of this interrogatory as being overbroad and requesting information from Dr. Weisenmiller that is *confidential* in nature, the dissemination of which might subject Dr. Weisenmiller to liability for breach of confidentiality agreements with other clients.

Dr. Weisenmiller has had numerous discussions over a number of years that broadly could be defined as explaining his "experience with power marketers." However, such discussions are too numerous to recall comprehensively or with specificity. Additionally, many of those discussions were of a confidential nature with clients. Further, Dr. Weisenmiller has prepared documents for other clients that have demanded that such documents be treated as confidential. Unlike Duquesne, the entities demanding confidential treatment of those documents have not sponsored Dr. Weisenmiller's testimony here. HSS/ARI further object that subpart (a) is overbroad as to time,

John S. Moot, Esquire
November 13, 1997
Page 3

location and product line. As such, it is unduly burdensome and would require a time consuming and costly investigation that would be unlikely to produce relevant evidence.

Interrogatory No. 23: Subpart (a) of this interrogatory requests that HSS and ARI "[p]rovide all calculations and analysis demonstrating that the bid rejected was 'higher than the weighted average of the two bids Duquesne accepted.'" A response to this request would require HSS and ARI to disclose information that Duquesne has deemed to be confidential. Therefore, prior to responding to subpart (a) of this interrogatory, HSS and ARI request clarification as to whether Duquesne is waiving its claim of confidentiality as to this material. HSS and ARI would be happy to provide responsive material to all active parties in this proceeding should Duquesne determine that this material no longer warrants protected status.

Interrogatory No. 26: HSS and ARI object to this interrogatory as overbroad and unduly burdensome. "All documents" could include documents such as Forms 10-K, 8-K, annual reports, as well as Duquesne's testimony in this proceeding. Moreover, the request for documents that discuss the "potential that Duquesne may propose the recovery of stranded costs," if taken literally, could relate to Duquesne's grotesquely inflated rates at present, which could include federal proceeding materials, merger proceeding materials, as well as other additional materials.

Interrogatory No. 27: Subpart (b) of this interrogatory seeks information concerning the impact of FERC Order No. 888. HSS and ARI object to this subpart to the extent it calls for a legal conclusion. HSS/ARI seek clarification with respect to this subpart.

Interrogatory No. 47: This interrogatory requests that Dr. Weisenmiller "identify all prior projections, estimates or forecasts" and "provide all related documents" of, *inter alia*, market prices of electricity or gas, transmission or transportation rates, the costs of new generating units. HSS and ARI object to this interrogatory as overbroad as to time and location, unduly burdensome, and requiring a time-consuming and costly investigation. Taken literally, this request would require Dr. Weisenmiller to provide all responsive material from the date that his career began. Moreover, the interrogatory seeks information concerning markets that are irrelevant to the issues in this proceeding. To attempt to compile all material responsive to this interrogatory would be unreasonable and oppressive. In addition, HSS and ARI object to this interrogatory on the ground that it asks for confidential and proprietary information in Dr. Weisenmiller's possession. Again, Dr. Weisenmiller has prepared documents for other clients that have demanded that such documents be treated as confidential, and on whose behalf Dr. Weisenmiller is *not* appearing here and who may have no interest in this proceeding.

Interrogatory No. 48: HSS and ARI object to this interrogatory, which seeks copies of all prior testimony of Dr. Weisenmiller that addresses any of the topics identified in Interrogatory

John S. Moot, Esquire
November 13, 1997
Page 4

No. 47, as requiring a time-consuming and costly investigation. Dr. Weisenmiller has testified in numerous proceedings in many jurisdictions. To attempt to review and compile all testimony responsive to this request would place an unreasonable and oppressive burden upon Dr. Weisenmiller and his staff. If you are in a position to more narrowly define the scope and nature of the request, undersigned counsel will advise if any such revised interrogatory can be answered.

Interrogatory No. 51: Subpart (c) requests that Dr. Weisenmiller explain whether it is his "contention that a utility in a ratemaking proceeding is obligated to file testimony and supporting exhibits in its case-in-chief that explain the prudence and/or reasonableness of every expenditure . . . that forms the basis for the proposed rates" and, if so, to provide "all examples" thereof which Dr. Weisenmiller is aware. HSS and ARI object to this interrogatory to the extent it calls for a legal conclusion. Moreover, HSS and ARI object to this interrogatory as overbroad and irrelevant insofar as it elicits examples and documents regarding the obligations of electric utilities subject to the jurisdiction of other state and/or federal regulatory bodies. Utilities' obligations to justify the prudence of their expenditures where such utilities are operating in states other than Pennsylvania, or subject to federal jurisdiction, may be of no consequence to this proceeding.

Interrogatory Nos. 54 and 55: These interrogatories request a comparison of the budgeted expenditures of HSS, ARI and MRW and Associates, Inc., respectively, to their actual expenditures for the period 1986-1997. HSS and ARI object to this interrogatory as irrelevant and not likely to lead to the production of relevant evidence. References in Dr. Weisenmiller's testimony regarding Duquesne's budget variances went to the issue of Duquesne's ability to project accurately its capital budget. Neither HSS/ARI nor MRW and Associates, Inc. are electric utilities. None are demanding that ratepayers pay billions of dollars based upon their ability to project future economic developments. Moreover, none has a rate at issue in this proceeding. Therefore, differences, if any, between budgeted and actual expenditures for HSS, ARI, or MRW and Associates are irrelevant to the issue of whether Duquesne's projections should be accepted as valid.

Interrogatory No. 57: To the extent that the request seeks confidential information, HSS/ARI object for the reasons expressed in Interrogatory Nos. 21 and 47.

III. General Objections

The following objections are generally applicable to interrogatories propounded on HSS/ARI in this proceeding.

1. To the extent Duquesne's instructions or interrogatories deviate in form or substance from obligations imposed by the Presiding Judge or the Commission's regulations (e.g., with regard to providing responses in writing under oath), HSS and ARI object.

John S. Moot, Esquire

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Page 5

2. HSS and ARI object to the provision of information which, if provided to a third party, would expose HSS and ARI to liability or sanctions, for instance, based upon claims of violations of intellectual property laws or contractual (such as licensing) arrangements. HSS and ARI generally object to any requirement that they reproduce, provide or identify documents that are publicly-available, for instance decisions, orders, reports, and the like.
3. With respect to voluminous documents, HSS and ARI may undertake steps to reduce the burden, such as making such documents available for review on site (as did Duquesne), or providing copies of relevant portions of extensive documents.
4. HSS and ARI reserve the right to assert claims of privilege or protection to documents subsequent to the date of this letter as discovery reviews continue.

We encourage you to try to modify your requests and work with us to avoid imposing upon the time of the Presiding Administrative Law Judge. We are prepared to discuss these matters with you promptly and informally to reach that goal.

Very truly yours,



Mark F. Sundback

Kenneth L. Wiseman

Attorneys for Hospital Shared Services
and Administrative Resources, Inc.

cc: All Parties
Prothonotary

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light
Company for Approval of
Restructuring Plan

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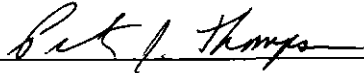
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Docket No. R-00974164
PROTHONOTARY'S OFFICE

CERTIFICATE OF SERVICE

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

Dated this 13th day of November, 1997.



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APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. R-00974104
R-00974104C0001-C0002
 Case Name PA Public Utility Commission
v.
Duquesne Light Company
 Location Pittsburgh
 Date November 13, 1997
 ALJ Corbett
 Reporting Firm Holbert Assoc

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES NO

Hearing held YES NO

Testimony taken YES NO

Transcript due YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days as scheduled

RECORD CLOSED YES NO

Briefs to be Filed KJK YES NO

BENCH DECISION YES NO

REMARKS:

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VIA HAND DELIVERY

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

Dear Counsel:

Please find enclosed two (2) copies of the Duquesne Industrial Intervenors' Interrogatories Set I to Office of Consumer Advocate in the above-referenced proceeding. Please send one copy of your responses, all disks and attachments to the undersigned and one copy of your responses, all disks and attachments to our consultant:

Mr. Stephen J. Baron
J. Kennedy and Associates, Inc.
35 Glenlake Parkway, Suite 475
Atlanta, GA 30328

Please provide responses to all interrogatories on an expedited basis. Please endeavor to forward responses as they are completed, rather than waiting until the responses to the full set are completed.

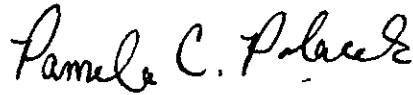
Irwin A. Popowsky, Esq., et al.
November 14, 1997
Page 2

Please communicate any objections or questions that you may have regarding these interrogatories as quickly as possible. Copies of these interrogatories are being served on all parties consistent with the attached Certificate of Service. Thank you for your attention to this matter.

Very truly yours,

McNEES, WALLACE & NURICK

By



James P. Dougherty
Pamela C. Polacek

PCP:mas

Enclosures

c: Certificate of Service

James J. McNulty, Acting Secretary (Transmittal Letter and Certificate of Service Only)

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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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Certificate of Service
Docket No. R-00974104
Page 2

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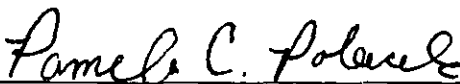
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Certificate of Service
Docket No. R-00974104
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Dated this 14th day of November, 1997, in Harrisburg, Pennsylvania.

MEMORANDUM

COMMONWEALTH OF PENNSYLVANIA
PA Public Utility Commission

DATE: November 20, 1997

SUBJECTS: PA PUC v. Duquesne Light Company and Joint Application of DQE, Inc.,
Allegheny Power System, Inc. and AYP Suv, Inc.
Docket Nos. R-00974104 and A-00110150F0015

TO: File Room

FROM: John H. Corbett, Jr.
Administrative Law Judge



KJR

I have attached a letter which has been filed in the above-captioned case. Please have this letter placed in the document folder.

If you have any questions, please do not hesitate to call me at (412) 565-3550.

JHC:kmc

Attachment

DOCUMENT
FOLDER

RECEIVED

DEC 19 1997

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

DOCUMENT
FOLDER

November 14, 1997

DOCKETED

DEC 29 1997

The Honorable Judge John H. Corbett
1103 State Office Building
Pittsburgh, PA 15222

Dear Judge Corbett:

On behalf of the Community Assistance Network (C.A.N.) I would like to submit this letter opposing Duquesne Light Company's proposed merger with Allegheny Power System, Inc. We are also opposed to Duquesne Light's request to continue to charge a stranded cost and/or Competitive Transition Charge (C.T.C.).

C.A.N. is a coalition of 35 to 40 social service agencies in the City of Pittsburgh and the Mon Valley communities within Allegheny County. We work with displaced workers, the under-employed worker, and the economically disadvantaged and their family members. C.A.N.'s mission is to lobby local, state and federal officials (both elected and private) to develop policies and program that ensure our clientele access to affordable basic human needs (i.e., housing, utilities, food and assistance with employment needs). In our opinion, a large percentage of our special target population/senior citizens and young-female head of household are being forced to exist through the winter months without affordable heat and electric services. This proposed merger would only make their situation worse.

Along with having a negative impact on the low income in our society, this proposed merger of Duquesne Light Company with Allegheny Power System, Inc. would also result in the projected loss of 500 or more jobs in Southwestern Pennsylvania. Duquesne Light's proposal to give customers a discount averaging 25% on the price of additional electric power (above their average monthly usage) runs in opposition to good budget management and efficient energy usage.

We hope you will do all you can to stop this merger and not allow a stranded cost charge and/or Competitive Transition Charge to occur.

Sincerely,

Herman Glass

Herman Glass, Chairperson
Community Assistance Network

NOV 20 1997

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November 21, 1997

James J. McNulty, Acting Secretary
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DOCUMENT
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RECEIVED
97 NOV 21 PM 4:03
F.A.P.U.C.
PROTHONOTARY'S OFFICE

RE: Duquesne Light Company - Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104;
ANSWER OF MAPSA TO DUQUESNE LIGHT COMPANY'S MOTION TO STRIKE TESTIMONY

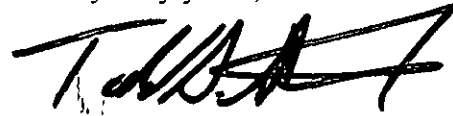
Dear Mr. McNulty:

KJR

Enclosed for filing are the original and three (3) copies of the Answer of the Mid-Atlantic Power Supply Association ("MAPSA") to the Motion to Strike Testimony in the above-captioned proceeding. Copies of this document have been served upon all parties of record, as indicated on the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,



Todd S. Stewart

TSS/bes

Enclosures

cc: Attached Certificate of Service
Honorable John H. Corbett, Jr., ALJ (via facsimile and Federal Express)

109

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

NOV 25 1997

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

Docket No. R-00974104

**DOCUMENT
FOLDER**

**ANSWER OF THE
MID-ATLANTIC POWER SUPPLY ASSOCIATION
TO THE MOTION TO STRIKE CERTAIN TESTIMONY
OF WHITFIELD A. RUSSELL
OF THE DUQUESNE LIGHT COMPANY**

PROTHONOTARY'S OFFICE
FALLS
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INTRODUCTION

On November 19, 1997, Duquesne Light Company ("Duquesne") filed a Motion to Strike specific portions of testimony filed by Whitfield A. Russell on behalf of the Mid-Atlantic Power Supply Association ("MAPSA"). Duquesne's Motion is grounded upon the Commission's regulations at 52 Pa. Code §1.4(e) and 5.103. Duquesne contends that Mr. Russell's testimony is immaterial and impertinent to Duquesne's restructuring proceeding because it addresses the impacts of the proposed merger between DQE, Inc. and Allegheny Power Systems, Inc. ("APS"), and because a separate proceeding has been convened by this Commission in order to address the public interest of the proposed merger.¹ Duquesne's argument that MAPSA's testimony concerning the pending merger of Duquesne and APS is immaterial and impertinent to this proceeding is wholly lacking in merit simply because it is Duquesne which has offered testimony concerning the supposed benefits of merger. It is irrational for Duquesne to argue that MAPSA should be foreclosed from addressing the merger in this proceeding when Duquesne obviously is of the opinion that testimony concerning the merger is relevant and material when offered by it.

¹ While it is true that MAPSA currently is not a party to the merger proceeding, that is not the primary reason why negotiations between MAPSA and Duquesne failed to resolve the issues at hand. Rather, MAPSA had unresolved concerns about the likely prejudice it would suffer if its testimony were removed.

It would be inappropriate to strike the testimony even if Duquesne had not addressed the merger. MAPSA's specific answer to the Motion to Strike follows:

SPECIFIC ANSWER

1. Mr. Russell's merger related testimony is not immaterial and/or impertinent to this proceeding and its inclusion in this proceeding will not prejudice Duquesne. Most significantly, Duquesne cites specific benefits that allegedly will accrue should the merger occur. (See e.g., Duquesne Statement No. 1, Testimony of David D. Marshall, pp. 6, 21, 36-37; Duquesne Statement No. 2, Testimony of Donald J. Clayton, pp. 25-26; attached hereto as Appendix "A"). In fact, in his testimony, Duquesne's witness, Mr. Marshall, recommends that the Commission approve the merger application and joint plan filed by Duquesne and APS. (Duquesne Statement No. 1, p.6).

2. MAPSA disagrees with the assertion that the only issues to be considered by the Commission in this case are those of the stand-alone restructuring of Duquesne. In this case Duquesne is proposing what is essentially the first step toward a merged company. To ask this Commission to consider its restructuring in a vacuum, without regard to the pending merger, is not reasonable. Mr. Russell's testimony points out the pitfalls in Duquesne's restructuring plan – a plan premised upon the pending merger – and addresses the benefits that Duquesne has alleged will result from the merger.

3. Duquesne raises the concern that inclusion of testimony regarding the merger will cause the parties and the presiding ALJ to lose focus in this case, contending that its restructuring case is a "stand-alone" proceeding. Simply put, Duquesne has raised the issue of the potential benefits of the merger upon its restructured operations, and Mr. Russell has addressed it.

MAPSA has an absolute due process right to address issues raised by Duquesne. To permit Duquesne to raise issues and subsequently limit responses to the same issues would be fundamentally unfair.

4. While allowing Mr. Russell's testimony regarding the merger to be heard in this case might encourage other parties to address the issue as well, such a result is appropriate provided that all parties demonstrate the relevance of their positions.

5. MAPSA will be prejudiced by striking Mr. Russell's testimony from consideration in this proceeding. While MAPSA currently is not a party to the merger proceeding, Mr. Russell's testimony in this case has addressed the benefits of the merger that have been raised by Duquesne in this proceeding. By requiring that issues relevant to the restructuring case be addressed in another case, MAPSA would be denied its right to address those issues here and possibly be denied the opportunity to address the issues at all. Duquesne's attempt to limit MAPSA in such a fashion is highly prejudicial to MAPSA.

6. This Commission should deny the Motion of Duquesne to strike any portion of the testimony of Whitfield Russell in this proceeding. Duquesne has failed to state any reason that would require Mr. Russell's testimony to be stricken. What Duquesne has done is to argue that a separate case is pending that will consider the public interest of the merger, and therefore, any testimony regarding the merger is irrelevant. However, Duquesne's argument flies in the face of reality, in that Duquesne has addressed merger benefits in this case. Further, Duquesne has failed to state any separate reason why Mr. Russell's testimony is not relevant to the consideration of Duquesne's restructuring plan, when in fact it is highly relevant in that it addresses the preparations Duquesne has made for the merger.

7. Simply stated, none of Mr. Russell's testimony, as described by Duquesne in its Motion to Strike, should be stricken. Duquesne has failed to make any argument that would require such a result -- it has not demonstrated that the testimony is irrelevant, immaterial or impertinent. Further, Duquesne has not demonstrated what prejudice it will suffer if the testimony is to be heard. On the contrary, since Duquesne has addressed the issue of merger benefits as they relate to the restructuring plan, MAPSA has the constitutional due process right to address the detriments, so that the plan may be altered accordingly.

CONCLUSION

MAPSA's testimony is relevant and material to the consideration of issues that are properly raised and addressed in this proceeding. No party will suffer harm if it is included; Duquesne's representations to the contrary notwithstanding. Duquesne has raised the issues, MAPSA has a right to address them, especially when the testimony is relevant standing alone. Therefore, Duquesne's Motion to Strike should be denied.

Respectfully submitted,



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Counsel for Mid-Atlantic Power
Supply Association

DATED: November 24, 1997

VOLUME I

Duquesne Statement No. 1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DUQUESNE LIGHT COMPANY
DOCKET NO. R-00974104

Direct Testimony
of
David D. Marshall

Contents:

Overview of Duquesne Customer Choice Plan

Appendix "A"

1 consumption. Equally important, Duquesne's innovative rate redesign proposal, which
2 is described in detail by James A. Lahtinen (Statement No. 5), may increase the
3 mitigation of stranded costs during the transition period by \$15 million per year.

4 Q. Please summarize your conclusions with regard to Duquesne's proposal to merge with
5 APS.

6 A. The Commission should go beyond approval of the Customer Choice Plan in this
7 docket and approve the Merger Application and Joint Plan filed by Duquesne and APS.

8 As explained in my direct testimony filed in that case:

- 9 • In addition to the customer benefits identified in Duquesne's stand-alone
10 Customer Choice Plan, the merger will provide additional savings to Duquesne,
11 on a nominal basis, of \$365 million in generation-related costs, \$173 million in
12 distribution-related costs, and \$9 million in transmission-related costs.
- 13 • Duquesne will flow through 100% of these cost reductions during the transition
14 period to its ratepayers by (i) increasing the amortization of stranded costs by
15 \$160 million during the transition period, (ii) reducing distribution rates by \$25
16 million in 2001, and (iii) freezing distribution rates at this reduced level until
17 2005.

- 1 • a minimum of \$1.7 billion in total amortization and depreciation of regulatory
2 assets and stranded generation costs during the transition period, with
3 additional amortization and depreciation possible through the ROE spillover
4 mechanism;
- 5 • additional revenues through the redesign of rates to encourage additional
6 consumption at more efficient levels, which may yield approximately \$15
7 million per year in additional stranded cost mitigation;
- 8 • reductions in operation and maintenance expenses and capital expenditures
9 below historic levels at both fossil and nuclear plants, totalling more than \$25
10 million per year;
- 11 • the continuing benefit of past mitigation, including the financial mitigation
12 discussed by Mr. Clayton (nearly \$700 million during the transition period);
13 and
- 14 • approximately \$550 million in additional mitigation due to the cost savings
15 associated with the proposed merger with APS.

16 All the foregoing mitigation will be passed on to Duquesne's ratepayers through the
17 Customer Choice Plan or, as to the last point, the Joint Plan.

18 Q. You have discussed Duquesne's methodology for calculating CTCs and its mitigation
19 plan, but you have not discussed the appropriate standard for stranded cost recovery.

20 Please turn to that subject.

1 Duquesne's fossil generation. Mr. Nelson also describes the cost mitigation that has
2 allowed Duquesne to reduce the cost of operating its fossil units.

3 **Ralph E. Duckworth** is Controller of Duquesne's Nuclear Unit. Mr.
4 Duckworth provides the calculation of Duquesne's operation and maintenance expense
5 and capital expenditures during the transition period for Duquesne's nuclear generation.
6 Mr. Duckworth also describes Duquesne's mitigation of nuclear O&M costs.

7 **Jeffrey D. Makhholm** is a Senior Vice President of National Economic
8 Research Associates, Inc., an economic consulting firm based in Cambridge,
9 Massachusetts. Dr. Makhholm supports the equity cost of capital used by Duquesne to
10 calculate its revenue requirements and by Mr. Clayton to derive present value
11 calculations. Mr. Makhholm also explains why utilities should be permitted to recover
12 stranded costs and shareholders have not already been compensated for the risk of
13 stranded costs.

14 **Thomas P. LaGuardia** is President of TLG Services, Inc. Mr. LaGuardia
15 presents the results of his analysis of the nuclear decommissioning costs for Beaver
16 Valley Units 1 & 2 and Perry Unit 1. He also presents fossil decommissioning studies
17 for the Company's fossil-fired generating stations.

18 **V. THE MERGER WITH APS**

19 Q. Please discuss why the Commission should go further and approve the Merger
20 Application and the Joint Plan.

1 A. The rationale for Commission approval of the Merger Application and the Joint Plan is
2 fully set out in the Company's joint application with West Penn. As documented
3 therein, additional synergy benefits will be created by the merger and shared by the
4 customers of Duquesne, West Penn and the other non-jurisdictional subsidiaries of
5 Allegheny Power. In summary, the evidence shows that:

- 6 • In addition to the customer benefits identified in Duquesne's stand-alone
7 Customer Choice Plan, the merger will provide additional savings to Duquesne,
8 on a nominal basis, of \$365 million in generation-related costs, \$173 million in
9 distribution-related costs and \$9 million in transmission-related costs.
- 10 • Duquesne will flow through 100% of these cost reductions during the transition
11 period to its ratepayers by (i) increasing the amortization of stranded costs by
12 \$160 million during the transition period, (ii) reducing distribution rates by \$25
13 million in 2001, and (iii) freezing distribution rates at this reduced level until
14 2005.

15 Q. Does that conclude your testimony?

16 A. Yes it does.

VOLUME I

Duquesne Statement No. 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DUQUESNE LIGHT COMPANY
DOCKET NO. R-00974104**

**Direct Testimony
of
Donald J. Clayton**

Contents:

**Regarding Cost Mitigation Efforts, Stranded Cost Calculations
and Recovery, Cost of Capital and Capital Structure.**

1 the Company will have reduced its potentially stranded costs by approximately \$1,030
2 million. The exhibit also shows that the Company has avoided some \$700 million of rate
3 increases which would have been required had the Company not pursued its aggressive
4 mitigation strategies. Duquesne has actively engaged in mitigation efforts for more than
5 ten years. Even though the Company was dealt crushing blow by the loss of steel load in
6 the early 1980s it has rebounded while balancing the interests of its customers,
7 shareholders, employees and other stakeholders. Duquesne pursued aggressive cost
8 containment for fuel, O&M and capital additions. Duquesne was the only company in
9 Pennsylvania to use the proceeds of a sale and leaseback transaction to financially
10 restructure itself and significantly reduce its cost of capital. Duquesne has been a
11 significant seller of power in the wholesale market and has passed all of the benefits of
12 these sales to ratepayers through its fuel clause. The Company was the first Company in
13 the state to voluntarily accelerate depreciation related to nuclear plants and has increased
14 its depreciation and amortization rate by more than any other utility in the state. Duquesne
15 is the only Company who has voluntarily increased its nuclear decommissioning funding
16 level to over six times the amount originally included in rates. Duquesne is the only
17 company in the state to sell a power plant and use the gain to offset a portion of its
18 stranded cost. Duquesne is the only Company to use innovative tax planning strategies to
19 mitigate stranded costs. Duquesne has reduced its base rates since 1992 while other
20 companies in Pennsylvania have received rate increases. Duquesne's mitigation plan has
21 complied with both the letter and intent of the Act and should be recognized by the
22 Commission in determining that Duquesne is indeed entitled to an opportunity to fully
23 recover its stranded costs. In addition to our stand alone proposals, a critical mitigation

1 strategy to be employed by the Company is the proposed merger with Allegheny Power
2 Systems² Approval of the merger will permit the Company to commit to an additional
3 \$160 million of depreciation and amortization, a \$25 million reduction in our distribution
4 rates beginning July 1, 2001, and a rate freeze for distribution through 2005. In addition,
5 it is likely that our stranded costs as of December 31, 2005 will be \$200 million less than
6 they would be without the merger and that the merger synergies will enable the Company
7 to shorten its stranded cost recovery period.

IV. DUQUESNE PROPOSES A MARKET-BASED RESTRUCTURING PLAN FOR CALCULATION AND RECOVERY OF STRANDED COSTS

8 Q. You have described the mitigation efforts of the Company in the first part of your
9 testimony. How does the Company propose to recover its "Transition or Stranded Costs"
10 during the Transition Period?

11 A. Section 2803 of the Customer Choice Act defines "Transition or Stranded Costs" as:

12 "An electric utility's known and measurable net electric
13 generation-related costs, determined on a net present value basis
14 over the life of the asset or liability as part of its restructuring plan,
15 which traditionally would be recoverable under a regulated
16 environment but which may not be recoverable in a competitive
17 electric generation market and which the Commission determines
18 will remain following mitigation by the electric utility."

19 In my testimony, I have used the term "stranded costs" to refer broadly to these costs.
20 Most of the Company's stranded costs fall into two categories; generation related
21 stranded costs (including future decommissioning expense) and regulatory assets. A third
22 category, transition costs, are smaller in magnitude and include such items as the cost of
23 our restructuring filing, the cost of customer choice education programs, and the cost of

² The details of the Company's merger application and combined restructuring proposals are set forth in the joint restructuring plan filing.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Answer upon the persons and in the manner indicated below.

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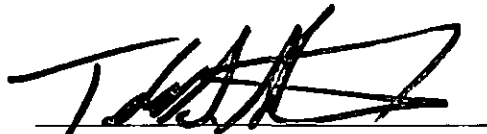
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Todd S. Stewart

DATED: November 24, 1997

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97 NOV 24 PM 4:03
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PROTHONOTARY'S OFFICE