SCOTT J. RUBIN
Public Utility Consulting

3 Lost Creek Drive
Selinsgrove, PA 17870-9357

(717) 743-2233 (Voice)
(717) 743-8145 (Fax)
e-mail: sjrubin@ptd.net

February 7, 1998

James McNulty, Prothonotary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

Re: Duquesne Light Company's Restructuring Plan
Docket No. R-00974104

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Main Brief of System Council U-10, International Brotherhood of Electrical Workers, in the above-referenced proceeding. A copy of this document has been served on Administrative Law Judge Corbett and all parties of record, as shown on the attached certificate of service. KJA

I am also enclosing an extra copy of the document that I would appreciate having time-stamped and returned to me in the enclosed envelope. Thank you.

DOCUMENT FOLDER

Sincerely,

Scott J. Rubin, Esq.

Enclosures

cc: Hon. John Corbett, Jr., ALJ (with diskette)
All parties of record

RECEIVED
FEB 06 1998
PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

ORIGINAL

6

BEFORE THE
COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE	:	DOCKET NO. R-00974104

MAIN BRIEF
OF SYSTEM COUNCIL U-10,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

SCOTT J. RUBIN
3 LOST CREEK DRIVE
SELINSGROVE, PA 17870
(717) 743-2233

COUNSEL FOR:
SYSTEM COUNCIL U-10, IBEW

DATED: FEBRUARY 10, 1998

Table of Contents

TABLE OF CITATIONS

JUDICIAL DECISIONS

ADMINISTRATIVE DECISIONS

STATUTES

REGULATIONS

Introduction and Summary of Argument

This brief is submitted on behalf of System Council U-10, International Brotherhood of Electrical Workers ("IBEW"). IBEW is the bargaining representative for approximately 2000 employees of Duquesne Light Company ("Duquesne"). IBEW St. 1 at 1. In this proceeding, IBEW is representing the interests of its current members as well as its retirees, both as employees of Duquesne and as consumers of electricity within Duquesne's service territory. *Id.* IBEW presented the testimony of one witness, its business manager Timothy Moran, who prepared IBEW Statement 1.

IBEW has directed its attention in this case to two issues: (1) the ill-conceived proposals to require Duquesne to sell or close its generating plants, and (2) the ability of non-utilities to provide billing and metering services for Duquesne's regulated distribution of electricity.

Plant Sales or Closure

The lack of information concerning the proposed sale of Duquesne's power plants is striking. Neither Duquesne nor any other party has attempted to evaluate the effect of plant sales or closures on the reliability of Duquesne's transmission system, though initial indications are that there would be serious reliability problems caused by closing or selling Duquesne's plants. Neither Duquesne nor any other party has attempted to evaluate the effect of plant sales or closures on Duquesne's employees. Neither Duquesne nor any other party has attempted to evaluate the effect of plant sales or closures on the communities where those plants, and employees, are located. Moreover, none of the parties making these proposals, including Duquesne in the later stages of this case, seem to recognize that the proposed, Commission-ordered sale of these plants is directly contrary to the Public Utility Code.

IBEW fully explores these issues in Section IV.A of this Brief. Simply, as IBEW will demonstrate, the Commission does not have the legal authority to order the sale or closure of a

power plant. Moreover, even if it did, the evidence of record in this case does not establish the need to do so. In fact, the evidence shows that Duquesne needs these plants in order to provide safe, adequate, and reliable service to its customers. Therefore, the Commission cannot order Duquesne to sell or close any of its power plants.

Billing and Metering

Several prospective marketers of electricity, including Enron Power Marketing, Inc. ("Enron"), Mid-Atlantic Power Supply Association ("MAPSA"), and New Energy Ventures ("NEV") (collectively referred to herein as "Marketers"), have proposed that they should be permitted to own, operate, and maintain customers' electric meters and provide all billing and collection services for Duquesne's regulated, distribution service.

In particular, Marketers argue that they should be allowed to provide – at each individual Marketer's option – all or any portion of the billing, metering, and collection services for Duquesne's provision of regulated, distribution service. IBEW strongly opposes this attempt by Marketers to provide a few distribution services to a select group of electricity consumers.

Initially, in Section IX.C.1, IBEW explains that it is unlawful for an entity that is not a public utility either (1) to render a bill for utility service or (2) to own, operate, and maintain a meter that is used for providing utility service. The legal requirements imposed by the Public Utility Code for the billing and metering of utility services cannot be waived by this Commission and can be met only by a public utility. Needless to say, the Marketers, by definition, are not public utilities.

IBEW also discusses two recent Commission decisions that reach the conclusion that billing, metering, meter reading, and other customer service functions must be provided by a regulated public utility. While these decisions did not fully address the legal analysis that is

presented by IBEW in this case, they reach a conclusion that is fully consistent with IBEW's analysis: only a regulated public utility can bill for tariffed distribution charges and provide metering, meter reading, and related customer services.

Moreover, IBEW will demonstrate that, even if it were lawful for non-utilities to meter and bill for utility services, the Marketers' proposals in this case are grossly unfair both to Duquesne and to consumers. The result of adopting the Marketers' proposals would be to increase Duquesne's cost of providing service and to decrease the overall quality, reliability, safety, and efficiency of electric service.

IBEW requests, therefore, that the Commission act in this case, as it has in other cases, to prohibit non-utilities from providing billing, metering, and other services associated with the regulated distribution of electricity. Such services must be provided only by Duquesne, as the regulated distribution utility.

ARGUMENT

IV. TRANSITION OR STRANDED COSTS

A. OVERVIEW OF STRANDED COST VALUATION AND RECOVERY APPROACHES

1. INTRODUCTION: ANY VALUATION METHOD THAT RELIES ON THE COMMISSION ORDERING DUQUESNE TO SELL OR CLOSE ANY OF ITS POWER PLANTS IS UNLAWFUL AND CANNOT BE ADOPTED.

In response to proposals made by several other parties, Duquesne has proposed to sell its power plants if the Commission orders it to do so. Tr. 176. Duquesne made it clear, however, that selling its plants was not its preferred method of valuing its stranded costs and that it does not believe that such a sale is the best course of action. Tr. 173, 182. However, Duquesne has offered to "waive our right" and sell its plants if the Commission so orders. Tr. 182.

There is no question that the Commission lacks the legal authority to order Duquesne to sell any of its power plants. Section 2804 of the Public Utility Code, 66 Pa. C.S. § 2804(5), specifically prohibits the Commission from ordering a utility to sell any of its facilities, stating: "The commission may permit, but shall not require, an electric utility to divest itself of facilities or to reorganize its corporate structure."

Moreover, even without the express prohibition in Section 2804, the Commission would not have the right to order a utility to sell or close a power plant (or any other facility). One of the fundamental principles of utility regulation in this Commonwealth is that the Commission does not sit as the "super board of directors" over a utility and neither owns nor controls a utility's property. As our Supreme Court has stated:

> The Public Utility Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them. Its sole power is to see that in the matter of rates, service and facilities, their treatment of the public is fair. Speaking through the present Chief Justice, we said: "It is not intended by the legislature that the commission should be a board of managers to conduct and control the affairs of public service companies, but it was meant that where certain of their powers and obligations had intimate relation to the public

> through fairness, accommodation or convenience, the commission should have an inquisitorial and corrective authority to regulate and control the utility in the field specifically brought within the commission's jurisdiction. . . . the company manages its own affairs to the fullest extent consistent with the protection of the public's interest, and only as to such matters is the commission authorized to intervene, and then only for the special purposes mentioned in the act": *Coplay Cement Mfg. Co. v. Pub. Ser. Com.*, 271 Pa. 58, 61, 114 A. 649. "It must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership": *Southwestern Bell Tel. Co. v. Pub. Ser. Com.*, 262 U.S. 276, 289.

Northern Pennsylvania Power Co. v. Pa. PUC, 333 Pa. 265, 267-68, 5 A.2d 133, 134-35 (1939).

In addition, it is beyond question that the Commission only has such authority as has been delegated to it by the General Assembly. *See, e.g., Pa. PUC v. Philadelphia Electric Co.*, 501 Pa. 153, 460 A.2d 734 (1983); *Western Pa. Water Co. v. Pa. PUC*, 10 Pa. Commonwealth Ct. 533, 31 A.2d 370 (1973). The Commission has certain authority regarding the construction, closure, and sale of power plants, but it does not go so far as to allow the Commission to make the decision for the utility. Specifically, the Commission (1) has the power to order the cancellation or modification of construction of a power plant (66 Pa. C.S. § 520), (2) must approve the retirement of a power plant (66 Pa. C.S. § 521), (3) may prohibit a utility from closing a power plant if the Commission finds that the plant, or its output, could be sold to another utility (66 Pa. C.S. § 525), and (4) must approve the sale of facilities that are in rate base (66 Pa. C.S. § 1102(a)(3)). But there is absolutely no statutory or other legal authority for the Commission to order a utility to shut down or sell a power plant.

Thus, while Duquesne may be willing to give the Commission the authority to order Duquesne to sell its power plants, the Commission is prohibited from exercising that authority.

It also must be recognized that Section 2804's provision that prohibits the Commission from ordering the sale of a power plant does not just protect the utility that owns the plant. As

the Act recognizes, there are other interests involved as well, including the interests of the utility's employees and the communities where the plants are located. 66 Pa. C.S. § 2802(18).

Moreover, even if it were lawful for the Commission to order the sale or closure of a power plant, the evidence in this case demonstrates that it would not be in the public interest to do so. Neither Duquesne nor any other party that is proposing the sale or closure of these plants has fully evaluated the transmission constraints that would result. Tr. 950-52. The initial review of transmission issues for the Elrama plant by Duquesne witness Karl, however, shows that serious transmission constraints would be created by the unrestricted sale or closure of that plant. Tr. 945. At this time, neither Duquesne nor any other party has a plan for alleviating those serious reliability concerns. Tr. 952. Further, neither Duquesne nor any other party has studied the reliability impacts of closing the Cheswick station or any other Duquesne facility. Tr. 952.

Furthermore, neither Duquesne nor any other party has evaluated the impact of the sale or closure of any facility on Duquesne's employees or on the communities where those plants and employees are located. Indeed, Duquesne's witnesses Marshall and O'Brien made it clear that no evaluation had been done of the impact of plant closures or sales on local communities (Tr. 175-78, 569) or on the employees who work at those facilities (Tr. 175-78, 570-73, 578-79).

Yet, in order for the Commission to evaluate a restructuring plan, it must consider the impact of the plan on the utility's employees and on the communities that might be affected. 66 Pa. C.S. § 2802(18). As required by the Public Utility Code, 66 Pa. C.S. § 2806(e), and the Commission's filing guidelines, Duquesne's original filing contained an evaluation of its original restructuring plan on its employees and on the local communities. Duquesne Exh. 1, Sch. N-1 to N-4. However, that evaluation does not consider the possibility that any plants would be sold, nor does it consider the possibility that any plants would be closed before 2005. Duquesne Exh.

1, Sch. L-5; Tr. 345-46. Simply, that original evaluation remains valid for a restructuring plan that does not involve the sale or closure of a power plant. But it has no relevance to a revised restructuring plan that would involve the sale or premature closure of a power plant. As IBEW demonstrated above, there is no other evidence in this case that enables the Commission to consider the impact of such a sale or closure on Duquesne's employees or on communities that might be affected.

IBEW's witness Moran accurately summarized this issue, as follows:

> [T]he power plants make a major contribution to the local economy, in terms of jobs, wages, and taxes. ... [I]t's clear to me that they failed to consider the substantial benefits to other area businesses, and the greater Pittsburgh area as a whole, from having these power plants in operation and owned by a local company. They also failed to consider the substantial costs associated with closing or selling those plants.

IBEW St. 1 at 11.

In summary, it is not in the public interest for Duquesne to sell or close any of its power plants. Even if it were a good idea to have Duquesne sell or close its power plants – which it is not – the Commission lacks the authority to order Duquesne to do so. Therefore, any stranded cost proposals based on the Commission ordering the sale or closure of a power plant must be rejected.

2. Duquesne's Approach

IBEW is not specifically addressing the valuation method used by Duquesne, except to note that it is unlawful to the extent that it gives the Commission the authority to order Duquesne to close or sell a power plant. *See* Section IV.A.1, above.

3. Intervenor Approaches

IBEW is not specifically addressing the valuation method used by various other parties, except to note that they are unlawful to the extent that they would give the Commission the authority to order Duquesne to close or sell a power plant. *See* Section IV.A.1, above.

4. Conclusion

For the reasons set forth above, it is neither lawful nor in the public interest for the Commission to order Duquesne to sell or close any of Duquesne's power plants. The determination of stranded costs must be conducted while Duquesne continues to own all of its existing power plants.

IX. DUTY TO SERVE

C. ELECTRIC TRANSMISSION AND DISTRIBUTION SERVICE

1. UNBUNDLING OTHER CUSTOMER SERVICES

A. INTRODUCTION: IT IS UNLAWFUL FOR NON-UTILITIES TO RENDER A BILL FOR UTILITY SERVICE OR TO OWN, OPERATE, AND MAINTAIN UTILITY METERS.

Numerous provisions of the Public Utility Code and the Commission's regulations require that billing and metering for public utility services must be provided by a public utility. As a consequence, Marketers must be prohibited from billing or metering public utility services.

Before discussing the specific legal restrictions, it is important to note that when IBEW uses the term "public utility services" it is referring only to the regulated transmission and distribution of electricity by Duquesne. That is, IBEW's position is that it is unlawful for anyone other than Duquesne to bill for and meter Duquesne's electricity distribution service. IBEW does not dispute the ability of non-utilities to provide their own bills solely for the supply of electricity or for other non-utility services.

The legal analysis of this issue must begin with the definition of "public utility." As amended by the Electricity Generation Customer Choice and Competition Act (Act 138 of 1996, P.L. 802; hereafter "the Act"), Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, excludes "electric generation supplier companies" from the definition of public utilities. The Act also defines "electric generation supplier" as "a person or corporation" that "sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company." 66 Pa. C.S. § 2803. In contrast, that same section defines an "electric distribution company" to be a "public utility" that provides "facilities for the jurisdictional transmission and distribution of electricity to retail customers." *Id.*

Thus, as a preliminary matter, jurisdictional transmission and distribution services must be provided to end-users of electricity by an electric distribution company. That electric distribution company, Duquesne in this case, must be a public utility.

The next step in this analysis is to determine whether billing and metering services are part of the "distribution services" that are provided by a public utility. Again, Section 102 of the Public Utility Code provides the answer. That section of the Code defines "service" to include "any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public ...." Further, Section 102 defines "facilities" to include "all plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility." It also should be noted that Commonwealth Court has held that the terms "service" and "facilities" as used in the Public Utility Code are to be broadly construed. *Country Place Waste Treatment Co., Inc., v. Pa. Public Utility Commission*, – Pa. Commonwealth Ct. –, 654 A.2d 72, 76 (1995).

Thus, when the Act speaks of "distribution services" that are provided by a public utility, that term is defined to include all acts performed and all property used by the distribution utility in serving its customers and the public. There is no question that the electric meter is property that is "used ... or supplied by public utilities" in providing regulated electric distribution service to their customers. There also is no question that the rendering of a bill for distributing

electricity is an "act done" in providing regulated electric distribution service to the utility's customers.

In other words, under the Public Utility Code, the metering and billing for the distribution of electricity are part of the provision of service by a public utility. As of this point in time, Duquesne is the only public utility that is authorized to provide electric distribution service within its service territory. Any Marketer (or other entity) that desires to meter and bill for electric distribution service first must receive a certificate of public convenience and necessity to provide public utility service. 66 Pa. C.S. § 1101.

This interpretation of the law is fully consistent with numerous other provisions in the Public Utility Code and in the Commission's regulations. The following provisions evidence a strong legislative intent that only a public utility should be permitted to bill for and meter utility services. The Commission's regulation of such billing and metering services is pervasive precisely because such services are essential to the provision of utility service. As IBEW explains in the following paragraphs, if such services are provided by Marketers and other non-utilities, then the Commission would not have the statutory authority to regulate those services.

Chapter 15 of the Public Utility Code (Service and Facilities) contains several provisions that require a public utility to bill for and meter utility services. Initially, Section 1504 gives the Commission the authority to regulate: "(2) ... the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the ***service*** of any and all ***public utilities***. (3) ... the examination and testing of ***such service***, and for the measurement thereof. (4) ... the accuracy of all meters and appliances for measurement. (5) ... the examination and testing of any and all appliances used for the measurement of any ***service*** of any ***public utility***." 66 Pa. C.S. § 1504 (emphasis added). That is, the Commission's authority to regulate the metering of

electricity, including the testing of meters, applies only to meters that are used to provide "service" by a "public utility." If the Commission were to permit non-utilities, such as Marketers, to provide metering services, the Commission would have no authority to regulate the non-utilities' meters.

Section 1507 of the Code requires every "public utility, furnishing service upon meter" to maintain records of the meters' accuracy, as well as equipment "for testing and proving the accuracy of meters furnished by such public utility for use." Moreover, the Commission is required to approve and inspect these meter testing facilities. 66 Pa. C.S. § 1507. Importantly, though, these testing and record-keeping requirements apply only to a "public utility" that furnishes "service." Once again, if the Commission desires to ensure that all electric meters are tested in a certified laboratory, the meters must be "furnished by" a "public utility." The Commission has no jurisdiction over measuring devices that are used by entities that are not public utilities.

Similarly, Section 317 of the Code permits the Commission to restrict the amount that "public utilities" may charge "for the testing of their instruments of precision and measuring apparatus." 66 Pa. C.S. § 317(b). Here again, the Commission cannot regulate the amount that is charged for testing a meter by any entity that is not a "public utility."

The Code contains several other provisions that empower the Commission to regulate the rendering of bills by "public utilities" but that do not apply if a non-utility were to render a bill for a utility service. Section 1509 of the Code sets forth restrictions on the billing procedures that are used by "a public utility as defined in paragraph (1)(i), (ii), (vi), or (vii) of the definition of 'public utility' in section 102 ... to its service customers ..." 66 Pa. C.S. § 1509. For example, this section contains requirements concerning the allowable time period for paying a

utility bill and the way in which information must be displayed on the utility bill. However, these restrictions apply only to "public utilities" that are delineated in specified portions of the definition in Section 102 of the Code. As was noted previously, Marketers are specifically excluded from that definition. Thus, the Commission's statutory ability to regulate the content and payment period on a bill for electric distribution service exists only when the bill for such service is "rendered by a public utility."

Similarly, Subchapter B of Chapter 15, 66 Pa. C.S. §§ 1521-1533, sets forth billing, collection, and termination requirements that must be met for public utilities that supply service to leased, residential premises. However, these provisions are limited to "public utilities as defined in paragraph (1)(i) and (ii) of the definition of 'public utility' ..." 66 Pa. C.S. § 1522(a). Thus, again, because Marketers are not defined as public utilities, they are not subject to the statutory provisions regarding the discontinuance of utility service to leased premises. In order for these statutory provisions to apply to electric distribution service, the bill and meter for that service must be provided by a public utility.

All of these provisions of the Public Utility Code are designed to protect consumers and to ensure that a minimum level of regulated, utility service is provided within the Commonwealth. It is possible to implement these provisions only if a public utility is responsible for the electric meter and renders the bill for electric distribution service.

In passing the Act, the General Assembly was aware of these restrictions when it permitted electric generation suppliers the right to bill for their own services and nothing more. In Section 2807(c), the Code provides: "Subject to the right of an end-use customer to choose to receive ***separate bills from its electric generation supplier***, the electric distribution company may be responsible for billing customers for ***all electric services***, consistent with the regulations

of the commission, regardless of the identity of the provider of those services." 66 Pa. C.S. § 2807(c) (emphasis added). That is, the statute does not permit electric generation suppliers to bill for ***all services***; that right is reserved to the distribution utility. Instead, the generation supplier only has the ability to render a separate bill for the services that it provides and then only if the customer requests it.

Section 2807(c) then sets forth requirements for how the electric distribution utility must perform the billing for services provided by others. These provisions cover the form and content of the bill, the furnishing of data to the distribution utility, and the allocation of payments. 66 Pa. C.S. §§ 2807(c)(1) to 2807(c)(3). Importantly, the Code does ***not*** contain comparable provisions that define similar obligations for electric generation suppliers performing the same function. *See* 66 Pa. C.S. § 2809. The absence of a parallel obligation for generation suppliers provides further support for the conclusion that the statute does not permit anyone other than the distribution utility to bill for distribution services.

In addition, there is no doubt that distribution utilities are required to provide other services that are directly related to the billing function. Section 2807(d) states:

> The electric distribution company ***shall continue*** to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa. C.S. § 2807(d) (emphasis added). It is difficult to understand how it would be possible for the electric distribution utility to continue providing these services unless it is also the entity that is billing for the services that it provides. This is particularly true for complaint resolution and collections, both of which are directly related to the actual bill that the customer receives.

Further, several important provisions in the Commission's regulations do not apply to electric generation suppliers. Under the Act, the only provisions of the Commission's

regulations that are made directly applicable to generation suppliers are the "standards and billing practices" found in 52 Pa. Code Ch. 56. 66 Pa. C.S. § 2809(b). It makes sense for these requirements to apply if the generation supplier is going to render a separate bill for service that it provides, as customers may request pursuant to 66 Pa. C.S. § 2807(c).

However, the Act does not provide that the requirements in Chapters 57 and 58 of the Commission's regulations apply to generation suppliers. Specifically, these regulations contain the following requirements, among others, with which electric distribution utilities must comply:

- Limitations on the fees for meter testing, 52 Pa. Code § 57.22;
- Procedures for adjusting bills for meter errors, 52 Pa. Code § 57.24;
- Procedures for engaging in sales promotion practices, 52 Pa. Code §§ 57.61-57.67;
- Maintenance of customer records that enable the utility to implement a low-income usage reduction program, 52 Pa. Code Ch. 58.

Each of these requirements, among the many others that appear in Chapter 57, apply only to public utilities that provide electric distribution service. As was noted previously, that term does not include the Marketers or other electric generation suppliers. Moreover, it would be extremely difficult, if not impossible, for electric distribution utilities to comply with many of these requirements if the electric distribution utility is not the entity that renders the bill to the customer, performs collection efforts, and is otherwise the primary contact point with the customer.

Furthermore, there is nothing in the Act that requires a different result. Numerous provisions of the Act state that the purpose of the Act is to provide for competition in the supply of electric generation to customers. For example:

- "Because of advances in electric generation technology and federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a ***competitive generation market*** ..." 66 Pa. C.S. § 2802(3) (emphasis added).

- "The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for ***the generation of electricity*** ..." 66 Pa. C.S. § 2802(12) (emphasis added).

- "The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a ***competitive market for the generation and sale or purchase of electricity.***" 66 Pa. C.S. § 2802(13) (emphasis added).

- "This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to ***generate and sell electricity*** directly to consumers in this Commonwealth. The ***generation of electricity*** will no longer be regulated as a public utility function except as otherwise provided for in this chapter." 66 Pa. C.S. § 2802(14) (emphasis added).

- "It is in the public interest for the ***transmission and distribution of electricity to continue to be regulated as a natural monopoly*** subject to the jurisdiction and active supervision of the commission." 66 Pa. C.S. § 2802(16) (emphasis added).

That is, there is nothing in the Act, or anywhere else in the Public Utility Code, that authorizes any entity other than a public utility to furnish an electric meter or to render a bill for electric distribution service. On the contrary, there are numerous provisions in the law that require that only a public utility can provide such services for its customers.

In summary, it is unlawful for any entity other than Duquesne to provide a meter and render a bill for the electric distribution services that Duquesne provides.

B. Resolution in Generic Proceeding vs. Resolution in this Case: Recent Commission decisions reinforce the requirement that only Duquesne is authorized to provide billing, metering, and meter reading services for its customers.

As early as January 1997, IBEW asked the Commission to establish a generic proceeding to resolve the important legal, policy, and factual issues concerning the provision of billing, metering, and meter reading services by Marketers and other non-utilities. See Comments of IBEW in *Tentative Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa.*

C.S. § 2806(e), Docket No. M-009608980 F. 0003, dated January 30, 1997, pages 1-5. IBEW believed that these issues were best decided before any of the utilities' specific restructuring plans were filed. However, the Commission determined that it preferred to decide these issues on a case-by-case basis in each restructuring plan, rather than in a generic proceeding. *Order Re: Electric Utility Restructuring Filings Made Pursuant to 66 Pa. C.S. § 2806(E)*, Docket No. M-00960890 F. 0003 (Pa. PUC Feb. 13, 1997), slip op. at 8-11.

In July 1997, IBEW again raised generic issues questioning the legality of non-utilities providing billing, metering, and meter reading services. Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electric Workers' Pennsylvania Utility Caucus, *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F)*, Docket No. M-00960890 F. 0011, dated July 24, 1997.

In denying that Petition, the Commission stated very clearly that it would not consider IBEW's arguments generically. Rather, the Commission stated that it "anticipated that metering and billing issues would be addressed in each restructuring case." *Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F)-Petition for Reconsideration, Clarification, Rescission, and Amendment of the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus*, Docket No. M-00960890 F. 0011 (Pa. PUC Aug. 21, 1997), slip op. at 3-4. The Commission went on to state:

> Although we declined to open up generic proceedings on these and other issues because of the limited time period allowed for hearing and resolution of the

> restructuring proceedings, we did recognize that the proceedings on the electric utility restructuring plans would examine transition issues, such as metering and billing, that involve employees of EDCs. In fact, the content of the restructuring plans required under Section 2806(d) must discuss the impacts of the proposed plan on the utility's employees. See 66 Pa. C.S. § 2806(e). We specifically noted that this issue along with other important issues would be explored in the restructuring proceedings ...

Id., slip op. at 4 (citations and footnotes omitted).

The Commission closed its August 21 Order by noting that IBEW (and other interested parties) should actively participate in the restructuring proceedings. The Commission noted its preference for developing these issues in that forum because "we will have the benefit of a full briefing schedule and an administrative law judge's initial decision before having to decide these issues." *Id.*, slip op. at 6.

It appears, therefore, that while the Commission has now ruled on the issue of competitive billing and metering in other proceedings (as IBEW discusses below), the parties must address in this case any facts that might lead to a result which is different from that reached by the Commission in other cases.

Within the past few months, the Commission has addressed this question on two separate occasions. Both times, the Commission has held that the electric distribution company (EDC) is the only entity that is authorized and permitted to provide metering and meter reading services, and it is the only entity that is authorized and permitted to bill for regulated distribution charges. As IBEW will explain in Section IX.C.1.d, below, the record in this case does not contain any information that would lead to a different result.

First, on November 24, 1997, the Commission issued a Proposed Rulemaking Order that requires each EDC to own, install, and maintain all electric meters used to serve its customers. *Rulemaking re Advanced Meter Deployment for Electricity Providers, 52 Pa. Code §§ 57.250-57.257*, Docket No. L-00970128 (Pa. PUC Nov. 24, 1997). In that Order, the Commission

concluded "that metering should remain a regulated function of the EDC at this time. Metering can remain a regulated function of the electric distribution utility, retaining all existing requirements and procedures for meter installation, reliability, safety, accuracy and the like." *Id.*, slip op. at 12.

Second, in its recent decision involving the restructuring of PECO Energy Co., the Commission reached a similar conclusion. *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket No. R-00973953 (Pa. PUC Dec. 23, 1997), *modified on other grounds*, slip op. (Jan. 16, 1998). In that decision, the Commission rejected Marketers' attempts to bill for PECO's distribution services and to take responsibility for metering and related services. Specifically, regarding billing, the Commission held: "We ... cannot conclude that it is appropriate to unbundle billing based on this record. Therefore, PECO shall provide all billing services, including billing for generation services, unless a customer indicates a preference to receive a separate bill directly from the supplier for generation services." *Id.*, slip op. at 139. On the issue of metering, the Commission referred to its rulemaking docket (discussed above) and held that "we do not believe that it is necessary to unbundle metering as a competitive service at this time. ... While PECO, as a regulated EDC, shall be responsible for all physical work related to the meter, the customer and/or the EGS [electric generation supplier] may select the qualified meter to be used and shall pay as a regulated rate any net incremental cost incurred by PECO as a result of the metering choice." *Id.*, slip op. at 140-141.

In summary, on the only two occasions where the Commission has addressed this issue, it concluded that billing, metering, meter reading, and other customer service functions must be

provided by as a regulated distribution service by a public utility. There is absolutely no reason to reach a different result in this case.

C. Interim Rules Applicable to Duquesne

IBEW is not addressing this issue.

D. Specific Services: Even if it Were Lawful for Non-Utilities to Bill and Meter Utility Services, the Marketers' Proposals in This Case Must be Rejected.

Even if the law did not prohibit the Marketers from metering and billing for electric distribution services, the evidence of record in this case demonstrates that it is not in the public interest for metering and billing services to be provided by the Marketers. The Marketers' proposals, therefore, must be rejected.

At the outset, IBEW would note that the Marketers' proposals constitute a solution in search of a problem. IBEW witness Moran accurately stated: "This is not a case where regulation doesn't work." IBEW St. 1 at 8. He went on to explain that Duquesne's customers "are receiving high-quality service: service orders are filled on time, metering and billing are performed accurately and on-time every month, payments are processed promptly and accurately, and customers can contact us 24 hours a day, 7 days a week." *Id.* Simply, there is no compelling reason to change from the current system, where the distribution utility is responsible for all billing and metering functions.

The Marketers' Proposals Do Not Allow Customers to Choose.

Rather than being interested in "customer choice," it is clear that the Marketers want to be able to control the billing and metering process. Enron witness Reising makes that abundantly clear in his proposed "Distribution Services Tariff." Enron St. 2, PDR-6. This proposed tariff sets out the rules that Enron would like to see govern the relationship between Duquesne (the "EDC" in the tariff), Marketers (the "Customer" in the tariff), and the utility customer (the "End

User" in the tariff). Those proposed rules make it clear that the Marketers would be able to choose who serves the customer. Specifically, proposed rule 10.1 states: "The Customer [that is, the Marketer], or at its election, the EDC [that is, Duquesne] shall be the Meter Service Provider and shall provide, own and maintain any meter or meters required in the supply of service." The rules continue, giving the Meter Service Provider the responsibility for reading meters and for rendering bills to End Users (that is, to Duquesne's customers). *Id.*, Rules 11.1 to 11.4. Importantly, there is nothing in Enron's proposed tariff that would allow the End User to decide who provides it with a meter, bill, or other customer services. Under the proposed tariff, that choice rests solely with the Marketer.

Enron's position is reinforced by the provisions in its proposed "Electric Generation Supplier Tariff" sponsored by its witness Coles. Enron St. 5, LRC-2. That tariff also fails to give Duquesne's customers any choice about who provides them with billing and metering services; instead, the Marketers are the only ones who have any choice. Specifically, proposed Rule 4.5 states: "Suppliers shall be responsible for billing all services to the Customer, including the EDC's charges for Energy Delivery Service, Transmission Service, Ancillary Services and other related charges, unless ***the Supplier elects***: (1) to have the EDC bill its charges separately to the Customer or (2) to have the EDC bill all charges including all of the Supplier's charges." *Id.*, page 6 (emphasis added). In other words, Enron's proposal is to give the Marketer the choice of billing options. Neither Duquesne nor its customers would have any choice in how Duquesne meters or bills its customers.

IBEW witness Moran discussed these, and other, problems with Enron's proposed tariffs. Mr. Moran concluded that several of Enron's proposals "could result in serious problems with the safety and reliability of electric service to Duquesne's customers." IBEW St. 1 at 3. As he

explained, not only would these proposals result in serious coordination problems between employees of Duquesne and the Marketers, but those coordination problems could lead directly to unsafe and hazardous conditions within Duquesne's distribution system. *Id.* at 3-5. Similar problems could be created for Duquesne's customer service personnel in attempting to determine whether termination requirements (among others) have been met. *Id.* at 7.

The Marketers' Proposals Violate the Law.

The Marketers' proposal cannot be adopted. This proposal violates the provisions of the Act. Section 2807(c) specifically states that the customer has "the right ... to choose to receive separate bills" from the Marketer and Duquesne. 66 Pa. C.S. § 2807(c). That section also states that if the customer fails to choose to receive separate bills, then Duquesne is responsible for rendering bills for all electric services. *Id.* Thus, the Marketers' proposal to give themselves the right to choose billing and metering options must be rejected as violating the provisions of the Act.

Enron responded to IBEW's testimony concerning the loss of customer choice by asserting: "The Customer is given the right to choose the Supplier. Different Suppliers may have differing arrangements with the EDC concerning the method of billing." Enron St. 5.1 at 3. In other words, Enron does not deny that its proposal fails to give a customer the right to choose its billing option. Instead, Enron proposes that the customer's choice of generation supplier should be based on that supplier's billing method. Of course, what Enron fails to mention is the possibility that ***all*** suppliers choose the same method of billing customers. If that were to occur, under Enron's proposal, customers would completely lose any right to choose the billing options that Section 2807 guarantees to them.

Simply, then, Enron's proposal fails to give customers the right to choose their billing option. Instead, Enron proposes to give this option solely to generation suppliers. This is not consistent with the requirements of Section 2807 and must be rejected.

The Marketers' Proposals Result in Unwarranted Discrimination.

Not only do the Marketers' proposals violate the express language of the Act, they also would result in unwarranted discrimination among similarly situated utility customers. By giving a Marketer the power to choose whether it will provide billing or metering services to a customer, the Marketer is free to skim off those customers that can be served at relatively low cost; leaving higher-cost customers to be served by Duquesne. IBEW witness Moran addressed these concerns as follows:

> Today, we have a system that ensures that everyone receives electric service of the same high quality. Customers who live in remote areas, who have low incomes, or who have special needs receive the same service at the same cost as customers who live in densely populated areas and make no demands on our customer service personnel. This type of universal service at a uniform price will be in serious trouble if we let other companies pick and choose the customers they want to provide revenue cycle services to. I have no doubt that Enron or NEV or one of the other potential suppliers could provide customer service to ***some*** of our customers at less than our ***average*** cost of providing customer service. So could [Duquesne]. But that's not the point. Right now, [Duquesne] employees are able to provide high-quality customer service to ***all*** of our customers. The monthly customer charge is the same for every customer who takes the same type of service. It doesn't matter if a customer calls us five times a month or once every ten years; it doesn't matter where they live or what their income is. The low-cost customers make it possible to serve the high-cost customers at the same price and same high quality. If competitors are allowed to skim off the low-cost customers (higher incomes, fewer demands, living in more densely populated areas), then it will not be possible to continue serving the higher cost customers at the same price, because the average cost will increase significantly.
>
> It's similar to the way that the U.S. Postal Service is set up. The goal is to provide a service (first class mail) to everyone at the same price. Of course others could deliver mail in New York City at less than the average, nationwide cost of delivering mail. But those people are not also willing to provide service to rural Montana or Alaska at the same price. Serving the high-cost customers is made possible by the ability to also serve the low-cost customers.
>
> Exactly the same thing is true for [Duquesne]'s revenue cycle services. It's possible to provide a full range of customer services – metering, meter

> reading, billing, collections, and customer service – at the same price to everyone only because we serve everyone. Take away our low-cost customers and the average cost to serve the remaining customers will increase.

IBEW St. 1, Sch. TM-1 at 10-11 (emphasis in original).[1]

Simply, the Marketers believe that they should be permitted to bill utility customers for ***regulated, distribution services*** at any price they choose – without regard to Duquesne's tariffed rate for providing such service. Under the Public Utility Code, Duquesne would be powerless to respond to the Marketers' efforts to skim off its lowest cost customers. Section 1304 prohibits a "public utility" from discriminating among similarly situated customers or from charging a rate that is either higher or lower than its tariffed rate. 66 Pa. C.S. § 1304. *See also* 66 Pa. C.S. § 1303, requiring public utilities to adhere to the provisions in their tariffs. But because the Marketers are not "public utilities" they believe that they should be allowed to charge different rates for precisely the same regulated, distribution service. Moreover, the effect of such pricing tactics would be to increase the average cost of serving those customers who are left on the Duquesne system.

The Marketers' Proposals are Neither Pro-Consumer Nor Pro-Competition.

The Marketers obviously contend that their proposals would enhance competition and would benefit consumers. In fact, exactly the opposite is true.

IBEW witness Moran, testified as follows about the problems that would result if each Marketer could provide its own meter:

> I am very concerned about what would happen if a customer changed electric suppliers with the frequency that some customers change their long-distance telephone supplier or the supplier of other competitive goods and services. If each generation supplier installs its own meter, then a customer could see frequent

[1] Mr. Moran's Schedule TM-1 is the testimony of the president of another IBEW local in a different restructuring case. Mr. Moran adopted this testimony as his own. IBEW St. 1 at 2.

changes of his or her electric meter. As I mentioned before, an electric meter is not just an appliance that can be unplugged. The work is potentially hazardous, must be done properly, and should not be done frequently to avoid the possibility of wear or damage to the customer's meter base. Further, there can be considerable inconvenience to the customer of having a meter changed. Depending on the location of the meter, the customer may need to be at home in order to have the meter changed. And in all cases, the customer will suffer a power outage while the meter is being changed. These kinds of outages will be very inconvenient to the customer. ...

Q. Do you agree with the other witnesses that allowing generation suppliers to provide the electric meter will improve the level of competition to customers?

A. Obviously, I am not an economist and I can't point to any studies on this question. But based on some very simple facts and my personal experience, I think that it is more likely that allowing competition for metering will actually result in reducing customer choice for generation supply.

Q. Why do you say that?

A. I am speaking from my experience and the experience of my friends, neighbors, and family. From my experience, many customers do not have a great deal of loyalty to specific suppliers. Many people will go to three or four different stores to buy groceries because of what's on sale. The next week, they'll buy a different set of items and different brands at different stores. Many people will watch the ads and coupons carefully and change their buying habits accordingly. If you get an offer from a long-distance telephone company that looks good, many people will change long distance suppliers, and then change to another supplier when they get a better deal. But customers will not do this if it is expensive or inconvenient to change suppliers. Just imagine how many people would change long-distance telephone suppliers if you had to schedule an appointment, have someone come to your house, lose telephone service for a period of time, and have to pay a substantial charge in order to switch suppliers.

It's also obvious to me that allowing suppliers to provide the electric meter will make it more difficult for smaller suppliers to break into the market. The small wind farm or hydroelectric dam, the factory producing some excess power, and other small power producers would be locked out of the market because they cannot provide metering and billing services.

In other words, it looks to me like having the generation supplier provide the electric meter will result in less customer choice, not more.

IBEW St. 1, Sch. TM-1 at 4-6.

These problems are serious. Customers will be reluctant to change suppliers if it means having to obtain a different electric meter. Safety can be compromised if the meter is changed frequently or if several different meter suppliers must be contacted before a building can be serviced. Meter installers that are not subject to the supervision and control of a public utility would have to be licensed, and the procedures for such licensing do not exist today.

The Marketers' Proposals Have Nothing to do With Providing Customer Choice and Everything to do With Trying to Make Money.

What's going on? Why are the Marketers proposing a system that is cumbersome, discriminatory, anti-competitive, and inconvenient? Why do they want to inhibit the entry of small suppliers into the generation market and cause serious concerns about the safety and reliability of electric service (both to the public at large and to utility workers)? The answer is ***money***. Like a breath of fresh air, NEV witness Day provided the real reason that Marketers want to provide billing and metering services. It has nothing to do with customer choice. As she testified:

> Q. Why is distribution service unbundling an essential element of the restructured energy services market?
>
> A. The simple answer is profitability. Without the unbundling and competitive provision of distribution services, new market entrants will eventually be starved out of the market. This will be the inevitable result when the margins on the sale of electricity are too small to support the new market entrant's service delivery overheads.

NEV St. 2 at 3 (Q/A 5).

In other words, it will be hard for Marketers to make money by doing what the law allows them to do – sell electricity. The profit margins will be small; the market will be very competitive. It will be hard to differentiate one marketer from another. It will be hard to compete head-to-head with efficient energy producers. It will be much easier for Marketers to make money if they can also skim off the desirable customers and provide them billing and

metering services at less than Duquesne's average cost. And, just to make sure that they can make money by cream skimming, the Marketers also want to prevent Duquesne from competing by charging anything other than Duquesne's average cost for billing and metering services.

To be blunt: It doesn't matter to the Marketers if it's inefficient, inconvenient, unfair, unlawful, or discriminatory. The Marketers will be able to make more money, so it must be a good idea.

The Commission should reject the Marketers' proposals, and do so in no uncertain terms. There is no reason why the Marketers should be allowed to provide billing and metering services. There certainly is no reason why Duquesne should be compelled to allow a Marketer to bill a Duquesne customer for the distribution services that Duquesne provides to that customer.

E. CONCLUSION

Several provisions of the Public Utility Code would be violated or rendered unenforceable if Marketers are permitted to provide billing and metering services to Duquesne's customers. Moreover, even if it were not unlawful for Marketers to provide these services, there are numerous reasons why it would not be in the public interest for them to do so. Simply, the Marketers' proposals would result in discrimination, economic inefficiency, confusion, safety concerns, and other serious problems with the provision of safe, adequate, and reliable electric service.

The Commission, therefore, must reject the Marketers' proposals to provide billing and metering services to Duquesne's customers. Duquesne, as the public utility charged with providing regulated, electric distribution service, must be responsible for the electric meters that serve its customers and must be permitted to render bills for distribution service to its customers.

CONCLUSION

For the reasons set forth in this Main Brief, System Council U-10, International Brotherhood of Electrical Workers respectfully requests the Pennsylvania Public Utility Commission to issue an order that (1) does not require Duquesne Light Company to sell or close any of its power plants, and (2) prohibits any entity other than Duquesne Light Company from providing and maintaining electric meters and from rendering bills for electric distribution service within the service territory of Duquesne Light Company.

Respectfully submitted,

Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870
(717) 743-2233

Counsel for:
System Council U-10, IBEW

Dated: February 10, 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of Duquesne Light Company's Restructuring Plan	:	Docket No. R-00974104

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Main Brief of System Council U-10, International Brotherhood of Electrical Workers, via United States Postal Service Priority Mail (Harrisburg-area parties) or Federal Express (non-Harrisburg-area parties) upon the participants, listed on the following pages, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Scott J. Rubin, Esq.

Counsel for:
International Brotherhood of Electrical Workers,
System Council U-10

Dated: February 7, 1998

Carol Pennington
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Marisa Sifontes
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Kandace Melillo
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

Patricia Armstrong
Thomas Thomas Armstrong & Niesen
P.O. Box 9500
Harrisburg, PA 17108-9500

Deneice Covert Zeve
Terry Lupia
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

Terrance Fitzpatrick
Ryan Russell Ogden & Seltzer
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Hon. John H. Corbett, Jr., ALJ
Pa. Public Utility Commission
1103 Pittsburgh State Office Bldg.
300 Liberty Ave.
Pittsburgh, PA 15222

Timothy Moran
System Council U-10, IBEW
986 Greentree Road
Pittsburgh, PA 15220

Kevin McKeon
William Hawke
Malatesta Hawke & McKeon
100 North 10th St.
Harrisburg, PA 17101

Daniel Clearfield
Wolf Block Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101-1236

James Dougherty
McNees Wallace & Nurick
P.O. Box 1166
Harrisburg, PA 17108-1166

Kenneth Zielonis
Stevens & Lee
P.O. Box 12090
Harrisburg, PA 17108-2090

Brian Rider
Pennsylvania Retailers' Assoc.
224 Pine St.
Harrisburg, PA 17101-1325

John Wilson
Community Action Association of Pa.
222 Pine St.
Harrisburg, PA 17101

John Moot
Skadden Arps Slate Meagher & Flom
1440 New York Avenue, NW
Washington, DC 20005

Richard Herskovitz
Duquesne Light Company
P.O. Box 1930
Pittsburgh, PA 15230-1930

David Hughes
4037 Ludwick St.
Pittsburgh, PA 15217

Jim Ferlo, Councilman
510 City-County Building
Pittsburgh, PA 15219

Mary McFall Hopper
PECO Energy Company
P.O. Box 8699
Philadelphia, PA 19101-8699

Jacqueline Morrow
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

Stephen Baron
J. Kennedy & Assoc.
35 Glenlake Parkway, Suite 475
Atlanta, GA 30328

Howard Louik
Allegheny County Law Dept.
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Steven Baicker-McKee
Babst Calland Clements & Zomnir
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Kenneth Wiseman
Andrews & Kurth
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Kenneth Maiman
Andrews & Kurth
425 Lexington Avenue
New York, NY 10017-3903

Exeter Associates, Inc.
12510 Prosperity Drive, Suite 350
Silver Spring, MD 20904

Michael Kurtz
Boehm Kurtz & Lowry
2110 CBLD Center
36 East Seventh St.
Cincinnati, OH 45202

Robert Weisenmiller
MRW & Associates, Inc.
1999 Harrison St., Suite 1440
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Robert Stefanko
Pittsburgh School District
341 South Bellefield Ave.
Pittsburgh, PA 15213

Margaret Peters
The Peoples Natural Gas Company
625 Liberty Ave.
Pittsburgh, PA 15222-3197

John Stember
1705 Allegheny Building
429 Forbes Ave.
Pittsburgh, PA 15219

Stephen Feld
Pennsylvania Power Company
P.O. Box 891
New Castle, PA 16103-0891

Donald Ayersman
IBEW Local 2357
1125 Denver Ave.
Morgantown, WV 26505

Tim Merrill
The Eastern Group
4 Penn Center West, Suite 200
Pittsburgh, PA 15276

Thomas Gadsden
Morgan Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Attorney of Record
Environmental Energy Project
3700 Vartan Way
Harrisburg, PA 17110

Paul Russell
Pa. Power and Light Co.
Two North Ninth St.
Allentown, PA 18101

Donald Kaplan
Preston Gates Ellis & Rouvelas Meeds
1735 New York Ave., NW, Suite 500
Washington, DC 20006-4759

David Boonin
New Energy Ventures
1845 Walnut St., Suite 2525
Philadelphia, PA 19103

Roger Clark
905 Denston Dr.
Ambler, PA 19002-3901

John O'Brien
Wheeled Electric Power Co.
50 Charles Lindburgh Blvd., Suite 207
Uniondale, NY 11553

James Steffes
Enron Power Marketing, Inc.
P.O. Box 4428
Houston, TX 77002

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

Albert Benincasa
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Joseph Dworetzky
Hangley Aronchick Segal & Pudlin
One Logan Square, 12th Floor
Philadelphia, PA 19103

John Horton
MidCon Corporation
701 East 22nd St.
Lombard, IL 60148

Craig Nifong
MidCon Corporation
3200 Southwest Freeway
Houston, TX 77027

Thomas Augspurger
MidCon Corporation
Office of General Counsel
701 East 22nd St.
Lombard, IL 60148

Mark McGuire
Jenner & Block
601 13th St., NW, Suite 1200
Washington, DC 20005

Gordon Smith
John & Henreger
1200 17th St., NW, Suite 600
Washington, DC 20036

Sheila Hollis
Duane Morris & Heckscher
1667 K St., NW, Suite 700
Washington, DC 20006-1608

Vickiren Aeshleman
QST Energy Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602

Gary Jeffries
CNG Energy Services Corp.
P.O. Box 15746
Pittsburgh, PA 15244-0746

David Cruthirds
Electric Clearinghouse, Inc.
100 Louisiana, Suite 5800
Houston, TX 77002-5050

Keith Sappenfield
NorAm Energy Management, Inc.
1600 Smith, Suite 1140
Houston, TX 77002-7345

John Orr
Duke Energy Trading & Marketing
One Westchester Center
10777 Westheimer, Suite 650
Houston, TX 77042

Lawrence Moncrief
Pittsburgh Chapter NAACP
1364 Silverton Ave.
Pittsburgh, PA 15206

THE LAW FIRM OF

MALATESTA HAWKE & McKEON LLP

HARRISBURG ENERGY CENTER
100 NORTH TENTH STREET
HARRISBURG, PENNSYLVANIA 17101
(717) 236-1300
FAX (717) 236-4841

http: //www.MHM-LAW.com

MAILING ADDRESS:
P.O. BOX 1778
HARRISBURG, PA 17105

JOSEPH J. MALATESTA, JR.
WILLIAM T. HAWKE
KEVIN J. McKEON
LOUISE A. KNIGHT
THOMAS J. SNISCAK
NORMAN JAMES KENNARD
LILLIAN SMITH HARRIS
SCOTT T. WYLAND
JANET L. MILLER
SUSAN J. SMITH
TODD S. STEWART
THOMAS S. PEDERSEN

ORIGINAL

DOCUMENT FOLDER

RECEIVED
98 FEB -9 PM 3:12
PA.P.U.C.
PROTHONOTARY'S OFFICE

February 9, 1998

Via Hand Delivery

James J. McNulty, Secretary/Prothonotary
Pennsylvania Public Utility Commission
North Office Building - Filing Room
PO Box 3265
Harrisburg, PA 17105-3265

RE: Pennsylvania Public Utility Commission v. Duquesne Light Company; Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104; MAIN BRIEF OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION

Dear Mr. McNulty:

Enclosed, for filing with the Commission, please find an original and nine (9) copies of the Main Brief of the Mid-Atlantic Power Supply Association ("MAPSA") in the above-referenced matter.

All parties to this proceeding have been served in accordance with the attached Certificate of Service. If you have any questions concerning the enclosed documents, 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 Federal Express) (2 copies and diskette)

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION ("MAPSA")

William T. Hawke
Janet L. Miller
Todd S. Stewart
Malatesta Hawke & McKeon LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
717-236-1300

Dated: February 10, 1998

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION AND SUMMARY OF ARGUMENT[1]

A. Procedural History

On August 1, 1997 Duquesne Light Company ("Duquesne") filed its restructuring plan with the Pennsylvania Public Utility Commission ("Commission") in accordance with the provisions of the Pennsylvania Electricity Generation Customer Choice and Competition Act ("Competition Act" or "Act"), 66 Pa. C.S. §2801 et seq. Duquesne's restructuring plan, inter alia, requests Commission approval of the imposition of specific unbundled rates, a competitive transition charge ("CTC") and specific tariff provisions which Duquesne alleges are designed to provide customers with direct access to licensed electric generation suppliers ("EGS"). Duquesne requests the collection of approximately $1.7 billion of "stranded" costs over the transition period. Duquesne's total stranded cost recovery is an approximation because Duquesne does not propose to do a final market valuation in order to make a determination of the actual level of stranded costs until the end of the transition period, namely in 2003. Duquesne also requests implementation of procedures that would allow it to maintain its universal service and consumer education obligations.

The Mid-Atlantic Power Supply Association ("MAPSA"), a party in this proceeding, is an incorporated association of power suppliers with an interest in the emerging electric power supply market within the Commonwealth and the Mid-Atlantic region. MAPSA's Board members include power marketers, independent power producers, and a broad range of companies which support the electric services industry. Currently, MAPSA's Board of Directors includes representatives of Air Products and Chemicals, Inc., CNG Energy Services Corporation,

[1] MAPSA's brief follows the common outline, as required by the Presiding ALJ. Where there are sections upon which MAPSA presents no case, this brief simply omits those sections.

Co-Gen Technologies, Inc., Natural Gas Clearing House, DuPont Power Marketing, Inc., The Eastern Group, Enron Capital & Trade Resources, Edison Source, Odyssey Strategies, Inc., and the U.S. Generating Company.

A telephonic pre-hearing conference was held on September 10, 1997, which resulted in a pre-hearing order that set a litigation schedule; admitted most of the intervenor parties; and disposed of other preliminary matters. Several additional pre-hearing orders also were issued.

Between December 15 and December 18, 1997 four days of hearings were held, at which Duquesne presented the witnesses which had supported its restructuring plan. Subsequent to the first four days of hearings, Duquesne indicated that it would waive cross-examination on all witnesses testifying on behalf of the intervenors if the intervenors would do likewise. By the first and second joint stipulations in this matter all intervenor testimony, exhibits and on-the-record data requests were admitted into the record of this proceedings. The record in this proceeding was closed on Friday, January 23, 1998.

B. Burden of Proof

It is well established that "the proponent of a rule or order has the burden of proof." 66 Pa. C.S. §332(a). A party with the burden of proof has the duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 365 Pa. 45, 78 A.2d 854 (1950). In this case, it is Duquesne which clearly bears the burden of proving that its restructuring plan is in the public interest. MAPSA maintains that Duquesne has failed completely to meet its burden.

C. Statement of the Issues (Questions To Be Answered)

The fundamental question which must be answered in the context of the Commission decision on Duquesne's restructuring plan is: Will Duquesne's restructuring plan guarantee the creation of a fully competitive environment as envisioned by the Competition Act?

MAPSA's Position and Suggested Answer: Duquesne's Restructuring Plan, as filed and as amended, will not produce or guarantee the creation of a fully competitive market place for retail sales of electricity within the service territory of Duquesne and is not in the public interest because it includes a customer generation credit which is insufficient to allow the development of competition for retail sales of electricity; the Plan does not contain the requisite safeguards (an interim Code of Conduct and supplier tariff) that are necessary to prevent barriers to competition; and, it contains anti-competitive and anti-consumer provisions.

D. Summary of the Argument

1. Overview of MAPSA Intervention and Position in this Proceeding

The Competition Act requires each jurisdictional electric utility to file a restructuring plan. Each utility's plan, *inter alia*, must contain: unbundled transmission, distribution and generation rates, and rates for other services; a proposed competitive transition charge ("CTC"); procedures for ensuring direct access to all licensed electric generation suppliers; and, revised tariffs and rate schedules implementing the enumerated requirements. 66 Pa. C.S. § 2806(e).

The CTC is a discrete charge intended to allow a utility an opportunity to collect its stranded or transition costs. 66 Pa. C.S. § 2808(a). In order to set the CTC, the Commission must first determine the level of a utility's stranded costs, which are defined as "a utility's known and measurable net electric generation-related costs, determined on a net present value

basis over the life of the asset or liability . . . which traditionally would not be recoverable under a regulated environment, but which may not be recoverable in a competitive electric generation market ...". 66 Pa. C.S. § 2803.

The result of unbundling transmission, distribution and generation charges, and of setting a CTC to recover reasonable and non-mitigatable stranded costs, is the creation of a "shopping credit," which is the difference between a utility's current, fully bundled rate, and the total of the non-bypassable charges (the transmission rate, the distribution rate, and the CTC).[2] The shopping credit is the price against which suppliers must compete; that is, if a supplier cannot procure energy and capacity, and all the necessary additional services, and sell them to a customer at less than the "shopping credit," that supplier will not gain any customers.

It is MAPSA's position in this proceeding that Duquesne's Restructuring Plan is seriously flawed and contrary to both the public interest and the Competition Act's mandate for competition among electric generation suppliers ("EGSs"). Most notably, the Restructuring Plan, if adopted, will result in a complete failure of electric generation competition, with the concomitant loss of the benefits and price decreases which competition produces. Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953, (Order entered December 23, 1997) (hereinafter "PECO").

Duquesne's Restructuring Plan obstructs retail competition by allowing Duquesne to retain market power in the restructured market place. This fact is proved beyond any doubt in the evidentiary record, and is actually admitted by Duquesne, which obviously has the

[2] In its proposal, Duquesne labels the shopping credit as a customer generation credit or "CGC".

diametrically opposite reading of the Competition Act from that understanding of MAPSA. In particular, Duquesne's Restructuring Plan effectively eliminates the opportunity for entry into Duquesne's service territory by EGSs because it contains an effective generation rate component (referred to in this proceeding and in this Brief as an "Competitive Generation Charge" ("CGC") or a "shopping credit") that is simply too low for alternate suppliers to compete. Additionally, Duquesne's Restructuring Plan is contrary to the public interest and to the provisions of the Competition Act because it contains a variety of provisions which either delay, discourage, or otherwise completely bar EGSs from obtaining access to customers. Further, Duquesne's Restructuring Plan is anti-competitive because it contains no provisions which will adequately protect competitive suppliers from anti-competitive behavior on the part of Duquesne.

2. Summary of MAPSA's Specific Positions

Initially, it is noted that MAPSA has not taken a position regarding the specific level of Duquesne's total stranded cost;[3] however, MAPSA disagrees with all of Duquesne's various methodologies for calculating its total stranded cost, leaving the Commission to exercise its discretion in adopting one of the methodologies (or a combination thereof) proffered by other intervenors in this proceeding.

MAPSA's focus, on the other hand, is on the rate-making device for the collection of those reasonable and unmitigatable stranded costs to be found by the Commission in this proceeding; namely, MAPSA's focus is on the competitive transition charge ("CTC") and, in particular, the resulting CGC.[4] The CGC represents the "bogey" which competitive suppliers

[3] Therefore, MAPSA has not completed the tables addressed in Your Honor's Interim Order.

[4] The CTC is mathematically related to the shopping credit or the CGC. Namely, the CGC (which Duquesne refers to as the "market price") is the DIFFERENCE between the TOTAL of the non-bypassable charges (the transmission charge, plus the distribution charge, plus the CTC), AND the total bill rate cap. PECO.

"must beat" in order to make a sale to a Duquesne customer (assuming that price is the customer's only consideration). Tr. 136. For example, under Duquesne's proposal, beginning on January 1, 1999, a competitive supplier will have to provide generation fully delivered to Duquesne customers at a price less than 1.8¢ per kWh; otherwise, Duquesne will retain all of its customers and its monopoly share of the market. Simply stated, if the credit which Duquesne proposes to give to customers who shop for generation is lower than the total delivered price of that power -- suppliers will be unable to meet or beat Duquesne's "bogey," (without engaging in a "for loss" enterprise) and the utility will retain its existing customers -- there will be no competitive market.

In addition to advocating a CGC that will allow for competition, MAPSA's intervention points out the various anti-competitive provisions of Duquesne's restructuring plan and advocates alternatives.

MAPSA's particular points follow:

1. An alternative method other than Duquesne's proposal, should be used for determination of any "market price" which is to be utilized to determine stranded costs; that is, neither Duquesne's RFP process, nor any market price projections in this proceeding set forth by Duquesne are appropriate for determining Duquesne's stranded cost level.

2. Duquesne's CTC must be set in such a manner that the resulting CGC will be set at a level which allows for a robust competitive market; MAPSA's testimony is that the CGC level in 1999 must be in the range of 2.9¢ (for 100% load factor) per kWh and 4.1¢ (for 50% load factor) per kWh with the addition of a customer

Participation Credit for at least the first year, to achieve a robust competitive market.

3. The Commission should institute a minimum level of protections to ensure that Duquesne's proposed merger with West Penn Power Company does not have anti-competitive effects.

4. Duquesne must eliminate its proposed phase-in of customer choice and provide for a "first-come, first-served" basis.

5. Any fees for scheduling or other ancillary services must be reasonable and cost justified.

6. Any imbalance fees should be set at 100% of out-of-pocket expenses incurred, and/or should be allowed to be traded among competitive suppliers.

7. Metering imbalances and billing services should be supplied on a competitive basis.

8. An interim Code of Conduct should be adopted contrary to that suggested to that by Duquesne.

9. Duquesne's "Customer-Specific" CTC calculation should be eliminated.

II. PHASE-IN OF CUSTOMER CHOICE

A. Method Of Customer Choice.

Duquesne's Proposed Procedure For Selecting Customers During The Phase In Period Is An Artificial Constraint Upon The Development Of A Truly Competitive Market Based Upon Arbitrary Factors Such As Geography Or Market Segment And Should Be Rejected.

Duquesne has proposed two methods for customer selection during the phase-in period.[5] For residential and small commercial customers, Duquesne proposes to select customers on the basis of geographic areas of choice ("GAC's"). Under Duquesne's proposal each GAC would be assigned to a specific year of the phase-in. For large commercial and industrial customers, eligibility for phase-in would be based upon SIC Code-based market segments which would be prioritized upon the results of the Pilot Program enrollment process. Basically, those market segments having the largest percentage of the total accounts by SIC Code being nominated for participation in the Pilot would be included in the first phase and the lower percentage codes being included in the second and third phases accordingly. (Duquesne St. No. 6, p. 3-4).

Duquesne's proposal imposes artificial constraints upon the free development of a truly competitive marketplace. A substantially similar, if not identical, approach proposed by Duquesne in the Pilot Programs was rejected by the Commission outright, and Duquesne's proposal here should be rejected as well. Petition of Duquesne Light Co. for Approval of Retail Access Pilot Program, Docket No. P-00971175, Order entered August 29, 1997, p. 33) ("Pilot Order").. The Competition Act, while not requiring first-come, first-served methodology for customer selection, expresses a decided preference for that methodology. 66 Pa. C.S. §2806(b)(4). The Act recognizes that competition among providers for electric generation

[5] Duquesne proposes to phase-in one third of its load for each of the three years, 1999, 2000, and 2001.

supply necessarily requires that there will be, during the phase-in, some degree of competition between customers to become enrolled in the various phase-in periods. Duquesne's artificial imposition of constraints upon the process will in all likelihood restrict the amount of load purchased from alternative suppliers (MAPSA St. No. 1, p. 59), and will unnecessarily complicate the enrollment process. Likewise, it is quite possible that small differences in pilot participation, where customer sophistication was quite limited, could have dramatic impacts upon members of a certain market segments' ability to engage in the competitive market, and thus create competitive disadvantages. (MAPSA St. No. 1, p. 59-61). In fact, the Commission has expressed a decided preference for not using geographic areas of concentration. In the recent PECO restructuring case, the Commission expressed its preference for eliminating competitive disadvantage among similarly-situated customers by accelerating the phase-in period rather than imposing artificial constraints upon the selection process; it rejected PECO's proposal for a random selection process.

Duquesne has proposed to artificially constrain the free development of competition among its customers in an alleged attempt to avoid competitive disadvantage among customers. (Duquesne St. No. 6, p. 5). However, Duquesne's proposal merely allows Duquesne to control the development of competition in its service territory. This Commission previously has recognized that such artificial constraints are inappropriate and, in fact, are more anti-competitive than a simple open enrollment process. MAPSA has proposed that no such constraints be placed upon the enrollment process and that all customers be eligible during each phase. Duquesne's proposal should be rejected.

B. Timetable For Phase-In.

Duquesne's Proposed Three-Year Phase-In Period To Full-Fledged Customer Choice Within Its Service Territory Is Not In The Public Interest And Should Be Rejected.

Duquesne has proposed that Customer Choice be phase-in over a three-year period commencing January 1, 1999, in successive 33% increments -- recognizing that approximately 5% of Duquesne's customers currently are enrolled in its Retail Access Pilot Program and will be enrolled in the first phase to full competition -- with the last 33% being phased-in on January 1, 2001. As discussed above, Duquesne itself has conceded that a phased-in approach to customer choice causes the distinct possibility of similarly-situated customers being treated differently. (Duquesne St. No. 6, p. 5). Duquesne has attempted to address this concern by manipulating the ability of certain classes of customers to engage in specific phases of competition. The Commission has taken the approach (PECO, p. 46-49) that the most appropriate method for eliminating the potential for discrimination and/or competitive advantage/disadvantages between similarly-situated customers is to accelerate, to the greatest degree possible under the statutory framework, the phase-in of customer choice. Thereby, the duration of the potential inequity is diminished significantly.

Under Duquesne' proposal it is possible that two similarly-situated customers could be phased-in as much as two years apart. Under the Commission's methodology, that period would be shortened by one year. Clearly, the accelerated phase-in provides a better method for eliminating any potential disadvantage. Id. Therefore, Duquesne should be required to modify its proposal to include the phase-in approach previously adopted by this Commission in PECO. Namely, one-third of Duquesne's customers (including the 5% Pilot customers) should be

phased-in on January 1, 1999; 33% should be phased-in on January 2, 1999; and the remaining customers should be phased-in on January 2, 2000.

III. TRANSMISSION AND DISTRIBUTION RATES; UNBUNDLING ISSUES

E. Ancillary Services

Duquesne's Proposal To Provide A "Market-Based" Credit For Ancillary Services Capable Of Competitive Provision Must Be Modified To Ensure That The Credit Represents The Fully-Allocated Cost Of Providing Those Services.

Duquesne's proposal includes the partial unbundling of ancillary services and allows for competitive provision of only one of them. The services of reactive power control, frequency regulation, scheduling, energy imbalance, and spinning reserve will be not be unbundled, and Duquesne proposes to collect the cost of these services in its transmission rates, because Duquesne proposes to continue monopoly provision of these services. Duquesne had originally proposed to unbundle the ancillary service of supplemental reserves and to charge suppliers per unit charges for those services. (Duquesne St. No. 5, p. 55). Duquesne subsequently modified its proposal to provide for a "market-based" credit for those ancillary services that can be purchased from an entity other than Duquesne (currently only supplemental reserves) and to add that credit to its CGC. (Duquesne St. No. 5 - Rejoinder, p. 2).

Duquesne should be required to unbundle all ancillary services and provide a separate, fully-allocated credit for each of those services which should be added to the CGC to compensate customers if they choose to have these services competitively provided. As pointed out by MAPSA witness Russell, suppliers will be required to purchase, at a minimum; scheduling, energy imbalance and supplemental reserves. (MAPSA St. No. 1, p. 20). In order to ensure that there will be no double collection, and to gain the best value for customers by allowing suppliers

to provide these services from the most economical source, an additional credit to the CGC is required.

Duquesne's Proposal Contains Imbalance Charges which are not Cost Justified and are otherwise unreasonable and should be rejected.

Energy imbalance charges are intended to compensate for differences in the amount of energy a customer is scheduled to use (and what a supplier therefore must deliver into the system) and what the customer actually uses. Duquesne proposes to charge each supplier for imbalances that fall outside of a 1.5% "dead-band"; during off-peak periods at the higher of 110% of Duquesne's out of pocket costs, or $50/mWh, and during on-peak periods, the higher of 110% of Duquesne's out of pocket costs or $100/mWh. Duquesne has failed to provide any cost justification for these charges; the charges are unreasonable and excessive, and Duquesne's proposal should be rejected.

As described by MAPSA witness Russell, Duquesne's proposed imbalance charges are intended to create an incentive for suppliers to schedule with a high degree of accuracy. (MAPSA St. No. 1, p. 56). Duquesne will provide class-average load data for customers with specific meter types to suppliers, who will then have to match the load shape. Suppliers are penalized if the supply does not match the usage, not if the supply does not match the load data. In actually scheduling the load, suppliers will be forced to rely on load data which is provided by Duquesne and which is likely to be highly inaccurate for any particular supplier. Id. Penalties are not inherently dangerous, but when the data on which a supplier must rely is not accurate, the penalties should be adjusted or eliminated, because of the potential for abuse. Under the circumstances, a reasonable change would be 100% of Duquesne's out-of-pocket expenses. (MAPSA St. No. 1, p. 57).

MAPSA witness Russell proposes that imbalances be allowed to be traded among competitive suppliers. Essentially, trading imbalances would allow a supplier who over-delivered in one hour to trade that over-supply to another supplier who might have under-supplied in that particular hour. Both suppliers would then be considered to be in balance, and Duquesne would not collect imbalance penalties from both, as would be the case under Duquesne's proposal. (MAPSA St. No. 1, p. 58). Mr. Russell also suggests that imbalances be allowed to be resolved in-kind, at a time, and in a manner agreed upon by Duquesne and the suppliers.

Duquesne's proposal regarding imbalances should be rejected, as being unreasonable, not cost justified as well as being inappropriately where Duquesne may be the cause of the behavior it seeks to punish. This Commission should instead adopt MAPSA's proposals and allow for imbalance trading and settlement in-kind.

Duquesne's Proposed $100 Scheduling charge is unreasonable, anticompetitive, not cost justified; and therefore, it should be rejected.

Duquesne has proposed to charge suppliers $100 for each schedule and each change in schedule which is submitted to Duquesne. As noted above, scheduling is one of those services which Duquesne proposes to continue to provide as a monopoly service. As pointed out by MAPSA witness Russell, the charge, as derived by Duquesne, "bears no rational relationship to the service." (MAPSA St. No. 1, p. 41). The Company derived the fee by dividing the adjusted labor expense of Account. No. 556 by the number of hours in a year. (Id.). Duquesne's analysis merely yielded evidence establishing the hourly cost of scheduling. Duquesne has not established the actual transactional cost that is incurred in providing the service. (Id. , p. 42). Further, the fee is so high that it is likely to hinder the development of a robust competitive

market because it will discourage suppliers with small loads -- and thus fewer kWh's over which to spread their fixed costs -- from participating in the market. (Id.).

When utilities impose charges which are anti-competitive, and therefore contrary to the express policy of the Commission and the Commonwealth, those charges: (1) must be proved to be necessary and not speculative, see Pa. P.U.C. v. The Peoples Natural Gas Company, 83 Pa. P.U.C. 22 (1994) (rejecting an OTS proposal to impose exit fees where the need for the fee was speculative); (2) must be specifically quantified, see Pa. P.U.C. v. UGI Utilities, Inc., 1994 Pa. P.U.C. Lexis 9 (1994) (rejecting unquantified and discriminatory exit fees which had the effect of shielding the utility from competition); and, (3) must be supported by adequate cost justification, see Re: PECO Energy Company, 180 P.U.R. 4th 125 (1997) (striking a switching fee that was not adequately cost justified). Where the utility fails to meet its burden of proof by adducing evidence which is substantial, its proposed rate must be denied in its entirety. Lower Frederick Township Water Company v. Pa. P.U.C., 409 A.2d 505, 507 (1980) (affirming the Commission's denial of all elements of a proposed rate increase where the utility did not meet its burden of proof with evidence which was not substantial). The record evidence is clear; Duquesne's scheduling fee is clearly and on its face anticompetitive. Duquesne has not proved that the charge is necessary (it currently is being fully recovered in rates) and has not submitted any cost justification on a transactional basis. In this instance, Duquesne is simply attempting to inhibit the development of competition, by imposing an excessive fee for a service for which there currently is no alternative. Duquesne's scheduling fee proposal should be stricken, at least until such time that it offers appropriate cost-justification.

IV. TRANSITION OR STRANDED COSTS

A. Overview Of Stranded Costs, Evaluation and Recovery Approaches

1. Introduction

At the very threshold of the process of reviewing any electric utility's proposal for stranded cost recovery, it must be realized that the CTC, by its very definition, is a device that allows utilities to recover costs which are not recoverable in the ordinary competitive market.[6] While one might argue that no above-market cost is reasonable for ratepayers to bear, such an argument has been considered and rejected by the Pennsylvania Legislature, which alternatively has determined that it is appropriate for electric utilities to recover their "reasonable" and non-mitigable above-market costs. Thus, the CTC, by its very nature of imposing above-market costs on ratepayers, is an anti-competitive device which serves to allow utilities to recover some of their prior investments which now have turned out to be "above-market." As stated by the Commission in PECO:

> The price caps or the energy and capacity credits ("ECC") [or, in Duquesne's case CGC] are a major government intrusion into the competitive market, just as are the CTCs that recover approved amounts of stranded investment.

PECO, p. 15.

On the other hand, while the Competition Act mandates the imposition of "reasonable" anti-competitive charges, it also establishes, as its dual goal, the promotion of competition. Therefore, the Commission's schizophrenic task in all of these restructuring proceedings is to

[6] The CTC is defined as "[a] nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs . . . ." 66 Pa. C.S. §2803. And, the "transition or stranded costs" are defined to be "[a]n electric utility's known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability . . . which may not be recoverable in a competitive electric generation market . . . ." 66 Pa. C.S. §2803 (emphasis supplied).

oversee and direct the development of a competitive market, while still allowing for the existence of an anti-competitive ratemaking device "left-over" from the prior regulatory period.

Looking at the situation from its proper perspective, unless subject to careful and ongoing regulatory scrutiny, the collection of utility stranded costs through the CTC can and will be used by Duquesne and the other electric utilities as a cleverly designed device to allow the utilities to charge under-market, and possibly even under-cost prices for generation, and still recover the previously allowed regulatory expenses and profit. For example, it is possible for a utility in the new competitive world to charge an under-market (or even under-cost) generation rate and still recover its full pre-1997 revenue requirement by using the CTC to recover the difference; all that is required to accomplish this result is to convince the Commission, in these restructuring proceedings, that the market price will be lower than it actually turns out to be. The utilities clearly have a tremendous incentive to use the lowest possible number for "market price," where market price is used to calculate stranded costs.

Of course, the only true and exact measure of net generation costs "not recoverable in a competitive market" would be found by comparing the book value of facilities with the sale price obtained through an "open-bid RFP," similar to that proposed by GPU Energy (i.e., Metropolitan Edison Company and Pennsylvania Electric Company). While Duquesne has proposed to allow itself to be ordered to undergo an RFP process in this proceeding, it does not prefer that process, and in fact Duquesne proposes no auction if its merger with West Penn is consummated. Indeed Duquesne has made multiple proposals for the quantification of its stranded costs, all of which (except an asset auction in 1989) reflect a bare wholesale market price as a determinant of value. The absence of true market value evidence frustrates the Commission's ability to determine Duquesne's "real" stranded costs, if any, and leaves the Commission with the uncertainty of

market price prognostication and speculation. Accordingly, Duquesne's decision effectively to forego an "RFP" process, must be viewed negatively.

MAPSA submits that what Duquesne has done, quite craftily, by using a low market price to create a high level of stranded costs, with a resulting low generation credit, is to have insulated itself from meaningful competition until at least 2003; and, the fact that Duquesne's Restructuring Plan will not allow for competition, has been admitted. As stated by Duquesne's policy witness and CEO:

> Q. And would you agree that it is very unlikely that if suppliers in general can't sell energy [and] capacity at a price that is equal to or less than that competitive generation credit, it is unlikely that they will gain customers.
>
> * * *
>
> A. I would argue that if they can't, you know, if suppliers can't in fact provide benefits above, you know, the wholesale price of power today [i.e., if suppliers can's sell power below the wholesale price], that probably the Competition Act isn't a good idea.

Tr. 136.

Duquesne's understanding of the Competition Act (and its Restructuring Plan which is the embodiment of its understanding) clearly is contrary to the Commission's understanding. West Penn, p. 1 (the Legislature intended the creation of a vibrant, competitive retail market in electric generation by January 1, 2001); PECO (rejecting a plan that hindered the development of a competitive retail market until 2003 at the earliest).

Most significantly, however, it must be remembered that, without competition, there are no "stranded costs" by definition, under the provisions of the Public Utility Code, 66 Pa. C.S. §2803; see also 66 Pa. C.S. §2811 (regarding the Commission's duty to monitor the "properly functioning and workable competitive electricity market"). Therefore, in the absence of a properly functioning and workable competitive electricity market, there is no need to compensate

Duquesne or its shareholders for costs which are "stranded" by competition, simply because by definition there are none.

Finally, it should be noted that, while the Commission has restricted discretion with regard to allowing stranded cost recovery (namely, it must allow that amount which is found to be reasonable and non-mitigable), it has complete discretion to determine whether that recovery is "front-end" (i.e, more in the early years, and less in the later years), "levelized" (i.e., equal over the years), or "back-end" (i.e., more in the later years). Further, the Commission has complete discretion regarding all other elements that are necessary to establish a competitive market (i.e., the full unbundling of services and the requirement of a pro-competitive supplier tariff). 66 Pa. C.S. §2802(12) and (14).

2. Duquesne's Approach

Duquesne's proposal for calculation of stranded costs fails to meet the known and measurable standard; is based upon faulty market price assumptions and otherwise is contrary to the statute and should be rejected.

Duquesne has made three distinct proposals regarding the calculation of stranded costs. Duquesne's preferred approach appears to be a process where it collects a "target" level of stranded costs of $1.7 billion. While Duquesne has not firmly estimated the $1.7 billion target, the number is based upon the 1997 RFP process. Tr. 344. Under its proposed process, Duquesne would do a final valuation of its generation assets in 2003 and would accordingly adjust the CTC collection mechanism in order to tailor the collection of stranded costs to meet the "now firm" number. The 2003 valuation would be performed on the basis either of an auction of Duquesne's

generation assets or more likely, through some yet undefined market valuation method. (Duquesne St. No. 1-R, p. 2).

The second process proposed would be a one-time administrative determination made in this proceeding, based upon market estimates. If the one-time administrative valuation were in fact done - - a process which Duquesne does not endorse - - Duquesne believes its stranded costs would be approximately $1.9 billion, as opposed to the at least $1.7 billion level identified using the "preferred" method. Duquesne's own witness, however, does not believe that the market price estimates used in preparing the latter estimates meet the Commission's known and measurable standard. Tr. 82. The third proposed methodology would be for Duquesne to auction its generation assets in 1999. (Duquesne St. No. 1 - Rejoinder, p. 1). However, this proposal, made in witness Marshall's Rejoinder Testimony, cannot be taken seriously. Duquesne does not propose to engage in the immediate auction process if the merger with West Penn Power occurs. Tr. 24-25. Moreover, because Duquesne has failed to include any specifics as to how the auction would actually take place and, because of the uncertainty as whether the Commission can indeed order Duquesne to auction its generation assets, this proposal must be disregarded.

In reality, what Duquesne proposes, is to collect its fully capped rate throughout the period 1999 to 2003. Relying upon the language of 66 Pa. C.S. §2804(4)(v), Duquesne believes that it has a right to continue to collect its fully-capped rate, so long as it applies any excess earnings to mitigate stranded costs. (Duquesne St. No. 2, p. 28). Duquesne's reliance on §2804(4)(v) as supporting its stranded cost recovery plan is contrary to the statute, and Duquesne's overall method for collection of its stranded costs must be rejected. Duquesne's

stranded cost recovery proposal: fails to meet the Commission's known and measurable standard; does not make a determination of stranded costs according to the methodology adopted by this Commission as being the correct methodology in the recent PECO Order; is based upon suspect evidence of market price, at best; and, is otherwise inadequate to form the basis of any level of stranded cost recovery. While MAPSA has taken no position as to what level of stranded costs, if any, should be established in this case, it disagrees with the methodology by which Duquesne attempts to calculate and collect stranded costs.

Section 2804(4)(v) of the Act contains a rate cap provision designed to ensure that the Commission does not require a utility to lower the rate cap if a utility rolls into its base rates its current energy cost rate at the time of the enactment of the act. 66 Pa. C.S. §2804(4)(v). Duquesne relies upon this section for the proposition that it should be allowed to collect its capped rate throughout the transition period, which Duquesne defines as being from 1999 through 2003. In 2003, Duquesne proposes to perform an evaluation of the market value of its assets, make a final determination of stranded costs, and adjust the CTC accordingly. Duquesne contends that it is likely that it will seek approval to extend the recovery period for CTC revenues because it contends that its level of stranded costs is in fact higher than the $1.7 billion estimate which it placed in its proposal.

Section 2804(4)(v) contains no provision which relieves an electric utility from determining a competitive transition charge based upon a "known and measurable" level of stranded costs at the time it files its restructuring plan. Indeed, the Act defines transition or stranded costs as

> "an electric utility's known and measurable net electric generation-related cost, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which

> traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market..."

66 Pa. C.S. §2803 (emphasis added).

The Act requires the Commission, in setting a competitive transition charge, "to provide each electric utility with an opportunity to recover its transition or stranded cost following the Commission's determination under subsection (c), every customer...shall pay a competitive transition charge to the electric distribution company..." 66 Pa. C.S. §2808(a). It is clear that the statute intends that electric distribution utilities will value the stranded cost level in their restructuring plans and that in determining the appropriate CTC, the Commission will only allow for the recovery of those "known and measurable" stranded costs.

Duquesne's proposal is to put off the valuation of its level of stranded costs until the year 2003. Duquesne proposes to collect a level of stranded costs which is based upon faulty market price assumptions, which Duquesne's own witnesses admit are not reliable. Tr. 82. Therefore, Duquesne proposes to collect a CTC which is targeted to collect a level of stranded costs which is not likely to be accurate.

MAPSA's witness testified that the only accurate method for determining stranded costs is divestiture of generation assets.(MAPSA St. No. 1, p. 7). Duquesne's proposal is perhaps most flawed by the fact the it does not propose to do so.[7] In his Rejoinder Testimony, Duquesne witness Marshall indicated that Duquesne would be willing to waive its statutory right not to be

[7] Without the certainty produced by divestiture, one can only guess at the market value of the assets. (MAPSA St. No. 1, p. 7). Indeed, in the case of New England Power, which auctioned off its non-nuclear generation assets, it obtained 150% of the book value, thereby reducing its stranded costs substantially. (MAPSA St. No. 1, p.7).

ordered to divest its generation assets and allow the Commission to order it to divest its generation assets through an auction to be held in 1999. (Duq. St. No. 1 - Rejoinder, p. 1). The market value determination for its generation assets that would be produced by such an auction would be used to determine the actual level of stranded costs for Duquesne. However, as admitted by Duquesne's witnesses, Tr. 24-25, if the proposed merger with West Penn Power occurs, Duquesne will not auction any assets. In order to ensure an accurate determination of stranded costs, the Commission should accept Duquesne's offer to waive its rights under the statute, and should order Duquesne to divest its generation assets in an "arms' length" auction process, regardless of whether Duquesne merges with West Penn Power, or not. Otherwise, Duquesne's offer to auction its assets is nothing more than an illusory promise. As pointed out by several intervenor witnesses in this case, divestiture is the best and most accurate method for determining the level of stranded costs related to generation assets in a competitive market. This fact was even grudgingly admitted by Duquesne's own witness. Tr. 141-42.

Duquesne's proposal estimates the initial level of the CTC based upon a 1997 RFP process. Tr. 139. Duquesne proposes to refine the target level of stranded cost recovery based upon an RFP process it proposes to engage in early 1998. Duquesne's RFP process has been criticized for several reasons, not the least of which is the fact that the process appears to have been developed with a goal of producing an unusually low "market price". (MAPSA St. No. 1, p. 18). Duquesne's own witnesses have admitted that the RFP result reflects a depressed market. Tr. 495. In fact, the Commission considered Duquesne's market price evidence in the Pilot proceedings, which was based upon its RFP results, and found it to be unconvincing. Pilot Order, p. 64. MAPSA's witness Russell testified that Duquesne's RFP process is incapable of

determining an accurate market price. (MAPSA St. No. 1, p. 25). Witness Russell details several specific facets of the RFP process which form the basis of his conclusion:

- The RFP approach will not provide prices that are representative, of amounts charged on sales by one party to a retail load. Rather, the product sold in the RFP would likely be a product included in a portfolio of generation products that a supplier would need to use in order to serve retail load.
- The RFP product was not designed to be used directly to serve retail load and is a wholesale product.
- The RFP offer does not include dynamic scheduling or any other costs associated with following customer load and is not suitable as a proxy for the power required to serve time-varying requirement customers.
- The RFP had a 75% capacity factor take-or-pay provision which limits the flexibility of the purchaser.
- The RFP requires a bidder to take point-to-point transmission service with the receipt point at Duquesne's generation units and which would make the power economical only for someone purchasing that power from Duquesne to serve load in Duquesne's service territory.
- The winning RFP bidder would not be guaranteed that it would obtain the entire megawatt block of power for which it had bid. Rather, the RFP only guarantees a minimum of 10 megawatts for the winning bidder, regardless of the amount sought.

- The RFP does not represent the true cost of generation assets in the way that a divestiture would because it does not include the intangible values of operating a generating plant.

(MAPSA St. No. 1, pp. 25-27). As can clearly be seen, Duquesne's RFP merely shows what a single party, in a market with many participants, is willing to pay for a very discrete product under very specific conditions. The additional fact that those conditions are subject to manipulation by Duquesne, the very party with an incentive to produce a low market-price result, and which appears to have done so in the first round of the process, increases Mr. Russell's concerns with such a proposal. (MAPSA St. No. 1, p. 25).

Duquesne's proposed methodologies for determining stranded costs are so seriously flawed, for the reasons set forth above, that they cannot be adopted by the Commission. Rather, the Commission should adopt a methodology or a combination of the methodologies proposed by the other Intervenors.

C. Merger Savings

Duquesne's planned Merger with West Penn Power has Serious Negative Implications which must be considered in any decision on its Individual Restructuring Case.

Duquesne has proposed to merge with West Penn Power. That merger is proceeding in a case separate from this one. However, the two cases are inextricably intertwined. Duquesne, in its direct testimony, (Duquesne St. No. 1, p. 36-37) stated that the pending merger between Duquesne and West Penn Power will produce additional savings above and beyond those alleged in Duquesne's restructuring case. Duquesne attempts, however, to isolate the currently filed

restructuring plan from the merger and continually states that this is its "stand alone case." Duquesne cannot have it both ways. Either, this Commission should consider Duquesne's currently proposed restructuring case as a completely stand alone case, or, the Commission should consider the currently proposed restructuring plan in light of the proposed merger between Duquesne and West Penn Power will, in fact, occur. In the former scenario, it would be wholly inappropriate for Duquesne to introduce any evidence regarding the merger in this proceeding. However, as is readily apparent, Duquesne's restructuring plans change dramatically if the merger does, in fact, take place. Therefore, this Commission should consider, in this case, what is likely to occur in the restructuring plan, post-merger, and should, in ruling upon this plan, take into consideration the fact that the merger is likely to occur.

Several Intervenors, through their testimony, have indicated the potential harm that the merger between Duquesne and West Penn will create. (See, e.g., MAPSA St. No. 1, pp. 9-17). The pending merger will undermine the ability of other suppliers to compete, will raise barriers to entry and allow the merged companies to lower their costs in non-comparable ways. The merger also has potential anti-competitive effects due to the joint control of transmission and distribution facilities of Allegheny and Duquesne; the ability of these two merged entities to game the system; and, the ability of the merged entity to escape effective regulation by the Pennsylvania Public Utility Commission. In particular:

- Because Duquesne's native load customers become the native load customers of West Penn and visa versa, what would have been an off-system sale from West Penn to Duquesne prior to the merger, becomes a native load sale. Such a conversion has immense favorable economic consequences for the merging companies. For example,

transmission providers can set aside firm transmission capacity for native load customers, use the native load priority to import low-cost power, and thereby free internal generation for profitable of sales to the PJM, etc.

- West Penn's proposal to amend the FERC-jurisdiction Power Supply Agreement will be coupled with a major change in the control of APS's generation and restrict Duquesne's ability to mitigate stranded costs. A newly-formed generating company will lease the generating capacity owned by the operating companies and sell power back at fixed rates until 2004. The documents governing this amendment and changes of control have been drafted in ways that may override Pennsylvania's restructuring plans or otherwise be adverse to competitors and ratepayers.
- While before the merger, APS will have every incentive to make an off system sale at a high price instead of selling power at a lower price to Duquesne, after the merger, APS has an incentive to do the reverse. The lower cost to Duquesne keeps competitors at bay and restricts Duquesne's stranded cost recovery. Such a sale is a win/win for the merged company and an artificial barrier to competitors.
- The merged company intends to consolidate control areas and centralize the automatic generation dispatch to the merged company's generation assets, effectively reducing revenue credits to transmission rates.
- APS makes none of the transmission capability linking its system to high cost markets available to others on a firm basis. Thus, APS has commandeered for its exclusive use firm access high cost markets and much of the first access to low cost markets. Competitors will have difficulty competing for firm access to lucrative

system sales. The inability to deliver power to PJM will adversely effect the amount bidders will offer in Duquesne's RFP.

(MAPSA St. No. 1, p. 9-17).

In view of the significant potential anti-competitive effects of the proposed merger, at a minimum the Commission should take the following actions:

1. Leave this restructuring docket open such that all parties have access to a readily available proceeding where the Commission can review complaints of anti-competitive behavior with the burden of proof remaining on the utility.
2. As a reasonable condition of the Commission's granting any approval for the merger, the merged entity should be required to waive any claim of primary federal jurisdiction.

F. Recovery of Stranded Costs

Duquesne's "Customer Specific" Competitive Transition Charge is discriminatory and is contrary to the law, and should be rejected.

Duquesne has proposed to calculate and collect a customer-specific competitive transition charge. In essence, Duquesne's proposal is to use a previous years' usage to determine a customer's future year total CTC allocated share and then to charge a customer a fixed CTC based upon the previous years' usage.

Duquesne's proposal is contrary to law. First, the proposal violates the Commission's mandate that CTCs be charged on a per-kWh basis. See PECO, p. 111. To do otherwise does not send the appropriate consumption signals to consumers. If a customers' usage in a succeeding year declines, under Duquesne's proposal, the customer will not recognize a

concomitant reduction in its CTC. Therefore, the Duquesne proposal imposes a penalty upon customers who, for whatever reason, may reduce their consumption.

Duquesne's proposal tends to encourage increased consumption by allowing customers to maintain a one-year buffer in the growth of any CTC rates by only recalculating the customers' CTC share on an annual basis. If a customers' usage increases dramatically in a given year, the customer will not see a resultant increase in its CTC allocation until the succeeding year. As pointed out by MAPSA witness Russell, (MAPSA St. No. 1, p. 37) Duquesne's proposal has the potential to cause intraclass cost shifting. The Act specifically prohibits the development of a CTC which will "shift...intraclass costs." 66 Pa. C.S. §2808(a). Under Duquesne's proposal it is possible that two customers in 1999, having the exact same load, will pay different CTCs. The reason is that the CTC will have been computed based upon the customers' 1996 load. Another factor to consider is the fact that, while Duquesne and the intervenors characterize the fixed monthly CTC as "customer-specific," the charge is actually premise-specific. Namely, the CTC is calculated for each meter, regardless of the occupant of the premises. It is easy to imagine a situation where different residents of the same premises will have widely varying consumption patterns.

Duquesne's fixed, customer-specific, CTC collection proposal is potentially discriminatory among customers, causes intraclass cost shifting, and, quite possibly, will prove to be competitively disadvantageous to similarly-situated customers. For these reasons, Duquesne's proposal should be rejected.

V. COMPETITVE TRANSITION CHARGE

A. Disputes Regarding Calculation of CTC And CGC.

Duquesne's proposed CGC is too low to allow for the development of meaningful competition for retail sales of electric energy and should be rejected.

It is axiomatic that an electric utility's Restructuring Plan must promote the development of a competitive market in accord with the policy of the Commonwealth set forth in the Competition Act. 66 Pa. C.S. §2802. Indeed, a Restructuring Plan which had been agreed to by many stakeholders and which provided only for rate cuts and other significant "concessions" by an electric utility, but which was also found to hinder the development of a "competitive retail electric market and [which made] competition for many residential and other low-load factor customers economically impossible until 2003 at the earliest," was rejected by the Commission as being contrary to the public interest. PECO, p. 14.

Specifically, it is the "level of the ECC [also referred to as the "generation credit" or the "shopping credit," and specifically called the "CGC" in Duquesne's case] [which] impacts whether the Act is a success or failure." PECO, p. 15. As further stated by the Commission:

> If the ECC [or Duquesne's CGC] in any year is too low, competition will be harmed or even destroyed. 'There are many ways in which a restructuring plan can result in a de facto monopoly in the electric supply market. Perhaps, the most important of these is the establishment of generation credits that are set below market prices for electricity.'

PECO, p. 16.

Thus, contrary to the position of Duquesne as expressed by its chief policy witness, Mr. Marshall, in this proceeding, the CGC must be set to allow for competition starting in 1999.

The Commission has made it clear that, in the context of reviewing the level of the generation or shopping credit to determine whether a Restructuring Plan promoted competition under the Act, it is the market retail price of fully delivered power (and not the wholesale price) which is the key determinant:

> Setting the ECC or [CGC] below price levels at which even the most efficient competitors could sell electricity or below market prices strangles competition by making it economically impossible to compete for retail customers. Simply put, if set too low, the ECC or [CGC] will mean that electric customers in PECO's [or Duquesne's] service territory will have few or no competitors competing for their business.

PECO, p. 16.

Where the record establishes, as it did in PECO, that a proposed generation or shopping credit (ECC or CGC) protects a utility's present monopoly position, even for the period from now until 2003, it must be found that the proposed generation credit hinders the creation of a competitive retail electric generation market, which is a major purpose of the Act. PECO, p. 18.

As indicated previously in this Brief, MAPSA has advocated a stranded cost approach which focuses on administratively setting the CGC. Because of the mathematical relationship of the CTC and CGC, under MAPSA's approach, the CTC would be the resulting number. As pointed out in the argument immediately below, in PECO, the Commission did not follow MAPSA's approach as advocated in this case. Should Your Honor and the Commission feel bound to follow the PECO approach, MAPSA (which has not taken a specific position on Duquesne's stranded cost level), vigorously disputes Duquesne's methodology (for all of the reasons set forth previously), endorses the PECO methodology, and relies upon other Intervenor's methodologies for calculating stranded costs. The next Section of this Brief sets forth the appropriate steps to be taken under the PECO methodology.

1. Difference in overall approach.

(a) CTC or CGC as a residual.

In order to rectify a Restructuring Plan (as proposed in a settlement) which contained a shopping credit that was too low to allow for competition, the Commission set the CGC as the residual of non-bypassable charges under the rate cap. PECO. This method identifies the utility's rates that should be subject to competition, after adequately compensating the utility for the use of its distribution and transmission systems and allowing recovery of 100% of its non-mitigable stranded costs. As stated by the Commission:

> This Opinion and Order establishes for the first time an unbundled T&D [transmission and *distribution*] rate for consumers of PECO. This Opinion and Order also establishes a CTC that consumers are obligated to pay PECO for every kWh consumed. The shopping consumer pays only the T&D rate and the CTC to the EDC [electric distribution company] when purchasing generation in the competitive market. The addition of the T&D rates and the CTC produces a total sum of charges that when compared to the customer's in effect as of January 1, 1997 gives rise to the concept of a 'shopping credit.' The shopping credit is not a selected number. It is the number that results from the difference between a particular customer's total rate as of January 1, 1997 and the sum of T&D and CTC rates established pursuant to this order.

PECO, p. 42.

And, once the CTC and the resultant shopping credit is derived, it is appropriate for the Commission then to review the record testimony in order to determine whether the resulting shopping credit itself, as well as "the mechanism of the shopping credits," will provide a competitive market. As stated by the Commission:

> The Commission is convinced from the record testimony that the shopping credits [4.46¢/kWh, on a system average basis] and the mechanism of the shopping credits [levelized] will provide a competitive market. Again it is only genuine competition that will deliver long term price benefits to the customers of the PECO service territory. The Commission's approach avoids creating a de facto monopoly that delivers temporary and short-term rates cuts.

> It creates real incentives for electric suppliers to compete for customers and for customers to shop for electricity. As such this decision will create a market featuring many buyers of electricity and many sellers of electricity.

PECO, p. 44.

Using the PECO method, however, may raise an additional question in this case, because the credit in PECO was found to be large enough to allow for competition: Namely, what are the Commission's options if the resultant shopping credit is not sufficient to enable full workable and robust retail competition as was the case in PECO? Clearly, there are two immediate remedies if it is found that a shopping credit is not large enough to promote robust competition. First, the level of the CTC can be adjusted; for example, in PECO, wherein the utility had proposed a "front-end loaded" CTC (higher in the early years and lower in the later years), the Commission directed that the CTC should be levelized or flattened. PECO, p. 41. In addition, under the terms of the statute, 66 Pa. C.S. §2808(b), the length of the period for recovery of the CTC can be extended. PECO, p. 104, fn. 102. Either of these tools, levelizing the CTC or extending the recovery period, has the effect of lowering the CTC, thereby increasing the mathematically related CGC to a level which will support the development of a workable competitive market. Another tool available to the Commission to promote competition is to increase the CGC by adding to it a Customer Participation Credit ("CPC"), as suggested by Mr. Russell in this case, and expressly adopted by the Commission for the Pilots. Pilot Order, p. 68-70.

In summary, the following steps are involved in determining an appropriate CTC and CGC.

- First: calculate the electric utility's stranded cost in accordance with the record evidence and the methodology set forth in PECO.
- Second: derive a CTC to collect those reasonable and non-mitigatable costs over an appropriate period (for example, the nine year period provided for in 66 Pa. C.S. §2808(b)).
- Third: calculate the appropriate T&D rates.
- Fourth: mathematically calculate the CGC, by adding the transmission, distribution and CTC charges, and subjecting the total of these three charges from the level of rates in effect on January 1, 1997.
- Fifth: determine whether the resulting CGC will allow for competition, based upon the record evidence of what a fully delivered retail price of power is.
- Sixth: make appropriate adjustments to the CTC/CGC if the CGC (shopping credit) is not large enough to allow for competition (e.g., flatten the CTC, "back-end load" the CTC, lengthen the recovery period, or provide for a CPC).

Because MAPSA has taken no position as to the appropriate level of Duquesne's stranded costs, the first, second, third, and fourth steps of the analysis must be based upon the CTC and T&D levels proposed by other Intervenors in this proceeding. However, when arriving at the fifth stage of the analysis which was approved in the PECO decision, namely, analyzing the CGC to determine whether it will allow for competition, MAPSA's concerns are implicated.

Simply stated, Duquesne's proposed CGC will not allow for competition because it is too low to allow suppliers to compete. Duquesne has adopted a methodology for determining the CGC that is the opposite of that set forth by the Commission. Namely, Duquesne proposes to

calculate the CGC and use the CTC as a "fall-out." In using the CGC as the "driving" number in the equation, Duquesne has used a wholesale market price, based upon the results of its flawed RFP process rather than attempting to set a fully-delivered retail price.[8]

The fact that Duquesne's CGC is based upon a wholesale market price is not disputed by Duquesne, rather, Duquesne's CEO defiantly declares that if suppliers cannot deliver power and provide benefits at a price equal to or less than the wholesale market price, the Competition Act is not a "good idea." Tr. 136. Duquesne's own witnesses acknowledge that suppliers will be unlikely to recover additional costs and provide a fully-delivered retail price that would be under the CGC. Tr. 497. Duquesne believes that in the restructured world, at least as long as Duquesne is serving as the supplier of last resort, competition will exist primarily between Duquesne, as the supplier of last resort, and the competitive suppliers as a unified mass. Tr. 137. Duquesne believes that suppliers should be placed at risk for possible fluctuations or differences in the market price, but that Duquesne should not shoulder that same risk. Tr. 493. Duquesne believes that it should be insulated from the possible changes in the market price of power. Id. Essentially, Duquesne's proposal is to set up a "competitive" scenario where there is no competition; a sentiment echoed by Duquesne's own witness who states that competition envisioned by the Act is potential competition, i.e., a potential for suppliers to compete in Duquesne's service territory, not actual competition, where suppliers actually can compete. Tr. 765.

[8] The "market price", which is used to determine what a utility may obtain for its sales of power (which then can be used - not ideally, however, to determine stranded costs) is not the retail "market price" which is to be reviewed to determine whether suppliers may compete. Rather, the latter price is the cost of fully-delivered power at the retail level.

One can only conclude from a review of Duquesne's position in this case that Duquesne does not believe that the CGC which it has proposed in this case will allow for the development of competitive market. In fact, Duquesne appears to defy the Statutes' mandate for the development of a competitive market and it does not even attempt to disguise the fact that its market price is a wholesale market price and that competitors will be unable to deliver power at that price or below it. Therefore, Duquesne's proposed CGC is contrary to the law and must be modified.

In modifying a CGC, the Commission should look at the record evidence in order to determine what level of CGC would be sufficient to allow for the development of a competitive market. The only evidence of what fully-delivered retail charge would satisfy the development of a competitive market was presented by MAPSA witness Russell. Mr. Russell testified that the preferred approach for setting the CGC is to determine it administratively, based on the long-run marginal cost. (MAPSA St. No. 1, p. 29). If that approach should endanger a utility's opportunity to recover its legitimate and verifiable stranded costs within the nine year period established in the Act, Mr. Russell recommends that the Commission extend the nine year period to a later date. (Id., p.30). Further, after the first year of collection, the CGC should be adjusted to reduce the gap between the CGC and the actual market price which evolved in the prior year. The CGC then would be adjusted to reflect anticipated changes in the market with this process continuing until the end of the recovery period.

Alternatively, Mr. Russell suggested that it would appropriate to look at market indices for the price of energy, and to those figures add: the value of additional services (and costs) which must accompany the raw price of energy in order to make it useful. These necessary additions to the market indices for the raw energy value include:

- The value of capacity adjusted to the load factor of the customer class, including the cost of capital additions.
- The value of installed reserves adjusted to the load factor of the customer class.
- The cost of ancillary services.
- Marketer's costs and home office overhead.
- Losses.
- Profit.

(MAPSA St. No. 1, p. 32)

It is necessary to add such items as the cost of marketing, home office overhead, and profit for the simple reason that, no matter what entity is selling the energy, that entity will incur these costs, and, in deriving the CTC, utilities Duquesne included their costs of marketing and home office overhead. Tr. 767-769. Accordingly, the CGC payable to competitors should be adjusted upward in order to put the utility's costs of marketing and home office overhead at risk in the competitive market. (MAPSA St. No. 1, p. 33).

Mr. Russell testified that the CGC, at a minimum, must fall within a range of at least 2.9¢ per kWh up to 4.1¢ per KWh. (MAPSA Exhibit No. 4). He also advocated an additional customer participation credit equal to that of Duquesne's Pilot Program. (MAPSA St. No. 1, p. 54). Obviously this level of CGC is far in excess of the 1.8¢ per kWh proposed by Duquesne.

Duquesne's approach for calculating its stranded cost is seriously flawed for all of the foregoing reason and leads to the development of rates which will preclude the development of a competitive market. Accordingly, its approach must be rejected as contrary to the Competition Act. PECO.

MAPSA's approach, which focuses upon setting the CGC based upon a realistic retail price of power as opposed to a suppressed wholesale price of power, will produce a competitive market, and MAPSA urges the Commission to adopt its suggested approach. MAPSA recognizes, however, that the Commission's approach contained in its PECO Order focuses upon calculating the stranded costs, and thereafter deriving a CTC to collect the stranded cost. By this method, the CGC, or shopping credit, is not a selected number; rather, it is the number that results from the difference between a particular customer's total rate as of January 1, 1997, and the sum of the transmission, distribution and CTC rates. PECO, p. 42.

Should the Commission follow its PECO methodology and not adopt MAPSA's suggested approach focusing on setting a competitive CGC in the first instance, MAPSA leaves the Commission to its discretion in adopting one of the stranded costs methodologies or a combination thereof proffered by the other Intervenors in this proceeding. Significantly, however, for the reasons discussed in greater detail elsewhere in this brief, Mr. Russell's testimony concerning the CGC is still relevant and probative. In short, evidence regarding the level of the CGC which is necessary to produce a competitive market is a subject which was specifically considered by the Commission in PECO. The Commission, after deriving the CTC with the resultant shopping credit, reviewed both the credit and its "mechanism" of collection, to determine whether a competitive market would be created. PECO, p. 44.

VIII. COMPETITIVE SAFEGUARDS

A. Code of Conduct

The Provisions of Duquesne's Code of Conduct which limit its implementation should be removed and Duquesne should be required to adopt a Code of Conduct in this proceeding which adequately protects customers and competitors.

Duquesne has proposed a Code of Conduct in this proceeding which would apply only if Duquesne offers unregulated services to customers within its own service territory. (MAPSA St. No. 1, p. 47). Duquesne further states that while it currently does not plan to compete in its service territory, those plans are not yet final. Tr. 493. Duquesne's proposal ignores the reality that much of the expense of doing business is the start-up, and that it is at the start-up that the opportunity for improper exchange of resources is greatest. (MAPSA St. No. 1, p.47). Duquesne also proposes to limit the applicability of its Code of Conduct to affiliate transactions within its own service territory, although Duquesne presumably would not be required, under its proposal, to engage its Code of Conduct and protect ratepayers and competitors if it competes in the service territories of other utilities. (MAPSA St. No. 1, p. 47). Finally, MAPSA proposed an interim Code of Conduct that would apply until the Commission's final rules are implemented. (MAPSA St. No. 1, Attachment II).

Duquesne's Code of Conduct proposal should be rejected for at least two reasons, as pointed out by MAPSA's witness in this case. First, if there is even the most remote possibility that Duquesne might compete in its own service territory, it should be required to implement a Code of Conduct, before undertaking any activity precedent to engaging in that activity. The same should be true if Duquesne intends to compete outside of its territory, because many of the same cost-shifting and cross-subsidization concerns are implicated, regardless of where the

company is competing. Duquesne's proposed code of conduct would allow Duquesne to continue to control the market in anti-competitive ways, and will hinder the ability of competitive suppliers to enter the market and compete thus preserving Duquesne's monopoly position in the market place and eliminating the possibility of cost savings for customers. One way to ensure that a non-discriminatory structural and operational relationship is developed between Duquesne and competitive suppliers and between Duquesne and any affiliates, is to establish an interim code of conduct in this proceeding. In spite of the Commission's determination to treat the issue generically, at least an Interim Code of Conduct must be established in this restructuring proceeding. A rulemaking, by its very nature is general, and not company-specific. While the rulemaking, which will take at least a year to compete, may set detailed guidelines, it will require specific filings to be made by each utility; those filings in all likelihood, will be subject to further adjudicatory proceedings, which may not be resolved until well into the first year of competition, even assuming that final rules are adopted by the end of 1998.

Therefore, the Commission should reject Duquesne's proposed code of conduct and in order to correct the deficiencies thereof should adopt MAPSA's proposed additions to the code of conduct as contained in MAPSA's direct testimony (MAPSA St. No. 1, Attachment No. II).

IX. DUTY TO SERVE

C. Electric Transmission and Distribution Service

Duquesne's Proposal Should be Modified to Allow for the Competitive Provision of Metering and Billing Services.

Duquesne's proposal does not allow for the competitive provision of the metering or billing functions. (Duquesne St. No. 8, p. 3). Duquesne believes that in order to comply with the

mandate of the Act, it is not necessary to unbundle metering and billing, in fact Duquesne's testimony could lead one to believe that the Act would forbid competitive provision of these services. (Id., p. 4). Duquesne does acknowledge, however, that the statute does allow the Commission to order it to unbundle other services. Tr. 852. MAPSA witness Russell testified that in order to have a truly competitive market, in which suppliers are permitted to provide all of the services that the utility can provide, it is necessary to allow suppliers the single bill option, and to allow supplier provision of the metering function. (MAPSA St. No. 1, pp.42-43).

Duquesne believes that in the period that it is still providing supplier of last resort service, that the only competition that will exist will be between suppliers and the company -- with the company providing service at the rate cap. Tr. 136. Under Duquesne's competitive scenario, the company -- the same entity that will be competing with suppliers for business -- will continue the monopoly provision of the most important customer service functions. As an alternative to Duquesne's proposal, which allows Duquesne to further entrench its monopoly position, the Commission should consider adopting the Metering and Billing Principles which are proposed in this proceeding by MAPSA witness Russell. (MAPSA St. No. 1, Attachment I). Application of MAPSA's principles will allow for the competitive provision of those services which are critical to the development of the customer relationship, and will allow for true competition to develop.

XIII. CONCLUSION

In conclusion, and for the foregoing reasons, MAPSA hereby requests this honorable Commission to modify Duquesne' s Restructuring Plan in accordance with the positions asserted herein and issue an order containing the following specific provisions:

1. Require Duquesne to auction its generation assets immediately in order to accurately determine the exact level of Duquesne's stranded costs;

2. Duquesne's proposed CGC should be recalculated to allow for the development of a robust competitive market in accordance with the methodology set forth herein;

3. The Commission should require as a condition for approving the merger between Duquesne and West Penn that the two companies waive any primary jurisdiction arguments with regard to anti-competitive effects of the merger;

4. That Duquesne should be required to modify its proposed customer choice methodology for the phase-in to provide for a first-come-first-serve basis and to eliminate the geographic areas of choice and its SIC code base methodologies;

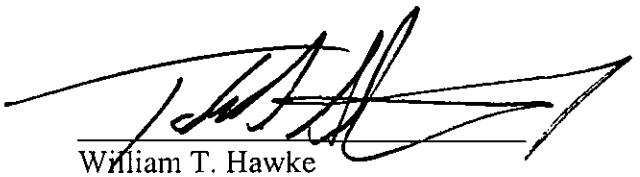
5. Any fees that are proposed by Duquesne for scheduling or any other ancillary services must be cost justified and must be reasonable and therefore Duquesne's proposed fees must be rejected until such time as they provide adequate cost justification for those fees;

6. Imbalance fees should be set at 100% of out of pocket expenses and imbalances should be allowed to be traded among competitive suppliers and satisfied in kind;

7. Metering and billing services should be allowed to be supplied on a competitive basis in accordance with MAPSA's proposal (MAPSA St. No. 1, Attachment I);

8. An interim code of conduct should be adopted which is contrary to that suggested by Duquesne (MAPSA St. No. 1, Attachment II).

Respectfully submitted,



William T. Hawke
Todd S. Stewart
Malatesta Hawke & McKeon LLP
Harrisburg Energy Center
100 N. 10th Street
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for Mid-Atlantic
Power Supply Association

DATED: February 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that this day a copy of the foregoing Main Brief of the Mid-Atlantic Power Supply Association on behalf of Duquesne Light Company has been served upon the persons and in the manner indicated below.

Service by First Class Mail:

John Moot, Esquire
Skadden, Arps, Slate Meagher & Flom
1440 New York Avenue N.W.
Washinton D.C. 20005

James P. Dougherty, Esquire
Robert A. Weishaar, Jr., Esquire
Pamela C. Polacek, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Kandace F. Melillo, Esquire
Wayne T. Scott, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
Assistant City Solicitor
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

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

Larry P. Crayne, Esquire
Richard S. Herskovitz, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

Angela T. Jones, Esquire
Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102 - Commerce Building
300 North 2nd Street
Harrisburg, PA 17101

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Irwin A. Popowsky, Esquire
Marisa A. Sifontes, Esquire
Steven K. Steinmetz, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael L. Kurtz, Esquire
David F. Boehm, Esquire
Boehm, Kurtz & Lowry
2110 CBLD Center
36 E. Seventh Street
Cincinnati, OH 45202

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll, P.C.
20th Fl., One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-1410

Terrance J. Fitzpatrick, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
Suite 101 - 800 North Third Street
Harrisburg, PA 17102-2025

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Matthew Kahal
Exeter Associates
Suite 350
12510 Prosperity Drive
Silver Spring, MD 20904

Wanda Schiller, Esquire
Steven F. Baicker-McKee, Esquire
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center, 8th Floor
Pittsburgh, PA 15222

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

Thomas Gadsen, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

Mark J. McGuire, Esquire
Ronald N. Carroll, Esquire
Jenner & Block
Suite 1200 - 601 13th Street, N.W.
Washington, DC 20005

Paul E. Russell, Esquire
Pennsylvania Power & Light Company
2 North Ninth Street
Allentown, PA 18101

Mary McFall Hopper, Esquire
PECO Energy Company
S23-1
2301 Market Street
Philadelphia, PA 19103

Joseph A. Dworetzky, Esquire
John P. Lavelle, Jr., Esquire
Hangley, Aronchick, Segal & Pudlin
12th Floor - One Logan Square
Philadelphia, PA 19103

Albert M. Benincasa
Director, Regulatory Affair
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 500 - 1735 New York Avenue, N.W.
Washington, D.C. 20006-4759

David M. Boonin
New Energy Ventures East, LLC
Suite 2525 - 1845 Walnut Street
Philadelphia, PA 19103

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street - Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500

John O'Brien, Esquire
Wheeled Electric Power Company
Suite 207 - 50 Charles Lindburgh Blvd.
Uniondale, NY 11553

Vickiren S. Aeshleman
Director, Regulatory Affairs
QST Energy, Inc.
Suite 300 - 300 Hamilton Boulevard
Peoria, IL 61602

Gary A. Jeffries, Esquire
CNG Energy Services Corporation
One Park Ridge Center
P.O. Box 15746
Pittsburgh, PA 15244-0746

David Cruthirds, Esquire
Electric Clearinghouse, Inc.
Suite 5800 - 100 Louisiana
Houston, TX 77002-5050

Douglas F. John, Esquire
Gordon J. Smith, Esquire
John & Hengerer
Suite 600 - 1200 17th Street, N.W.
Washington, DC 20036-3006

Mary Ann Ralls, Esquire
Duane, Morris & Hechscher LLP
Suite 700 - 1667 K Street, N.W.
Washington, D.C. 20006-1608

Keith M. Sappenfield, II
Director of Marketing Support
NorAm Energy Management, Inc.
P.O. Box 2628
Houston, TX 77252-2628

John R. Orr, Esquire
Duke Energy Trading & Marketing, LLC
One Westchester Center
Suite 650
10777 Westheimer
Houston, TX 77042

Lawrence E. Moncrief, Esquire
1364 Silverton Avenue
Pittsburgh, PA 15206

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Alan Kohler, Esqire
Robert J. Longwell, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
Suite 300, 212 Locust Street
Harrisburg, PA 17101-1236

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Kenneth L. Wiseman, Esquire
Robert M. Lamkin, Esquire
Andrews & Kurth, LLP
Suite 200
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

Alan Barak
Environmental Energy Project
1417 Blue Mountain Parkway
Harrisburg, PA 17112

Mark F. Sundback, Esquire
Robert M. Lamkin, Esquire
Andrews & Kurth, LLP
Suite 200
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213

Tim Merrill, Esquire
Suite 200 - 4 Penn Center West
Pittsburgh, PA 15276

Robert B. Weisnemiller
MRW & Associates, Inc.
Suite 1440 - 1999 Harrison Street
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

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

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

Cindy Datig, Esquire
Dollar Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

Kenneth Zielonis, Esquire
Stevens & Lee
Suite 310 - 208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090

Donald R. Ayersman, Jr., Esquire
IBEW Local 2357
1125 Denver Avenue
Morgantown, WV 26505

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Kevin J. McKeon
Malatesta Hawke & McKeon LLP
P.O. Box 1778
Harrisburg, PA 17105

John Wilson, Executive Director
Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

Todd S. Stewart

DATED: February 10, 1998

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF RESTRUCTURING PLAN UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE	DOCKET NO. R-00974104

BRIEF

UNIVERSAL SERVICE AND ENERGY CONSERVATION ISSUES

John W. Wilson

FOR

The Community Action Association of Pennsylvania
222 Pine Street
Harrisburg, Pennsylvania 17101

Dated: February 1997
Date Due: February 10, 1997

TABLE OF CONTENTS

I. UNIVERSAL SERVICE AND ENERGY CONSERVATION PROGRAMS

A. Introduction: Legal and Legislative Background

On December 3, 1996, Governor Tom Ridge signed into law the *Electricity Generation Customer Choice and Competition Act* ("Customer Choice Act"). The Customer Choice Act revised the Public Utility Code. 66 Pa. C.S. §§101, et seq., by inter alia, adding Chapter 28, relating to restructuring of the electric utility industry. The Pennsylvania Public Utility Commission ("Commission") is the agency charged with implementing the Act.

1. Low Income Ratepayers Have Special Needs and Concerns that Must Be Addressed in a Restructured Electric Industry.

Low income customers are not likely to share in the benefits of a restructured industry. In fact, they may be substantially harmed by it unless strong and meaningful programs and policies are put into place to protect them. Low income customers are perhaps the most captive of customers. As such, their ability to exercise choice in generation as the industry restructures will be less that other residential customers (Wilson, Direct, Page 3).

Additionally, low income households have virtually no discretionary income for investments in efficiency measures and carry higher risk with respect to arrearages, which makes them even less attractive to potential aggregators. This leaves them especially vulnerable as costs begin to shift from larger customers to smaller ones. In essence, the low income, seniors, minorities, rural and other at risk customer groups may suffer from neglect and redlining by providers because they pose more difficulties in being served. (Id.).

Finally, we must remember that low-income households are generally less educated and informed about energy use than typical customers. This situation reduces their

ability to take advantage of what benefits may fall their way. Since the pursuit of adequate food and clothing, employment, and mere housing itself are of paramount importance to these people, it is unlikely they will become informed or take advantage of a market-based decision making (Id.).

2. The Pennsylvania General Assembly Recognized the Special Needs and Concerns of Low Income Ratepayers by Making Certain Policy Declarations in the Electric Generation Competition and Customer Choice Act Including the Creation of appropriately funded and available Universal Service and Energy Conservation Programs.

It is clear that the *raison d'etre* of the Customer Choice Act is not to promote *laissez faire* competition in the area of generation. Rather, Section 2802 defines no less than three public policy requirements directly relevant to ensuring that the special needs of low income ratepayers are adequately addressed as Pennsylvania restructures its electric industry. These requirements are:

- Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and *electric service should be available to all customers on reasonable terms and conditions* (emphasis added, § 2802(9));
- The Commonwealth *must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service* (emphasis added, § 2802(10); and
- There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. *The public purpose is to be promoted*

by the continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism (emphasis added, § 2802(17)).

In support of these public policy requirements, the Customer Choice Act specifies specific programs that must be developed and implemented. The Customer Choice Act defines the programs under the general heading of Universal Service and Energy Conservation, and specifically states that:

- Universal service and energy conservation is defined as policies, protections and services that help low-income customers to maintain electric service. *The term includes customer assistance programs; termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low income usage reduction programs, and applicable renewable resources and consumer education* (emphasis added, § 2803).

Though the Customer Choice Act does not specify low income participation and funding levels with respect to Universal Service and Energy Conservation, it does give the broad powers to make such determinations. Specifically, the Customer Choice Act states that:

- *The Commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.* These policies, activities and services shall be funded in each electric distribution territory by non-bypassable competitively neutral cost recovery mechanisms that fully recover the costs of universal service

and energy conservation services. (emphasis added, § 2804 (9));

3. The Pennsylvania Public Utility Commission Implemented a Two-Step Process for Meeting Its Responsibilities as Declared and Outlined in the Electric Generation Competition and Customer Choice Act With the Goal of Establishing Meaningful and Strong Universal Service and Energy Conservation Programs in Each Utility Service Territory.

a. Step 1: The Commission Issued Its Tentative Order on Universal Service and Energy Conservation Requirements and Requested Input and Comments from All Interested Stakeholders.

In keeping with the low income policy requirements of the Customer Choice Act, the Commission proposed its "Tentative Order Re: Guidelines for Universal Service and Energy Conservation Programs Made Pursuant to 66 Pa. C.S. §2803 §2802(17), 2804(8) and 2804(9) at Docket No. M-00960890 f 0010 at a Public Meeting held April 24, 1997, and requested comments for consideration. These

> "[g]uidelines were intended to assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each utility by setting forth the Commission's current views regarding how those issues should be addressed in the restructuring proceedings. It is our intention that the Guidelines will enable the parties to more efficiently focus on the relevant factual determinations necessary to comply with the Act. . . . The sole intent of this tentative order is to propose guidelines for universal service and energy conservation programs and to request written comments from the electric utilities and other interested parties on these guidelines. The Commission will use the comments to this tentative order to develop guidelines for universal service and energy conservation programs that will be issued in a final order..."

Among other things, the Commission's Tentative Order on Universal Service and Energy Conservation suggested a methodology for determining the funding and participation levels necessary to provide strong and meaningful programs. The Commission pointed out that participation levels for similar programs in California was nearly 56%, and that given that Pennsylvania utilities have non-income eligibility requirements to consider as well, it would be reasonable to assume a 40% penetration rate of the total 150% of Federal poverty guideline households in each utility service territory was a good estimation of that level. (Kuennen, Direct, Page 11).

b. Step 2: The Commission Issued Its Final Order on Universal Service and Energy Conservation which, Among Other Things, Stated that Participation and Funding Levels for Low Income Programs Will be "Based on a Needs Assessment of the Market for and acceptance of Universal Service Programming in the Territory."

After evaluating the comments provided by 52 parties in response to the Commission's Tentative Order on Universal Service and Energy Conservation Requirements, the Commission issued its Final Order on such at Docket No. M-00960890 f 0010 at a Public Meeting held July 10, 1997. The Final Order reiterated the purposes of the Tentative Order regarding the Commission's intention that its Universal Service and Energy Conservation Guidelines are to "assist the parties in the preparation, litigation and resolution of the Restructuring Filings of each EDC by setting forth the Commission's current views regarding how those issues should be addressed in the restructuring proceedings..." but in its Final Order, the Commission declined to offer "any precise requirements that must be a part of the universal service and energy conservation plans of any utility." (Exhibit CRK-3, Page 2) Rather, the Final Order specifies that such "decisions will be made only in the restructuring order, after the EDCs

and all interested parties have had an opportunity to address the issues based upon [its] guidelines.

Of particular note is the Final Order acknowledgment that:

> "the Code, as now amended by the Act, for the first time imposes a mandate for universal service and energy conservation policies, programs and protections that are 'appropriately funded and available in each electric distribution territory' and the Commission can and will meet this mandate while meeting the other requirements of the Code. " (Id. at 3).

Further, the Final Order notes that the "neither the Act nor [the] Guidelines specify any particular spending level for universal service and energy conservation as a whole ..." (Id. at 3). The only requirement being that "total level of resources directed to universal service and energy conservation is 'appropriate' and the benefits are made 'available'." (Id.) In this regard, the Final Order provides means for defining what is "appropriate" and "available" within the context of each EDC Restructuring Proceedings. (Id.)

Specifically, the Final Order states that "in order to ensure that universal service and energy conservation programs are 'appropriately funded and available in each service territory." Each EDC plan must address:

- Identification of existing and proposed efforts;
- Needs assessment of the market for and acceptance of universal service programming in the territory;
- Identification of the greater of the current level of spending or the amounts included in existing rates to support existing efforts;
- Other statutory mandates and these guidelines. (Id. at 34).

B. Overall Funding and Rate Issues.

1. Eligibility and Funding Levels

a. Duquesne's Proposed Universal Service and Energy Conservation Program Neither Meets the Requirements of the Customer Choice Act, Nor the Commission's Final Order Requirement that Such Programs be Appropriately Funded and Available as Determined Through a "Needs Assessment of the Market or and Acceptance of Universal Service Programming in [Its] Territory" and Should Therefore be Rejected.

Duquesne offers a universal service and energy conservation program in this proceeding that amounts to a continuation of historic participation and spending levels developed within and designed to serve the needs of low income customers in a regulated electric market. Duquesne would have us believe that low income needs and concerns will not change with the onset of competition. This line of thinking is contrary to that expressed in the Customer Choice Act, the Commission's Tentative and Final Orders on Universal Service and Energy Conservation, and the testimony of CAAP Witness Wilson which strongly suggests that low income needs and concerns will be quite different in a competitive electric market. (Wilson, Direct, Page 4).

Recognizing the changing needs and concerns of low income ratepayers, the Customer Choice Act mandated the creation of "appropriately funded and available" universal service and energy conservation programs in each utility service territory. The Tentative Order suggested that "appropriately funded and available" should be defined as programs designed to provide services to 40% of the income eligible low income population. (Exhibit CRK-11, Pages 10-12). The Final Order explicitly stated that programs should be meaningful and strong. (Exhibit CRK-3, Page 40). Additionally, participation and funding

should be determined through a needs assessment. (Id at 34). Finally, CAAP Witness Wilson has pointed out in no uncertain terms that "[l]ow income customers are not likely to share in the benefits of a restructured industry . . . [i]n fact, they may be substantially harmed by it unless strong and meaningful programs and policies are put into place to protect them." (Wilson, Direct, Page 3).

Duquesne's proposed plan does not take into consideration these concerns. Its does not ensure that low income programs will be "appropriately funded and available." It is not based on a needs assessment that takes into consideration the special needs and concerns that low income customers will face in the new competitive market place (Kuennen, Direct, Page 7). Rather, its needs assessment as described in Duquesne Witness Flynn's testimony amounts to nothing more than an apology for historically inadequate program participation and funding levels (Flynn, Rebuttal).

i. Duquesne's Proposed Customer Assistance Program (CAP) Underestimates Annual Households in Need by 11,921 (=33,802*40%-1,600) And Annual Funding Requirements by $9,221,812 (=11,921*$773.59).

As CAAP Witness Kuennen points out, an analysis of U.S. Census data for Duquesne's service territory shows that as many as 104,057 households in Duquesne's service territory are income eligible for CAP. (Kuennen, Direct, Page 8). The Commission's Final Order suggests that basic CAP eligibility should be as follows:

1. Status as a ratepayer or new applicant is verified.
2. Household income is verified at or below 150% of the Federal poverty guidelines.

3. The CAP applicant is payment troubled. Payment troubled is defined as a household who has failed to maintain one or more payment arrangements. (Kuennen, Direct, Page 12).

Duquesne Witness Hoffmann states Duquesne has 55,538 identified low income payment troubled households, and 33,802 "delinquent" payment troubled households (Wilson, Direct, Page 3). These figures strongly suggest that Duquesne has between 33,802 and 55,538 CAP eligible households in its service territory.

Duquesne proposes a Customer Assistance Program designed to help low income customers afford electric service but limits this program to 1,600 participants annually with funding set at $500,000 a year. (Id. at 5). Based on the payment trouble numbers provided by Duquesne above, this equates to a proposed CAP penetration level of between 2.8 and 4.7 percent. Additionally, these figures are well below that which is necessary to meet the CAP needs as suggested by Duquesne Witness Hoffman and CAAP Witnesses Wilson and Kuennen. Duquesne Witness Hoffman "conservatively" estimates that as many as 7,000 of its low income households may be eligible for CAP based on need. (Id. at 6). CAAP Witness's Wilson and Kuennen show that Duquesne CAP needs may be as high as 13,521 households annually assuming 40% of Duquesne's delinquent payment troubled customers apply and enroll with funding needs approaching $10,459,556 annually. (Id. at 7, Kuennen, Direct, Page 15). Based on CAAP's numbers, assuming a conservative 40% of Duquesne's identified delinquent payment troubled customers are eligible and apply, Duquesne's proposed CAP underestimates annual households in need by 11,921 (=33,802*40%-1,600) and annual funding requirements by $9,221,812 (=11,921*$773.59). (Kuennen, Direct, Page 15).

ii. Assuming a 10-Year Completion Goal of 40% of the Remaining Unserved Income Eligible Population, Duquesne's Proposed Low Income Usage Reduction Program (LIURP) Underestimates Annual Households in Need by 3,249 (((=104,057*40%-5,328)/10)-700) And Annual Funding Requirements by $3,800,845 (=3,249*$1,170).

Duquesne proposes a LIURP designed to help low income customer afford electric service by providing energy conservation measures, including energy efficient appliances and energy education but limits participation to 700 participants annually with funding set at $700,000 a year. Duquesne Witness Hoffman testified that Duquesne has no way of estimating the actual level of remaining LIURP need in its service territory. (Kuennen, Direct, Page 8). In Rebuttal, Duquesne Witness Flynn suggests that Duquesne's historic LIURP funding levels are sufficient to meet the low income need in the new competitive environment but provides no needs assessment to support this conclusion. (Flynn, Rebuttal, Page 10).

As CAAP Witness Kuennen points out, an analysis of U.S. Census data for Duquesne's service territory shows that as many as 104,057 households in Duquesne's service territory are income eligible for LIURP. (Kuennen, Direct, Page 8). Using the Commission's Tentative Order Methodology for determining the low income need and participation levels, i.e., assuming a conservative 40% of Duquesne's identified income eligible customers are eligible and apply so as to take into consideration non-income eligibility requirements, and assuming a 10-year window for provision of services, Duquesne's proposed LIURP underestimates annual households in need by 3,249 (((=104,057*40%-5,328)/10)-700) and annual funding requirements by $3,800,845 (=3,249*$1,170).

b. CAAP's Proposed Universal Service and Energy Conservation Program Participation and Funding Levels Meet the Requirements of the Customer Choice Act, and the Commission's Final Order Requirement that Such Programs be Appropriately Funded and Available as Determined Through a "Needs Assessment of the Market or and Acceptance of Universal Service Programming in [Its] Territory" and Should Therefore be Accepted.

CAAP has proposed specific universal service and energy conservation program funding and participation levels in this proceeding. CAAP's plan meets the requirements of the Customer Choice Act, the Commission's Tentative and Final Orders on Universal Service and Energy Conservation, and as well as the special concerns and needs of low income customers in the new competitive electricity market described by CAAP Witness Wilson, while taking into consideration other requirements of the Customer Choice Act, and the Commission's Tentative and Final Orders.

Contrary to Duquesne Witness Flynn's contention that CAAP's proposed participation and funding levels are "based on income alone" (Flynn, Rebuttal, Page 8), CAAP's proposed participation and funding levels were determined using the Commission's proposed "40% methodology" for determining need as described in its Tentative Order on Universal Service and Energy Conservation using 1990 U.S. Census data for specific cities, boroughs, and townships included in Duquesne's Tariff. The Commission specifically stated that a conservative 40% participation goal for Universal Service and Energy Conservation Program participation instead of California's 56% penetration because Pennsylvania's low income programs contain "other no income criteria" (Kuennen, Direct, Page 11).

i. To Be in Compliance with the Customer Choice Act's Mandate that Universal Service and Energy Conservation Programs Be Appropriately Funded and Available as Such Duquesne Should Be Required to Develop and Implement a Full Scale Customer Assistance Program (CAP) Designed to Serve 13,251 Low Income Households Annually With Funding Set at $10,459,556 Annually.

As CAAP Witness Kuennen has testified, Duquesne estimates that it has 52,538 low income payment troubled customers, and 33,802 low income delinquent payment troubled customers. (Kuennen, Direct, Page 9). The Commission's Final Order eligibility criteria which states:

> A CAP applicant must meet the following eligibility criteria:
>
> 1. Status as a ratepayer or new applicant is verified.
> 2. Household income is verified at or below 150% of the Federal poverty guidelines.
> 3. The CAP applicant is payment troubled. Payment troubled is defined as a household who has failed to maintain one or more payment arrangements. Id.

CAAP Witness Kuennen has testified that a good estimate of per household CAP costs for a full scale Duquesne program would be $773.59 per household. (Id. at 12). These figures suggest that a full scale CAP program based on a needs assessment coupled with other Commission criteria would be one that targets between 13,521 (=33,802*40%) annually at an annual cost of $10,459,556 (=13,521*$773.59) and 21,015 (=52,538*40%) annually at an annual cost of $16,257,149 (=21,015*$773.59). (Id. at 14). Given the immediate need to balance other policy goals of the Customer Choice Act to meet the rate cap, Duquesne should be required to implement a program targeting the lower end of this range.

ii. To Be in Compliance with the Customer Choice Act's Mandate that Universal Service and Energy Conservation Programs Be Appropriately Funded and Available Duquesne Should Be Required to Expand Its Low Income Usage Reduction Program (LIURP) So as TO Serve 3,949 Low Income Households Annually With Funding Set at $4,500,845 Annually.

Using the standard LIURP definition of low income of households at or below 150% of Federal poverty guidelines as required by the Commission Final Order, 1990 U.S. Census data for Duquesne cities, boroughs, and townships suggest an estimated 104,057 of Duquesne's 522,574 residential household's are income eligible for LIURP. (Kuennen, Direct, Page 10). Considering the 5,328 low income households previously served, this further suggests that 98,729 (=104,057-5,328) low income Duquesne households are still in need of LIURP services. (Id.).

Given the need to take into consideration non-income eligibility criteria, the Commission suggested in its Tentative Order on Universal Service and Energy Conservation it would be reasonable to assume a 40% penetration rate of the total 150% of Federal poverty guideline households with a given utility service territory would be necessary and adequate to meet the low income need. (Id. at 11). Using the Tentative Order methodology, Duquesne has an estimated 39,492 (=(104,057-5,328)*40%) low income households still in need of LIURP services. (Id.). At an estimated per household cost of $1,140, this equates to total budget needs of $45,008,452 (=(104,057-5,328)*40%*$1,140). Assuming a ten-year window for completion, this equates to annual completions of 3,949 (=39,492/10) homes and annual spending of $4,500,845 ($45,008,452/10). (Id.).

2. If Necessary, Duquesne Should be Required to Shift Costs Between Accounts to Fund the Increases in Universal Service and Energy Conservation Programs Such That They Are "Appropriately Funded and Available" As Required by the Customer Choice Act and Commission's Final Order.

As the Commission's Final Order makes clear, expenditures for universal service and energy conservation programs must be examined in conjunction with other requirements of the Act, and EDCs are not to determine universal service and energy conservation funding levels after other funding requirements are met. (Exhibit CRK-3, Page 35) Rather, "the total amount of dollars available under the rate cap should be adjusted to meet the requirements of the Act including universal service and energy conservation" funding. (Id). Further, in its Final Order, the Commission specifically allows for the shifting of programs between current accounts that support low income access to electricity, including gross write-offs, collection costs, and dunning letter postage costs. (Id.).

Duquesne states that it spent an estimated $39,799,899 in gross write-offs, collection costs, and dunning letter postage costs on low income customers during 1996. (Kuennen, Direct, Page 16). Duquesne could transfer a portion of these funds to the increases necessary to bring universal service and energy conservation programs into compliance with the Customer Choice Act and Commission's Final Order without any adverse effect on the rate caps. (Id.).

C. Other Recommendations

1. Ongoing Technical and Training Assistance Will Be a Vital Component of Any Universal Service and Energy Conservation Program and Should Be Funded Accordingly

On Going technical and training assistance will be vital to insuring that universal service and energy conservation programs offer the highest quality services available. (Wilson,

Direct, Page 9). In this regard, Duquesne should establish a $50,000 annual budget for T&TA to be used to provide up to date training and technical assistance for its network of service providers.

2. Ongoing Research and Development Assistance Will Be a Vital Component of Any Universal Service and Energy Conservation Program and Should Be Funded Accordingly

Ongoing research and development will be vital to insuring that Duquesne's universal service and energy conservation programs offer the most "cutting edge" of technologies available. (Id.). As such, Duquesne should be required to establish a $100,000 annual budget to fund a central research and development program to seek out new techniques, evaluate national trends, etc. (Id.).

A first step in ensuring that "cutting edge" technologies are made available to low income households would be to institute a renewables pilot program along the lines of that described in OCA Witness Brockway's testimony (Brockway, Direct, pages 43-47). As Brockway points out, the General Assembly authorized the use of renewable technologies in universal service and energy conservation programs (Brockway, Direct, page 44). The Commission should require Duquesne to develop and institute a low income renewables pilot program.

3. Effective consumer education will be vital to the success of restructuring, and it will be particularly low income household participation.

Low income consumers will need programs designed to meet their specific need. Duquesne should fund these programs and provide them through the same agencies that provide existing low income energy services. Distribution through the network of independent low

income assistance agencies is necessary to ensure that low income, handicapped and elderly customers have the knowledge and tools needed to objectively evaluate information presented and make informed choices, as well as their rights. (Wilson, Direct, Page 7). Duquesne should be required to create a low income education program that would be delivered through its existing network of low income assistance organizations within its service territory. Initially, this program should be funded at $300,000 per year for renewal upon positive evaluation.

II. CONCLUSIONS

A. Regarding Compliance of Duquesne's Universal Service and Energy Conservation Plan with Respect to the Customer Choice Act and Commission's Final Order

Duquesne's LIURP plan neither meets the Customer Choice Act's requirement that universal service and energy conservation programs be "appropriately funded and available," nor the Final Order's requirement that funding and participation levels for universal service and energy conservation programs be determined through a needs assessment. As such, Duquesne's Restructuring Plan does not meet the standard necessary for Commission approval; and

Similarly, Duquesne's CAP plan neither meets the Customer Choice Act's requirement that universal service and energy conservation programs be "appropriately funded and available," nor the Final Order's requirement that funding and participation levels for universal service and energy conservation programs be determined through a needs assessment. As such, Duquesne's Restructuring Plan does not meet the standard necessary for Commission approval.

B. Relief Requested

2. Specific Relief Requested

a. Universal Service and Energy Conservation Program Eligibility.

In general, all Duquesne Universal Service and Energy Conservation programs should be available to all of its electric customers with household incomes at or below 150% of the federal poverty guidelines. Though the Public Utility Commission may deem it necessary to include other non-income eligibility criteria in making eligibility determinations, CAAP would caution the Commission to keep non-income criteria to a minimum;

b. LIURP Expenditure Levels.

Minimally, LIURP funding should be ramped up to $4,500,845 annually by 1999, and continue at this level through at least 2008. This funding level would ensure that the program is "appropriately funded" as required by §2804 (9) of the Customer Choice Act and the Commission's Final Order. The Commission must make provisions to ensure that funds budgeted during the year are spent during that year. Funds not expended should be added to, not take the place of, planned program funding for the following year. Further, Duquesne must encourage the use of Community-Based Organizations located within Duquesne's service territory in the delivery of all LIURP services.

c. LIURP Program Penetration.

Minimally, LIURP program penetration should be ramped up from 1996 levels to 3,949 completions. These penetration levels should continue through at least 2008.

d. CAP Expenditure Levels.

Initially, annual CAP funding should be ramped up to $10,459,556 million annually by 1999 and continue at this level until it is determined by the Commission that a different level is needed. This funding level would ensure that this program is "appropriately funded" as required by §2804 (9) of the Customer Choice Act and the Commission's Final Order. As with LIURP, the Commission must make provisions to ensure that funds budgeted during the year are spent during that year. Funds not expended should be added to, not take the place of, planned program funding for the following year.

e. CAP Participation Levels.

Initially, CAP participation levels should be ramped-up from 1996 levels to 13,251 households annually.

f. Staying Within the Rate Cap.

To ensure that the recommended funding increases for LIURP and CAP meet the rate cap requirements of the law, Duquesne should be required to transfer funds from gross write-offs and collection costs, and, if necessary to ensure meaningful and strong programs, they should be required to reduce stranded cost recovery, as well.

g. Electric Competition Consumer Information and Customer Assistance.

Duquesne should be required to create a low income education program that would be delivered through its existing network of low income assistance organizations within its service territory. Initially, this program should be funded at $300,000 per year for renewal upon positive evaluation;

h. Training & technical assistance (T&TA).

Duquesne should establish a $50,000 annual budget for T&TA to be used to provide up to date training and technical assistance for its network of service providers.

i. Research and Development (R&D).

Duquesne should establish a $50,000 annual budget to fund a central research and development program to seek out new techniques, evaluate national trends, etc., and to support semi-annual meetings of its Universal Services and Conservation Providers to facilitate the exchange of Ideas. This budget should be set at $50,000 annually.

j. Community-Based Organizations.

Duquesne must encourage the use of community-based organizations in the provision of all universal service and energy conservation program services. These community-based organizations must be located in and have strong ties to the local communities Duquesne serves. There are several such organizations already in existence that are integral parts of the communities in which Duquesne operates as an electric distribution company. These organizations may need some training and technical assistance to familiarize them with the new programs and this should be readily provided as well.

k. Community Steering Committee.

A Community Steering Committee for Universal Service and Energy Conservation Programs should be established. This Committee should have system wide oversight with respect program design and provision.

l. Renewables Demonstration.

Duquesne should be required to establish a low income renewables pilot program. This pilot program should be funded at $150,000 a year.

3. Other Relief Requested.

CAAP requests any other relief that the Court deems appropriate.

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	**DOCKET NO: R-00974104**
DUQUESNE LIGHT COMPANY	:	

KJR

CERTIFICATE OF SERVICE

I hereby certify that I am serving the attached Brief by First Class Mail upon the persons listed on the following pages:

13995

DOCUMENT FOLDER

98 FEB -9 PM 12:57
RECEIVED
PROTHONOTARY'S OFFICE

John A. Wilson
Community Action Association of Pennsylvania

Larry R. Crayne, Esquire
Richard S. Herskovitz, Esquire
DUQUESNE LIGHT COMPANY
411 Seventh Avenue, 15th Floor
Pittsburg, PA 15219

John S. Moot, Esquire
Kurt Bilas, Esquire
DUQUESNE LIGHT COMPANY
1440 New York Avenue, NW
Washington, DC 20005

James P. Dougherty, Esquire
Robert A. Weishaar, Jr., Esquire
Pamela C. Polacek, Esquire
DUQUESNE INDUSTRIAL INTERVENORS
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108

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

Kandace Melillo, Esquire
Wayne T. Scott, Esquire
PA PUC OFFICE OF TRIAL STAFF
P.O. Box 3265
Harrisburg, PA 17105-3265

Karen Oill Moury, Esquire
OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
ASSISTANT CITY SOLICITOR
313 City County Building
414 Grant Street
Pittsburg, PA 15219

Howard M. Louik, Esquire
Terry Lupia, Esquire
OFFICE OF ATTORNEY GENERAL
14th Floor Strawberry Square
Harrisburg, PA 17120

Irwin A. Popowsky. Esquire
Marisa A. Sifontes, Esquire
Steven K. Steinmetz, Esquire
OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, PA 17120

EXETER ASSOCIATES INC.
Suite 350
12510 Prosperity Drive
Silver Springs, MD 20904

Deneice Covert Zeve, Esquire
Terry Lupia, Esquire
OFFICE OF ATTORNEY GENERAL
14th Floor Strawberry Square
Harrisburg, PA 17120

Michael L. Kurtz, Esquire
David F. Boehm, Esquire
ARMCO INC.
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Steven Baicker McKee, Esquire
Wanda Schiller, Esquire
ALLEGHENY TELEDYNE INC.
Subsidiaries
8th Floor Two Gateway Center
Pittsburg, PA 15222

Terrance J. Fitzpatrick, Esquire
RYAN RUSSELL OGDEN & SELTZER LLP
GPU ENERGY
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Kenneth L. Wiseman, Esquire
Mark F. Sundback, Esquire
ANDREWS & KURTH LLP
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Robert B. Weisenmiller
MRW & ASSOCIATES INC.
HOSPITAL SHARED SERVICES
Suite 1440
1999 Harrison Street
Oakland, CA 94612-3517

Michael Reid, Director
MATERIALS MANAGEMENT SERVICES
ADMINISTRATIVE RESOURCES INC.
500 Commonwealth Drive
Warrendale, PA 15086-7513

Robert J. Stefanko, Esquire
PITTSBURG SCHOOL DISTRICT
341 South Bellefield Avenue
Pittsburg, PA 15213

Tim Merrill, Esquire
THE EASTERN GROUP
Suite 200, 4 Penn Center, West
Pittsburg, PA 15276

Margaret Peters, Esquire
THE PEOPLES NATURAL GAS COMPANY
625 Liberty Avenue
Pittsburg, PA 15222-3197

William T. Hawkw, Esquire
Kevin J. McKeon, Esquire
MALATESTA HAWKE & MCKEON
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105-1778

LOW INCOME ASVOCATE PARTIES
1705Allegheny Building
429 Forbes Avenue
Pittsburg, PA 15219

Morgan Lewis & Bockius
PENNSYLVANIA POWER COMPANY
2000 One Logan Square
Philadelphia, PA 19103

Stephen L. Feld, Esquire
PENNSYLVANIA POWER COMPANY
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Cindy Datig, Esquire
$1 ENERGY FUND
P.O. Box 42329
Pittsburg, PA 15203

Donald R. Ayersman Jr., Esquire
IBEW LOCAL 2357
1125 Denver Avenue
Morgantown, WV 26505

David Hughes
4037 Ludwick Street
Pittsburg, PA 15217

Mark J. McQuire, Esquire
Ronald N. Carroll, Esquire
MC2 INC., MIDCON GAS SERVICES CORP.
Suite 1200, 601 13th Street, NW
Washington, DC 20005

Thomas J. Augspurger, Esquire
MIDCON CORPORATION
OFFICE OF GENERAL COUNSEL
701 East 22nd Street
Lombard, IL 60148

Paul E. Russell, Esquire
PENNSYLVANIA POWER & LIGHT COMPANY
2 North Ninth Street
Allentown, PA 18101

Joseph A. Dworetzky, Esquire
John P. Lavelle Jr., Esquire
Hangley Aronchick Segal & Pudlin
New Energy Ventures
12th Floor One Logan Square
Philadelphia, PA 19103

David M. Boonin
New Energy Ventures East LLC
Suite 800
200 South Broad Street
Philadelphia, PA 19102

Alan J. Barak, Esquire
Environmentalists
1417 Blue Mountain Parkway
Harrisburg, PA 17112

Robert Clark, Esquire
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901

Scott J. Rubin, Esquire
IBEW System Council U-10
3 Lost Creek Drive
Selingsgrove, PA 17810-9357

John O'Brein, Esquire
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Boulevard
Uniondale, NY 11553

Patricia Armstrong, Esquire
Allegheny Electric Cooperative
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17106-9500

Daniel Clearfield, Esquire
Gerald Gornish, Esquie
Alan Kohler, Esquire
Wolf Block Schorr & Solic Cohen LLP
305 North Front Street, Suite 401
Harrisburg, PA 17101-1236

James D. Steffes
Enron Power Marketing Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002

Albert M. Benincasa, Esquire
Director Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

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

Vickiren S. Aeschleman
Director Regulatory Policy
QST Energy Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602

Duane Morris & Heckscher LLP
QST Energy Inc.
1667 K Street, NW Suite 700
Washington, DC 20006-1608

Mary McFall Hopper
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101

Douglas F. John, Esquire
Duke Ener Trad/Marketing
Noram Ener Mgmt Inc., Elec
Clearinghouse Inc.
1200 17th Street, NW Suite 600
Washington, DC 20036-3006

ORIGINAL

City of Pittsburgh

Department of Law

Tom Murphy
Mayor

Jacqueline R. Morrow
City Solicitor

DOCUMENT FOLDER

February 9, 1998

RECEIVED

FEB 09 1998

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

VIA EXPRESS U.S. MAIL DELIVERY

James J. McNulty
Prothonotary
Pennsylvania Public Utility Commission
P. O. Box 3265
North Office Building
Harrisburg, Pennsylvania 17105-3265

RE: Application of Duquesne Light Company for Approval of a Restructuring Plan (Under Section 2806 of the Pennsylvania Public Utility Code);
Docket No. R-00974104

Dear Mr. McNulty:

Please find enclosed for filing, on behalf of the City of Pittsburgh, Pennsylvania, the original and nine (9) copies of the City's Main Brief in the above-captioned proceeding.

Also enclosed is an extra copy, marked as such. Kindly return same, marked as filed, in the self-addressed, postage prepaid envelope, enclosed herewith.

Copies have been served on parties of record, as indicated in the enclosed Certificate of Service. Any questions regarding this filing should be directed to the undersigned at (412) 255-2015. Thank you.

Sincerely,

Rodney R. Akers
Assistant City Solicitor

Enclosures
CC: The Honorable John H. Corbett, Jr. (by hand)
Parties of Record

107

AFSCME

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

MAIN BRIEF OF THE CITY OF PITTSBURGH

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll Professional Corporation
2000 One Oxford Centre
301 Grant Street
Pittsburgh, Pennsylvania 15219

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
City of Pittsburgh
Department of Law
313 City County Building
414 Grant Street
Pittsburgh, Pennsylvania 15219

February 9, 1998

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE CITY OF PITTSBURGH

TABLE OF CONTENTS

N.B.: The City has not briefed every topic covered by the standardized Main Brief Outline adopted in this case. Those portions of the fixed outline that comprise the City's Main Brief are highlighted in **boldface.**

TABLE OF CITATIONS

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Act 138 was signed into law by Governor Ridge on December 3, 1996. Known as the Electricity Generation Customer Choice and Competition Act ("Customer Choice Act"), 66 Pa. C.S. §§ 2801-2813, the Customer Choice Act represents our Commonwealth's legislative and executive mandate for restructuring Pennsylvania's electricity generation industry from its regulatory environment to a competitive marketplace:

> . . . this Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs. 66 Pa. C.S. § 2802(7) and (8).

The Customer Choice Act required all electric utilities to submit a restructuring plan to the Pennsylvania Public Utilities Commission ("Commission") not later than September 30, 1997. The plans to be submitted to the Commission were to reflect the guidelines laid down by the Customer Choice Act and the overall purpose of that statute - to create meaningful competition in the generation of electricity to the benefit of the ratepayers and so that Pennsylvania can effectively compete for significant industry and job growth.

As part of the restructuring process, in recognition that utilities have incurred certain costs in a regulatory environment which ". . . may not be reasonable in a competitive market . . . ", the Commission is empowered to determine and provide for each utility to recover a just and reasonable amount of stranded costs, 66 Pa. C.S. § 2802(15).

Duquesne Light Company ("Duquesne") manipulates this feature of the mandated restructuring process, its stranded cost claim, in an attempt to thwart the goals of the Customer Choice Act. Rather than promoting competition and making its service area more attractive for

business development, Duquesne's stranded cost claim virtually assures that there will not be any competition with Duquesne in the generation marketplace for many years to come and that Duquesne's ratepayers will continue to pay some of the highest rates in the United States for at least the next eight years.

In this Brief, by reference to certain subjects in Section IV of the Main Brief outline on which the City of Pittsburgh ("City") submitted testimony or agrees with the testimony of other parties to this proceeding, the City will concentrate on identifying the serious flaws in Duquesne's proposed stranded cost claim, which must be rejected by the Commission because:

A. Duquesne's stranded cost valuation approach is rife with errors that seriously inflate Duquesne's claim and provide the incentive to maximize, rather than minimize, stranded costs;

B. Contrary to the very purpose of the Customer Choice Act, Duquesne's stranded cost calculation methodology impairs formation of a competitive market and minimizes traditional risk faced by utility investors;

C. The admitted lack of any meaningful mitigation efforts by Duquesne is significant in light of the level of Duquesne's stranded cost claim and its lack of competitive rates for its customers; and,

D. Because Duquesne has failed to carry its heavy burden of proof as to the fair and reasonable amount of its stranded costs, if any, Duquesne's stranded cost claim must be denied in its entirety unless Duquesne commits to divest itself of its generating assets. Divestiture will not only result in an immediate transition to a competitive market but is a more credible method of valuing assets than merely ascertaining stranded costs.

IV. TRANSITION OR STRANDED COSTS

A. Overview of Valuation and Recovery Approaches

1. Introduction

Section 2804(VI)(13) of the Customer Choice Act gives the Commission ". . . the power and duty to approve a competitive transition charge for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers." (Emphasis added.)

The burden of proving justness and reasonableness in this proceeding is squarely on Duquesne. That burden is a heavy one and the evidence to meet it must be substantial. ***See, Burleson v Pennsylvania Public Utilities Commission***, 501 Pa. 433, 41 A.2d 1234 (1983); ***Popowsky v. Pennsylvania Public Utilities Commission***, _____ Pa. Commonwealth Ct. ___, 674 A.2d 1149 (1996); ***Pennsylvania Power Company v. Pennsylvania Public Utility Commission***, 55 Pa. Commonwealth Ct. 477, 625 A.2d 719 (1993) ***alloc. den.*** 637 A.2d 288 (1994); ***Lower Frederick Township v Pennsylvania Public Utility Commission***, 48 Pa. Commonwealth Ct. 222, 409 A.2d 505 (1980); 66 Pa. C.S. § 315(a), § 332(a).

As part of this burden, Duquesne must show that it has mitigated its stranded costs since, under Section 2803, the definition of stranded costs are costs ". . . which the Commission determines will remain following mitigation . . . ". Section 2808(c)(4) directs the Commission to consider ". . . the extent to which the electric utility has undertaken efforts to mitigate generation-related transitions or stranded costs by appropriate means . . . ," the mitigation must be ". . . commensurate with the magnitude of . . . stranded costs" and includes not only efforts before the plan was filed but those committed to by the utility for the transition period.

Duquesne has not taken seriously its burden of proof and its obligation to mitigate. Indeed, its plan clearly runs counter to the purpose for and goal of the Customer Choice Act. By grossly overstating its stranded cost claim and ignoring any obligation to mitigate its stranded costs, Duquesne's plan is calculated to prevent competition and to keep its current high rates in effect as long as possible while paying only lip service to the Customer Choice Act by parading a long list of witnesses before Judge Corbett to recite the requisite buzz words contained therein.

2. Duquesne's Approach

Duquesne's plan bases its transition charges on the difference between generation rates, capped at current rates during the entire transition period - through December 31, 2005, and "actual market prices", which would be determined by an annual auction pursuant to a request for proposals ("RFP") designed by Duquesne. Duquesne proposes a schedule of accelerated depreciation and amortization of $1.7 billion over the transition period, based on a return on equity ("ROE") of 11.5%. Further, under its original plan, Duquesne would increase the level of depreciation and amortization by the amount of ROE exceeding 12% ("ROE spillover"). Even though Duquesne's original projections, based on an administrative determination of market prices, indicated stranded costs would still remain after 2005, Duquesne proposed a final valuation in 2003 based on the results of a determination of market value by an arbitration panel. This valuation could occur earlier depending on proposed market price "trigger mechanisms."

On or about October 20, 1997, Duquesne changed its estimates of stranded costs dramatically. In the worst case scenario, the low market price, Duquesne's stranded costs at the end of 2005 were reduced by it by $159 million (from $528 million to $423 million); based on

the high market price scenario, Duquesne's remaining stranded costs escalated from $8 million to a *stranded benefit - an overrecovery - of $233 million.*

Duquesne's original claim and plan of recovery was criticized for many reasons, including generally:

- The plan froze Duquesne's rates at their current high level until after 2005, providing no rate relief to consumers for many years.
- Duquesne's estimates of stranded costs were greatly inflated and ignored the best evidence of value available. The assumptions Duquesne made in its valuation approach were aimed at understating value. In addition, Duquesne's valuation ignored plant life extensions, shutdowns of uneconomic plants, productivity and efficiency gains and other significant value.
- Duquesne's RFP proposal was designed to produce low market values and artificially excessive stranded costs.
- Duquesne has not effectively mitigated its stranded costs and its plan called for the continuation of electricity rates which remain among the highest in the nation.
- Duquesne's plan provided incentives to maximize - not minimize - its stranded costs and ignored any duty to mitigate those costs. Pursuant to Duquesne's own projections of market price, for instance, there are plants in its system that would cost hundreds of millions of dollars more to operate than to shut down and, of course, those unnecessary or avoidable costs would be recovered by Duquesne under its stranded cost claim.
- Duquesne's plan would seriously impair and delay the formation of a competitive market.
- There are alternative valuation and recovery mechanisms that would provide greater benefits to consumers, provide greater incentive to minimize stranded costs and promote competition as mandated by the Customer Choice Act.

In its December 2, 1997, rebuttal testimony, Duquesne could not refute these points and chose not to address the many criticisms and errors pointed out by the testimony against its plan. Instead, it "modified" its plan in three (3) major respects:

- Agreeing that its valuation mechanism was flawed, Duquesne proposed a divestiture of its generating units in 2003, coupled with the arbitration

concept, at the Commission's discretion. Duquesne lowered the market price of the "trigger mechanisms" so that a final valuation could occur as early as 2001. It also removed the .5% "deadband" from its ROE spillover proposal so that increased amortization and depreciation would begin over 11.5%. Very significantly, Duquesne's divestiture proposal is offered only on a stand alone basis and would not occur if the pending proposed merger of DQE, Inc. (Duquesne's corporate parent) and Allegheny Power System ("APS") is approved.

- Duquesne is willing to consider changes suggested by the Commission to the terms of its RFP.

- Duquesne proposes to hire a consultant to study its plants and to make recommendations as to whether to shut down uneconomic plants. Duquesne avers that the study will be completed in 1998.

Duquesne's "rebuttal plan," however, does not go nearly far enough for a number of reasons, including, generally:

- The plan and Duquesne's rebuttal case do not rebut or address many of the objectionable features of the original plan that remain in place.

- The divestiture proposal is a ploy by Duquesne and APS to garner support for the proposed merger.

- The proposed divestiture is set to occur in 2003, much too late to promote industry and jobs in Pittsburgh, and to correct the economic damage done to the region by Duquesne's historic unjustifiably high rates and consequent obstacle to competition.

- There is no reason to wait until 2003. There is a vibrant market now for generation assets.

- Duquesne's offer to refund overrecovery of stranded costs after 2003 does not work.

- The rebuttal proposal to conduct a shutdown study is an admission by Duquesne that it has not taken its duty to mitigate stranded costs seriously.

3. The City's Approach

The City believes that the approach that will produce the greatest benefits is for the Commission to require - regardless of whether a merger is approved - Duquesne to divest

itself of a substantial portion of its generating assets as soon as possible in order for Duquesne to have the opportunity to recover stranded costs, if any. This approach, the City believes, will reflect the most accurate and highest market value, and will mitigate against the continued operation of uneconomic units, thus lowering stranded costs significantly. Divestiture would also have the benefit of creating generation competition in Pittsburgh. The market is fully capable of valuing assets now as is evidenced by the numerous asset sales that have occurred and are expected in the near future.

If Duquesne will not agree to divestiture, the Commission should not permit Duquesne to recover any stranded costs since it has not come close to meeting its heavy burden of proof in this case and there is a real possibility that Duquesne, even under its *own* projections, will enjoy a stranded benefit of hundreds of millions of dollars.

4. Conclusion

Duquesne's plan must be rejected and a plan adopted by the Commission that contains the following features, among others:

- Stranded costs should be determined by actual market information, obtained preferably by an early divestiture of Duquesne's generation assets, if Duquesne is to be allowed to recover any stranded costs.
- Duquesne should be required to mitigate its stranded costs by shutting down uneconomic units immediately, or not being permitted to pass costs related to those units through to ratepayers.
- The plan ultimately adopted should promote the creation of a competitive market at the soonest point in time.

B. Generation - Related Stranded Costs (Recovery Pursuant to Section 2808(3))

3. Market Value

(a) Introduction

The City will concentrate on Duquesne's methodology of arriving at the market value of its generating assets in order to estimate its stranded costs. In estimating the amount of its stranded costs at December 31, 2005, and the present value of its stranded costs as of January 1, 1999, Duquesne uses an administrative approach and ignores actual market information in an effort to inflate its claim as much as possible. Duquesne embraced this method despite the fact that all parties to this proceeding, including Duquesne, criticize the administrative approach as inherently unreliable and endorse the sale of generating assets as the best method of ascertaining value. A sale of generating assets would dramatically reduce Duquesne's stranded generation cost claim.

It is extremely significant to note, in light of Duquesne's heavy burden of proof, that Duquesne admits that under its own administratively determined projections, it may realize no stranded costs but rather a benefit of $233 million!

(b) Market Price Projections

(i) Forecasting Methodology

Again, both sides in this proceeding agree that the regulatory approach that involves forecasting market prices over a long period of time is inaccurate and unreliable and that the best approach is to use actual market information - actual sales of generating assets.[1] Duquesne expressed a strong view that predictions of future market prices are unreliable. Indeed, Mr. Schnitzer testified that ". . . a market-based determination of stranded costs is

[1] Marshall Rebuttal p. 2, l. 3-16;pp. 7, l. 17 - 11, l. 14; Schnitzer Direct p. 3, l. 13-15; Seiple Direct p. 6, l. 6-9; Metro Direct pgs. 15, l. 4-p. 17, l. 11.

inherently superior to an administrative determination."[2] Duquesne witness Marshall conceded as much in his surrebuttal when he proposed his 2003 divestiture. Yet, Duquesne continues to rely on its admittedly flawed methodology and that approach could cost Duquesne ratepayers many millions of dollars.[3]

By adopting an administrative approach and projecting long-term electricity market prices, Duquesne purposely has ignored the best evidence of value available: actual market value of generating assets, including Duquesne's sale of its interest in Fort Martin Unit 1 to APS' unregulated subsidiary for what amounted to $130 million in excess of the plant's book value. This is proof that Duquesne's claim intentionally is inflated to provide it the highest recovery and greatest insulation from competition. APS, Duquesne's proposed parent, presumably used a forecast of prices and determination of value of the Fort Martin facility that justified paying $130 million over book value. Yet Duquesne actually estimates that it would have to pay someone to own its plants.[4] This blatant inconsistency and Mr. Schnitzer's rebuttal testimony dismissing the Fort Martin sale as irrelevant[5] speaks volumes regarding Duquesne's true motivation in using an administrative rather than market approach. Duquesne's approach is neither plausible, reasonable nor credible.[6]

(ii) Input Assumptions

"Duquesne's assumptions are either too conservative or are erroneous."[7] They uniformly result in an understatement of value,[8] and it is clear that Duquesne's low case of value

---

2 Schnitzer Direct p. 3, l. 13, 14.
3 Metro Direct p. 16, l. 12-16.
4 Seiple Direct p. 6, l. 19-21.
5 Schnitzer Rebuttal p. 27, l. 14-17.
6 Kahal Surrebuttal p. 10, l. 6-p. 11, l. 21.
7 Seiple Direct p. 6, l. 25.
8 Weisenmiller Direct p. 120, l. 16-p. 128, l. 5.

is particularly exaggerated.[9]

Mr. Seiple points out that Duquesne's treatment of its Cheswick plant demonstrates a good example of the problems with Duquesne's assumptions. In its low market scenario, Duquesne would have to pay someone to take this plant.[10] Yet, Duquesne has made the following faulty assumptions that undervalue the Cheswick plant:

- Duquesne uses an average availability factor that conflicts with its own witness' testimony that is higher. Using the higher factor results in a $14 million increase to the value of the plant in the low price scenario and $28 million in the high price scenario.

- Rather than assuming that 6% of the Cheswick plant's output is unavailable to sell into the market, Duquesne should have calculated its plants' projected revenue consistent with Schnitzer's methodology whereby Schnitzer does not adjust his calculations for any losses in the transmission or distribution systems. If Duquesne did so, the value of the plant in the low price scenario would increase by $10 million and by $20 million in the high price scenario.[11]

Duquesne makes other erroneous assumptions calculated to reduce value:[12]

- Duquesne retires its units at the end of book life.[13]

- Duquesne fails to consider technology and productivity improvements and other efficiencies that it admits are associated with deregulation and should be considered.[14]

- Duquesne fails to consider the impact of future gas prices on market prices. There is likely to be upward price pressure on gas markets which will impact and increase long-term electricity prices.[15]

- Duquesne's inflation data results in an understatement of market prices.[16]

- Duquesne's market price projections are unreasonably low compared to other recent estimates.[17]

---

9 Weisenmiller Direct p. 153, l. 14-20.
10 Seiple Direct p. 6, l. 30, 31.
11 Seiple Direct p. 6, l. 32-p. 7, l. 28; *See* Seiple Exs. 3 and 4.
12 *See*, e.g. Weisenmiller Direct p. 120, l. 16-p. 128, l. 5.
13 Seiple Direct p. 7, l. 30, 31.
14 Schnitzer Direct p. 8, l. 3-10; Seiple Direct p. 8, l. 1-7.
15 Seiple Direct p. 8, l. 19-p. 9, l. 2; Weisenmiller Direct p. 128, l. 12-20.
16 Weisenmiller Direct p. 132, l. 13-18.
17 Weisenmiller Direct p. 132, l. 13-18; p. 152, l. 21-24.

- The projections Duquesne uses resulting from its recent solicitation, or RFP, are not credible as to what electricity market prices will be, and suggests instead that prices in a deregulated market will be higher. If Duquesne believed its own solicitation analysis, it would be best for Duquesne to shutdown all of its coal fired plants and two of its nuclear plants and thereby save $1.158 billion between now and 2005.[18]

The terms of Duquesne's proposed RFP or annual solicitation to set the stranded cost charge or CTC are designed to depress bid prices and understate market prices. For instance, bidders are not provided assured transmission rights on Duquesne's system. Additionally, the solicitation is for energy only and does not reflect the cost of other services. The bottom line is that the solicitation will not reflect market prices.[19] Duquesne as much admitted this.[20]

(iii) Results

Duquesne's projections simply are not credible. The approach used is admittedly unreliable and seems purposely designed to overstate stranded costs wherever possible. Duquesne ignores its own best evidence of market value because that evidence, the recent sale of its interest in Fort Martin Unit 1, would not be in its best interests which are to overstate stranded costs and prevent competition.

Duquesne's own analysis, which now shows that Duquesne could end up with a stranded benefit of $233 million, when corrected for the numerous faulty assumptions, confirms that Duquesne's claim is grossly overstated and entitled to no weight. In fact, if Duquesne's market price projections for the transition period which are based on its solicitation are correct,

---

18 Seiple Direct p. 9, l. 25-30; Seiple Ex. 5.
19 Weisenmiller Surrebuttal p. 26, l. 2-7.
20 Lahtinen Ex. 14, p. 2.

Duquesne should shut down most of its plants and thereby erase its stranded cost claim.[21]

(c) Other Evidence of Market Value

Duquesne has ignored considerable evidence of market value that would reduce and potentially eliminate its stranded cost claim. The most obvious example, of course, is Fort Martin Unit 1. The sale of Duquesne's interest in this plant to APS ' subsidiary at more than four times book value provides a real valuation of generating assets that serve Duquesne's territory.[22] Mr. Weisenmiller testified that Duquesne has no stranded cost claim under the Fort Martin case.[23]

The results of the Fort Martin sale are consistent with Duquesne's internal consultants' studies and analyses. The Metzler consulting firm told Duquesne that the value of just four of its plants could exceed book value by over $650 million; Duquesne's investment bankers' analyses show even higher results.[24]

Duquesne recently has boasted to the financial community that it has substantial financial strength, including improved earnings and growth rates in earnings per share and dividends near the top of the industry.[25] Yet it would have the Commission believe that its generating assets are worthless and, that it would surely have to pay someone to take them off its hands!

In addition to ignoring the Fort Martin transaction, Duquesne disregarded billions of dollars of generation asset sales illustrating that, within the last six months substantial generating assets sold at a premium over book value.[26]

---

21 *See* Seiple Direct p. 9, l. 25-p. 10, l. 11; p. 10, l. 22-p. 11, l. 6.
22 Seiple Direct p. 6, l. 9-18; Weisenmiller Direct p. 22, l. 4-12.
23 Weisenmiller Direct p. 153, l. 11, 12.
24 Weisenmiller Direct p. 6, l. 7-p. 7, l. 17; p. 20, l. 8-p. 22, l. 12.
25 *See* Weisenmiller Direct p. 77, l. 21-p. 79, l. 17.
26 Seiple Direct p. 18, l. 5-19; Weisenmiller Direct p. 145, l. 20-p. 147, l. 17; Weisenmiller Surrebuttal p. 7, l. 3-21; p. 31, l. 20-p. 32, l. 2, p. 33, l. 1-22.

Practically all parties agree that the best evidence of the value of Duquesne's generating assets would be produced by a sale of those assets, including Duquesne - which has proposed such a sale in 2003, in the discretion of the Commission, unless its merger with APS is approved.[27] Besides providing the best method of valuing assets, such a sale would supply a more credible estimate of stranded costs, advance a more immediate transition to a competitive generation market and would promote effective competition by providing an opportunity for potential competitors to gain entry into the market.[28]

But Duquesne's divestiture proposal, its basic "rebuttal" to the very serious criticism of its restructuring plan, is really just a subterfuge to garner labor and public support for its APS merger, since divestiture would only occur if the merger is *not* approved, and only then in 2003 - after Duquesne has collected hundreds of millions in CTC charges, provided no rate relief to its customers for six (6) years, and suppressed the formation of a competitive generation market. If the merger is approved, Duquesne plans no real changes at all and, accordingly, ratepayers would continue to pay the same high rates for eight (8) years without competition and without realizing any appreciable benefit from the Customer Choice Act.[29]

Duquesne attempts to create an impression that, if the merger is not approved and divestiture occurs, massive job losses, and economic damage to communities that house its generating plants, will occur.[30] The result, it hopes, will be increased pressure for Commission approval of the merger and thus, no divestiture. But Duquesne's premise that its employees will lose their jobs in the event of divestiture, and that local communities will be harmed is - just like

---

27 Marshall Rebuttal p. 2, l. 3-16,p. 7, l. 17-p. 11, l. 14; Kahal Surrebuttal p. 5, l. 4-23; Baron Surrebuttal p. 3, l. 8-10; Seiple Direct pp. 16, l. 33-p. 18, l. 2; Weisenmiller Direct p. 117, l. 16-p. 118, l. 20.

28 Seiple Direct p. 17, l. 2-6; Weisenmiller Direct p. 142, l. 8-p. 143, l. 7.

29 Seiple Direct p. 19. l. 1-3, 32, 33; Weisenmiller Direct p. 40, l. 1-10; Kahal Surrebuttal p. 5, l. 4-10; Baron Surrebuttal p. 3, l. 4-13.

30 Marshall Surrebuttal pgs. 12-13. This led to the friendly cross examination of Duquesne's witnesses by counsel for Duquesne's union employees.

its divestiture "proposal" - a ruse.

It is unlikely that divestiture would result in any massive loss of jobs. Quite the contrary, current employees will have an advantage in retaining employment under new ownership. There are a number of plants that have changed hands recently without significant changes in staffing and Duquesne could ensure this result by so conditioning the asset sale or by making other commitments. Regardless of who owns the plants, staffing and closure decisions should be based on the economics dictated by competition. It could be that new owners will find greater value in Duquesne's assets and the results, long-term, would be more beneficial to the current employees and to the communities.[31] This is particularly so given Duquesne's very poor track record of operations.[32]

Further, there is no credible reason to wait until 2003 for a divestiture. Duquesne's reasoning, that the market is not mature enough, and that it has a duty to serve, just does not hold water.[33] First, there is ample evidence that the market would support a current divestiture. Witnesses have given examples of billions of dollars of recent transactions, including Duquesne's own. The results as to value have been many times higher than Duquesne's fictional market projections.[34] Duquesne's own advisors believe that now is the time to sell in order to recognize the greatest value.[35]

Second, Duquesne's "obligation to serve" argument is a ruse. Duquesne's early trigger mechanism could lead to a sale in 2001 under Duquesne's proposal, showing that Duquesne's "service obligation" is nothing more than an excuse for it to collect an artificially

---

31 Weisenmiller Surrebuttal p. 58, l. 11-p. 60, l. 20.
32 Weisenmiller Surrebuttal p. 38, l. 10-p. 39, l. 2.
33 Marshall Rebuttal p. 12, l. 1-5.
34 Seiple Direct p. 17, l. 36-p. 18, l. 7; Weisenmiller Direct p. 142, l. 8-p. 147, l. 17; Weisenmiller Surrebuttal p. 7, l. 3-21; p. 33, l. 16-22.
35 Weisenmiller Surrebuttal p. 4, l. 1-p. 5, l. 14, p. 6, l. 1-8; p. 31, l. 20-p. 32, l. 2.

high CTC for at least six years. How do market prices which trigger an early sale relieve Duquesne of its obligation to serve? Duquesne could provide for its obligation to serve as part of a current divestiture.[36] In addition, the proposal to refund overcharges to consumers who move from the territory before 2003 does not work. Nor does it address the harm to industry, jobs and business development that will result from a prolonged continuation of the current intolerable rates.

(d) Conclusion

Duquesne has presented absolutely no reliable evidence of market value. It chose not to rebut the serious errors and flaws in its direct case and instead to present an illusory, self-serving, "proposal" to divest generating assets. It was incumbent on Duquesne to present a plan, by September 1, 1997, and to carry its heavy burden of proof that it will have stranded costs and the fair and reasonable amount. Duquesne has not done so. In fact it agrees that a possible outcome of its own projections is a large stranded benefit. There is only one consistent theme to Duquesne's plan - overstate stranded costs, delay competition as long as possible and ignore the interests of the ratepayers and the growth of the Pittsburgh region.

4. Other Factors Affecting Market Value/Stranded Costs

(a) Life Extension

Duquesne's projections assume that its plants will be retired at the end of their book life, although life extensions of coal units are common. Life extensions will reduce stranded costs.[37] Mr. Kahal testified that the net present value of benefits of life extensions of Duquesne's coal units may be as high as $171 million.[38]

(b) Plant Shutdowns

---

36 Weisenmiller Surrebuttal p. 5, l. 4-22.

37 Seiple Direct p. 7, l. 33-36; Kahal Direct pgs. 34-38; Weisenmiller Direct p. 66, l. 17-21.

Duquesne's plan does not call for shutting down uneconomic power plants in an effort to mitigate stranded costs, even in instances where to do so would save its customers hundreds of millions of dollars.[39] The fact that Mr. Marshall has proposed a 1998 shutdown study indicates that Duquesne has ignored its duty to mitigate stranded costs. Shutdown issues should have been addressed in Duquesne's plan and not been put off to be the subject of a later study proposed in rebuttal testimony.[40] This observation again speaks volumes about Duquesne's motives and the anticompetitive mindset of its management.

(c) Productivity Gains

Duquesne's projections assume "fixed technology" and even Duquesne admits that a "fixed technology" estimate is inaccurate. As part of its plan to overstate stranded costs, Duquesne erroneously assumes that competitive pressures will not result in technological innovation, efficiency and productivity gains.[41] Competition will motivate new efficiencies and could provide millions of dollars in cost savings.[42] The U.S. Department of Energy, Energy Information Administration, reports that competition may reduce industry non-fuel operating expenses by as much as 40%. Finally, Duquesne has more room than its competitors to reduce costs since Duquesne had the lowest relative efficiency of utilities studied in Pennsylvania, in the East Central Area Reliability Coordination Agreement ("ECAR") region, and the third lowest of utilities studied in the nation.[43]

(h) Conclusion

Wherever Duquesne could make an assumption that would increase stranded costs

---

38 Kahal Direct p. 38, l. 6-12.
39 Seiple Direct p. 11, l. 10-13; p. 12, l. 25-p. 13, l. 29.
40 Kahal Surrebuttal p. 7, l. 17-p. 8, l. 15; Weisenmiller Surrebuttal p. 2, l. 24-26; p. 8, l. 7-18.
41 Seiple Direct p. 7, l. 37-p. 8, l. 7.
42 Kahal Direct p. 29, l. 6-p. 34, l. 9.
43 Weisenmiller Surrebuttal, p. 37, l. 18-p. 39, l. 2.

and impede the creation of a competitive market, the company did so, even if its errors were obvious and blatant, which most were. Duquesne has snubbed the Customer Choice Act and the Commission, and should not be rewarded for doing so.

F. Recovery of Stranded Costs

1. Introduction

Duquesne's proposed stranded cost recovery mechanism purposely is designed to impair the formation of a competitive market. It offers no incentive for Duquesne to minimize its stranded costs. Duquesne has made no effort to mitigate stranded costs and makes no commitment whatsoever to do so in the future.

2. Proposals to Adjust the Level of Stranded Cost Recovery

(a) Mitigation

Duquesne's current retail rates, which would remain in place under Duquesne's plan through 2005, are not competitive. Mr. Seiple testified as follows:

> . . . Duquesne's customers historically and currently pay some of the highest rates in the country. Duquesne's rates to residential customers are 25% higher than the comparable average for Pennsylvania. Duquesne's commercial rate is 42% higher than the comparable figure for its neighboring utility, West Penn Power. Similarly, Duquesne's industrial rate is 33% higher than West Penn Power's equivalent rate.[44]

Mr. Seiple further testified that Duquesne's Mr. Clayton was not close to being accurate when the latter testified that ". . . Duquesne's commercial rates compare favorably to the ECAR and MAAC [(or Mid-Atlantic Area Council)] averages and its industrial rates are below average in the ECAR and MAAC regions."[45] Actually, Duquesne's average commercial rate is 17% higher than the ECAR region's average rate for investor-owned utilities and its industrial

[44] Seiple Direct p. 4, l. 7-12; Seiple Table 1.

rate is 37% higher than the average. Of the 29 investor-owned utilities in ECAR, only three (3) utilities have higher industrial rates than Duquesne and only five of 27 supplying power to commercial users in ECAR have higher rates than Duquesne.

Duquesne's rates consistently rank among the highest in the United States.[46] And Duquesne chose not to rebut Mr. Seiple's corrections of Mr. Clayton's glaring misstatements! Duquesne also did not attempt to refute either Mr. Seiple's testimony, or that of a number of other witnesses, stating that Duquesne's past mitigation efforts were minimal and were absolutely required by the financial condition of the Company and the level of rates Duquesne has been charging its customers.[47]

Duquesne brazenly refuses to make a future commitment to mitigate any of the substantial stranded costs it claims it has.[48] Instead, Duquesne's response to the substantial criticism of the witnesses asserting that Duquesne has ignored its duty to mitigate is Mr. Marshall's tepid proposal for the shutdown study, scheduled for 1998. The company makes this response even though Duquesne was aware of the existence of large operating losses and the questionable economic viability of certain plants long before it filed this case on August 1, 1997. Yet, it chose not to address those issues in this case - just to propose, in its rebuttal case, to "study" them during 1998. The consequences of ignoring its duty to mitigate should be borne by Duquesne.[49] Its mitigation efforts have not even approached the requirement of the Customer Choice Act that its efforts should be commensurate with the magnitude of its supposed stranded costs.[50] Full mitigation reduces the costs for consumers and leads to earlier and more effective

---

45 Clayton Direct p. 18, l. 13, 14.
46 Seiple Direct p. 4, l. 7, 8; Weisenmiller Direct p. 79, l. 14-17.
47 Seiple Direct p. 4, l. 30-p. 5, l. 2; Weisenmiller Direct p. 65, 1. 1, Weisenmiller Surrebuttal p. 2, l. 4-26.
48 Weisenmiller Surrebuttal p. 2, l. 24-26.
49 Kahal Surrebuttal p. 7, l. 17-p. 9, l. 9; Weisenmiller Surrebuttal p. 8, l. 7-18.
50 Section 2808(c)(4) of the Customer Choice Act.

competition. Duquesne's approach, by contrast, is to have its ratepayers subsidize its efforts to impair competition.[51]

3. Methods of Stranded Cost Recovery

(a) Accelerated Amortization Under Section 2804(4)(v) (Duquesne's ROE Spillover Proposal)

Duquesne's ROE spillover mechanism fails to provide Duquesne with an incentive to reduce costs or mitigate stranded costs.[52] The spillover fund can be manipulated so that earnings can be used to fund items associated with unregulated market transactions. For instance, Duquesne could increase its capital expenditures before the end of the transition period so that reduced expenditures would be needed after the transition period is over when Duquesne is forced to compete. It could also use earnings to build market share by selling power below market prices. Duquesne could use funds to defray avoidable costs without the necessity to justify it. Plain and simple, Duquesne's ROE spillover proposal impedes the development of competition.[53]

Duquesne has not attempted to rebut the testimony evidencing that its mechanism is a sham devised for Duquesne's benefit and that such a mechanism will minimize the financial risks to its shareholders at the expense of Duquesne ratepayers.[54] Duquesne's proposed revision eliminating the 1/2% collar (the collar was a neat trick that guaranteed its shareholders a 12% ROE) does not solve the numerous problems with this mechanism.[55]

4. Other Arguments Regarding Recovery of Stranded Costs

Duquesne's methodology impairs the formation of a competitive market, the very

---

51 Weisenmiller Direct p. 65, l. 2-p. 66, l. 3.
52 Seiple Direct p. 14, l. 5-18.
53 Seiple Direct p. 14, l. 8-p. 15, l. 18; Weisenmiller Direct p. 83, l. 10-21.
54 Seiple Direct p. 14, l. 8-p. 15, l. 18; p. 15, l. 21-p. 16, l. 21; Weisenmiller Direct p. 54, l. 5-13; p. 83, l. 4-8; Weisenmiller Surrebuttal p. 2, l. 3-26.

goal of the Customer Choice Act. Under Duquesne's plan, it will be very difficult for new suppliers to meaningfully compete for market share.[56]

In a properly functioning competitive market, decisions on whether to supply power are based on avoidable costs. Under Duquesne's plan, supply decisions have nothing to do with avoidable costs and everything to do with overrecovery of stranded costs. For instance, using Duquesne's own forecasts, Duquesne should shutdown its Elrama plant since Elrama's avoidable costs will exceed revenues from sales by $215 million. Instead, Duquesne's plan is to operate this plant to the detriment of ratepayers.[57]

5. Conclusion

Duquesne's stranded cost recovery plan does not reflect the requirements and goals of the Customer Choice Act and must be rejected.

---

55 Weisenmiller Surrebuttal p. 11, l. 6-21.
56 Weisenmiller Direct p. 11, l. 2-p. 13, l. 3.
57 Seiple Direct p. 12, l. 23-p. 13, l. 29; Seiple Table 3.

XIII. CONCLUSION

Duquesne openly admits that it may not have stranded costs and may have instead a stranded benefit of hundreds of millions of dollars. Yet its desired restructuring plan calls for ratepayers to continue to pay the same unreasonably high rates for the next eight years. Simply put, Duquesne's ratepayers will realize no benefits under the Customer Choice Act until after 2005.[58] Duquesne's plan to maintain some of the highest rates in the country, will continue to exact an enormous economic toll on its ratepayers and will inhibit the development of industry and jobs in the Commonwealth generally and the Pittsburgh region, in particular, flying in the face of the core purposes of the Customer Choice Act.[59]

Duquesne's stranded cost valuation and recovery approach has not met Duquesne's heavy burden of proving a just and reasonable amount of Duquesne's stranded costs, if any. On the contrary, Duquesne's plan is designed to maximize stranded costs and impede the development of competition. The illusory changes to its approach that constitute its rebuttal case only show that Duquesne has no answer to the abundant and justified severe criticism of its plan.

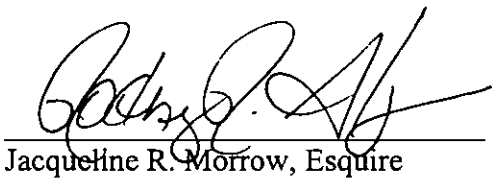
Because Duquesne has not met its burden of proof and has not presented an acceptable plan as required by the Customer Choice Act, and because Duquesne has ignored its obligation to mitigate, the City respectfully requests that the Commission deny Duquesne's stranded cost claim in its entirety, subject to Duquesne agreeing to completely divest its generation assets in the year 1999, *whether or not the APS merger is approved*, such divestiture to determine the amount of Duquesne's stranded cost claim, if any. If Duquesne chooses not to divest, it should not be allowed to recover any stranded costs.

---

58 Seiple Direct p. 20, l. 8-12; Weisenmiller Direct p. 40, l. 1-10; p. 51, l. 14-p. 53, l. 11; Schoengold Direct, pgs. 15, 16.

59 Weisenmiller Direct p. 39, l. 15-20.

Respectfully submitted,



Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
City of Pittsburgh
Department of Law
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll Professional
Corporation
2000 One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219

Attorneys for the City of Pittsburgh

Dated: February 9, 1998

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants via Express U.S. Mail, postage prepaid, except as indicated on the attached service listing, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), and § 5.502. (relating to filing and service of briefs).

Dated this 9th day of February, 1998.

Rodney R. Akers
Counsel for City of Pittsburgh

City of Pittsburgh
Department of Law
313 City County Building
414 Grant Street
Pittsburgh, Pennsylvania 15219

Telephone (412) 255-2015
Facsimile (412) 255-2285

PA Public Utility Commission v. Duquesne Light Company

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

Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
Locust Court Building, Suite 300
212 Locust Street
Harrisburg, PA 17101

Kandace F. Melillo, Esquire
Office of Trial Staff
PA Public Utility Commission
P. O. Box 3265, North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA 17101-3265

John O'Brien, Esquire
Wheeled Electric Power Company
50 Charles Lindburgh Blvd., Suite 207
Uniondale, NY 11553

Angela Jones, Esquire
Office of Small Business Advocate
1102 Commerce Building
300 North Street
Harrisburg, PA 17101

Marisa Sifontes, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

James P. Dougherty, Esquire
David M. Kleppinger, Esquire
NcNees, Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166

Robert F. Young, Esquire
Allegheny Electric Cooperative, Inc.
212 Locust Street
P.O. Box 1266
Harrisburg, PA 17108-1266

Patricia Armstrong, Esquire
Regina L. Matz, Esquire
John A. Alzamara, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500

Scott Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901

Michael L. Kurts, Esquire
Boehm Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

Larry R. Crayne, Esquire
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue, 16-006
Pittsburgh, PA 15219

John S Moot, Esquire
1440 New York Avenue NW
Washington, DC 20005

Donald R. Ayersman, Jr., Esquire
1125 Denver Avenue
Morgantown, WV 26505

Steven Baicker-McKee, Esquire
Babst, Calland, Clements & Zomnir, P.C.
8th Floor, Two Gateway Center
Pittsburgh, PA 15222

Kenneth L. Wisseman, Esquire
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington, DC 20006

Terrance J. Fitzpatric, Esquire
Ryan, Russsell, Ogden & Seltzer, LLP
Suite 101, 800 North Third Street
Harrisburg, PA 17102-2025

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P.O. Box 891
New Castle, PA 16103-0891

Kenneth Zielonis, Esquire
Stevens & Lee
208 North Third Street, Suite 310
P. O. Box 12090
Harrisburg, PA 17108-2090

Mark J. McGuire, Esquire
Jenner & Block
Suite 1200, 601 13th Street NW
Washington, DC 20005

Timothy W. Merrill, Jr., Esquire
Suite 200, 4 Penn Center West
Pittsburgh, PA 15276

Kevin J. McKeon, Esquire
Malatesta, Hawke & McKeon LLP
P. O. Box 1778
Harrisburg, PA 17101

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

William T. Hawke, Esquire
Mid Atlantic Power Supply Association
100 North 10th Street
Harrisburg, PA 17105

Joseph A. Dworetzky, Esquire
Hangley, Aronchick, Segal & Pudlin
12th Floor, One Logan Square
Philadelphia, PA 19103

"Attorney of Record,
Environmental Energy Project"
3700 Vartan Way
Harrisburg, PA 17110

Paul E. Russell, Esquire
Pennsylvania Power and Light Company
2 North 9th Street
Allentown, PA 18101

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

Exeter Associates, Inc.
12510 Prosperity Drive, Suite 350
Silver Spring, MD 20904

Mary McFall Hopper, Esquire
PECO Energy Company, S23-1
2301 Market Street
Philadelphia, PA 19103

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 Ninth Avenue
Sea Cliff, NY 11579

Donald A. Kaplan, Esquire
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 2525
1735 New York Avenue, NW
Washington, DC 20006-4759

David M. Boonin
New Energy Ventures East, LLC
Suite 2525
1845 Walnut Street
Philadelphia, PA 19103

Vickiren S. Aeshleman
Director, Regulatory Affairs
QST Energy, Inc.
300 Hamilton Blvd., Suite 300
Peoria, IL 61602

Gary A. Jeffries, Esquire
CGN Energy Services Corporation
One Park Ridge Center
P.O. Box 15746
Pittsburgh, PA 15244-0746

David Cruthirds, Esquire
Electric Clearinghouse, Inc.
100 Louisiana, Suite 5800
Houston, TX 77002-5050

Douglas F. John, Esquire
John & Hengerer
1200 17th Street NW, Suite 600
Washington, DC 20036-3006

Mary Ann Ralls, Esquire
Duane, Morris & Hechscher LLP
1667 K Street NW, Suite 700
Washington, DC 20006-1608

Keith M. Sappenfield, II
Director of Marketing Support
NorAm Energy Management, Inc.
P. O. Box 2628
Houston, TX 77252-2628

John R. Orr, Esquire
Duke Energy Trading & Marketing, LLC
One Westchester Center, Suite 650
10777 Westheimer
Houston, TX 77042

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P. O. Box 4428
Houston, TX 77002

Mark F. Sundback, Esquire
Andrews & Kurth LLP
1701 Pennsylvania Avenue NW
Washington, DC 20006

Lawrence E. Moncrief, Esquire
1364 Silverton Avenue
Pittsburgh, PA 15276

Robert B. Weisenmiller, PhD
MRW & Associates, Inc.
Suite 1440, 1999 Harrison Street
Oakland, CA 94612-3517

Michael Reid, Director
Materials Management Servies
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

James J. McNulty
PA PUC Prothonotary
P. O. Box 3265
North Office Building
Harrisburg, PA 17101

Wayne T. Scott, Esquire
Kandace F. Melillo, Esquire
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17108-3265

Samuel W. Braver, Esquire
Bruce Americus, Esquire
Buchanan Ingersoll, P.C.
20th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-1410

Donald R. Ayersman, Jr., Esquire
IBEW Local 2357
1125 Denver Avenue
Morgantown, WV 26505

Cindy Datig
Dollar Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

John Wilson, Executive Director
Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

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

HANGLEY ARONCHICK SEGAL & PUDLIN

ATTORNEYS AT LAW • A PROFESSIONAL CORPORATION

WILLIAM T. HANGLEY
MARK A. ARONCHICK
DANIEL SEGAL
DAVID B. PUDLIN
ALAN KLEIN
MYRON A. BLOOM
JOSEPH A. DWORETZKY
RICHARD J. GOLDSTEIN
BRUCE S. HAINES
JOHN S. SUMMERS
REGINA A. VOGEL
PAUL McDONALD
DAVID M. SCOLNIC
SARA M. STAMAN
CURTIS L. GOLKOW
JOHN P. LAVELLE, JR.
DAVID J. WOLFSOHN
LESLIE T. BRADLEY
JOSEPH F. RIGA
MICHAEL LIEBERMAN
SUSAN PACKER
YVONNE LEE CLAYTON
ANDREW K. FLETCHER
KIMBERLY M. HULT
LUKE E. DEMBOSKY
EDMOND J. GHISU
ALICE E. HARVEY
KAREN E. LEONARD

ONE LOGAN SQUARE
TWELFTH FLOOR
PHILADELPHIA, PENNSYLVANIA 19103-6933

FACSIMILE: 215-568-0300

20 BRACE ROAD
SUITE 201
CHERRY HILL, NEW JERSEY 08034

FACSIMILE: 609-616-2170

Direct Dial
(215) 496- 7052
E-mail Address:
ldembosky@hangley.com

February 9, 1998

Via Federal Express

James J. McNulty III
Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Commonwealth Ave. And North St.
Harrisburg, PA 17120

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

Dear Mr. McNulty:

Enclosed for filing please find the original and ten (10) copies of the Post-Hearing Brief of Intervenor NEV East, LLC in the above matter. A copy has been served on all known parties and counsel of record in accordance with the attached Certificate of Service.

Sincerely,

Luke E. Dembosky

LED:pk
Enc.
cc: Honorable John H. Corbett, Jr., ALJ (w/enc.) (two copies via federal express)
Larry R. Crayne, Esq., Duquesne Light Company (w/enc.) (via federal express)
All parties of record (w/enc.) (via first class mail)

BEFORE THE
PENNSYLVANIA *PUBLIC UTILITY COMMISSION*

In the Matter of	)	
Duquesne Light Company	)	**Dkt. No. R-00974104**
Restructuring Plan Filing	)	
	)	

POST-HEARING BRIEF OF INTERVENOR NEV EAST, LLC IN OPPOSITION TO PROPOSED RESTRUCTURING PLAN OF DUQUESNE LIGHT COMPANY

Joseph A. Dworetzky
John P. Lavelle, Jr.
Luke E. Dembosky
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square, 12th Floor
Philadelphia, PA 19103

Attorneys for Intervenor
NEV East, LLC

Dated: February 9, 1998

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

COMMISSION OPINIONS AND ORDERS

INTRODUCTION

NEV East, LLC ("NEV")[1], by and through its undersigned counsel, submits this Memorandum of Law in opposition to the proposed restructuring plan (the "Plan") submitted by Duquesne Light Company ("Duquesne Light") pursuant to Section 2806 of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S.A. §2801 et seq. (the "Act"). The specific aspects of the Plan addressed in this Memorandum are code of conduct and competition issues related to consolidated billing services.

ARGUMENT

IX. DUTY TO SERVE

C. Electric Transmission and Distribution Service

1. Unbundling Other Customer Services

(d). Specific Services

(i). Customer Billing

Duquesne Light Should Be Required To Implement Consolidated Billing For Multiple Meter Customers In Accordance With The Commission's Opinion And Order In The PECO Restructuring Proceeding.

Under the current regulatory system, the many customers who receive service on multiple meters throughout an EDU's service territory are discriminated against when compared to customers with similar loads served through a single meter. (Boonin, Direct Testimony, at 19). In particular, a customer with multiple meters who is on the same rate schedule and who

---

[1] NEV, an intervenor in this proceeding, is a national leader in the formation of retail energy power purchasers groups. NEV negotiates with energy suppliers nationwide to obtain the lowest electricity prices through the collective purchasing strength of its buyers' group members.

places the same type of non-distribution related load on the system as a single-meter customer is being charged more than that single-meter customer. (Id. at 19).

Although the Act is silent on this specific issue, it does give the Commission authority "to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and address competitive alternatives." Section 2806(h); see also Section 2804(2) ("Customers should be able to choose among alternatives such as . . . flexible pricing. . . ."). Moreover, leveling the playing field for multiple-meter customers is in keeping with the Act's undisputed purposes, among others, of creating a competitive market and promoting economic development in the Commonwealth.

In its Opinion and Order entered December 23, 1997 in the restructuring proceeding involving PECO Energy Company[2], the Commission exercised its authority to remedy the existing discriminatory billing practices affecting multiple meter customers by approving billing consolidation, such that aggregated customers will be billed based on the load that they place on the system. In its restructuring plan, PECO had defined "customer" to include a single point of delivery. In rejecting that definition, the Commission stated:

> In challenging PECO's position, it was asserted that EGSs should be permitted to treat customers with multiple locations as a single service for purposes of billing for transmission and CTC-related charges. In other words, transmission and CTC-related charges would not change with the number of installations or

---

[2] Application of PECO Energy for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement and Petition of Enron Energy Services Power, Inc. for Approval of an Electric Competition and Choice Plan and for Authority Pursuant to Section 2807(E)(C) of the Public Utility Code to Serve as the Provider of Last Resort in the Service Territory of PECO Energy Company, Docket Nos. R-00973953 and P-00971265.

meters, as they currently do, but with the amount of load placed on the system.

> PECO's restriction is inappropriate in a competitive generation market because it makes it more difficult with multiple sites to aggregate their load with a single EGS. Accordingly, we shall permit billing consolidation. For administrative ease, billing consolidation should only apply to customers who have multiple meters on the same rate tariff. This change shall not apply to distribution charges because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of the service.

Order and Opinion, at p. 140 (emphasis added).[3]

The Commission's December 23, 1997 Opinion and Order is entirely consistent with NEV's testimony in this proceeding regarding the need to eliminate the current discriminatory effect on customers with multiple meters by permitting alternative generation providers to treat these customers as a single service for purposes of billing for transmission and CTC-related charges. (Boonin, Direct Testimony, at 19-20). In particular, when a customer has multiple metering locations, the customer should be permitted to elect to consolidate the bills for any or all of its meters served under the same rate. Transmission and CTC-related charges would not change with the number of installations or meters, as they currently do, but with the amount of load placed on the system. (Id. at 20). As stated by the Commission in its December 23 Opinion and Order, for administrative ease, this billing consolidation should only be for

---

[3] The Commission reaffirmed its intention that billing consolidation be implemented in its subsequent Opinion and Order on Compliance Filing, adopted and entered on February 5, 1998, in the same restructuring proceeding involving PECO Energy Company (at pp. 12 and 14).

customers of record who have multiple meters on the same rate tariff. (Boonin, Direct Testimony, at 19-20).[4]

Elimination of this present discriminatory effect on multiple meter customers is particularly important now that competition -- and the innovation it will inevitably bring -- has been introduced into the system. (Id. at 20-21). More and more customers will be metered so that hourly loads can be determined, enabling consolidated billing. (Id.). Competition also challenges the necessity of demand-based billing, particularly if customers are paying for the burden they place upon the system virtually on an hourly basis. (Id.). At bottom, competition highlights the importance of electric prices in economic competitiveness, and eliminates any excuse for the type of blatant discrimination which exists under the current system. (Id.). Duquesne Light has introduced no evidence against the adoption of consolidated billing.

Accordingly, NEV proposes that the Commission adopt NEV's proposal that alternative generation providers be allowed to consolidate bills for customers with multiple meters within a single tariff, in accordance with the Commission's Opinion and Order entered December 23, 1997 in the PECO Energy Company restructuring proceeding. (Boonin, Direct Testimony, at 21). Only through this modification can the Commission prevent the discrimination that exists under the current system. (Id. at 21).

---

[4] The Commission would not need to take action with respect to generation itself because the price of generation is deregulated and the EDU already has the right to issue a customer a bill for its generation services on a consolidated basis. (Id. at 17). Nor would this proposed change apply to distribution charges, as the Commission noted in its December 23, 1997 Order in the PECO proceeding, because customers with multiple meters may impose a cost on the system that is different than a similar load from a single location associated with the distribution of the service. (Id.). Therefore, distribution charges should be billed as they are currently. (Id.).

XIII. CONCLUSION

For all of the foregoing reasons, NEV East, LLC requests that the Commission reject Duquesne Light's proposed restructuring plan and instead require Duquesne Light to submit a modified restructuring plan which incorporates NEV's proposal of consolidated billing as discussed above.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL & PUDLIN

By: _____

Joseph A. Dworetzky
John P. Lavelle, Jr.
Luke E. Dembosky
Attorney Id. Nos. 26968, 54279 and 75596
One Logan Square, 12th Floor
Philadelphia, PA 19103
(215) 568-6200

Dated: February 9, 1998

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 1998, I caused a true and correct copy of the Post Hearing Brief of Intervenor NEV East LLC to be served by federal express upon:

Larry R. Crayne, Esquire
Richard S. Herskovitz, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
(412) 393-6645

and by first class mail upon the parties listed below:

James P. Dougherty, Esquire
Robert A. Weishaar, Jr. Esquire
Pamela C. Polacek, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
(717) 237-5446
(717) 237-5300 FAX
(Duquesne Industrial Intervenors)

Kandace F. Melillo, Esquire
Wayne T. Scott, Esquire
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
Assistant City Solicitor
313 City County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2015
(412) 255-2285 FAX
(City of Pittsburgh)

John S. Moot, Esquire
Kurt Bilas, Esquire
1440 New York Avenue NW
Washington DC 20005
(202) 371-7310
(202) 393-5760 FAX
(Duquesne Light Company)

Stephen J. Baron
J. Kennedy and Associates, Inc.
Suite 475
35 Glenlake Parkway
Atlanta, GA 30328
(770) 395-1288
(770) 396-0151
(Duquesne Industrial Intervenors)

Karen Oill Moury, Esquire
Office of Small Business Advocate
Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
(717) 783-2525

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
(412) 350-1182
(Allegheny County)

Irwin A. Popowsky, Esquire
Marisa A. Sifontes, Esquire
Steven K. Steinmetz, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048
(717) 783-7t52 FAX

Deneice Covert Zeve, Esquire
Terry Lupia, Esquire
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-4530
(717) 787-1190 FAX
(Commonwealth of Pennsylvania)

Steven Baicker-McKee, Esquire
Wanda Schiller, Esquire
Babst, Calland, Clements & Zomnir PC
8th Floor, Two Gateway Center
Pittsburgh, PA 15222
(412) 394-5400
(412) 394-6574 FAX
(Allegheny Teledyne, Inc. and Subsidiaries)

Kenneth L. Wiseman, Esquire
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington DC 20006
(202) 662-2700
(202) 662-2739 FAX
(Hospital Shared Services)

Mark F. Sundback, Esquire
Andrews & Kurth, LLP
1701 Pennsylvania Avenue NW
Washington DC 20006
(202) 662-2755
(202) 662-2747 FAX
(Administrative Resources, Inc.)

Matthew Kahal, Esquire
Exeter Associates, Inc.
Suite 350
12510 Prosperity Drive
Silver Spring, MD 20904
(301) 622-4500
(301) 622-2686 FAX
(Office of Consumer Advocate)

Michael L. Kurtz, Esquire
David F. Boehm, Esquire
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202
(513) 421-2255
(513) 421-2764 FAX
Armco, Inc.

Terrance J. Fitzpatrick, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(717) 236-7714
(717) 236-7816 FAX
(GPU Energy)

Robert B. Weisenmiller
MRW & Associates, Inc.
Suite 1440
1999 Harrison Street
Oakland, CA 94612-3517
(510) 834-1999
(510) 834-0918 FAX
(Hospital Shared Services)

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513
(412) 772-7223
(412) 772-6969 FAX

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213
(412) 622-3780
(Pittsburgh School District)

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197
(412) 497-6892 (412) 497-6838 FAX

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
(412) 338-1445
(412) 232-3730 FAX

Stephen L. Feld, Esquire
Pennsylvania Power Company
I East Washington Street
P.O. Box 891
New Castle, PA 16103-0891
(412) 656-5382

Donald R. Ayersman, Jr., Esquire
1125 Denver Avenue
Morgantown, WV 26505
(304) 296-3958
(IBEW Local 2357)

Mark J. McGuire, Esquire
Ronald N. Carroll, Esquire
Jenner & Block
Suite 1200, 601 13th Street NW
Washington DC 20005
(202) 639-6000
(202) 639-6066 FAX
(mc', Inc.; MidCon Gas Services Corp.)

Tim Merrill, Esquire
Suite 200
4 Penn Center West
Pittsburgh, PA 15276
(412) 490-0925
(The Eastern Group)

Kevin J. McKeon, Esquire
Malatesta, Hawke & McKeon LLP
P.O. Box 1778
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841 FAX
(The Peoples Natural Gas Company)

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-5234
(215) 963-5299 FAX
(Pennsylvania Power Company)

David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217
(412) 421-6072 (Self)

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

William T. Hawke, Esquire
Mid Atlantic Power Supply Association tOO
North 10th Street
Harrisburg, PA 17105
(717) 236-1300
(717) 236-4841 FAX

Joseph A. Dworetzky, Esquire
John P. Lavelle, Jr., Esquire
Hangley, Aronchick, Segal & Pudlin 12th Floor
One Logan Square
Philadelphia, PA 19103
(315) 496-7037
(215) 568-0300 FAX
(New Energy Ventures)

Alan J. Barak, Esquire
Environmental Energy Project
Environmentalists
1417 Blue Mountain Pkwy.
Harrisburg, PA 17112
(717) 540-5106
(717) 541-1970

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870-9357
(717) 743-2233
(717) 743-8145 FAX
(IBEW, System Council U-10)

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
Suite 500
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17106-9500
(717) 255-7600
(717) 236-8278 FAX
(Allegheny Electric Cooperative, Inc.)

Paul E. Russell, Esquire
Pennsylvania Power and Light Company
2 North 9th Street
Allentown, PA 18101
(610) 774-4254
(610) 774-6726 FAX

DavidM. Boonin
New Energy Ventures East, LLC
Suite 800
200 South Broad Street
Philadelphia, PA 19102
(215) 545-5058
(215) 545-5811 FAX

Roger E. Clark, Esquire
The Environmentalists
905 Denston Drive
Andler, PA 19002-3901
(215) 643-2364
(215) 628-2630 FAX

John O'Brien, Esquire
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Boulevard
Uniondale, NY 11553
(516) 390-7600

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Alan Kohler, Esquire
Robert J. Longwell, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
Suite 401
305 North Front Street
Harrisburg, PA 17101-1236
(717) 237-7181
(717) 237-7161 FAX
(Enron Power Marketing, Inc.)

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002
(713) 853-7500
(713) 646-8169 FAX

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579
(516) 674-4186

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

Mary McFall Hopper, Esquire
PECO Energy Sompany
S23-1
2301 Market Street
Philadelphia, PA 19103

Vickiren S. Aeshleman
Director, Regulatory Affairs
QST Energy, Inc.
Suite 300- 300 Hamilton Boulevard
Peoria, IL 61602

Gary A. Jeffries, Esquire
CNG Energy Services Corporation
One Park Ridge Center
P.O. Box 15746
Pittsburgh, PA 15244-0746

Mary Ann Ralls, Esquire
Duane, Morris & Heckscher, LLP
Suite 700, 1667 K. Street, N.W.
Washington, D.C. 20006-1608

Keith M. Sappenfield, II
Director of Marketing Support
NorAm Energy Management, Inc.
P.O. Box 2628
Houston, TX 77252-2628

David Cruthirds, Esquire
Electric Clearinghouse, Inc.
Suite 5800 - 100 Louisiana
Houston, TX 77002-5050

John R. Orr, Esquire
Duke Energy Trading & Marketing, LLC
One Westchester Center
Suite 650
10777 Westheimer
Houston, TX 77042

Douglas F. John, Esquire
Gordon J. Smith, Esquire
John & Hengerer
Suite 600 - 1200 17th Street, N.W.
Washington, D.C. 20036-3006

Lawrence E. Moncrief, Esquire
1364 Silverton Avenue
Pittsburgh, PA 15206

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

Kenneth Zielonis, Esquire
Stevens & Lee
Suite 310 - 208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 500 - 1735 New York Avenue, N.W.
Washington, D.C. 20006-4759

John Wilson, Executive Director
Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

Luke E. Dembosky

Legal Department

PECO ENERGY

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215 841 5544
Fax 215 568 3389

Direct Dial: 215 841 4941

February 9, 1998

FedEx

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

Re: PECO Energy Company v. Duquesne Light Company
PUC Docket No. R-00974104

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and nine copies of PECO Energy Company's Main Brief in the referenced matter.

Sincerely,

Mary McFall Hopper

MMH/mtg

enclosures

cc: Hon. John Corbett, Jr.
Parties of Record

107357

92

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	DOCKET NO. R-00974104
	:	
DUQUESNE LIGHT COMPANY	:	

MAIN BRIEF
OF
PECO ENERGY COMPANY

Paul R. Bonney, Esquire
Mary McFall Hopper, Esquire
Assistant General Counsel

PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-4941

Dated: February 9, 1998

107322

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Ever since it was enacted fourteen months ago, the Electricity Generation Customer Choice and Competition Act (the "Electric Competition Act") has been subjected to intense examination, with parties of diverse interests offering conflicting interpretations of its various provisions. On one point, however, all stakeholders seem to agree -- the overriding goal of the Electric Competition Act is to establish a level playing field on which customers can freely choose their generation supplier, and generation suppliers can fairly compete for their business without impairing the reliability of existing service.

As an electric distribution company ("EDC") and an electric generation supplier ("EGS"), PECO expects to compete with Duquesne in Southeastern Pennsylvania, in the Pittsburgh area and in other retail electric markets. PECO's interest in this proceeding, therefore, is to ensure that its ability to compete is not compromised by factual determinations and/or legal conclusions which are at odds with the treatment it received in its recently concluded restructuring case at Docket No. R-00973953 (the "PECO Case") and that its shareholders are not treated unfairly vis-à-vis other EDC's. Quite simply, the Commission's resolution of key issues must be consistent.

II. PHASE-IN OF CUSTOMER CHOICE

B. Timetable For Phase-In

The General Assembly recognized that the restructuring of the electric utility industry and the introduction of retail competition was a daunting and complex task. With that in mind, it

adopted a series of provisions which clearly contemplate that customer choice will be phased in gradually over a three-year period (see 66 Pa. C.S. § 2806(b)).

In the PECO Case, the Commission departed from the course plainly marked by the Legislature and effectively accelerated the introduction of customer choice by a year for those customers who, under the statute, would not become eligible to shop until January 1, 2000 and January 1, 2001, respectively. PECO strongly disagrees with this aspect of the Commission's decision and has appealed it to the Commonwealth Court. See also the discussion of this issue in GPU's brief, in which PECO concurs. However, if that requirement is to hold, fairness dictates that similar phase-in schemes be imposed on all of Pennsylvania's electric utilities. Otherwise, the spirit, and arguably the letter, of the Electric Competition Act's reciprocity feature (66 Pa. C.S. § 2805(b)(2)) would be violated.

IV. TRANSITION OR STRANDED COSTS

The Electric Competition Act first defines the term "transition or stranded costs" (66 Pa. C.S. § 2803) and then sets forth certain standards to govern their recovery through competitive transition charges (66 Pa. C.S. § 2808). PECO takes no position with respect to the overall level of stranded costs to which Duquesne is entitled. Instead, PECO merely urges the Commission to be even-handed in its determination.

A. Overview Of Stranded Cost Valuation And Recovery Approaches

To ensure consistent treatment and to avoid a situation whereby one utility reaps an unfair advantage (or suffers an unfair disadvantage), stranded costs should be quantified in all restructuring proceedings on the basis of the "valuation" method used in the PECO Case and not the "lost revenues" method.

B. Generation-Related Stranded Costs

3. Market Value

(b) Market Price Projections

Not surprisingly, Pennsylvania's restructuring proceedings have produced a wide range of conflicting and fiercely defended opinions regarding future retail market prices for energy and capacity. And, as has become evident, virtually any scenario can be constructed depending upon the assumptions employed.

In the PECO Case, the Commission adopted OCA witness Smith's market price projections for purposes of quantifying stranded costs.[1/] PECO submits that the Commission's findings are not supported by substantial evidence and it has challenged them on appeal. PECO also recognizes that slightly different market prices will likely prevail in Western and Eastern Pennsylvania. Nonetheless, after taking into account the cost of and constraints to transmitting

---

1/ At the same time, however, the Commission ignored those market values when it designed PECO's unbundled tariff rates.

electricity from west to east, there should be some logical nexus between the market prices accepted here and those utilized in the PECO Case.

D. Decommissioning

2. Fossil Decommissioning

The Electric Competition Act defines transition or stranded costs to include "retirement costs attributable to the utility's existing generation plants" (66 Pa. C.S. § 2803). Notwithstanding this unequivocal language, the Commission, in the PECO Case, concluded that it could not approve the recovery of future fossil decommissioning costs because "future or prospective fossil plant decommissioning expenses are not traditionally recognized in rates in Pennsylvania" (December 23, 1997 Order, p. 91).

PECO believes that the Commission's treatment of this issue is wrong as a matter of law, rewrites the Electric Competition Act in a way that could not possibly have been intended by the General Assembly and, therefore, will be quickly reversed by the Commonwealth Court. Until then, however, there is no basis for approving Duquesne's or any other utility's fossil decommissioning claim.

E. Regulatory Assets And Liabilities

2. Disputes Regarding Specific Claims

(j) SFAS 106 Deferred Costs

In the PECO Case, Mr. Kollen, appearing there on behalf of the Philadelphia Area Industrial Energy Users Group, proposed that the Commission recognize, as a regulatory liability, earnings that PECO's actuaries projected its SFAS 106 trust fund would generate on deposits made to the fund prior to the advent of retail competition. Even though PECO pointed out that such future earnings had already been taken into account in calculating its ongoing generating plant costs for market value purposes, the Commission adopted Mr. Kollen's adjustment.

PECO has appealed this issue and has also petitioned the Commission to reconsider and correct this obvious error. Unless that is done, consistency would require that similar offsets to SFAS 106 claims be made in all electric restructuring proceedings.

V. THE COMPETITIVE TRANSITION CHARGE

A. Conceptual Disputes Regarding Calculation Of CTC/CGC

1. Difference In Overall Approach

The Commission, in the PECO Case, decided that the restructuring process should not simply produce a level, competitive playing field, but rather should put in place real incentives for customers to leave their incumbent utility by providing them what the Commission perceived to be an opportunity to reduce their rates by 15.0%. It accomplished this objective through a series

of interrelated steps:

- The creation of artificial "shopping credits" which far exceed and, indeed, bear no relationship to anyone's projected market prices in the near term.

- The extension of the CTC recovery period to make the inflated "shopping credits" fit under the rate cap.

and

- The requirement that PECO charge default customers the higher "capped" rates and deny them the benefit of lower market prices if they fail to shop.

PECO does not believe that the General Assembly intended to penalize incumbent utilities or their customers in furtherance of retail competition and will ask the Commonwealth Court to reverse these aspects of the Commission's decision. But, regardless of the outcome, whatever rules are applied to PECO must be imposed on other utilities as well. Otherwise, the playing field will be anything but "level" and PECO's ability to compete will be severely hampered.

VI. RATE OF RETURN/DISCOUNT RATE

PECO makes no specific recommendation regarding Duquesne's cost of capital, its appropriate after-tax discount rate or the return it should be allowed to earn on the unamortized balance of its stranded costs. PECO notes, however, that it was granted a pre-tax return equivalent to its embedded cost of long-term debt on the grounds that the recovery of CTC revenues is essentially risk-free. The Commission's reasoning, although unsupported and contrary to the Electric Competition Act's promise of stranded cost recovery, would unfortunately apply

with equal force to all other incumbent utilities.

VIII. COMPETITIVE SAFEGUARDS

AND

IX. OTHER ISSUES (METERING AND BILLING)

It is absolutely critical that all electric generation suppliers adhere to the same set of competitive safeguards and rules regarding the unbundling of metering and billing services. PECO assumes that such issues will be resolved on a generic basis and that the restrictions imposed on it will also apply to Duquesne and other incumbent utilities.

Respectfully submitted,

Paul R. Bonney, Esquire
Mary McFall Hopper, Esquire
Assistant General Counsel

PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-4252

Dated: February 9, 1998

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of Pennsylvania Public Utility Commission v. Duquesne Light Company - Pa. PUC Docket No. R-00974104.

Larry R. Crayne, Esquire
Richard S. Herskovitz, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

412 393 6645

John S. Moot, Esquire
Kurt Bilas, Esquire
1440 New York Avenue, NW
Washington, DC 20005

202 393 5760

James P. Dougherty, Esquire
Robert A. Weishaar, Jr. Esquire
Pamela C. Polacek, Esquire
McNees, Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108

717 237 5300

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

770 396 0151

Kandace F. Melillo, Esquire
Wayne T. Scott, Esquire
PA Public Utility Commission
Office of Trial Staff
P. O. Box 3265
Harrisburg, PA 17105-3265

717 772 2677

Angela T. Jones, Esquire
Office of Small Business advocate
Commerce Building
Suite 1102
300 North Second Street
Harrisburg, PA 17101

717 783 2831

Jacqueline R. Morrow, Esquire
Rodney R. Akers, Esquire
Assistant City Solicitor
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

412 255 2285

Samuel W. Braver, Esquire
Bruce A. Americus, Esquire
Buchanan Ingersoll, P.C.
20th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219-1410

412 562 1041

Howard M. Louik, Esquire
Allegheny County Law Department
300 Fort Pitt Commons
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

412 350 1174

Irwin A. Popowsky, Esquire
Marisa A. Sifontes, Esquire
Steven K, Steinmetz, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

717 783 7152

Matthew Kahal
Exeter Associates, Inc.
Suite 350
12510 Prosperity Drive
Silver Spring, MD 20904

301 622 2686

David F. Boehm, Esquire
Michael L. Kurtz, Esquire
Boehm, Kurtz & Lowry
2110 CBLD Center
36 East Seventh Street
Cincinnati, OH 45202

513 421 2764

Wanda Schiller, Esquire
Steven Baicker-McKee, Esquire
Babst, Calland, Clements & Zomnir P.C.
8th Bloor, Two Gateway Center
Pittsurgh, PA 1522

412 394 6574

Terrance J. Fitzpartrick, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

717 236 7816

Margaret Peters, Esquire
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222-3197

412 497 6838

Kevin J. McKeon, Esquire
Malatesta, Hawke & McKeon LLP
P. O. Box 1778
Harrisburg, PA 17101

717 236 4841

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

215 963 5299

Stephen L. Feld, Esquire
Pennsylvania Power Company
1 East Washington Street
P. O. Box 891
New Castle, PA 16103-0891

412 656 4378

Thomas J. Augspurger, Esquire
MidCon Corporation
Office of General Counsel
701 East 22nd Street
Lombard, IL 60148

630 691 3827

Mark J. McGuire, Esquire
Ronald N. Carroll, Esquire
Jenner & Block
Suite 1200, 601 13th Street NW
Washington, DC 20005

202 689 6066

William T. Hawke, Esquire
Janet L. Miller, Equire
Todd S. Stewart, Esquire
Malatesta, Hawke & McKeon LLP
P.O. Box 1778
Harrisburg, PA 17101

717 236 4841

Paul E. Russell, Esquire
Pennsylvania Power and Light Company
Two North Ninth Street
Allentown, PA 18101

610 774 6726

Donald A. Kaplan, Esquire
Lisa M. Helpert, Esquire
Preston Gates Ellis & Rouvelas Meeds LLP
Suite 500, 1735 New York Avenue, NW
Washington, DC 20006-4759

202 331 1024

Albert M. Benincasa, Esquire
Director, Regulatory Affairs
Skipping Stone
46 9th Avenue
Sea Cliff, NY 11579

516 676 6984

David M. Boonin
New Energy Ventures East, LLC
Suite 2525
1845 Walnut Street
Philadelphia, PA 19103

215 563 9292

Gary A. Jeffries, Esquire
CNG Energy Services Corporation
One Park Ridge Center
P.O. Box 15746
Pittsburgh, PA 15244-0746

412 787 4268

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong, & Niesen
Suite 500
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17106-9500

717 236 8278

Mary Ann Ralls, Eqsuire
Duane, Morris & Herhscher LLP
Suite 700
1667 K Street, NW
Washington, DC 20006-1608

202 776 7801

David Cruthirds, Esquire
Electric Clearinghouse, Inc.
Suite 5800
100 Louisiana
Houston, TX 77002-5050

713 507 6834

John O'Brien, Esquire
Wheeled Electric Power Company
Suite 207
50 Charles Lindburgh Blvd.
Uniondale, NY 11553

516 390 7628

Joseph A Dworetzky, Esquire
Luke E. Dembosky, Esquire
John P. Lavelle, Jr., Esquire
Hangley, Aronchick, Segal & Pudlin
12th Floor, One Logan Square
Philadelphia, PA 19103

215 568 0300

Vickieren S. Aeshleman
Director, Regulatory Affairs
QST Energy, Inc.
Suite 300
300 Hamilton Blvd.
Peoria, IL 61602

309 655 1360

Keith M. Sappenfield, II
Director of Marketing Support
NorAm Energy Management, Inc.
P.O. Box 2628
Houston, TX 77252-2628

713 654 5839

John R. Orr, Esquire
Duke Energy Trading & Marketing LLC
One Westchester Center
Suite 650, 10777 Westheimer
Houston, TX 77042

713 260 6511

Douglas F. John, Esquire
Gordon J. Smith, Esquire
John & Hengerer
Suite 600
1200 17th Street, NW
Washington, DC 20036-3006

202 429 8805

James D. Steffes
Enron Power Marketing, Inc.
1400 Smith Street
P.O. Box 4428
Houston, TX 77002

713 646 8160

John Stember, Esquire
Low Income Advocate Parties
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

412 232 3730

Robert B. Weisenmiller
MRW & Associates, Inc.
Suite 1440
1999 Harrison Street
Oakland, CA 94512-3517

510 834 0918

Michael Reid, Director
Materials Management Services
Administrative Resources, Inc.
500 Commonwealth Drive
Warrendale, PA 15086-7513

412 776 6969

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

314 725 2022

Daniel Clearfield, Esquire
Gerald Gornish, Esquire
Alan Kohler, Esquire
Robert J. Longwell, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
305 North Front Street, Suite 401
Harrisburg, PA 17101-1236

717 237 7161

Tim Merrill, Esquire
Suite 200
4 Penn Center West
Pittsburgh, PA 15276

412 787 7675

Lawrence E. Moncrief, Esquire
1364 Silverton Avenue
Pittsburgh, PA 15206

412 731 1105

Mark F. Sundback, Esquire
Robert M. Lamkin, Esquire
Andrews & Kurth, LLP
Suite 200
1701 Pennsylvania Avenue, NW
Washington DC 20006

202 662 2739

Robert J. Stefanko, Esquire
341 South Bellefield Avenue
Pittsburgh, PA 15213

412 622 7995

Roger Clark, Esquire
The Environmentalists
905 Denston Drive
Ambler, PA 19002-3901

215 628 2630

Brian A. Rider, President
Pennsylvania Retailers' Association
224 Pine Street
Harrisburg, PA 17101-1325

717 236 1234

Scott J. Rubin, Esquire
3 Lost Creek Drive
Selinsgrove, PA 17870

717 743 8145

Cindy Datig, Esquire
Dollar Energy Fund
P.O. Box 42329
Pittsburgh, PA 15203

412 431 2084

Kenneth L. Wiseman, Esquire
Robert M. Lamkin, Esquire
Andrews & Kurth, LLP
Suite 200
1701 Pennsylvania Avenue NW
Washington DC 20006

202 662 2739

Kenneth Zielonis, Esquire
Stevens & Lee
Suite 310, 208 North Third Street
P.O. Box 12090
Harrisburg, PA 17108-2090

717 234 1939

Donald R. Ayersman, Jr., Esquire
IBEW Local 2357
1125 Denver Avenue
Morgantown, WV 26505

(No fax listed)

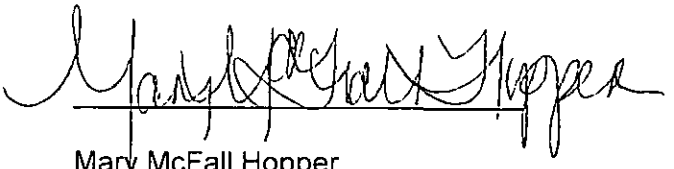
David Hughes
4037 Ludwick Street
Pittsburgh, PA 15217

412 421 6162

John Wilson, Executive Director
Community Action Association
222 Pine Street
Harrisburg, PA 17101

717 232 1014

Respectfully submitted,



Mary McFall Hopper
Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
215 841 4941

Dated: February 9, 1998

ANDREWS & KURTH L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP
ATTORNEYS
1701 PENNSYLVANIA AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20006-5805

TELEPHONE:(202) 662-2700
TELECOPIER:(202) 662-2739
TELEX: 79-1208

OTHER OFFICES:
HOUSTON
DALLAS
LOS ANGELES
NEW YORK
THE WOODLANDS
LONDON

ROBERT M. LAMKIN
202-662-2779

February 9, 1998

VIA OVERNIGHT MAIL

James J. McNulty
Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Commonwealth Avenue and North Street
Harrisburg, Pennsylvania 17120

Re: Duquesne Light Company Restructuring Proceeding,
Docket No. R-00974104

Dear Mr. McNulty:

Pursuant to Sections 1.4 and 5.502 of the Pennsylvania Public Utility Code, enclosed please accept for filing: (1) an original and nine (9) copies of the Public Version (Protected materials redacted) Main Brief of Hospital Shared Service ("HSS") and Administrative Resources, Inc. ("ARI"); and (2) an original and nine (9) copies of the Confidential Version of the Main Brief of HSS and ARI in the above-captioned proceeding.

Also, please find an additional copy of the cover of the Main Brief for each of the two versions to be stamped and returned to me in the enclosed self-addressed postage prepaid envelope.

Sincerely,

Robert M. Lamkin
One of Counsel for Hospital Shared Services
and Administrative Resources, Inc.

Enclosures

cc: Judge Corbett (w/encl.
and computer diskette version)
Service List