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ORIGINAL

April 24, 1998

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

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

Dear Secretary McNulty:

Please find attached an original and nine (9) copies of the Reply Exceptions of the Pennsylvania Retailers' Association for filing in the above captioned proceeding. As indicated by the attached Certificate of Service, all parties of record and the Commission's Office of Special Assistants have been served a copy hereof.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

Kenneth Zielonis

Kenneth Zielonis, Esq.

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cc: File

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS OF THE PENNSYLVANIA RETAILERS' ASSOCIATION

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Dated: April 24, 1998

Attorneys for the Pennsylvania Retailers' Association

I. STATEMENT OF THE CASE

On August 1, 1997, Duquesne Light Company, ("Duquesne"), filed its restructuring plan pursuant to Section 2806 of the Pennsylvania Public Utility Code ("Code"). On August 6, 1997 the Pennsylvania Public Utility Commission, ("Commission"), assigned the restructuring filing to the Office of Administrative Law Judge. The Presiding Administrative Law Judge ("ALJ") is John H. Corbett, Jr.

On August 15, 1997, David Hughes filed a letter Petition to Intervene. On August 20, 1997, the International Brotherhood of Electrical Works, Local Council U-10 filed a Petition to Intervene. On August 25, 1997, the Commission's Office of Trial Staff filed a notice of appearance. On August 27, 1997, ARMCO, Inc. filed a Petition to Intervene in this proceeding. On August 28, 1997 the Pennsylvania Retailers Association, ("PRA"), filed a Petition to Intervene. On August 29, 1997, Enron Power Marketing filed a Petition to Intervene. On September 2, 1997 Allegheny Teledyne filed a Petition to Intervene. On September 4, 1997 Mid-Atlantic Power & Supply Association and Hospital Shared Services/Administration Resources, Inc. filed Petitions to Intervene. A initial prehearing conference was held on September 4, 1997. At the prehearing conference a litigation procedural schedule was established. A second prehearing conference was scheduled for October 21, 1997. This prehearing conference was subsequently cancelled at the request of the parties.

The Presiding ALJ has issued several interim orders. Such interim orders resolved discovery and procedural disputes as well as established the process for hearings in this proceeding.

Hearings to cross-examine Company witnesses were held the week of December 15, 1997 in Pittsburgh, Pennsylvania. Subsequently, the parties agreed that there would be no necessity for cross-examination of intervenor witnesses scheduled for the week of January 5, 1998.

As a result of several stipulations entered into by the parties, the testimony of intervenor witnesses was submitted without the necessity of cross-examination of such witnesses. In addition, several additional exhibits have been entered into the record in addition to those cross-examination exhibits entered into the record at the hearings held the week of December 14, 1997. The presiding ALJ closed the evidentiary record on January 20, 1997.

The record consists of numerous exhibits and statements of the individual party's witnesses. In addition, the record consists of a hearing transcript in excess of 1,000 pages.

The presiding ALJ directed the filing of Main and Reply Briefs. The active parties to the proceeding filed Main and Reply Briefs including the Pennsylvania Retailers' Association, ("PRA"). On March 25, 1998 the Commission's Office of Administrative Law Judge issued the Recommended Decision of the

presiding ALJ. The active parties, including PRA, submitted Exceptions. PRA files these Reply Exceptions in response to the Exceptions of Duquesne.

II. SUMMARY OF REPLY EXCEPTIONS

The ALJ Appropriately Determined That Brunot Island and Phillips Generating Stations Do Not Constitute Standed Investment. ALJ's market price projection is appropriate and should be accepted by the Commission. The ALJ correctly utilized life extension to determine Duquesne's level of stranded costs. The ALJ correctly rejected fossil plant decommissioning costs in accordance with tranditional ratemaking policy. Duquesne's SFAS 106 costs are not transition costs. The Warwick Mine costs would not be recoverable under tranditional ratemaking and thus do not qualify as transition costs. The ALJ correctly rejected Duquesne's CTC rate design. Duquesne's proposal to calculate T&D rates based upon required rates of return violates the rate cap.

III. REPLY EXCEPTIONS

A. The ALJ Appropriately Determined That Brunot Island and Phillips Generating Stations Do Not Constitute Standed Investment

Duquesne's cold reserved units (Brunot Island and Phillips) do not qualify as stranded costs in this proceeding. Under traditional ratemaking, the recovery of the caretaker costs of these units would have been permitted solely upon the basis that they returned to service and once again became "used and useful" to the public. There is no evidence that such units will be returned to service. Thus the claim must be disallowed.

B. The ALJ's Market Price Projection Is Appropriate

The ALJ correctly accepted the OCA's estimate of future market prices. Duquesne falsely attempts to impeach the credibility of the OCA's market price estimates asserting that it utilized "market" data and not computer simulations as the utility did in the PECO proceeding. The ALJ resoundly and correctly rejected Duquesne's half-baked attempt to provide a so-called market projection. Duquesne merely provided wholesale prices which resulted from a skewed auction.

C. The ALJ Correctly Utilized Life Extensions To Determine Duquesne's Stranded Costs

The ALJ appropriately recommended that the stranded cost calculation include a life extension of Duquesne's plants. It is a fact in the electric utility industry that generating plants can and have been life extended beyond their arbitrary financial or book lives. The OCA provided a reasonable approximation of the value of the plants as life extended.

D. The ALJ Correctly Rejected Fossil Plant Decommissioning Costs

Fossil plant decommissioning costs were appropriately rejected by the ALJ. Such costs are not collectable in rates currently because the are not known and measurable. Decommissioning costs do not result from a transition to a competitive generation market, the standard upon which transition costs must be measured.

E. Duquesne's SFAS 106 Costs Are Not Transition Costs

The ALJ correctly rejected recovery of SFAS 106 costs. Such costs do not result from a movement to competition. Moreover, such costs are now overcollected by Duquesne and its stranded cost proposal does not reflect a return of that overcollection. Thus the claim must be rejected.

F. The Warwick Mine Costs Do Not Qualify As Transition Costs

The costs associated with the Warwick Mine must be rejected as a stranded costs. Such costs could be recovered under traditional ratemaking if they meet a market threshold. They have not done so and thus do not qualify as a stranded cost under the Act.

G. The ALJ Correctly Rejected Duquesne's CTC Rate Design

It was appropriate for the ALJ to reject Duquesne's proposed rate design for calculation of the CTC. It is improper for the CTC to be collected via what is essence a demand charge. This proposal is simply a means of guaranteeing the recovery of stranded investment. Such guarantee is already provided in the Act through the reconcileable CTC. Because Duquesne has not provided a marginal cost study, there is no basis for such a dramatic modification to its current rate design.

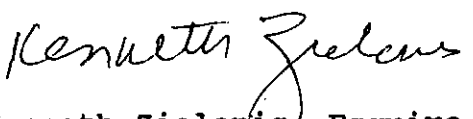
H. Duquesne's Proposal To Calculate T&D Rates Based Upon Required Rates Of Return Violates The Statutory Rate Cap

Duquesne's proposal to calculate T&D rates utilizing required rates of return was rightly rejected by the ALJ. Duquesne concedes that its proposal would require a violation of the statutory rate cap. Thus it must be rejected.

IV. Conclusion

For all of the above reasons, the Pennsylvania Retailers' Association respectfully requests this Commission to adopt each and every Reply Exception contained herein.

Respectfully submitted,



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Dated: April 24, 1998

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IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of April, 1998, I have served true and correct copies of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code Section 1.54:

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April 24, 1998

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

RE: Duquesne Light Company Restructuring Proceeding, Docket No. R-00974104

Dear Mr. McNulty:

Enclosed for filing please find an original and nine (9) copies of the Reply Exceptions of Enron Power Marketing, Inc. As indicated on the attached Certificate of Service, copies of this document are being served this day on the parties in the manner indicated.

Please contact me if you have any questions with respect to the enclosed.

Very truly yours,

Alan Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

AK/jlg
Enclosure

cc: Hon. John Corbett, Jr. w/enc.
All Parties of Record w/enc.
Office of Special Assistants w/enc. and disk

DOCUMENT FOLDER

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-00974104
v.	:	
	:	
Duquesne Light Company Application	:	
to approve Restructuring Plan pursuant to	:	
66 Pa. C.S. §2806(d)	:	

ORIGINAL

REPLY EXCEPTIONS OF ENRON POWER MARKETING, INC.

Daniel Clearfield
Alan Kohler
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Dated: April 24, 1998

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I. INTRODUCTION

These Reply Exceptions are submitted on behalf of Enron Power Marketing Inc. ("Enron") in response to certain exceptions raised by Duquesne Light Company ("Duquesne") and the Office of Consumer Advocate ("OCA"). Through its exceptions, Duquesne seeks to have the Commission modify the ALJ's Recommended Decision to assure a rate design and generation credit which will preclude electric generation suppliers, like Enron, from entering and competing in the retail generation supply market in Duquesne's service territory. In addition, OCA continues to attempt to resurrect its call for immediate tariffed rate reductions in electric distribution company ("EDC") restructuring plans despite the fact that such regulated rate reductions outside the context of the competitive market have been rejected outright by the Commission.

These modifications requested by Duquesne and OCA fly in the face of the legal interpretations and generic policies established by the Commission in the PECO Restructuring Orders,[1] with no legal distinction or evidentiary support. The Commission should continue on its present course and adopt a restructuring plan for Duquesne consistent with the pro-competitive paradigm adopted in the PECO Restructuring Orders.

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[1] Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code (December 23, 1997) R-00973953 ("PECO Order"). The Commission has also issued three other decisions in the PECO Restructuring case: Reconsideration Order (January 16, 1998); Compliance Filing Order (February 5, 1998); Revised Compliance Filing Order (February 26, 1998). The four Commission orders are jointly referred to as the "PECO Restructuring Orders".

II. REPLY EXCEPTIONS

A. Regulated Rate Reductions — The Commission Should Follow its PECO Decision and Recognize that Reducing Duquesne's Regulated Rates is Inappropriate Absent a Chapter 13 Proceeding on the Promulgation of Regulations.

Reply to: OCA Exceptions, pp 7-9.

1. Enron agrees with one aspect of the OCA exceptions to the ALJ's Recommended Decision pertaining to immediate, tariffed rate reductions — that being that the Recommended Decision is internally inconsistent regarding its discussion of this issue. On page 447 of the Recommended Decision, the ALJ expressly rejects OCA's proposal to implement immediate rate reductions.[2] Later, on page 556 of the R.D., the ALJ seems to favor "a levelized rate reduction."

2. Regardless of the ALJ's intent, the Commission has rejected immediate rate reductions as a means of implementing the Act in EDC restructuring plans. As the Commission stated conclusively in the PECO Restructuring Order:

> Relying principally on changing rate tariffs to deliver price benefits to ratepayers will not foster the competitive retail electric market that the Act requires for all customers, not just the largest users. In fact, providing temporary rate cuts through tariffed generation rate reductions will leave the customers without a

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[2] As the ALJ concisely stated:

> Because the OCA's proposal for immediate rate reductions entails extension of the transition period, I urge the Commission to reject it. In my opinion, the most satisfactory way to achieve rate relief for Duquesne's beleaguered customers is to move as quickly as possible to a fully competitive electric generation market. During the transition, ratepayers will continue to shoulder only the burden of rates capped at their present levels — no more or no less.

R.D. at 447.

> competitive market that is their only real protection under the Act. Indeed, once the temporary rate cuts expire, customers would experience the equivalent of a horrible hangover if little or no competition exists to provide the competitive benefits the Act intends.

PECO Restructuring Order at 43.

3. In its exceptions, OCA attempts to resurrect the immediate, tariffed rate reduction issue by "mixing apples with oranges" and referencing Section 2807(e), which calls for a rulemaking to establish standards requiring the provider of last resort to "acquire electric energy at prevailing market prices to serve that customer **and shall recover fully all reasonable costs.**"[3] But Section 2807(e) governs the price levels to be charged by the provider of last resort after the phase-in and is a completely separate issue from the establishment of a generation credit and whether tariffed rates for all customer should be reduced — an OCA proposal which the ALJ in this case and the Commission in the PECO Restructuring Order has rejected outright.

4. As to the application of Section 2807(e), Section 2807(e) provides as follows in relevant part:

> (e) **Obligation to Serve** — An electric distribution company's obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer is revised as follows:
>
> * * *

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[3] 66 Pa.C.S. §2807(e)(3) (emphasis added). In its Exceptions at p. 8, the OCA misstates the content of this provision and states that the provision requires that customers "are to be served at 'prevailing market prices.'" However, the clear language of Section 2807(e)(3) requires only that energy be "**acquired**" at prevailing market prices **and** mandates that in addition to the acquisition of energy that all reasonable costs be fully recovered.

(2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

(3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.[4]

5. Subsection (e)(2) expressly mandates that the provisions of Subsection (e)(3) pertaining to the connection, delivery and acquisition of electricity for default customers be implemented through the promulgation of regulations. No other authority is provided to the Commission as to implementation of this portion of the statute. Furthermore, Subsection (e)(2) dictates that the mandatory rulemaking to implement Subsection (e)(3) establish the EDC's "obligations that will exist at the end of the phase-in period".[5] Subsection (e)(3) sets the standard governing the Commission's promulgation of regulations and states that, under the regulations, the PLR is required to "acquire electric energy at prevailing market prices to that customer and shall recover fully all reasonable costs." Read together, the two subsections require the Commission to promulgate rules following restructuring which define the EDC's obligation to

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4 66 Pa.C.S. §2807(e)(2) and (3).

5 Subsection (e)(2) indicates that the rules should be promulgated at the "end of the transition period" to establish the EDC's obligation "at the end of the phase-in period." To make sense of this provision, it appears that the General Assembly's reference to the end of the transition period was intended to refer to the close of Commission restructuring proceedings. Such an interpretation is consistent with the language of Section 2807(e) which indicates that the various underlying subsections are intended to be carried out by the Commission "following implementation of restructuring."

serve, including the terms and conditions under which it will acquire and sell power to default customers. Until such regulations are finalized, the EDC must charge default customers current unbundled tariff rates unless the Commission finds that rate reductions are warranted under Chapter 13 procedures.

6. The OCA can reach the result it advocates, which is that somehow Section 2807(e)(3) requires that generation rates be reduced to "prevailing market" rate levels for all customers including those who do not choose, only by ignoring language which requires that the subsection be implemented by regulation, and by continuously and blatantly misstating the content of the subsection. The language of Section 2807(e) is clear. What it does not say is that the provider of last result must charge rates to customers at prevailing market prices from the outset of direct access. What it does say is that following the phase-in, the Commission should promulgate regulations which require the PLR to "**acquire** electric energy at prevailing market prices to serve that customer **and shall recover fully all reasonable costs**."[6]

7. This latter clause means that the PLR rate must recover not only prevailing market price for power but also all of Duquesne's costs associated with providing generation services. Today, the total cost (less the portion deemed stranded) is the residual generation credit. By establishing the PLR rate at this level, the rate will thus recover not only the wholesale cost of power ("prevailing market prices"), but also the full retail delivery costs associated with selling the commodity to retail customers. Misstating the language of the statute will not change the language or the General Assembly's intent in enacting it.

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[6] 66 Pa.C.S. §2807(c)(3) (emphasis added).

8. As recognized by the Commission in the PECO Reconsideration Order,[7] if the OCA wants an EDC's rates to be reduced, it should bring an action under Chapter 13 and prove its case. It should not be permitted to completely distort a provision of the Act in attempt to achieve a result which was never intended and which is inconsistent with the Act's overriding goal to reduce rates and bring other benefits to consumers through the competitive market, not instead of the competitive market.

B. Interim Generation Credit — The Commission Should Utilize the PECO Model to Determine Both Interim and Permanent Generation Credits.
Reply to: Duquesne Exceptions, pp. 7-8

9. Duquesne has excepted to the ALJ's determination regarding use of the pilot program participation and market credits as interim generation credits during the period prior to the completion of an auction divesting itself of its generation assets and determining its final CTC.[8] Duquesne requests that revenue losses associated with the pilot credits should also be rolled into its interim CTC — reducing the interim generation credits below pilot levels.

10. Duquesne's exception completely misses the point. There is simply no evidentiary or legal support for departing from the PECO model for determining the generation credit, regardless of whether it is being established on an interim or permanent basis. As set forth in detail in Enron's Exceptions,[9] under the PECO model, the generation credit is calculated as the residual of Commission determined distribution rates plus FERC established transmission

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7 PECO Reconsideration Order at 21.

8 R.D. at 159. Such divestiture would only occur if the merger between Duquesne and West Penn is not consummated.

9 Enron Exceptions, pp. 16-25.

rates and Commission determined stranded costs, utilizing OCA market prices, levelized over the recovery period.

11. The Commission's PECO model resulted from a direct interpretation of the Act and constitutes the only rate design which complies with the Act's mandate to enable the development of a vibrant competitive environment.[10] Furthermore, neither the ALJ nor Duquesne have cited to record evidence in this proceeding which could support a different outcome.

12. Use of the PECO model is appropriate regardless of whether the generation credit is interim or permanent in nature. In fact, it is particularly important to apply the PECO model to the calculation of an interim generation credit to be utilized during the initial stages of direct access, when the structure of the market is initially established. Duquesne's exception should be denied and the Commission should adopt the PECO model for any interim generation credits established in this restructuring proceeding.

C. RFP Determined Generation Credit — The ALJ was Correct In Deciding that Duquesne's Proposal to Determine the Generation Credit Through an RFP Should Be Rejected. R.D. at 554. Reply to: Duquesne Exceptions, pp. 11-12

13. Duquesne has excepted to the ALJ's recommendation to reject its proposal to determine the generation credit through issuance of RFPs — under the theory that the RFP

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10 As the Commission recently stated, "By creating a vibrant competitive market in electricity at the retail level, the General Assembly has adopted the position that competition yields greater benefits to the public than even the most diligent and careful rate regulation." Electric Distribution Utility Rates, Rules, Regulations and Practices, M-00971032 (December 18, 1997), 28 Pa.B.1425.

will identify the prevailing price of generation in Duquesne's service territory. Duquesne's claim is groundless and should be rejected.

14. Duquesne first argues that prevailing market prices should be used as the generation credit regardless of the circumstances. Duquesne's claim is absurd. Nothing in the Act links the generation credit to the market price of energy. While the use of market prices, absent divestiture, in the calculation of stranded costs is unavoidable,[11] no reasonable legal or evidentiary rationale supports the notion that market prices must be utilized in determining how stranded costs should be recovered.

15. Duquesne's RFP proposal, in particular, is violative of the Act and otherwise anti-competitive and inappropriate since, even assuming for the moment that an RFP could be designed to measure market prices, the market prices would be largely wholesale in nature and would be completely inappropriate for use in designing rates in a retail environment. As the Commission determined in the PECO Restructuring Order, once the level of transition and stranded costs has been calculated, rates should be designed in a manner which assures adequate recovery, but, at the same time, is in furtherance of the development of competition the Act mandates.[12] Any "calculated" market price, therefore would have to include all delivery

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[11] Enron agrees with Duquesne's statement on page 11 of its Exceptions that market prices should or, at least, can be used to mitigate the loss of load associated with direct access. However, Duquesne's premise has no relevance as to how stranded costs should be recovered but only as to how stranded costs should be calculated in the first instance.

[12] As the Commission explained:

> Setting the EEC 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

(continued...)

costs and all retail marketing costs, plus ability of suppliers to offer discounts. Duquesne's RFP market prices are completely inadequate from this standpoint.

16. Despite Duquesne's meritless contention, designing rates in a pro-competitive manner is not an "objection to the Act itself" or an "artificial inflation" of the generation credit. Instead, such a rate design is exactly what the Act envisions and demands. Duquesne's attempt to draw a link between a retail generation credit and wholesale market prices for power is nothing more than a self-serving attempt to "kill the market" and assure that it retains all of its customers at the same time it is permitted to recover its stranded costs. Such an attempt "flies in the face" of the paradigm endorsed by the Act and should be rejected outright.

17. Even if the Commission were to find merit in some variation of an RFP approach, Duquesne's proposed RFP is designed to attract bids below even the wholesale prices that should be considered "prevailing" in an open market. As explained by MAPSA witness

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[12](...continued)

> compete for retail customers. Simply put, if set too low, the ECC will mean that electric customers in PECO's service territory will have few or no competitors competing for their business. To use witness Silkman's term, PECO would be a "de facto monopoly."
>
> * * *
>
> The shopping consumer pays only the T&D rate and the CTC to the EDC when purchasing generation in the competitive market. The addition of the T&D rate and the CTC produces a total sum of charges that when compared to the customer's rate 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 Restructuring Order at 16, 42 (emphasis added).

Russell, the RFP: (1) does not include scheduling which enables the power to be used to serve time varying customers; (2) contains a 75% capacity factor take-or-pay provision which limits the flexibility of the purchases; (3) requires point to point transmission service in a manner which would restrict sales to customers in Duquesne's service territory; and (4) only includes a guarantee of 10 megawatts for the winning bidder.[13] All of these factors serve to deflate the value of RFP bids further reducing the generation credit below levels which would enable market entry by EGSs. For all of these reasons, Duquesne's RFP proposal lacks merit and should be rejected.

D. Realized Rate of Return — **The ALJ Correctly Determined That a Realized Rate of Return Should be Utilized in Establishing Duquesne's T&D Rates.**
Reply to: Duquesne Exceptions, pp. 33-34

18. Throughout its exceptions, Duquesne attempts to resurrect its doomed argument that it should be rewarded with an increase of its rate of return in the process of unbundling transmission and distribution ("T&D") rates from generation supply rates. Duquesne's attempt is nothing more than a "backdoor" attempt to provide itself a rate increase in its restructuring proceeding and, in doing so, to evade mandatory Chapter 13 ratemaking requirements and procedures.

19. In addition to its previous arguments in its testimony and briefs, Duquesne tries a new angle by claiming that rejecting an increased return on its T&D rates, in essence, establishes a return on its transmission and ancillary service rates which improperly infringes on the FERC's jurisdiction. Such an argument, while creative, does not withstand close scrutiny.

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[13] MAPSA St. No. 1 at 25-27.

20. As evidenced by the PECO Restructuring Orders, the Commission is fully aware of the jurisdictional lines between transmission and distribution rates and that, while it has full authority to establish unbundled distribution rates, transmission rates are exclusively within the FERC's jurisdiction. Nevertheless, in order to fulfill its mandate under the Act to unbundle Duquesne's rates, the Commission must establish a distribution rate and identify, presumably based on traditional cost of service allocators, a transmission component of the rate so that an unbundled T&D rate can be identified for demonstrative purposes.

21. Ultimately, the Commission's determination of Duquesne's distribution rate will be binding and its transmission rate will be formally established by the FERC. If FERC awards Duquesne a higher rate of return for transmission rates then the realized rate of return recognized by the Commission, Duquesne's unbundled T&D rate (and unbundled generation rates) will have to be adjusted accordingly. Such an approach is the approach endorsed by the Commission in the PECO Restructuring Orders, and is a necessary approach to fulfilling the Act's mandate.[14] Furthermore, such an approach does not poach on the FERC's ratemaking authority and is completely consistent with FERC established jurisdictional lines. Duquesne's claim to the contrary seeks to "hamstring" the Commission into increasing its regulated rates in a manner prohibited by both Chapter 13 and the Act.

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[14] By way of example, in the PECO Restructuring Order at 62, the Commission identified a 2.93 cent T&D rate, but later clarified that only the established distribution rate is a firm rate determination. The final unbundled T&D rate will not be firmly established until the FERC finalizes EDC transmission rates.

E. Riders 8, 9 and 20- The Commission Should Adopt the ALJ's Finding That it is Discriminatory for Duquesne to Offer Special Discount Contracts to New Customers or Existing Customers with New Load. Reply to: Duquesne Exceptions p. 36

22. The ALJ found that all of Duquesne's existing customers who are under a special discount contract will have the opportunity to shop to meet their full generation needs no later than January 1, 2001.[15] The ALJ further found that Duquesne can acquire new customers or new load in the competitive generation marketplace; offering special discount contracts to new customers or existing customers with new load therefore constitutes discriminatory treatment which is proscribed by the Act at 66 Pa.C.S. §2804(7).[16]

23. The ALJ's conclusions are in keeping with the Commission's policy, as stated in the PECO Restructuring Order, that existing discount provisions in the tariff must be unbundled and allocated between the T&D and generation components of the service so that customers can receive discounted T&D service while continuing to shop for generation, and that "competitively priced" tariff offerings associated with generation will be eliminated as to all customers who are eligible for choice.[17] These policies should be adopted by the Commission in this proceeding so that all EDCs are fairly subject to consistent requirements.

24. As the ALJ has properly recognized, allowing Duquesne to offer special discount contracts to new customers or for the new load of existing customers is discriminatory treatment, and is therefore prohibited. The proper way for Duquesne customers to receive discounts from Duquesne is for Duquesne to unbundle special discounts for distribution so that

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15 R.D. at 605.

16 R.D. at 605.

17 PECO Order at 117-121; Enron M.B. at 31-33.

each one is available to customers, and limit the discounts to T&D services only once direct access begins. The proper way for Duquesne customers to receive discounts on generation service is to shop for discounted service from the unregulated affiliate of Duquesne or from competitive suppliers.[18]

III. CONCLUSION

Enron respectfully requests the Commission to adopt its Reply Exceptions and to issue a final restructuring order for Duquesne consistent with the foregoing discussion.

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[18] Enron M.B. at 33.

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I hereby certify that I have this day served a true copy of the foregoing document via first class mail, postage pre-paid upon the participants, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

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April 24, 1998

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PROTHONOTARY'S OFFICE

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

Dear Prothonotary:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

Enclosures
cc: Cheryl Walker Davis, Director
Office of Special Assistants

Hon. John H. Corbett, Jr.
Administrative Law Judge

Parties of Record

Mr. Brian Kalcic

DOCUMENT FOLDER

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS OF THE OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: April 24, 1998

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I. INTRODUCTION AND SUMMARY

On March 25, 1998, the Secretary of the Pennsylvania Public Utility Commission issued the Recommended Decision ("R.D.") of Administrative Law Judge ("ALJ") John H. Corbett, Jr. in this matter. The effect of the ALJ's primary recommendation would be to adopt the Restructuring Plan filed by Duquesne Light Company ("Duquesne" or "Company") provided certain modifications were made to the plan consistent with the statutory mandates of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§2801-2813 ("Competition Act"). Among the recommendations that the ALJ offers are to: (1) accept the three-year phase-in period proposed by the Company, (2) unbundle the transmission and distribution rates based upon a realized rate of return, (3) adopt the Office of Consumer Advocate's ("OCA") approach for recovering the Company's stranded costs during the transition period which sets the competitive transition charge ("CTC") so as to decline each year as forecasted market prices for the competitive generation credit ("CGC") increases during the transition, (4) adopt OCA's recommendation to allocate stranded cost responsibility to each customer class on the basis of the production allocator used in the Company's last rate case, (5) allow for a levelized rate reduction on a customer class basis calculated to fully recover stranded costs, and (6) accept the

Company's proposal to allocate universal service costs on a uniform cents per kWh basis.

The Office of Small Business Advocate ("OSBA") filed Exceptions to the ALJ's Recommended Decision on April 14, 1998. The Exceptions filed targeted specifically the issues of the timetable for the phase-in of direct retail access and the allocation of universal service costs proposed by the Company.

In these Reply Exceptions, the OSBA replies to issues concerning: (1) the correct rate of return to use when unbundling transmission and distribution ("T&D") rates, and (2) issues related to the appropriate allocation of CTC cost responsibility to rate classes. Specifically, the OSBA files these Reply Exceptions in response to the Exceptions filed by Duquesne, Hospital Shared Services and Administrative Resources, Inc. ("HSS/ARI"), Enron Power Marketing, Inc. ("Enron"), and Duquesne Industrial Intervenors ("DII"). While we do not intend to reiterate here the arguments that were set forth in our Main Brief, a summary of our position on these key issues may be helpful.

With respect to the CTC, the OSBA agrees with the ALJ's recommendation that adopts an allocation of the CTC revenue requirement to each rate class. OSBA M.B. at 18. This recommended CTC methodology could provide ratepayers with an immediate rate reduction, independent of their eligibility in the phase-in

process. Id. at 17-18. The OSBA would clarify the ALJ's recommendation as to the length of the transition period being commensurate with each class exhausting its share of the CTC responsibility.

As to Duquesne's solicited rejection of the ALJ's recommendation to use the realized rate of return when unbundling T&D rates, the OSBA agrees with the ALJ's recommendation. The OSBA recommended that the Company use a functionalized distribution revenue requirement that reflects class and system average rates of return provided by current revenues at the rate cap. OSBA M.B. at 15. The use of a realized rate of return would be consistent with the precedent set by PECO Energy[1] and comply with the Competition Act. Id.

The OSBA requests the Commission's adoption of the ALJ's recommendation that the Company: (1) implement the OCA's allocated CTC approach whereby stranded cost responsibility is assigned to each customer class based upon the production capacity allocator utilized in the Company's last rate case, and (2) unbundle its transmission and distribution ("T&D") rates based upon a realized rate of return.

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[1] Application of PECO Energy for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, et al., Docket Nos. R-00973953, P-00971265 (Order entered December 23, 1997) ("PECO Energy").

II. REPLY EXCEPTIONS

A. The Commission Should Deny Duquesne's Exception Relating To the CTC Design Applicable to Administrative Determination.

1. Length of CTC Recovery Period. Response to Duquesne Exception No. 8(b)(i).

Duquesne implies that there exists some ambiguity in the ALJ's recommendation of the length of the recovery period. Duquesne Ex. at 26-27. The Company states that the most natural reading of the ALJ's recommendation is that the CTC be calculated after subtracting the OCA's projected CGC and T&D rate from current rates under a transition period that would terminate in approximately 2003. Id. at 26. The Company, however, notes that the ALJ's reference to "levelized rate reductions" could spread out the CTC recovery period through 2005. Id. The Company implies this interpretation is not viable because it would cause rate reductions which it states the ALJ specifically did not order. Id. at 27 (Emphasis in original).

The OSBA finds the Company's argument disingenuous. It is clear that the ALJ recommends a recovery period consistent with the OCA's proposal to allocate CTC responsibility. R.D. at 838. Within that same context the ALJ states, "[t]he Commission should direct Duquesne to complete the transition period and cease collecting any CTC from its customers by December 31, 2005. Id.

The ALJ goes on to state that the Commission should adopt the OCA's recommendation to establish a levelized rate reduction. Id..

The ALJ has made statements that are clear and distinct under the concluding section of the Recommended Decision addressing the Competitive Transition Charge. The Commission should deny this Exception.

2. Class Responsibility for Stranded Costs. Response to Duquesne Exception No. 8(b)(ii), DII Exception No. 10, Enron Exception E, and HSS/ARI Exception No. 11.

The Company references its last base rate proceeding and notes that the required rate increases were applied pursuant to its proposal to spread any revenue increase across the board on a "zero fuel" basis. Duquesne Ex. at 27. The Company then states that this methodology provided each rate class with approximately the same percentage increase. Id.. The Company continues that any rate changes in this proceeding should be accomplished in a comparable manner. In other words, the Company seeks to utilize the aforementioned premise to argue that if a levelized rate is ordered by the Commission, it must be comparable for all classes. Id.. at 27-28 (Emphasis in original).

The Company's premise is baseless. First and foremost, this restructuring proceeding is **not** a rate case. The methodology proposed to spread the previous revenue increase on a zero fuel

basis to give each rate class approximately the same percentage increase is irrelevant in this proceeding.

What is relevant here is the Average and Excess ("A&E") cost methodology employed in the Company's last rate base case. It is this cost methodology that is used to unbundle rates in this proceeding -- not the "zero fuel" approach. Consistency in the overall unbundling process requires that stranded cost be allocated to customer classes according to the Company's A&E cost methodology. Equalizing rate reductions across all rate classes, as suggested by Duquesne, would be inconsistent with the A&E approach to the unbundling process.

Contrary to the assertions of Duquesne, DII, and HSS/ARI, the CTC-residual approach would **not** treat all rate classes comparably. The OSBA previously stated that under a strict CTC-residual approach, "all classes would pay CTCs equal to the full difference between their existing generation rate cap and the market generation component rates." OSBA M.B. at 18. Classes with more "space" under their existing generation rate cap would therefore pay CTCs for those classes that had less space, until the total stranded costs were recovered. Id.. Since the available margin that a class exhibits under the generation rate cap is a function of its current rates, this method would result in an interclass shift of

CTC cost responsibility which is prohibited by the Competition Act. 66 Pa.C.S. §2808(a).

In contrast, the ALJ's recommendation provides an appropriate allocation of the CTC to each customer class. This would result in the equitable allocation of stranded costs to rate classes in proportion to each class' current share of Duquesne's production-related capacity costs. This plan does not "write-up" rates for certain classes to recover revenues that are not that class' responsibility as HSS/ARI contend. HSS/ARI Ex. at 26. Nor is this plan to establish a levelized rate reduction erroneous as Enron contends. Enron Ex. 17-18. Rather, it maintains each class' relative share of production-related capacity costs by allocating the responsibility of stranded costs by customer class. Moreover, it could provide a reduction for those customers ineligible for direct access for one or two years dependent upon the timetable adopted by the Commission. Those classes with generation rate caps that can accommodate a viable CGC and a rate reduction should be entitled to both. Consequently, the arguments of HSS/ARI and Enron are misplaced.

Moreover, to the extent that the Commission adopts a levelized rate reduction, such reductions need not be comparable for all classes. The amount of the levelized rate reduction per class is a function of its existing generation rate cap, allocated CTC, and

Commission adopted generation credits. Consequently, not all classes can anticipate similar rate reductions. In fact, to require similar rate reductions for all classes would itself result in the shifting of stranded cost responsibility per class. This result is prohibited by the Competition Act. 66 Pa.C.S. §2808(a).

Further, to the extent that a class' share of CTC responsibility cannot be retired by December 31, 2005, it is reasonable for the CTC to continue for those classes as long as might be necessary. This approach would maintain equity among rate classes with respect to stranded cost responsibility and would be consistent with PECO_Energy whereby the CTC must be reconciled by rate class.

In summary, the CTC-residual methodology would not result in an allocation consistent with the Company's last rate base case, and therefore, would contravene the Commission's specific statutory mandate. See, 66 Pa.C.S. §2808(a). Accordingly, the Exceptions of Duquesne, DII, Enron and HSS/ARI should be denied.

3. Non-Shopping Customers.
Response to Duquesne Exception No. 8(b)(iii).

Duquesne asserts that if the unbundled rates adopted in this proceeding are lower than the Company's current rates, then only customers that "shop" in the direct retail access market should receive rate reductions. Duquesne Ex. at 30. The Company implies

that this approach is the only approach that would be consistent with PECO Energy. The Company's reasoning on this implication is misconceived.

In PECO Energy, the Commission used all of the available rate cap margin to establish the highest possible shopping credit. The Commission reasoned that a hefty shopping credit would spur customer choice and hence stimulate competition. This approach is not equivalent to establishing a levelized rate reduction for only shopping customers. The two scenarios compared by the Company are not equivalent.

The Company aspires to support its conclusion by attempting to make two incompatible scenarios compatible. Because the Company's initial premise is incorrect, its conclusion is necessarily incorrect. The OSBA asserts that this clarification contended by the Company should be denied.

B. The Commission Should Deny Duquesne's Exception Relating to the Use of Required Rate of Return for Unbundled T&D Rates.
Response to Duquesne Exception No. 12(a).

Duquesne excepts to the ALJ's recommendation to use "realized" rather than required rates of return for developing T&D rates. Duquesne Ex. at 33. The Company claims that adopting the ALJ's recommendation would be confiscatory and in violation of its rights to a fair return on investment. These assertions are erroneous.

The recommendation of the ALJ is neither confiscatory nor violative of the Company's right to a fair return on its investment. Duquesne's non-generation charges are capped at the rates set by the Company's last Commission approved base rate case. OSBA M.B. at 14. The Company's overall return now being earned on its rate base under current approved customer rates is 8.86%. This represents the Company's realized rate of return. Id.. To adopt the required rate of return (9.61%) as asserted by the Company would produce T&D rates that exceed the existing non-generation rate cap.

Section 2804(4) of the Competition Act states for parties that choose an alternative supplier, total charges for non-generation services shall not exceed the non-generation charges that are applicable as of the enactment date of the Act. 66 Pa.C.S. §2804(4)(I)(B). The required rate of return, since it exceeds the non-generation charges applicable as of the enactment date of the Act, violates Section 2804(4) of the Competition Act. The OSBA urges the Commission to reject Duquesne's Exception on this issue and to adopt the recommendation of the ALJ.

III. CONCLUSION

Based upon the foregoing, the Office of Small Business Advocate recommends that the Commission adopt the Recommended Decision of Administrative Law Judge John H. Corbett with respect to the ALJ's recommendation concerning: (1) the allocation of CTC cost responsibility to customer classes consistent with the discussion contained herein, and (2) the unbundling of the Company's transmission and distribution rates utilizing a realized rate of return.

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Date: April 24, 1998

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

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April 24, 1998

VIA HAND DELIVERY

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

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

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions of the Duquesne Industrial Intervenors ("DII") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties are being duly served with the exceptions. Please date stamp the extra copy of this letter and return it for our filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK

By Pamela C. Polacek
Pamela C. Polacek

Counsel to the Duquesne Industrial Intervenors

PCP/clc
Enclosures
c: Administrative Law Judge John H. Corbett, Jr. (via Federal Express on 4/23/98)
Cheryl W. Davis, Office of Special Assistants (w/diskette) (via hand delivery)
Certificate of Service

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET. AL.	:	
v.	:	
	:	DOCKET NO. R-00974104
DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE	:	

REPLY EXCEPTIONS OF THE
DUQUESNE INDUSTRIAL INTERVENORS — COMPLAINANTS

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J&L Specialty Steel, Inc.
LTV Steel Company, Inc.

Nabisco Inc.
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Dated: April 24, 1998

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I. INTRODUCTION

On April 14, 1998, parties in this proceeding submitted to the Pennsylvania Public Utility Commission ("PUC" or "Commission") Exceptions to Administrative Law Judge John H. Corbett, Jr.'s, Recommended Decision ("R.D."). The Duquesne Industrial Intervenors ("DII"), a party to this proceeding, filed with the Commission and served on all parties of record its Exceptions ("DII Exc."). DII received Exceptions from the following parties:

- Duquesne Light Company ("DLC" "Duquesne" or the "Company")
- Office of Consumer Advocate ("OCA")
- Office of Trial Staff ("OTS")
- PECO Energy Company ("PECO")[1]
- The Environmentalists
- Hospital Shared Services and Administrative Resources, Inc. ("HSS/ARI")
- Enron Power Marketing, Inc. ("Enron")
- Pennsylvania Retailers' Association
- Mid-Atlantic Power Supply Association
- International Brotherhood of Electrical Workers

Pursuant to the established procedural schedule and 52 Pa. Code § 5.535, DII hereby files these Reply Exceptions. DII responds to multiple parties, including, but not limited to, DLC. In addition, to the extent any other party's Exceptions conflict with the positions taken in DII's Main or Reply Briefs, as well as DII's Exceptions, DII reaffirms its position on those issues.

As a preliminary matter, DII notes that, unlike most parties, the Company's Exceptions do not fully comport with the Commission's requirement that exceptions concisely state the finding or conclusion of the R.D. to which the party excepts. See 52 Pa. Code § 5.533(b). In addition, many

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[1]The Commission recently adjudicated the restructuring filing submitted by PECO. See Pennsylvania Pub. Util. Comm'n v. PECO Energy Company, Docket Nos. R-00973953 & P-00971265 Opinion and Order entered Dec. 23, 1997, 181 PUR 4th 517 ("PECO Restructuring Order"), Opinion and Order on Reconsideration entered on Jan. 16, 1998 ("PECO Reconsideration Order"), Opinion and Order on Revised Compliance Filing entered on Feb. 26, 1998 ("PECO Restructuring 2/26/98 Order").

of the Company's assertions are for "*clarification*" or some action other than modification of the R.D. As a result, it is often difficult to determine which portions of the R.D. Duquesne excepts to. DII attempts to restate these those portions prior to responding.

In addition, the Company submits with its Exceptions various tables and charts. DII expresses concern regarding the Company's interpretations of the R.D. DII urges the Commission to use extreme caution in adopting the Company charts.[2]

By way of further example, DII notes the inability of the revised DJC-10 to fully explain the ALJ's recommendations on the various sub-issues regarding the stranded cost calculation. For example, rather than depicting the recommended net book value at $917.61 million (R.D. at 175) and then containing a line item adjustment to exclude the cold reserve units (id.), DJC-10 aggregates the adjustments into a single revised net book value of $848.55 million. Although this calculation may be accurate, DII urges the Commission to more fully reflect all of the ALJ's recommendations in its summary tables that may accompany the Final Order in this proceeding. Only by taking a step-by-step analysis can the Commission be assured it has fully reflected all relevant recommendations.

Further, DII believes the Company misinterprets the ALJ's recommendations regarding the present value of the Beaver Valley 2 lease expense and the unamortized debt costs regulatory asset. The R.D. clearly states that $475.57 million should be included for the BV2 lease. R.D. at 175. This equates to $278.24 million net of deferred taxes. See DLC Exc., Appendix B, Revised Ex. No. DJC-10. The OCA recommendation of $300.35 million (net of deferred tax) should not be included. In

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[2] For example, DII notes the Company's inclusion of $61.53 million of working capital, purportedly based on the summary of recommendations in the R.D., despite no discussion of the issue in the text of the R.D. See DLC Exc., Appendix B, Revised Ex. No. DJC-10.

addition, the ALJ specifically adopts the OCA treatment of the unamortized debt cost regulatory assets, which are $18.67 million (post-2005) and $9.61 million (pre-2005). R.D. at 361 (ALJ recommendation) & 356 (OCA position).

DII takes no position on the additional tables appended to the DLC Exceptions presumably for illustrative purposes. DII fully reserves its right to comment on and object to any similar calculations submitted in the Company's compliance filing.

II. REPLY EXCEPTIONS

A. DII Reply to Duquesne Exception 1.a: Immediate Auction — Obligation to Serve.

Duquesne requests "clarification" that the Company should submit the plan regarding its continued obligation to serve after completion of the generating asset auction. DLC Exc. at 5-6. DLC states "the Judge was not clear, however, on when that plan would be submitted." Id. at 5.

DII asserts the Company's request to delay submission of the plan does not comport with the ALJ's intentions and is otherwise undesirable. The ALJ clearly intends the plan to be submitted with the plan for divestiture so that "[a]ll interested parties should have an opportunity to respond to either or both proposals." R.D. at 159 & 832. Identical language is used in both the discussion and summary sections of the R.D. The Company should also submit a plan when it files its final CTC calculation using the market values produced by the auction. R.D. at 160 & 832. In other words, the ALJ recommends two plans be filed.

DII asserts the more important of the two filing dates is the first plan. The manner in which DLC proposes to handle its continuing obligation to serve must be addressed by the parties and the Commission as soon as possible. One of the possible "solutions" that DLC suggests regarding its

obligation to serve is the elimination of customers' right to return to service under the rate cap. See DII M.B. at 43-44. DII is troubled by this attempt to undermine one of the central consumer protections in the Act. Id. Despite extensive DII argument regarding this issue (see DII M.B. at 43-44; DII R.B. at 17), the ALJ fails to specifically address the possible elimination of the right to return to service under capped rates; instead, the ALJ defers this issue until Duquesne submits its formal plan for addressing its continued obligation to serve. This critical issue must be addressed as quickly as possible to prevent any negative impacts that continued uncertainty regarding the ability to return to rate cap service may have on the development of the competitive market. Customers cannot make a fully informed choice regarding whether to leave bundled service until they know whether the rate cap protection will remain intact. DII respectfully requests that this issue be addressed by the PUC as quickly as possible.

DII respectfully requests that the DLC exception be denied. The ALJ clearly contemplates the Company submitting two proposals regarding its obligation to serve. In the alternative, DII submits the earlier of the two specified dates for filing this plan (i.e., filing with the auction proposal 90 days after entry of the Commission's Final Order) is more desirable to expedite consideration of this critical issue. The DLC proposal as set forth in its exception should be denied.

B. DII Reply to Duquesne Exception 1.b: Immediate Auction — Timing of Auction.

The R.D. states that divestiture of DLC's generating assets "should occur within 18 months of entry of the Commission's Final Order disposing of this application." R.D. at 159. DLC seeks

to "clarify that there is no 'requirement' that an auction be completed within 18 months." DLC Exc. at 7. Because this request is patently contrary to the ALJ's recommendation, DII construes this as an exception.

The DLC exception must be denied. The ALJ is correct. The asset auction must be accomplished as quickly as possible to establish a definitive level of stranded cost responsibility. This level must be established prior to the start of phase-in to enable customers to make rational supply choices with full cognizance of CTC levels. See DII M.B. at 39-43 (explaining why DLC's delayed valuation proposals harm the development of statewide competition). The Commission's final vote on the DLC restructuring proceeding and the Allegheny Power/DLC merger proceeding is tentatively scheduled for May 21, 1998. The Final Order should be issued shortly thereafter. The 18 month limitation placed in the R.D. will enable the auction (and a definitive stranded cost total) to be determined at or around January 1, 1999, which is the beginning of the first stage of phase-in.

Only an immediate auction satisfies the dictates of the Act; only an immediate auction balances the interests of all parties. The 18 month requirement for completion of the DLC generating asset divestiture must be maintained. DII urges the PUC to deny the DLC exception.

C. DII Reply to Duquesne Exception 1.c: Immediate Auction—Interim CTC.

DLC seeks "clarification" that the ALJ accepts its proposal to defer revenue losses associated with market and customer participation credits that will be carried forward from the pilot program into the interim CTC pending the results of the asset divestiture. DLC Exc. at 7-8. DLC seeks to recover these revenue losses thru the final CTC. Id. DLC asserts that inclusion in the final CTC is an integral part of its asset divestiture proposal that was not addressed by the R.D. Id. Consequently, DLC seeks clarification that the ALJ approved the proposal.

DII submits the DLC clarification should be rejected. The absence of discussion or recommendation regarding the deferral of revenues losses equates to rejection of the proposal by the ALJ. No clarification is necessary. The DLC request for clarification should be denied.

D. DII Reply to Duquesne Exception 2.b.i: Final Valuation — Exceptions — Timing of Valuation.

The R.D. recommends that the market value of Duquesne's generating units be established by immediate divestiture (if the merger is not consummated) or the OCA market value analysis (if the merger is consummated or the divestiture does not occur within 18 months of the Final Order). R.D. at 159-60 & 272-73. DLC excepts to the ALJ's rejection of its delayed valuation approach. DLC Exc. at 10. DII submits that the DLC exception should be denied.

As DII explains fully in its Main and Reply Briefs, the arguments advanced by DLC to illustrate the lack of factual basis for rejection of the delayed valuation proposal are misguided. DII M.B. at 30-35; DII R.B. at 14-19. First, contrary to DLC's assertion (DLC Exc. at 10) no assurance exists that better market evidence to establish asset value will exist in 2003. DII R.B. at 16. In addition, to the extent DLC is implying that this "better evidence" would be reviewed by an arbitration panel to administratively determine stranded cost, grave due process concerns exist. See DII M.B. at 41-42.

Second, whether DLC will continue to be recovering stranded costs in 2003 is irrelevant to whether a one-time determination of stranded costs is required in this proceeding. See DII R.B. at 16-17. The Act governs the establishment of stranded cost recovery. No portion of the Act permits

special treatment for a company that can purportedly "prove" it will still be recovering stranded costs until 2003. The Act requires that the Commission establish the level of stranded costs that will be recoverable by each utility as part of its restructuring proceeding.

Third, DLC's "continuing obligation to serve under the rate cap" is a requirement placed on all utilities for the period of stranded cost recovery. See 66 Pa. C.S. 2804(4). The rate cap is a central consumer protection that is a quid pro quo for stranded cost recovery by utilities. DII R.B. at 17; DII M.B. at 43-44. The existence of the rate cap does not eviscerate the necessity of a one-time determination of stranded costs in this proceeding.

Fourth, contrary to the DLC assertion (DLC Exc. at 10), the Act clearly requires a one-time valuation of stranded costs be made as a part of this proceeding. DII M.B. at 31-33; DII R.B. at 16-17. DII addresses this issue in detail in response to the OTS Exception D, infra.

Fifth, establishing DLC's stranded costs as part of this proceeding benefits customers by providing a certain answer to one portion of the electricity purchasing equation (i.e., the CTC component). By knowing the CTC for each year of the transition period, customers can better decide whether to enter the market to take advantage of a particular price offer or to refuse the offer and remain on bundled service because the price plus the CTC will exceed the bundled, capped price charged by DLC. DII M.B. at 40-41. Furthermore, certainty regarding the stranded cost projection is not enhanced by the delayed valuation proposal; it is no more certain that a delayed valuation conducted by an arbitration panel will be accurate than it is certain that the DII or OCA market price forecasts will be inaccurate. DII R.B. at 15-16.

The five reasons advanced by DLC in its Exceptions to the ALJ's rejection of the delayed valuation proposal are inaccurate and misplaced. DII respectfully submits that the DLC exception should be denied.

E. DII Response to OTS Exception D: One-Time Determination of Stranded Costs.

The OTS excepts to the failure of the ALJ to "specifically conclude that a one-time administrative determination of stranded costs is not required at this time under the Act." OTS Exc. at 14-16. OTS also excepts to the failure to adopt the Company's delayed valuation proposal. Id. DII submits both exceptions must be denied.

The Act clearly contemplates a one-time determination of stranded costs in this proceeding. DII M.B. at 30-35 & 39-43; DII R.B. at 16-17. As DII states in its Reply Brief, the following reasons, at a minimum, support a one-time assessment:

- The definition of stranded cost requires generation-related costs to be netted in determining stranded costs. 66 Pa. C.S. § 2803. It is impossible to net Duquesne's potential stranded costs if one component of stranded costs is not quantified.

- The definition of stranded cost states that such costs are to be determined "as part of the restructuring plan." Id. The Commission will not be reviewing Duquesne's restructuring plan in 2001-2003.

- The definition of stranded cost requires that such cost be mitigated. Id. The Commission is required to look at both retrospective and prospective mitigation by the Company. Id. §§ 2808(4) & (5). The Commission cannot fulfill its duty to ensure that such costs are mitigated in order to produce a just and reasonable level to recover from ratepayers unless a definitive level of stranded cost is determined as part of this proceeding.

- The Commission cannot perform its duty to ensure that stranded cost recovery is "just and reasonable" unless a definitive determination of total stranded costs is made as part of the restructuring proceeding. See id. §§ 1301, 2802(15), 2804(13), 2804(14) & 2808(c)(3).

- The Commission cannot fulfill its duty under the Act to perform a yearly reconciliation of the CTC revenues (Id. § 2808(f)) unless a definitive level of stranded cost is established as part of this proceeding.

- Delaying determination of stranded costs does not adequately balance the interests of ratepayers and the Company, in violation of Section 2802(8). Id. § 2802(8).

- Delaying determination of a definitive level of stranded cost is unfair and equitable to Duquesne's ratepayers because other ratepayers in the Commonwealth have been granted such certainty as to stranded cost responsibility. Id. § 2802(8).

- Delaying determination of Duquesne's stranded cost will hinder the development of the competitive market, in contravention of the goals of the Act. Id. §§ 2802(4)-(7).

DII R.B. at 16-17. The OTS argument that a one-time determination of stranded costs is not necessary is clearly in error. DII further addresses the reasons to maintain the ALJ's recommendation against delayed valuation in response to Duquesne Exception 2.b.i., supra. DII submits the OTS exceptions on this issue should be denied.

F. DII Reply to Duquesne Exception 2.b.ii: Final Valuation — Exceptions — The RFP.

DLC excepts to the ALJ's recommendation against the Company's proposal to use an annual RFP to establish the annual shopping credit. DLC Exc. at 10-12. DLC cites two reasons why the ALJ rejects its proposal. Id. Regardless of the validity of DLC's explanation, DLC fails to cite or address the more pervasive flaws that caused the ALJ to reject the proposal out of hand.

The R.D. states "the RFP proposal has received a great deal of justified criticism from every party to this case and no need exists here to reiterate those criticisms." R.D. at 554. One of those justified criticisms is DII's explanation of the detrimental effects that will result from not fixing annual CTC charges for each year of the recovery period as a part of this proceeding. DII M.B. at 78-80. The Company has not, and can not, justify this proposal. DII submits that the DLC exception should be denied.

G. DII Reply to Duquesne Exception 4.a: Administrative Determination of Market Value — Market Price Forecasts.

DLC excepts to the ALJ's reliance on the OCA market price forecast. DLC Exc. at 13-14. Duquesne appears to state that the Commission should rely on Mr. Schnitzer's flawed market price analysis instead of Mr. Smith's use of the ENPRO model. Id. at 14. DLC also faults Mr. Smith's inclusion of a reserve requirement in his forecast. Id.

The DLC arguments are misguided and must be rejected. As DII explains in its Exceptions, the OCA analysis is a reasonable forecast of future market prices in the DLC region. DII Exc. at 5-6. Comparison to DII's forecast illustrates the reasonableness of OCA's forecast. Id. Particularly significant is the need to maintain continuity throughout the various restructuring proceedings through the use of the ENPRO model to forecast prices. Id. Thus, the Commission's adoption of the OCA analysis in the PECO proceeding is relevant here. Adoption of the OCA forecast is reasonable.

In addition, as DII explains fully in its Main Brief, reserve requirements should be included in a forecast in order to ensure the market can meet anticipated levels of customer demand for reliability. DII M.B. at 37. Thus, OCA does not err by including a reserve margin in its forecast.

The DLC criticisms of the OCA market price forecast are baseless and should be rejected. The DLC exception should be denied.[3]

[3]HSS/ARI also excepts to the ALJ's reliance on the OCA market value analysis. HSS/ARI Exc. at 17-20. DII's arguments apply with equal force to that exception. The HSS/ARI exception should be denied.

H. DII Reply to Duquesne Exception 4.d: Administrative Determination of Market Value — Environmental Regulations.

DLC excepts to the ALJ's recommendation to not issue a finding that recent environmental proposals will add significantly to Duquesne's costs. DLC Exc. at 17. The DLC exception must be denied. As DII explains in its Reply Brief, the Company never challenged the other parties' projections on this issue. DII R.B. at 24. In addition, the adoption of the Kyoto Accords by the U.S. Senate is uncertain. Id. Furthermore, the net effect of the Accords on revenues, if adopted by the Senate, is uncertain. Id. The DLC exception is without merit and should be denied.

I. DII Reply to Duquesne Exception 5: Merger Savings.

DLC excepts to the ALJ's consideration of the merger savings as an offset to stranded costs. DLC Exc. at 17. As DII explains in its Main Brief, fairness and equity require the savings to be credited against stranded cost recovery. DII M.B. at 47. In addition, DLC was the party to interject the issue by submitting direct testimony claiming savings that can be realized from the merger. DII R.B. at 25. For these reasons, the DLC exception should be denied.

J. DII Reply to Duquesne Exception 6.b: Decommissioning — Fossil.

DLC excepts to the ALJ's recommendation to deny recovery as a stranded cost for future fossil decommissioning costs. DLC Exc. at 18-19. DLC attempts to distinguish consideration of this issue from the Commission's proper denial of an identical claim made by PECO. Id. (citing PECO Restructuring Order, slip op. at 92). This exception is without basis and should be rejected.

As DII explains fully in its Main and Reply Briefs, no legitimate distinction can be made on this issue between DLC's claim and PECO's claim; i.e, both are not "stranded costs" under the Act because neither claim is not "known and measurable" or typically recoverable in a regulated

environment. DII M.B. at 49-50; DII R.B. at 26. DLC's remark that ALJ Kashi has recommended recovery for these costs in the PP&L proceeding is irrelevant (DLC Exc. at 19); the only Commission precedent is the denial of PECO's identical claim. The DLC exception should be denied.

K. DII Reply to Duquesne Exception 7.a: Regulatory Assets — Deferred Coal Costs.

DLC excepts to the ALJ's denial of recovery for a "Deferred Coal Cost" regulatory asset. DLC Exc. at 19-20. The Company deferred these costs pursuant to a settlement permitting recovery of the costs if they ever fell below market-based caps. See DII M.B. at 60-61; DII R.B. at 29-30. The Company claims the caps in the settlement are "cost-based caps." DLC Exc. at 19-20. As DII explains in its Reply Brief, the Company submits no additional evidence to support its interpretation of the settlement. DII R.B. at 29-30. The Company fails to satisfy its burden to prove the costs were typically recoverable in the regulated environment. Id.

In addition, the Act does not permit recovery for costs deemed, in the past, to be excessive and "disallowed by the Commission as imprudently incurred." DII M.B. at 60-61 (citing 66 Pa. C.S. § 2803). Duquesne was previously denied recovery of the costs because those costs were excessive. Id. The Company does not address this valid reason to deny recovery of the deferred coal costs as a stranded regulatory asset in this proceeding. DII submits the DLC exception should be denied.

L. DII Reply to Duquesne Exception 7.b: Regulatory Assets — Deferred Caretaker Costs.

DLC excepts to the ALJ's denial of recovery for a "Deferred Caretaker Cost" regulatory asset associated with the Brunot Island and Phillips plants. DLC Exc. at 20. As DII explains fully in its Main Brief, the regulatory asset is improper because Duquesne would not be able to recover the

costs, in the regulated environment until it returned the plants to operation. DII M.B. at 61-62. Thus, the costs do not meet the definition of "stranded cost" in the Act. See 66 Pa. C.S. § 2803. Consequently, the DLC exception must be denied.

M. DII Reply to Duquesne Exception 7.c: Regulatory Assets – SFAS 106.

DLC excepts to the R.D.'s denial of recovery for a "SFAS 106" regulatory asset. DLC Exc. at 20-21. DLC argues that the fact that suppliers in the competitive market will also be subject to SFAS 106 is irrelevant. Id. DLC asserts that no future operating costs would be recoverable under this standard. Id.

What DLC omits, however, is a discussion of the concept that stranded cost recovery is only available for the portion of future operating costs not compensated for by the future market prices. If all suppliers face a comparable cost, market prices will adjust to recover that comparable cost. DII M.B. at 66. SFAS 106 is one such cost. Importantly, the DLC exceptions do not deny that competitors will be subject to SFAS 106 obligations. See DLC Exc. at 20-21.

In addition, the SFAS 106 costs are not "net" because they are included in other portions of the Company's stranded cost claim. Id.; DII R.B. at 31-32. Furthermore, the accounting treatment of the costs will reverse in the future, fully compensating DLC for the costs. Id.

The DLC exception is without merit and should be denied.

N. DII Reply to Duquesne Exception 8.b: CTC Design Applicable to Administrative Determination.

Considerable confusion exists regarding the ALJ's recommendation for establishing Duquesne's competitive transition charge. See DLC Exc. at 23-30; Enron Exc. at 16-25; OCA Exc. at 3-10; DII Exc. at 19-21. DII asserts that the methodology must be clarified. DII Exc. at 19-21.

Specifically, DII respectfully submits that the DII proposed methodology is fully consistent with the Act and should be adopted. In addition, the DII methodology will promote development of the competitive market. Furthermore, to the extent the ALJ intended to adopt OCA's proposal, DII submits the proposal violates the rate cap and anti-cost shifting provisions of the Act. DII M.B. at 80-83 & 86-87. The Commission should clarify this issue consistent with the DII comments.

O. DII Reply to Duquesne Exception 12.a: Transmission and Distribution Rates — Realized Rates of Return.

DLC excepts to the R.D.'s mandate that the Company's transmission and distribution rates be established using a "realized" (as opposed to "required") rate of return. DLC Exc. at 33-34. The Commission should deny this exception.

As DII explains in its Briefs, the Company must establish transmission and distribution rates in this proceeding by unbundling the rates in effect as of January 1, 1997. DII M.B. at 10-12; DII R.B. at 5-7. Unbundling the rates on a "required" return, rather than "realized" rate of return, changes the rates in effect on January 1, 1997, and shifts costs between customer classes and between the generation and transmission/distribution components. Id.

This cost shifting is clearly prohibited by the Act and violates the rate cap. 66 Pa. C.S. §§ 2808(a), 2804(7) & 2804(4)(i). Consequently, the proposal must be rejected. DII requests the Commission deny DLC's exception regarding transmission and distribution rates.

P. DII Reply to Duquesne Exception 12.b: Transmission and Distribution Rates — Ancillary Services.

DLC excepts to the ALJ's recommendation that ancillary service costs be included in generation rates. DLC Exc. at 34-35. DLC attempts to cloud the issue by raising the specter of jurisdictional disputes. Id. DII submits the exception should be denied. The Commission should

not be diverted from the fundamental issue: ancillary services are generation costs that should properly be included in generation rates in the unbundling process. DII M.B. at 14-17; DII R.B. at 7-8. The Company's exception should be denied.

Q. DII Reply to Duquesne Exception 13.a: Special Customer Classes — Rule 4 Contracts.

DLC excepts to portions of the ALJ's recommendation regarding Rule 4 contracts. DLC Exc. at 35-36. Importantly, DLC does not except to the finding that Rule 4 contracts must be unbundled. See id. DLC excepts to modifying the contracts to "require full payment of the CTC, while providing a comparable dollar value offset on the regulated transmission, distribution, or generation rates." Id. at 35. DLC proposes instead to extend the CTC recovery period for customer classes that cannot meet their allocated share of stranded costs before 2005. Id. DLC claims that Rule 4 contract customers are one class that will need an extended recovery period.

DII submits the DLC exception must be denied. DII agrees that the situation as explained by DLC is a valid illustration of the faults of an allocated CTC methodology because of the uncertainty and confusion created regarding the allocated responsibility for certain customer classes. See DII M.B. at 80-83. In addition, the DLC exception highlights the inequity of determining the end of stranded cost recovery on a customer class basis. Moreover, any possible extension must be accompanied by concurrent extensions of the contract itself and the rate cap protections. See DII M.B. at 72-73.[4] Notwithstanding these points, the DLC request to modify the R.D. must be denied.

[4]This necessity of extending the rate cap applies equally to any customer class that may be forced to pay stranded cost beyond the statutory recovery period. See DLC Exc. at 28-29 & n.22.

First, no jurisdictional dispute exists. The contracts entered into by Duquesne have already discounted its transmission rates unless the contract specifies the discount is for the generation only.

Second, DLC misinterprets the PECO precedent and the ALJ's recommendation (which follows that precedent) regarding the unbundling of special contracts. See DLC Exc. at 35-36. Special contracts are to be unbundled with the discount that the customer receives spread across all unbundled elements, including the CTC. PECO Restructuring Order, 181 PUR 4th at 570; See also DII M.B. at 89-90. If the customer selects an alternative supplier, the customer retains the discounts on all other unbundled rate elements, including the CTC. PECO Restructuring 2/26/98 Order, slip op. at 13. Implementing the unbundling and "opportunity to shop" portions of the PECO order in any other manner violates the Act's anti-cost shifting and rate cap provisions. Id.

The simple unbundling of the special contract with a portion of the discount assigned to the CTC does not result in the customer bypassing full payment of the CTC. To the extent the Duquesne exception rests on this assumption, the Company's exception is clearly wrong. See DLC Exc. at 35-36. The CTC properly allocable to special contract customers is the embedded unbundled CTC component in the contract. The PECO revised compliance filing order makes clear that customers on special contracts are responsible only for the embedded unbundled CTC for the contract. PECO Restructuring 2/26/98 Order, slip op. at 13. Forcing the special contract customer to pay a higher CTC based on the premise that over the entire recovery period the customer should compensate the Company as if the customer was not taking service on a special contract is a violation of the Act's rate cap. 66 Pa. C.S. § 2804(4)(i). The customer will be forced to pay charges higher than those in effect for its customer class on January 1, 1997. In addition, the DLC proposal is an inter-class cost shift in the recovery of stranded costs, which is prohibited by the Act. Id. § 2808(a). This

overcompensation is unlawful and shifts costs to special contract customers. Any contrary interpretation of the Act, the PECO precedent or the R.D. should be rejected. The DLC exception should be denied.

R. DII Reply to OCA Exception No. 6: Clarification on Rule 4 Contracts.

OCA requests clarification regarding the stranded cost liability associated with customers on Rule 4 contracts. OCA Exc. at 20-21. Specifically, the OCA requests clarification ensuring that, if an allocation of stranded cost results in a CTC that violates the generation rate cap for Rule 4 customers, the Company must forgo those revenues unless, for good cause shown, it requests and is granted a longer CTC recovery period. Id. at 20.

OCA appears to misconstrue the PECO precedent, which was adopted by the ALJ to control the unbundling and CTC liability of special customer classes. R.D. at 595-99.[5] As DII explains in response to DLC Exception 13.a., supra, special contracts are to be unbundled with the discount spread across every unbundled rate element, including the CTC. PECO Restructuring Order, 181 PUR 4th at 570; See also DII M.B. at 89-90. The Commission in the PECO proceeding makes clear the proposition that customers on special contracts are responsible for only the embedded unbundled CTC in each contract. PECO Restructuring 2/26/98 Order, slip op. at 13. To the extent the OCA clarification would endorse the possible extension of CTC recovery, the clarification should be denied.

[5]The R.D. uses almost identical language as that in the PECO Order. See PECO Restructuring Order, 181 PUR 4th at 570-72.

S. DII Reply to PECO Exception A: Timetable for Phase-in.

PECO states that it participates in this proceeding "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." PECO Exc. at 1. DII agrees with PECO that consistent decisions by the Commission on critical issues are necessary to create a level competitive playing field throughout the Commonwealth for all market participants; however, PECO's approach on some issues, including the timetable for phase-in, is to suggest the Commission seek a remand of the record in the PECO Commonwealth Court appeal to modify the PECO decisions in order to conform with the ALJ's recommendations from this proceeding. PECO Exc. at 2-3.

DII respectfully requests the Commission deny this attempt to amend the Commission decision in the only restructuring proceeding decided to this date. The Commission fully considered this issue in the PECO proceeding and correctly determined the accelerated phase-in schedule was permissible and preferable under the Act. DII M.B. at 8-9; DII R.B. at 4-5 The logical manner for the Commission to institute the necessary consistency on this issue is to modify the ALJ recommendations to comply with the Commission precedent. See DII Exc. at 2-4. The PECO attempt to relitigate this issue must be rejected.

T. DII Reply to PECO Exception B: Fossil Decommissioning.

PECO also attempts to relitigate the Commission precedent established in its restructuring proceeding regarding recovery of future fossil decommissioning costs. PECO Exc. at 3. DII asserts the ALJ correctly treated the PECO decision as binding precedent on this issue. As DII explains in its reply to Duquesne Exception 6.b., supra, the Commission correctly held in PECO that future

fossil decommissioning costs are not recoverable as "stranded costs" under the Act. The prudent Commission action is to consistently apply this precedent and deny the DLC (and PECO) exceptions on the issue.

U. DII Reply to Enron Exception D: Voltage Differentiated Rates.

Enron excepts to the ALJ's rejection of its voltage differentiated rate proposal. Enron Exc. at 15-16. Enron claims the ALJ errs in determining that the proposal shifts costs or violates the rate cap. Id. at 15. As DII explains it its Reply Brief, Enron has not sufficiently demonstrated that cost-shifting will not occur. DII R.B. at 8. Enron's observation that "it is extremely unlikely that any customer would pay" rates that exceed the rate cap (if such rates result from adoption of its proposal) does not demonstrate compliance with the caps. See Enron Exc. at 15. In addition, Enron does not sufficiently address the potential for cost shifting under its proposal. See id. at 15-16. DII submits the Enron exception should be denied.

V. DII Reply to OSBA Exception 2: Universal Service Cost Allocation.

The OSBA excepts to the R.D.'s conclusion that DLC's proposed allocation of universal service costs is consistent with the allocation in the Company's last base rate proceeding. OSBA Exc. at 8-12. Although the OSBA agrees that conceptually the allocation should remain consistent, the OSBA provides tables and calculations purportedly illustrating that factually the Company does not comply with this principle. Id. OSBA cites a change in the percentage of these costs allocated to the residential class from 83.2% in the last base rate proceeding to 46.8% in this proceeding. Id. at 10.

DII concurs with the position that universal service costs must be allocated to customer classes consistent with the allocations produced in the Company's last base rate proceeding. DII M.B. at 96-98; DII R.B. at 47-48. DII has not, however, examined the OSBA calculations in detail. Consequently, DII cannot affirmatively support or oppose the OSBA statement that factually the Company has not allocated universal service costs consistent with allocations of those costs in the last base rate proceeding.

W. DII Reply to OTS Exception G: Universal Service Cost Allocation.

The OTS also excepts to the R.D.'s conclusions regarding allocation of universal service costs. OTS Exc. at 19-21. OTS recommends that universal service costs be collected through a flat $1.85/month per customer charge. Id. at 19. Although DII does not affirmatively support the OTS proposal, DII acknowledges the merit of the concept on which the proposal is based (i.e., avoidance of a disproportionate impact or penalty on high volume electricity users).

X. DII Reply to Environmentalists Exception 23: Environmental Comparability Requirement.

The Environmentalists except to the ALJ's recommendation to not address environmental comparability requirements in this proceeding. Environmentalists Exc. at 11-12. The ALJ states the issue is "not strictly required by the Act" to be addressed in this proceeding or "inappropriate for consideration." R.D. at 828. DII agrees with the recommendation; these issues are better addressed through specific legislation or a generic proceeding before the Commission. In addition, uniform environmental requirements may hinder the development of a robust competitive environment. DII R.B. at 49. Consequently, the Environmentalists' exception should be denied.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request the Commission's Final Order in this proceeding incorporate the DII positions as explained in the DII testimony, Main Brief, Reply Brief, Exceptions and Reply Exceptions. In addition DII requests the Commission deny the exceptions of the parties as explained above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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Dated this 24th day of April, 1998, in Harrisburg, Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
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ORIGINAL

IRWIN A. POPOWSKY
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April 24, 1998

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PROTHONOTARY'S OFFICE

James J. McNulty, Secretary
Secretary Bureau
Pennsylvania Public Utility Commission
Room B-20, North Office Building
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Harrisburg, PA 17105-3265

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

Dear Secretary McNulty;

Enclosed please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

Copies of this document have been served on all parties of record as shown on the attached Certificate of Service.

Sincerely,

Marisa A. Sifontes

Marisa A. Sifontes
Assistant Consumer Advocate

Enclosure
cc: All parties of record
Honorable John H. Corbett, Jr. (Via overnight mail)
Office of Special Assistants

DOCUMENT
FOLDER

BEFORE THE
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

OFFICE OF CONSUMER ADVOCATE'S
REPLY EXCEPTIONS

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I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS

Exceptions to the Recommended Decision (R.D.) of Administrative Law Judge ("ALJ") John H. Corbett in this proceeding were filed on April 14, 1998. The OCA now files these Reply Exceptions in response to Exceptions presented by Duquesne Light Company ("Duquesne" or "Company") and certain other parties to this proceeding.

In its Exceptions, Duquesne emphasizes its agreement with the ALJ's recommendation to accept Duquesne's proposed auction of its generating assets as a means of establishing stranded costs in the event the merger with Allegheny Power Systems (APS) is not consummated. However, Duquesne continues to press its proposal for a "final valuation" of stranded costs in 2003 if the merger is consummated. As discussed in both OCA's and Duquesne's Exceptions, the ALJ's recommendations with respect to the manner of recovery of stranded costs in the event of a merger need to be clarified because of some apparent inconsistencies. In particular, OCA submits that, for numerous reasons, the "final valuation" proposal must be rejected.

Even more important, however, is that the Commission ensure that the benefits of restructuring will be flowed through to all ratepayers, not just to those who are able to, and choose to, select an alternative generation supplier. OCA submits that failure to pass through the benefits of restructuring to all ratepayers is contrary to the objectives of the Electric Choice and Competition Act and would result in windfall profits to the Company even while it is being provided with significant stranded cost recovery ($1.02 billion under OCA's recommendation) because of its uneconomic generating resources. Furthermore, OCA submits that its proposed 16.9% rate reduction is a key element of restructuring for Duquesne in light of the Company's extremely high rates.

OCA would also wishes to make clear its view that if Duquesne does proceed to auction its assets, that the rate cap is still applicable during the CTC recovery period.

II. REPLY EXCEPTIONS

REPLY NO. 1: Obligation to Serve Under the Rate Cap (DLC Exc. at 5-6)

The OCA submits that it is necessary for the Commission to provide clarification regarding Duquesne's obligation to serve its customers at rates that are within the statutory rate cap. In its Exceptions, the Company seems to be suggesting that it will submit a plan regarding its continuing obligation to serve following an auction of its generation assets.[1] DLC Exc. at 5. Duquesne appears to suggest that it will not provide this service to its customers under the provisions of the rate cap, or that such a determination should be made at that time. The OCA requests that the Commission make clear that Duquesne's obligation to serve its customers is inextricably linked to the Company's recovery of a CTC, regardless of whether or not its generation assets are sold. See 66 Pa. C.S. §2807(e)(1). Therefore, if the Company wants to collect a CTC, it also retains the obligation to serve at rates that are within the statutory rate cap. The Commission should clarify that if the Company is collecting a CTC, the rate caps in Section 2804(4) of the Act apply for the statutory period. 66 Pa. C.S. §2804(4).[2] The OCA submits that these obligations are contained in the Act and should be clarified by the Commission, so there is no confusion regarding Duquesne's obligation to serve within the parameters of the rate cap.

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[1]OCA assumes that in this section of its Exceptions Duquesne is addressing its proposal for a complete divestiture of its generating assets as presented in its Rebuttal Testimony and modified in its Rejoinder Testimony. As OCA has previously indicated, if divestiture is the approach taken, the Company will need to provide a detailed and acceptable plan. See OCA St. 1-R at 4-5.

[2] The generation rate cap expires at the end of 2005 or at the completion of CTC recovery, whichever happens first.

REPLY NO. 2(b)(i): Duquesne's "Final Valuation" Proposal Should Be Rejected. (R.D. at 555-57; DLC Exc. at 10)

As discussed in OCA's Exceptions, the ALJ's decision requires clarification as to his disposition of Duquesne's proposal for a "final valuation" of stranded costs in 2003 and with respect to the manner in which the CTC and CGC (shopping credit) are to be established in the event the merger is consummated and Duquesne does not proceed with an auction of its generating assets. See OCA Exc. at 3-10. As discussed there, the ALJ's decision on pages 555-57 indicates his clear agreement with OCA's approach to the establishment of these charges, including a one-time determination of stranded costs and OCA's proposed levelized rate reduction, and OCA submits that it is this approach which should be adopted for the reasons detailed in OCA's Exceptions. Id.

Duquesne's Exceptions also question the ALJ's disposition of these issues. Duquesne concludes that the ALJ rejects the "final valuation" approach because of the "delay" associated with it but argues that there was no factual basis for doing so. DLC Exc. at 10. In particular, Duquesne contends that a valuation in 2003 is superior to one conducted today contending that better market evidence will be available. Id. The Company also argues that the "final valuation" approach is consistent with statutory requirements and won't harm ratepayers because Duquesne won't be able to recover its stranded costs anyhow before 2003 under its approach. Id. Duquesne also contends that the "final valuation" approach is better because of the Company's continuing obligation to serve under the rate cap. Id. Finally, Duquesne argues that projecting market prices today does not benefit customers by providing certainty, but is detrimental because such prices are bound to be inaccurate. Id.

OCA submits that these arguments in support of Duquesne's "final valuation" approach are weak and are far outweighed by the problems created by the "final valuation" method

as detailed in OCA's Briefs and Exceptions. See OCA M.B. at 14-21; OCA R.B. at 7-8; OCA Exc. at 9-10. First, OCA would emphasize its disagreement with Duquesne regarding whether the Act permits a "final valuation" approach. OCA submits that the Act is very clear in requiring a one-time determination of stranded costs on a net present value basis as part of each electric utility's restructuring plan. 66 Pa.C.S. § 2803. Second, and perhaps the key drawback of this proposal from a practical perspective, is the Company's ROE spillover mechanism which would require annual earnings reviews by the Commission and may well give rise to annual rate cases as a means of protecting the due process rights of ratepayers. See OCA M.B. at 18-20; OCA R.B. at 20-21.

Third, OCA would emphasize its disagreement with Duquesne's assertion that the certainty of a one-time determination of stranded costs and a CTC will not be extremely beneficial in promoting competition by establishing the rates to be paid to the utility for the CTC recovery period.

Fourth, the primary problem with this proposal from ratepayers' perspective is that the substantial rate benefits of restructuring are unnecessarily postponed until the "final valuation" is made. For Duquesne ratepayers, who pay the second highest rates in Pennsylvania with an average residential rate of 12.2¢/kWh, this is simply the wrong approach to restructuring under the Act. See OCA M.B. at 17-18.

Fifth, OCA would emphasize that postponement of a stranded cost determination will weaken Duquesne's incentives to mitigate stranded costs and maximize asset value. Id. at 18. As OCA witness Kahal testified, "Poor cost control performance during the intervening years will show up as reduced market value of its power plants in 2003. Ratepayers will incur at least some of that risk under Duquesne's plan." OCA St. 1 at 15. Indeed, the intended division between that portion of Duquesne's operations which are regulated and that which is unregulated will not occur since

performance at the Company's generating units will affect the final valuation of stranded costs. This is particularly of concern since continued operation of a number of Duquesne's generating units would appear to be uneconomic. Id. Since the final stranded cost valuation will depend on whether the Company retires or continues to operate its generating units, and the efforts that it makes to control costs, the Commission needs to be particularly wary of a final valuation approach, since it will also require the Commission to determine the prudence of the Company's management of generating facilities during this period. Id.

With all of these drawbacks to Duquesne's proposal, OCA submits that there is little to commend it. In particular, OCA submits that uncertainties regarding the market value of the Company's generating plants will not be dispelled by 2003. See OCA M.B. at 16-17. Moreover, there is no guarantee that a futures market will develop by 2003 that will provide market data throughout the life of asset period for which market price projections must be made in this case, even if they were determined to be more trustworthy than the models utilized in this case. Id. OCA also fails to understand why the "final valuation" approach is better because of Duquesne's obligation to serve under the rate cap, as they contend in their Exceptions but fail to explain.

The "final valuation approach" clearly has little merit, and numerous drawbacks, and should be rejected.

REPLY NO. 2(b)(ii): The ALJ Properly Rejected Duquesne's Proposal To Set The Annual CGC, Or Shopping Credit, Based On Duquesne's RFP In Favor Of Establishment Of Shopping Credits At The Time Of Restructuring Based On Forecasted Market Prices. (R.D. at 555-57; DLC Exc. at 10-12)

As part of its Exceptions with respect to the ALJ's disposition its "final valuation" proposal, Duquesne takes exception to the ALJ's rejection of its proposal to set the annual shopping credit using an RFP. DLC Exc. at 10-12.

In response, OCA would first emphasize that the RFP proposal should be rejected as an integral part of the problematic "final valuation" proposal. Further, as emphasized in OCA's Main Brief, there may be significant controversy over the price which is produced by Duquesne's auction, requiring Commission monitoring and possibly review of this process. See OCA M.B. at 65-66. Additionally, use of an annual auction would make it difficult to establish rates during the CTC recovery period today and would, as indicated above, likely affect the extent to which competition would take hold in Duquesne's service territory.

Duquesne argues that this means that the implication of having a predetermined CGC is that the shopping credit will be inflated and be a subsidy designed to benefit competitors. DLC Exc. at 11. OCA disagrees. The CGC may be overstated, understated, or right on target, but its establishment in advance can reasonably be expected to provide a better foundation for nascent competition to develop, as the ALJ concluded.

Thus, for the reasons discussed above, and these additional reasons, OCA submits that Duquesne's RFP should not be utilized to determine the shopping credit.

REPLY NO. 3: Brunot Island and Phillips (R.D. at 176; DLC Exc. at 12-13)

While OCA has not proposed the disallowance of stranded costs related to these units as the Company notes in its Exceptions (DLC Exc. at 12, n.9), as set forth in OCA's Briefs, it is OCA's position that if recovery of Brunot Island costs are allowed at all, $5 million of the Company's investment in Brunot Island should be removed from net book value to reflect the Company's commitment to utilize $5 million from the Ft. Martin sale to refurbish those units. See OCA M.B. at 26-28; OCA R.B. at 8-9. Since the Company has not addressed this specific issue in its Exceptions, OCA will refer the Commission to OCA's Briefs for discussion of this issue. Id.

REPLY NO. 4(a): ALJ Corbett Reasonably Relied On OCA Witness Doug Smith's Market Price Forecast Developed Using The ENPRO Model. (R.D. at 272-73; DLC Exc. at 13-14)

As indicated by Duquesne in its Exceptions, the ALJ adopted OCA witness Doug Smith's market price forecast for purposes of establishing stranded costs, noting the Commission's adoption of Mr. Smith's ENPRO modeling approach in its PECO decision.[3] DLC Exc. at 13-14; R.D. at 272-73. In its Exceptions, Duquesne argues that the ALJ erred in relying on the PECO decision, claiming that it is "inapposite" in this case since Duquesne did not develop a market price forecast based upon a computer simulation. DLC Exc. at 14. Without specifically saying so, Duquesne appears to argue that its market price forecast, which is based almost entirely on Mr. Schnitzer's projections of the "cost of new entrants" into the generating market, is better than the computer modeling utilized by OCA witness Smith, which incorporates numerous variables, including projections of the costs incurred by new entrants into the marketplace. Id. The details, and a comparison of the market price forecasting methodologies of Duquesne's and OCA's witnesses are set forth in OCA's Main Brief, as are a review of the inputs utilized and critique of each methodology. See OCA M.B. at 28-39. As discussed there, Mr. Smith's forecasting methodology is clearly a far more robust analysis of the interactions between supply and demand in the marketplace than is Duquesne's analysis, and the Commission has clearly indicated its agreement with Mr. Smith's methodology and input assumption. Id. at 34-36.

Duquesne argues that Mr. Smith's analysis is not the same as in PECO. DLC Exc. at 14. Mr. Smith did analyze a different market area here, but as the ALJ clearly recognized, the

[3]Application of PECO Energy for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement, R-00973953, slip op. (December 23, 1997), as modified on reconsideration, slip op. (Jan. 16, 1998).

model (ENPRO) is the same (R.D. at 273) and Mr. Smith's methodology and inputs are consistent with the approach taken in PECO.

Duquesne also argues with Mr. Smith's use of an 8% reserve margin in ECAR when there is currently no installed reserve requirement. DLC Exc. at 14. This issue was addressed in OCA's Briefs. See OCA M.B. at 36; OCA R.B. at 9. As discussed there, OCA witness Smith's analysis reasonably assumed that customers will seek a level of system reliability comparable to historical minimum targets. Id. Mr. Smith's treatment of this issue is clearly reasonable and should be adopted, and, as the ALJ concluded, the weight of the evidence favors OCA's approach. R.D. at 273.

REPLY NO. 4(b): The ALJ Reasonably Concluded That Life Extension Should Be Assumed For Duquesne's Coal-Fired Generation, Consistent With Standard Industry Practice. (R.D. at 281; DLC Exc. at 15-16)

ALJ Corbett adopted OCA's adjustment to reflect life extension of Duquesne's coal-fired plants at a cost of $300/kW, resulting in a reduction of $170.72 million in stranded costs. In its Exceptions, Duquesne argues that the ALJ's conclusion that "it is unreasonable to assume the physical life of a stranded asset equates exactly with its book life" is "wrong" and that the book life of the asset is the best estimate of its projected physical life. DLC Exc. at 15. This is simply not the case when it is clear that life extension of coal-fired plants is standard practice in the industry, as OCA witness Kahal testified. See OCA M.B. at 39-40; OCA R.B. at 11.

The Company criticizes OCA for not undertaking a specific study of life extension for Duquesne's units and relying on a study in PECO Energy's restructuring proceeding. DLC Exc. at 15. However, Mr. Kahal did perform his own analysis. The problem for Duquesne is that Duquesne has not performed such an analysis even though it would have been appropriate to do one for purposes of determining stranded costs. See OCA M.B. at 39. Mr. Kahal's analysis uses

assumptions from the PECO Energy case which OCA submits are reasonable assumptions. These included reasonable assumptions regarding the escalation of market prices and reasonable assumptions regarding the cost of life extension.

Duquesne argues that OCA's life extension forecast is "speculative" and assumes that current technology will continue to set market prices 40 years from now. To the contrary, OCA submits that it is the Company's assumption that a standard practice in the industry will no longer be utilized when it produces benefits based on market prices that is unreasonable.

As emphasized in OCA's Briefs, in the PECO case, PECO Energy projected and the Commission adopted life extensions for three coal plants, and it was the study in that case which formed the basis for Mr. Kahal's adjustment here. The Company failed to provide any substantive response to OCA's position on this issue on the record of this proceeding. OCA submits that Mr. Kahal's analysis is reasonable and should be adopted.

REPLY NO. 4(c): Plant Shutdown Study (R.D. at 287; DLC Exc. at 16) -- No Reply Is Necessary

REPLY NO. 4(d): Environmental Regulations (R.D. at 303; DLC Exc. at 17)

Duquesne, in its Main Brief, requested a finding that because additional environmental regulations may be implemented in the future, all of the market value estimates are "conservative." DLC M.B. at 39-40. Duquesne excepts to the ALJ not making this finding. DLC Exc. at 17. OCA submits that the assertion is unnecessary and should be rejected. The market value estimates developed in this proceeding are based on numerous assumptions, some of which may turn out to overstate stranded costs, and some of which may turn out to understate them. Doug Smith pointed out that his estimate of the costs incurred for new generating capacity may be understated, resulting in overstatement of stranded costs, because of his assumption of "plain vanilla" equipment and the

likelihood of higher land costs, construction interest costs, and project development costs (soft costs) to name a few. See OCA M.B. at 32. Thus, it would be inappropriate for the Commission to conclude that these market value estimates are "conservative" because of environmental uncertainties, when other factors may provide a contrary weighting. As OCA witness Smith has testified, in performing his market value estimate, he "attempted to seek a reasonable expected value outcome on each issue." OCA St. 2 at 3. Thus, he has "chosen assumptions that have an equivalent likelihood of being above or below the actual outcome." Thus, the Commission should not find that environmental uncertainties make market value estimates "conservative."

REPLY NO. 5: Merger Savings (R.D. at 310-11, 835; DLC Exc. at 17)

Duquesne refers the Commission to its Exceptions in the merger proceeding with respect to reflection of merger savings as part of stranded costs. As discussed in OCA's Briefs in this case and in the merger proceeding, Duquesne's stranded costs should be adjusted downward by $152.8 million if the merger is approved. See OCA M.B. at 47-48; OCA R.B. at 13.

REPLY NO. 6(a): The ALJ Correctly Adopted a 10% Contingency Factor for Nuclear Decommissioning (DLC Exc. at 18)

In the Recommended Decision, the ALJ used a 10% contingency factor in determining the amount required to fully fund Duquesne's nuclear decommissioning obligation. R.D. at 335. Duquesne excepted to this decision. DLC Exc. at 18. Duquesne has argued that it was improper to adopt the OCA's proposal, as it was based on the Commission's proposed policy statement. In contrast, Duquesne argued that its own witness provided the proper contingency factors to be adopted. Id.

The OCA submits that the ALJ properly accepted the 10% contingency included in the OCA's analysis. While OCA witness Catlin recognized that the Commission had eliminated all

contingencies associated with PP&L's nuclear decommissioning cost estimates in their last rate case, he proposed to use the Commission's proposed policy statement as support for a 10% contingency. OCA St. 3 at 19; OCA M.B. at 48-49. The OCA submits that the contingencies of approximately 20% included in Duquesne's analysis are excessive. The OCA's analysis which includes a 10% contingency factor provides sufficient funding of nuclear decommissioning costs. Therefore, the ALJ's decision to decrease the contingency to 10% should be adopted.

REPLY NO. 6(b): The ALJ Correctly Determined that Fossil Decommissioning Is Not Recoverable as a Stranded Cost. (DLC Exc. at 18-19; PECO Exc. at 3)

In the Recommended Decision, the ALJ denied recovery of fossil decommissioning costs, consistent with the Commission's Order in PECO. R.D. at 347. Duquesne excepts to this finding. DLC Exc. at 18. The Company argues that the Commission's finding in PECO does not apply in this case, as Duquesne submitted site specific decommissioning studies for each of its plants. Id. at 18-19. The OCA submits that the ALJ properly decided this issue based on PECO and that Duquesne's exception should be denied.

In considering the Company's claim for fossil decommissioning costs, the OCA noted the inherent uncertainty in the Company's estimates. OCA witness Catlin explained why these costs are not properly recovered as stranded costs: (a) there is a great deal of uncertainty over whether dismantling and decommissioning of the facilities will actually occur, and if so, when; (b) if the Company does decommission and dismantle the plant, the existing generation site can be quite valuable; and (c) the costs of decommissioning apply not only to Duquesne, but to every electric supplier, and it would be an unfair advantage for Duquesne ratepayers to fund these costs in advance, while others must derive the necessary funds from the market. OCA St. 3 at 21-22; OCA M.B. at 49-50. Therefore, the OCA submits that the ALJ was correct in denying the Company recovery of

fossil decommissioning costs.

In support of its claim, Duquesne also cites the recent Recommended Decision in the PP&L restructuring case as reason that Duquesne's claim for fossil decommissioning should be granted. DLC Exc. at 19. The OCA submits that while a Recommended Decision can provide guidance, it is only a recommendation. PECO Energy is the controlling Commission Order on this issue, and consistent with the Commission's decision in PECO, Duquesne's claim for fossil decommissioning must be denied.

REPLY NO. 7(a): The ALJ Correctly Determined that Deferred Coal Costs Are Not Recoverable as a Regulatory Asset (DLC Exc. at 19-20)

In his Recommended Decision, the ALJ denied recovery of $13.5 million in deferred coal costs, finding that the Company had failed to show that these costs would be typically recoverable under traditional regulation. R.D. at 379. Duquesne excepted to this decision, arguing that the recovery of deferred coal costs should have been allowed because its existing coal caps, which resulted in these deferrals, are cost-based. DLC Exc. at 20. The OCA submits that the ALJ's decision was correct and should be affirmed. As the OCA explained in Brief, the coal costs are simply not eligible for recovery in this case. OCA M.B. at 54. The deferred coal costs are based on amounts that exceed the coal caps in place. Duquesne was allowed to defer these costs until such time that the costs fell below the cap. To the extent that the Company's costs never fell below the cap, recovery of these costs was not guaranteed at the expiration of the coal cap provisions. Therefore, the OCA submits that these costs were never guaranteed recovery under traditional regulation and recovery should not be permitted now.

REPLY NO. 7(b): The ALJ Properly Denied Recovery of Deferred Caretaker Costs (DLC Exc. at 20)

Duquesne has excepted to the ALJ's determination to deny the Company recovery of

deferred caretaker costs associated with maintaining the Brunot Island and Phillips plants in cold storage. DLC Exc. at 20. The ALJ denied recovery of Duquesne's claim for deferred caretaker costs due to the fact that the Company has no plans to return these plants to service. R.D. at 385.

The OCA submits that the ALJ's finding is correct. No recovery should be provided for deferred caretaker costs as a regulatory asset. These units were placed in cold reserve, and the caretaking costs were only to be recovered at the time that the units were returned to service. OCA M.B. at 55-56. The Company has made no plans to do so, as such there is no basis for the recovery of this claim. As OCA witness Catlin explained, if the units are later returned to service, then "it will be because the revenues produced will exceed Duquesne's margin costs. If this occurs, then Duquesne will recover its deferred costs from the margins generated." OCA St. 3 at 15. Thus, the OCA submits that the ALJ properly denied the recovery of these costs, and that Duquesne's exception should be denied.

REPLY NO. 7(e): Pilot Program Incentive Credits (R.D. at 304-05; DLC Exc. at 22)

As discussed in OCA's Main Brief, if the Commission approves a rate reduction, the pilot program incentive credits recognized as a stranded cost should be adjusted. See OCA M.B. at 46. Additionally, they should be adjusted to reflect the level and/or time of participation as compared to the forecasted level. Id. The ALJ agreed with this recommendation. R.D. at 304-05. In its Exceptions, Duquesne argues that this recommendation is in error, claiming that the rates to be approved in this case bear no relation to these revenue losses. DLC Exc. at 22. OCA disagrees. The pilot program incentive credits were only intended to be allowed to the extent that they represented stranded costs and, to the extent a rate reduction is found to be appropriate that offsets these credits, such incentive credits do not represent stranded costs. See OCA St. 1 at 16-17.

REPLY NO. 8(a): ROE Spillover; Accelerated Amortization (R.D. at 443; DLC Exc. at 24)

OCA agrees with Duquesne that if the Commission rejects Duquesne's final valuation proposal in favor of a one-time determination of stranded costs, as recommended by OCA, then it would be inappropriate to utilize the ROE spillover proposal to return "excess" earnings to ratepayers. DLC Exc. at 24. Thus, no ROE spillover mechanism should be used under this scenario and Duquesne will bear any risks or rewards associated with differences in markets prices or operating costs from those utilized in the Commission's stranded cost determination.

REPLY NO. 8(b)(i): The ALJ's Decision Appropriately Recommends Levelized Rate Reductions And Rejects Duquesne's/DII's CTC Residual Approach And Enron/MAPSA's CGC Residual Approach To Stranded Cost Recovery. (R.D. at 555-57; DLC Exc. at 24-27)

In its Exceptions, Duquesne provides an extensive quote from pages 555-56 of ALJ Corbett's Recommended Decision, where the ALJ discusses the design of the CTC. DLC Exc. at 24-25. Duquesne then goes on to provide its interpretation of that recommendation. DLC Exc. at 26-30. OCA similarly commented extensively on the ALJ's recommendation in this respect in its Exceptions. See OCA M.B. at 3-10.

OCA disagrees with what Duquesne characterizes as "[t]he most natural reading" of this portion of the ALJ's recommendation, although OCA agrees that it is inconsistent with the ALJ's recommendations elsewhere in his decision. Duquesne is of the view that a "natural reading" of this section of the decision supports the Company's "CTC residual" methodology. DLC Exc. at 26. This is clearly contradicted, as Duquesne itself recognizes, by the ALJ's recommendation for "levelized rate reductions." DLC Exc. at 26-27. Indeed, Duquesne calculates a 10% rate reduction on a system average basis if this is the ALJ's intent.

However, the more important issue here is what is appropriate and consistent with the

statutory intent. As discussed in OCA's Exceptions, a rate reduction is necessary to ensure that ratepayers pay only the amount of stranded costs determined by the Commission. See OCA Exc. at 8. For customers who continue to take generation service from Duquesne, these costs include the Company's T&D rates, the CTC, and the market price of generation. Id. For customers who take generation service from an alternative electric generation supplier, these costs include T&D rates and the CTC. Id. Customers who are not able to shop, or who choose not to shop, should not be required to pay more than the market prices upon which the estimate of stranded cost is based. This is especially important given that under the ALJ's recommendation it will be a full two years before all customers are able to shop. Additionally, charging a generation rate in excess of "prevailing market prices" plus all reasonable costs is contrary to the clear provisions of the Act, which requires that at the end of the phase-in period, customers who do not choose an alternative generation supplier are to be served at "prevailing market prices" and the provider is to recover the reasonable costs of providing such service. 66 Pa.C.S. § 2807(e)(3).

For similar reasons, and as set forth in OCA's Briefs as referenced above, OCA also disagrees with DII's Exceptions in support of a CTC residual and approach and Enron's and MAPSA's Exceptions which would deny the benefits of restructuring (through immediate rate reductions) to ratepayers who are unable to, or opt not to, choose an alternative supplier, a result which is inconsistent with the Act's requirements.

REPLY NO. 8(b)(ii): Class Responsibility for Stranded Costs (R.D. at 556; DLC Exc. at 27-29)

Duquesne and DII also takes issue with the ALJ's adoption of OCA's position that stranded costs should be allocated based on the utility production plant allocator used in the Company's last base rate proceeding. DLC Exc. at 27-29; DII Exc. at 19-21. In this regard, the ALJ

concluded that OCA's recommendation was consistent with the statutory intent and the Commission's holding in PECO. R.D. at 556.

Duquesne claims that while production plant was allocated pursuant to the average and excess methodology in its last case, the revenue increase was not spread to customer classes on that basis. DLC Exc. at 27. Duquesne argues that applying the findings in that case to this case requires that "any rate changes be applied in a comparable manner to all rate classes." Id. Further, Duquesne contends that applying the CTC residual methodology preserves these relationships between rate classes and ends the transition period between rate classes at the same time. Id. at 28. Duquesne also argues that, alternatively, a levelized rate reduction which is comparable for all classes will preserve these relationships. Id. In this regard, the Company criticizes OCA's position because it would result in differing rate reductions for different rate classes -- and is actually more beneficial to residential customers than to some other classes. Id. at 28-29.

The whole problem with the Company's critique in this respect is that it is contradicted by the plain language of the Act, which requires an allocation of stranded cost responsibility in a manner consistent with the utility production plant allocator utilized in the last base rate proceeding. 66 Pa.C.S. § 2808(a). The Act does not, as the Company would have it, allocate responsibility based upon the allocation of the revenue increase in the last case. There is good reason for this. The General Assembly clearly intended to allocate stranded cost responsibility based on cost of service, not based on a range of other rate design considerations and competitive pressures that the Commission may have taken into account in making its revenue increase determinations in such case. Also, revenue increases are driven by far more than just production costs.

Thus, the Company's argument is plainly contrary to the statutory intent and the ALJ's conclusion, adopting the PECO approach to allocation of stranded cost responsibility should be

adopted. For similar reasons, DII's Exceptions should be rejected.

REPLY NO. 8(b)(iii): Non-Shopping Customers (R.D. at 555-57; DLC Exc. at 30)

Duquesne argues that the Commission should clarify the ALJ's decision to provide that only shopping customers should receive rate reductions. DLC Exc. at 30. As set forth in OCA's Exceptions and discussed above, OCA submits that such an approach would unlawfully deny non-shopping customers of the benefits of restructuring and require them to pay higher rates than allowed under the statute. Customers who are not permitted to, or choose not to, shop should pay no more than prevailing market prices and Duquesne should recover no more than the reasonable costs of providing such service, as provided by Section 2807(e)(2) and (e)(3) of the Act. 66 Pa.C.S. §§ 2807(e)(2)-(e)(3).

REPLY NO. 9: ECR Roll-In (R.D. at 557; DLC Exc. at 30)

Duquesne excepts to the ALJ's conclusion that Duquesne cannot roll in its ECR at a level higher than "in effect" on the "effective date of the Act." DLC Exc. at 30; R.D. at 557.

As discussed in OCA's Main Brief, OCA's proposal to provide immediate rate reductions would render Duquesne's proposal to roll in the ECR at a higher level moot. See OCA M.B. at 69. If a different approach is adopted, however, OCA submits that Duquesne should not be permitted to increase its rates currently since it has not shown that it requires such an increase. Id. As OCA witness Kahal testified, the rate increase should be rejected because Duquesne's earnings are expected to be very strong and its rates are already among the highest in the state. OCA St. 1 at 12. Thus, there is no justification for increasing Duquesne's rates.

REPLY NO. 10: Return On Equity (R.D. at 587; DLC Exc. at 31)

As OCA argued in its Briefs, the Commission should allow Duquesne a return on equity of 10.0%, consistent with its adoption of a 10.0% return on equity in PECO's securitization

proceeding and in the PECO Order. See OCA M.B. at 69; OCA R.B. at 25.

REPLY NO. 11: Rate Redesign (R.D. at 556; DLC Exc. at 32-33)

Duquesne proposed a two-part CTC which includes a fixed (customer-specific) charge, based on the Company's view that a lower usage-based charge will encourage greater consumption and, thereby, mitigate stranded costs. DLC St. 5 at 32-47. As explained in OCA's Briefs, the result is an increase in the Company's fixed cost recovery from ratepayers, even while the Company will be collecting fewer costs as some customers obtain their generation service from competitive suppliers. See OCA R.B. at 24. At the same time, the proposal provides a relative increase in fixed cost recovery from customers who use less generation, and a relative reduction in rates for customers who use more. OCA M.B. at 67; OCA R.B. at 24. In other words, the rate is promotional in nature, encouraging increased energy usage.

In his Recommended Decision, the ALJ rejected this proposal, contending that it "violates the prohibition in the Act against intraclass cost shifting." R.D. at 556. Duquesne excepts to this decision, arguing that the ALJ's legal conclusion is in error and represents poor public policy. DLC Exc. at 32-33. OCA submits that, for the reasons discussed above, Duquesne's promotional CTC charge should be rejected in favor of a usage charge to collect the CTC and maintain the same level of fixed cost recovery as experienced by the Company currently.

REPLY NO. 12(a): Transmission and Distribution Rates -- Realized Rates of Return (R.D. at 68; DLC Exc. at 33-34)

As discussed in OCA's Briefs and Exceptions, Duquesne proposed to unbundle its rates based on its claimed rate of return for Transmission and Distribution service, and a residual return (under the rate cap) on generation service. See OCA M.B. at 8-9; OCA R.B. at 4-5. As discussed there, this proposal is inconsistent with the Act's requirement that the Commission establish

the cap for the non-generation portion of rates at the level of such charges that has been approved at the effective date of the Act. Id.; 66 Pa.C.S. § 2804(4)(i)(B). Since non-generation charges were not specifically separated from generation charges at that date, OCA argued that the only appropriate way to unbundle these services is to assume that they were realizing the same actual rate of return at that date and unbundle them accordingly. Id.

Consistent with the Commission's recommendation in PECO, the ALJ adopted OCA's and DII's position on this issue, finding that this would create an "inappropriate cost-shift and a violation of the Act's rate cap." R.D. at 68. Duquesne argues that this decision is in error, contending that there is no possibility of cost shifting and that the argument, if adopted, would prohibit recovery of a just and reasonable T&D rate that Duquesne argues would be confiscatory and violative of Duquesne's federal and state constitutional rights. DLC Exc. at 33-34. Duquesne also argues that rates for transmission and ancillary services cannot be "set" by this Commission. Id. at 34.

As discussed in OCA's Briefs, the Company's jurisdictional argument is without merit since the Commission is free to adjust distribution rates to meet the requirements of the non-generation charge rate cap required by the statute. See OCA M.B. at 8-9; OCA R.B. at 4-5. The Company's constitutional claim, however, is a new argument. The Company's argument should be rejected. The rate cap, which does contain certain exceptions if found necessary, applies to these current rates. If current rates were not confiscatory, unbundled rates which result in the same level of revenues cannot now be considered confiscatory.

REPLY NO. 12(b): Transmission and Distribution Rates -- Ancillary Services (R.D. at 84; DLC Exc. at 34)

The issues discussed in Duquesne's Exceptions are not issues raised by OCA and OCA

is, therefore, not providing a response.

REPLY NO. 13(a): Special Customer Classes -- Rule 4 Contracts (R.D. at 598; DLC Exc. at 35-36)

Rule 4 customers receive discounted rates. As discussed in OCA's Briefs, in light of the Act's requirement to allocate stranded costs on the basis of the utility production plant allocator, it is possible that the dollars allocated to such customers will exceed the contractual rates, and rate cap, for service to such customers. See OCA M.B. at 66-67. In this light, OCA submitted that for such customers, the Company must forego the collection of such revenues "unless, for good cause shown, it requests and is granted a longer collection period for these classes," consistent with the exception provided by the Act. Id.

In his Recommended Decision, ALJ Corbett requires Duquesne to honor its existing contracts and to charge the full CTC to Rule 4 customers. To the extent that full payment of the CTC would result in a rate higher than the contract rate, the ALJ would require Duquesne to "provide a comparable dollar value offset on the regulated transmission, distribution or generation rates." R.D. at 598.

In its Exceptions, Duquesne argues that the ALJ's treatment is confiscatory and that the only lawful result is to extend the CTC for such customers. DLC Exc. at 35. Duquesne also argues that it poor public policy to restrict the offering of discounted CTCs as it will harm economic development and reduce stranded cost mitigation opportunities.

Although the OCA submits that the ALJ's position is a valid one, which is consistent with the Act's requirements, the OCA is not opposed to extension of the CTC for Rule 4 customers for good cause shown. The ALJ's recommendation simply recognizes that the Company has been discounting these rates at its own expense and can continue to do so. To assert that there is

"confiscation" without even knowing whether any under-recovery will occur is unreasonable. Many things can change during the CTC recovery period -- sales could grow for the class or new customers could be added -- that provide the Company adequate opportunity to recover the costs allocated to this class. At this time, the Company simply cannot claim confiscation, particularly when the Company alone, and not other ratepayers, determined to enter into these contracts. Further, OCA would emphasize that these restrictions may not be applicable to new load, either for existing customers or for new customers, and that economic development and stranded cost mitigation will not necessarily be harmed.

REPLY NO. 14: The ALJ Correctly Found that Customers Returning to Rate Cap Service Should Not Be Required to Stay For Twelve Months. (DLC Exc. at 36)

As part of its restructuring filing, Duquesne proposed that customers who return to rate cap service be required to stay with Duquesne for twelve months to address the Company's concern with "gaming". The ALJ found that there was no evidence that there would be a problem with gaming, and that such a provision would be a "serious impediment to competition." R.D. at 637. Duquesne excepted to this finding. DLC Exc. at 36. The OCA submits that the ALJ properly denied inclusion of such a provision. As the OCA explained in Brief, there are a number of reasons that a customer may need to return to rate cap service temporarily, for reasons other than gaming, and that the Company's proposal would likely serve to discourage customers from freely entering the competitive market. OCA M.B. at 71. Instead, the OCA submits that Duquesne's concerns about gaming would be more appropriately addressed by other means such as pricing its generation service closer to market prices (subject to the rate cap), or to impose a fee when a customer makes use of this service more than twice in a twelve month period. Id. at 71-72. Therefore, the OCA submits that the ALJ's finding not to impose restrictions on service to returning customers was appropriate

and that Duquesne's exception should be denied.

REPLY NO. 15: Fees (DLC Exc. at 37)

In its Exceptions, Duquesne clarified that it would be permitted to charge certain fees after they are specified in a later filing. DLC Exc. at 37. The OCA would further clarify that Duquesne is permitted to request the ability to charge these fees, and that all parties will have the opportunity to comment on the propriety of such fees at that time.

REPLY NO. 16: Universal Service Cost Allocation (OSBA Exc. at 8; OTS Exc. at 19)

In the Recommended Decision, the ALJ adopted the Company's proposal to allocate universal service costs on a cents per kWh basis. R.D. at 795. The OSBA and the OTS have excepted to this finding. OSBA Exc. at 8; OTS Exc. at 19. The OCA submits that the Company's proposed allocator is consistent with the requirements of the Act and the Commission's Universal Service Order, and provides an equitable distribution of these costs. As such, the ALJ's decision on this point should be adopted.

In its Exceptions, OSBA has argued that the ALJ's recommendation to accept the Company's allocator should not be adopted. Instead, the OSBA has argued that the Company should be directed to modify its proposed allocation so it conforms with the costs currently embedded in rates. OSBA Exc. at 11. To allocate universal service costs consistent with the OSBA's recommendations would require the residential class to bear more than 80% of the costs of the expanded programs. OSBA Exc. at 10. The OCA submits that such a result is unfair. Universal Service programs provide a benefit to all of the Company's ratepayers, and to society as a whole, and as such it is reasonable for all classes of customers to share in their funding. Moreover, as the OCA previously explained, the costs in question in this case are due to an expansion of Duquesne's Universal Service programs, and as such, have not previously been included in rates. Therefore, the

Company's proposed allocation is reasonable and should be adopted.

The OSBA also argues that the Company's proposed allocator is discriminatory against the non-residential class to the benefit of the residential class, in violation of Section 2804(7) of the Act. OSBA Exc. at 10-11. The OCA submits that the OSBA is mistaken in its reasoning on this point, and that the Company's allocator provides an appropriate allocation of these costs under the Act. Section 2804(9) provides that recovery of these costs must be non-bypassable. The OCA submits that by assigning residential customers such a great percentage of the costs, as the OSBA has recommended, would allow non-residential customers to effectively bypass these costs, in violation of the Act and the intent of the General Assembly.

OTS excepts to the ALJ's decision to adopt a cents per kWh allocator, instead of OTS's proposed allocator, based on a per customer basis. OTS Exc. at 19. While recognizing that all customers must help fund universal service programs, OTS reasons that by using a per kWh allocator, high volume users bear more than their share of the costs. OTS Exc. at 19-20. As the OCA explained in its Brief, the Company's proposed allocator is relative to distribution costs, and not energy. Therefore, it is not inconsistent with the Act or the Commission's Universal Service Order. OCA M.B. at 84. As explained above, the OCA submits that the per kWh allocator provides an equitable distribution of universal service costs. Therefore, the ALJ's decision should be adopted.[4]

OTS has also excepted to the ALJ's decision to not list the universal service charge as a separate line item on a customer's bill. OTS Exc. at 21. The ALJ did not accept the OTS's proposal to unbundle this charge from distribution rates. R.D. at 795. This finding is consistent with

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[4] In the event that the Commission does not adopt the Company's proposed per kWh allocator, the OCA supports the use of the non-production revenue allocator submitted by OCA witness Brockway. See OCA St. 6 at 50-51; OCA M.B. at 84.

the Commission's decision in PECO that the charge be embedded in distribution rates. The OCA submits that the ALJ's finding is correct and should be adopted.

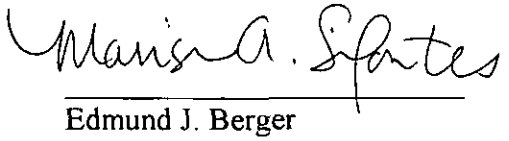
REPLY NO. 17: The Environmentalists Better Choice Plan (Env. Exc. at 2)

The Environmentalists have excepted to the ALJ's decision to defer consideration of the Better Choice Plan until such time that the Commission promulgates regulations regarding Sections 2807(e)(2) and (3) of the Act. Env. Exc. at 2. The OCA submits that the ALJ was correct in his recommendation, and that this plan should be considered at a later date.

III. CONCLUSION

WHEREFORE, the OCA respectfully submits that the ALJ's Recommended Decision should be adopted as modified in accordance with the OCA's Exceptions and Reply Exceptions.

Respectfully submitted,



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Dated: April 24, 1998
46688

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of April, 1998.

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ORIGINAL

April 24, 1998

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RE: Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104; Docket No. R-00974104C0001-C0004; **REPLIES OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION TO EXCEPTIONS**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Replies to Exceptions of the Mid-Atlantic Power Supply Association in the above-captioned proceeding. If you have any questions concerning the enclosed filing, please direct them to me.

Very truly yours,

Todd S. Stewart

Counsel for Mid-Atlantic Power
Supply Association

TSS/bes
Enclosures
cc: All parties of record
Administrative Law Judge John H. Corbett

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company	:	
for Approval of its Restructuring Plan	:	Docket No. R-00974104
Under Section 2806 of the Public Utility Code	:	Docket No. R-00974104C0001-C0004

REPLIES OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION ("MAPSA") TO EXCEPTIONS

AND NOW COMES, The Mid-Atlantic Power Supply Association ("MAPSA"), by and through its counsel, Malatesta Hawke & McKeon LLP, and hereby replies to "Exceptions" of Duquesne Light Company ("Duquesne") and the Office of Consumer Advocate ("OCA") submitted in the above-captioned proceeding, which Exceptions were filed in response to the Recommended Decision of Administrative Law Judge John H. Corbett issued March 18, 1998.

I. REPLIES TO "EXCEPTIONS" OF DUQUESNE

At the threshold, MAPSA maintains that Duquesne has failed completely to comply with the Commission's regulations regarding the filing of specifically numbered Exceptions to the Recommended Decision of Administrative Law Judge Corbett in the above-captioned proceeding. Duquesne's document does not contain Exceptions which are: set out separately; separately numbered; or, which allow for the identification of the page number of the Recommended Decision to which they refer. 52 Pa. Code §5.537(b). As such, Duquesne's purported "Exceptions", indeed, are not Exceptions at all; rather, they are no more than a letter

lamenting the Company's displeasure with the ALJ's Decision and have no legal effect. Therefore, Duquesne should be found to have waived its right to file Exceptions. Duquesne's purported "Exceptions" should be wholly disregarded by this Commission.

In the alternative, MAPSA replies to each of Duquesne's purported "Exceptions" as identified below by citation to the page number in Duquesne's filing.

Reply No. 1 - - Timing of Valuation.

On page 10 of its "Exceptions" Duquesne argues that the Recommended Decision (R. D. at 159) rejected Duquesne's final valuation proposal without a factual basis for doing so. Duquesne's comment is without merit and should be rejected. Duquesne cites 5 "reasons" that it believes its valuation of its generation assets in 2003 is superior to a valuation of its assets today.

The ALJ's reasoning clearly indicates that the ALJ considered all of the evidence regarding Duquesne's proposal to finally value its assets, for stranded cost purposes, in 2003 as opposed to doing so immediately. For Duquesne to state that no factual basis exists for the ALJ's Decision is merely a smokescreen to allow Duquesne to re-argue the factors which it presented to the ALJ in which the ALJ rejected in recommending that the valuation be performed immediately. Duquesne's argument is undercut by the fact that Duquesne itself proposed to auction its generation assets immediately.

Reply No. 2 - - The RFP.

On page 10 of Duquesne's "Exceptions," Duquesne addresses the ALJ's rejection of Duquesne's proposal to set to an annual shopping credit based on Duquesne's RFP process. Duquesne erroneously cites the two factors that it contends the ALJ relied upon in developing his recommendation, namely; that "the market is not sufficiently 'mature' to facilitate such an RFP"

and "(ii) using an RFP 'will stifle any nascent competition'" (Duquesne "Exceptions" at 10-11). Duquesne ignores fact that the ALJ specifically found that Duquesne's RFP proposal "fails to produce the equivalent of a 'retail' price for electric generation in a sufficiently wide market under terms flexible enough to attract a significant number of purchasers." (R.D. at 554). Duquesne is setting up a "straw man" argument in attempting to avoid the issue. Simply put, Duquesne's RFP is a failure and the Judge expressly recognized that fact. There is ample evidence in the record, (e.g. MAPSA Statement No. 1 at 25-27) which documents the inability of Duquesne's RFP process to produce a "market price" which is even close to reality. Duquesne's arguments to the contrary are without merit and this Commission should reject them, and, likewise, reject Duquesne's RFP proposal.

Reply No. 3 - - Rate Redesign.

On page 32 of its "Exceptions" Duquesne argues that the ALJ erred in rejecting Duquesne's rate redesign proposal on the ground that it "violates the prohibition in the Act against intraclass cost shifting." (Duquesne "Exceptions" at 32). Duquesne claims that the ALJ's finding was in error because the other witnesses in the case "expressly or implicitly acknowledged" that no "cost shifting" had occurred in Duquesne's proposal. Id. Duquesne stated that MAPSA's witness, Mr. Russell, was the only witness to claim that Duquesne's rate redesign was inappropriate because of the potential to cause intraclass cost shifting. Duquesne's self-serving argument is without merit. The fact is, the ALJ recognized that Duquesne's proposal has potential to cause 2 identically situated customers to pay different CTCs because of the usage calculation Duquesne's proposal employed. The ALJ correctly recognized that the above-described situation would constitute intraclass cost shifting. On that basis, the ALJ rejected

Duquesne's rate redesign proposal. For Duquesne to state that the ALJ was in error because other witnesses in the case failed to acknowledge this reality, simply ignores the essential question. Likewise, Duquesne's lengthy citation to the testimony of its own witness is similarly unconvincing. Simply stated, as borne out by the testimony of MAPSA witness Russell (MAPSA Statement No. 1-S at 6), Duquesne's rate redesign has the potential to cause intraclass cost shifting, and the ALJ was correct in rejecting Duquesne's proposal on that basis.

Reply No. 4 - - Ancillary Services.

On page 34 of its "Exceptions" Duquesne asserts that the ALJ made two distinct findings regarding ancillary services that are "preempted by federal law." Duquesne first argues that the ALJ's finding that Duquesne "has not affirmatively proven this fact to be true" (R. D. at 84) with regard to whether ECAR imposes significant restrictions upon the competitive procurement of ancillary services, is preempted by federal law. The fact that FERC Order No. 888 requires the unbundling of ancillary services is not in dispute. The ALJ does not question this fact. Duquesne makes the leap, however, to assert that the only forum before which parties may question the rates charged to retail consumers for these services is the FERC. Clearly, this is not the case. Duquesne's failure to cite any authority for this proposition underscores this point. The ALJ's recommendation does attempt to set a FERC jurisdictional rate. Rather, the ALJ merely finds that Duquesne has failed to meet its burden of proof with respect to whether ECAR imposes significant restrictions upon the competitive procurement of ancillary services. The ALJ obviously believed that fact to be instrumental in ruling upon whether the proposed unbundling of ancillary service charges, as proposed by Duquesne, was reasonable. The issue is not whether Duquesne is able to recover the charges but, rather, "where" Duquesne is able to recover these

charges. The ALJ merely recommended that the charges are appropriately recovered in the generation component of Duquesne's rates as opposed to the transmission and distribution component. Therefore, the preemptive power of FERC jurisdiction is not at issue.

Duquesne's bold second assertion that, because ECAR rules prohibit the "provision of services by a generation located outside the control area" the ALJ's decision must be reversed, is without merit and should be disregarded. The essence of this issue is that ancillary service charges are not appropriately included in the transmission and distribution rates charged to Duquesne's customers. These charges are appropriately credited to the generation function. The ALJ recognized that fact, as should this Commission.

MAPSA REPLIES TO THE EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

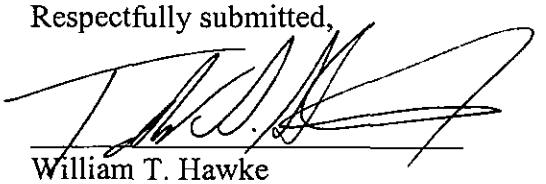
MAPSA reply to Exception No. 1C of the Office of Consumer Advocate ("OCA").

The OCA recommends that this Commission clarify or modify the Recommended Decision to explicitly state that the ALJ's Recommended Decision adopted the OCA's proposal to grant Duquesne customers an across-the-board 16.9% rate reduction. (Exceptions of the OCA at 7). The OCA argues that an immediate rate decrease should be adopted in lieu of setting a CGC which would allow for vibrant competition in Duquesne's service territory. This methodology was expressly rejected by this Commission in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973953 (Order entered December 23, 1997) ("PECO"). In that case, the Commission stated that "our general concern is that the partial settlement trades temporary inadequate rate cuts and other concessions for delay in competition in de facto monopoly status

for PECO Energy." PECO, p. 14. MAPSA recommends that ALJ's decision be clarified to state clearly that it does not propose to grant immediate across-the-board rate discounts to Duquesne customers. Rather, MAPSA urges this Commission to adopt the basic principal which this Commission set forth in PECO, namely that, if discounts to customers are to be achieved, at all, they are to be achieved through the competitive market based upon an adequate "shopping credit," and not through temporary inadequate rate cuts.

WHEREFORE, the Mid-Atlantic Power Supply Association respectfully requests that this Commission deny the above replied-to "Exceptions" of Duquesne and the Office of Consumer Advocate to the Recommended Decision of ALJ Corbett issued March 18, 1998 in the above-captioned proceeding.

Respectfully submitted,



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Counsel for the
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Dated: April 24, 1998

CERTIFICATE OF SERVICE

I hereby certify that this day a copy of the foregoing Replies of the Mid-Atlantic Power Supply Association has been served upon the persons and in the manner indicated below.

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Todd S. Stewart

DATED: April 24, 1998

DATE: April 28, 1998

SUBJECT: R-00974104 &
R-00974104C0001-C0004

TO: Chery W. Davis, Diector
Office of Special Assistants

FROM: James McNulty
Secretary
JML

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

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

See Attached List

Reply Exceptions have been received from:

See Attached List

BTL

cc: Annette Shelley

DATE: April 28, 1998

SUBJECT: R-00974104 &
R-00974104C0001-C0004

TO: Chery W. Davis, Diector
Office of Special Assistants

FROM: James McNulty
Secretary

PWL

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

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

See Attached List

Reply Exceptions have been received from:

See Attached List

BTL

cc: Annette Shelley

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Uniform Cover and Calendar Sheet

1. REPORT DATE: April 28, 1998	**2. BUREAU AGENDA NO.:** APR-98-OSA-203*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	**5. PUBLIC MEETING DATE:** April 30, 1998
6. APPROVED BY: **Director:** C. W. Davis, 7-1827 **Supervisor:** R. H. Albert, 7-8108	
7. PERSONS IN CHARGE: P. Foster, G. Strella	
8. DOCKET NO.: R-00974104, et al.	

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

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

(b) On August 1, 1997, Duquesne filed a restructuring plan to implement direct access to a competitive market for the generation of electricity pursuant to Section 2806(d) of the Electric Generation Customer Choice and Competition Act. Numerous parties filed petitions or letters of intervention. Several parties filed Formal Complaints against Duquesne's Restructuring Plan. ALJ Corbett conducted Public Input Hearings on November 12-13, 1997, and evidentiary hearings were held on December 15-18, 1997. Briefs and Reply Briefs were filed. The ALJ's Recommended Decision was issued on March 25, 1998. Exceptions and Reply Exceptions were filed to the ALJ's Recommended Decision.

(c) The Office of Special Assistants recommends that the Commission conduct a nonbinding Poll of the issues presented by the Exceptions taken to the ALJ's Recommended Decision.

10. MOTION BY: **Commissioner** Chm. Quain **Commissioner** Hanger - Yes
Commissioner Rolka - Yes
SECONDED: **Commissioner** Bloom **Commissioner** Brownell - Yes

CONTENT OF MOTION: 1) The Recommended Decision of the ALJ in this matter be adopted by the Commission in all respects unless otherwise modified within the body of this Motion; 2) the Office of Special Assistants, in conjunction with the Law Bureau, prepare an Order for entry consistent with this Motion.

CONTINUED

Statement of Commissioner John M. Quain attached.
Statement of Commissioner John Hanger attached.

Note: The Chairman also polled the Commission on the remaining issue regarding the phase-in, this issue to be included in the Office of Special Assistants preparation of the final Order.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Application of Duquesne Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code	**PUBLIC MEETING- April 30, 1998 OSA-203**
	R-00974104 & R-00974104C0001-C0004
Application of West Penn Power Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code	**PUBLIC MEETING- April 30, 1998 OSA-202**
	R-00973981

STATEMENT OF CHAIRMAN JOHN M. QUAIN

Our decisions, today, in both the Duquesne and West Penn restructuring cases represents an informed, compromise position. I commend the parties and the Administrative Law Judges in both cases for their diligence and commitment. The well-developed records put before my colleagues and myself were of great value in considering and resolving both cases. The compromise we reach today, in each case, facilitates the rapid but reasoned development of competitive markets. This approach is essential to an orderly transition from a heavily regulated environment to open competition.

I also appreciate the willingness of my colleagues to seek a balanced and comprehensive result in these cases for the benefit of citizens and businesses within the Duquesne and West Penn service territories. Our action will also have a concomitant beneficial impact on the Commonwealth as a whole.

4-30-98
DATE

JOHN M. QUAIN, CHAIRMAN

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pa. 17105-3265

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS RESTRUCTURING PLAN	**PUBLIC MEETING- APRIL 30, 1998 APR-98-OSA-203* DOCKET NO. R-00974104**

STATEMENT OF COMMISSIONER JOHN HANGER

This Commission's decision of the Application of Duquesne Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code ("Application") will profoundly impact the future of those working and living in the service territory of Duquesne Light Company ("DLC"). A good decision will benefit the consumers of electricity and improve the economic competitiveness of Pittsburgh and other communities in the DLC service territory by creating a genuinely competitive retail electricity market. A fair resolution will also provide a reasonable transition for DLC's shareholders and employees from generation monopolies to competition.

Most importantly, though the final vote will not be taken until May 14, 1998, today's polling demonstrates that this Commission is in fact fashioning an outcome that will create genuine retail competition and a reasonable transition. In fact, Chairman Quain's Motion establishes in 1999 a system average shopping credit of 4.01 cents per kilowatt-hour and a system average competitive transition charge (CTC) of 2.44 cents per kilowatt-hour.

Since much is at stake for the employees, shareholders, and ratepayers of DLC, all parties to this case have zealously advocated for their interests. The record is full of much evidence and argument. Our task is to understand what has been submitted and to resolve conflicting claims. After careful deliberation and hopefully with wisdom, now this Commission must decide.

The starting point for decision is the Electricity Generation Customer Choice and Competition Act (hereinafter "Act"). Indeed, the Act is the foundation for deciding every restructuring case, even though each restructuring case is different, since each involves a different utility and evidence. Yet, the Act is more than a starting point or foundation. The Act is the electric restructuring North Star that shows the right direction and prevents us from losing our way.

The Act explicitly states its purpose in Section 2802(12):

> 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 while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

As the Commission implements the Act to achieve this purpose, it must be mindful that it "... must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, non-utility generators of electricity and other affected parties." Section 2802(8).

The Act establishes that the unbundling of electric rates is the central task that the Commission must complete in order to achieve the Act's purpose. "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..." and "The Commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission, and distribution. The commission may require the unbundling of other services." See Sections 2802(14) and 2804(3).

DLC's Application

As the case developed, DLC has submitted two proposals for restructuring. Developed in the rebuttal and rejoinder phases of the case, DLC's primary position appears to be a proposal to divest generation assets in order to establish the value of DLC's assets and the amount of its stranded investment. See DLC's Main Brief, p.2. DLC also proposes to maintain the pilot program's system average shopping credit of 3.76 cents per kilowatt-hour until the completion of the generation asset auction.

The record of this case demonstrates that certain of DLC's fossil fuel plants may be quite valuable. For example, CS First Boston, which is also serving as DLC's merger advisor, performed a plant valuation study for DLC and concluded that five generation plants could be sold for between $827 million and $1.184 billion. See Recommended Decision, p. 265; Exh. RBW-10; HSS/ARI St. 1 at 21, Table III-1. The book value of the five plants was $450 million. Id. Consequently, CS First Boston advised DLC that a sale may produce a purchase premium of $377 million to $734 million above book. Id.

The record also shows that generation asset sales in California, New England, and Pennsylvania (the Ft. Martin unit) all have produced sale prices that are greater than the book value of the plants. Recommended Decision, p. 267. For example, New England Electric System sold generation assets in 1997 for 1.4 times net book value; Pacific Gas & Electric Company sold generation plants for 1.32 times net book value; Southern California Edison Company sold generation assets for 2.65 times net book value; and DLC sold in 1996 its share of Ft. Martin to Allegheny Power System for 4.5 times net book value. Id.

Consequently, an auction could possibly reduce DLC's stranded costs, though it is impossible to guarantee the result of any auction.

The Act states that "the Commission may permit, but shall not require, an electric utility to divest itself of facilities or to reorganize its corporate structure." Section 2804(5). At this point, though legally permissible, DLC's proposal to auction generation assets is little more than a naked idea.

No details have been provided. If DLC wishes to pursue the auction of generation assets, DLC must submit within 90 days of the entry of the final order of this case a fully detailed plan. That plan must address a host of issues, including the impact on DLC's employees, the treatment of DLC's nuclear plants, and means to insure reliability. All parties then must be given a full opportunity to comment on that plan.

Though the interrelationship of the proposed merger with DLC's positions in this case are not free of ambiguity, DLC apparently does not intend to auction any of its generation assets if the proposed merger with Allegheny Power System is completed. If the merger is completed, DLC apparently claims $1.899 billion of stranded costs and a return of 13%. DLC seeks to collect these costs over 7 years, starting January 1, 1999.

To collect these stranded costs, DLC proposes directly or indirectly to unbundle its system average rate of 8.93 cents per kilowatt-hour into a T&D charge of 2.21 cents per kilowatt-hour; a system average competitive transition charge of 4.91 cents per kilowatt-hour; and (3) a system average competitive generation credit or shopping credit of 1.81 cents per kilowatt-hour.

DLC arrives at these proposed unbundled rates through a mixture of methodologies for quantifying its stranded costs and valuing its generation assets. These methodologies include 1 year and 8 year request for proposal (RFP) processes and the testimony of witnesses, principally Schnitzer and Clayton.

If DLC's testimony and evidence were accepted, DLC's stranded cost claim would mean that DLC's approximately 2250 megawatts of generation assets would have a market value of $27 million, excluding decommissioning costs, when their book value is $1.275 billion if the Beaver Valley 2 leased assets are included. Recommended Decision, p.252.

DLC's $27 million market valuation is flatly contradicted by the market valuation studies performed by Metzler & Associates and CS First Boston that were done for DLC as well as Duquesne's sale of Ft.. Martin. Id. at 252-272. The sale of DLC's 50% ownership of Ft. Martin (267 megawatts) for $169 million is particularly damaging to the credibility of DLC's case. Indeed, DLC argues that all its remaining megawatts of generation are worth just $27 million or one-sixth the value of its Ft. Martin sale. Even if one assumes that Allegheny Power System overpaid substantially for Ft. Martin, DLC is still arguing that all of its generation assets have a market value that is less than the book value of DLC's former share of Ft. Martin. The overwhelming weight of evidence is not surprisingly against DLC's extreme litigation position, and it must be rejected.

One of the valuation tools that DLC used to arrive at its market valuation position is the 1 year and 8 year RFPs. Other parties, particularly Hospital Shared Services/Administrative Resources, Inc. and Mid-Atlantic Power Supply Association, effectively attacked the reasonableness of the RFPs. The shortcomings of the RFPs include: 1. RFP buyers had to purchase transmission services, which had the effect of lowering the price a buyer would be willing to pay. 2. The RFP's take or pay provisions and the possibility of transmission constraints meant that RFP participants had to lower their bids to reflect the probability that the power they bought would not be deliverable to their customer because of transmission constraints. 3. The RFP represented a very small fraction of the DLC peak load and as

such did not represent the normal prices that would materialize in a competitive market with supply and demand in equilibrium.

Given these shortcomings and since the RFPs were a significant input into DLC's market valuation, it is not surprising DLC's market valuation of $27 million is not credible.

A related problem to DLC's generation market valuation position is DLC's proposed shopping credit of 1.81 cents per kilowatt-hour for fully delivered power to retail customers. DLC bases its proposed shopping credit on the discredited RFPs and argues that the shopping credit equals the market price for power. Yet, even estimates of market prices provided by consultants for Duquesne are well above 1.81 cents per kilowatt-hour. Id. at 265.

DLC's proposed shopping credit would strangle competition and make DLC a de facto monopoly. It would do so, because no competitor could provide fully delivered power for 1.81 cents per kilowatt-hour to retail customers without losing money on every kilowatt-hour sold. It would destroy the purpose of the Act for at least 5 and probably 7 years. Such a result would violate Section 2804(2) that directs in part: "...the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access." Establishing a shopping credit at a level that will mean few or no competitors offering service in the DLC service territory would mean that the Commission has effectively not allowed customers to "choose among electric generation suppliers in a competitive market through direct access."

The Commission must reject DLC's proposed unbundled rates and establish unbundled rates supported by substantial evidence.

DLC's system average transmission and distribution rates should be set at 2.345 cents per kilowatt-hour in 1999 and 2.22 cents per kilowatt-hour in 2000. DLC's system average competitive transition charge should be set at 2.44 cents per kilowatt-hour to recover $1.331 billion of stranded costs in 7 years. The shopping credit should be 4.01 cents per kilowatt-hour in 1999. The shopping credit is the residual left after the unbundled rates for transmission and distribution, stranded generation costs added together and subtracted from DLC's system average rate of 8.93 cents per kilowatt-hour.

The total stranded cost recovery of $1.331 billion results from adopting the recommendation of OCA on DLC's generation plant stranded costs and approving $339.26 million of regulatory asset stranded costs. DLC made no claim for non-utility generation contract stranded costs.

Universal Service

To make it clear that steps must be taken to insure that electricity service is universally available as the Commonwealth transitions from generation monopolies to generation competition, the Act contains multiple provisions concerning universal service. For example, Section 2802(9) states: "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." Section 2802(10) says: "The Commonwealth must, at a minimum, continue the

protections, policies, and services that now assist customers who are low-income to afford electric service." Section 2803 defines "universal service and energy conservation" 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, application of renewable resources and consumer education." Section 2804(8) states: "The commission shall establish for each electric utility an appropriate cost recovery mechanism which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs." Finally, Section 2804(9) requires in part: "The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory..."

As compared to the billions of dollars claimed for stranded costs, the approximately $7 to $8 million that OCA, CAAP, and the environmentalists argue should be dedicated to insure universal service is comparatively small. The record also shows that without this modest expenditure possibly an increasing number of low-income customers could be without electric service as the transition to competition is completed. Such a result is not acceptable under the terms of the Act, especially given that the Legislature has found that electric service "is essential to the health and well-being of residents."

Presently, two programs, DLC's Customer Assistance Program (CAP) and Low-income Usage Reduction Program (LIURP), exist to promote universal service. These programs now have budgets of $550,000 and $700,000 respectively. The CAP program annually serves 1600 customers and LIURP 700 customers. Though reaching a small fraction of those in need, the record shows that these programs are successful. For example, by making bills affordable and reducing electric usage, both programs reduce uncollectible expense, collection costs, and regulatory expense.

For all these reasons, these universal service programs should be expanded as detailed in the Chairman's Motion.

Phase-In

Different phase-in schedules for competition in different parts of the Commonwealth would advantage or disadvantage customers depending on where they live and on which utility serves them.

In PECO, this Commission ordered that a maximum of 33% of the non-coincidental peak load of each tariff class shall have the opportunity for direct access on January 1, 1999, a maximum of 66% shall be eligible for direct access on January 2, 1999, and that all customers shall be eligible for direct access on January 2, 2000. This schedule is in the public interest in order to provide the benefits of direct access expeditiously. Moreover, the schedule is appropriate both to minimize competitive disadvantages among customers and among EDCs and to facilitate an orderly transition without confusion due to different phase-in schedules for different EDCs in overlapping media markets.

Yet, some argue that the phase-in schedule adopted in PECO is contrary to a common sense reading of the statute, could confuse customers, would not be orderly, could disadvantage industry, and could require recalculation of stranded costs.

I cannot agree with these arguments. Section 2806(b) provides that:

> "Recognizing that approximately 5% of the peak load will have retail access through pilot programs, the following schedule for phased implementation of retail access shall be adhered to unless a determination is made by the commission under subsection (c):
>
> (1) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.
>
> (2) As of January 1, 2000, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.
>
> (3) As of January 1, 2001, all customers of electric distribution companies in this Commonwealth shall have the opportunity for direct access.
>
> (4) ..... within each customer class, the customers that are eligible for direct access prior to full direct access shall be determined on a first-come-first-served basis unless otherwise determined by the commission ....to prevent competitive disadvantages among similarly situated customers within a customer class."

It has been argued that the Act requires one specific phase-in schedule of exactly 33% of load eligible for direct access exactly on each of the three dates specified and that Section 2806(b) provides the Commission with no discretion concerning the phase-in schedule, except to extend the phase-in schedule pursuant to Section 2806(c).

This interpretation is not consistent with the plain language of Section 2806(b). Any argument that the Commission has no discretion to adopt a phase in schedule within the parameters of Section 2806(b) ignores the phrase "a maximum of" that directly grants the Commission the discretion that some argue does not exist. Rules of statutory construction do not permit an interpretation of the Act in a manner that would render specific language superfluous. If the Legislature intended "a maximum of" to mean "exactly" , the phrase "a maximum of" would not have been used.

Moreover, this interpretation is further supported by the general rule in subsection (a), "consistent with the commission's discretion under this section." If the Commission's discretion were limited to extending the schedule pursuant to subsection (c), the language in subsection (b) would have provided a precise load for phase-in on a precise date instead of using the phrases "a maximum of" and "as of."

I do agree that the phrase "as of" has several meanings in the English language, including "on," "no later than", "by", and "commencing on." However, consideration of the entire statutory language does not support the argument that the language may only be interpreted to mean "commencing on."

Even if the phrase "as of" is interpreted to mean "on," the schedule adopted in PECO is fully consistent with the language of the Act. On January 1, 1999, there will be a maximum of 33% eligible

for direct access; on January 1, 2000, there will be a maximum of 66% eligible for direct access; and on January 1, 2001, all customers will be eligible for direct access.

Similarly, if the phrase "as of" is interpreted to mean "by," our schedule is fully consistent with the language of the Act. By January 1, 1999, there will be a maximum of 33% eligible for direct access; by January 1, 2000, there will be a maximum of 66% eligible for direct access; by January 1, 2001, all customers will be eligible for direct access.

If the phrase "as of" is interpreted to mean "no later than," the schedule that I support is fully consistent with the language of the Act. No later than January 1, 1999, there will be a maximum of 33% eligible for direct access; no later than January 1, 2000, there will be a maximum of 66% eligible for direct access; no later than January 1, 2001, all customers will be eligible for direct access.

In contrast, the interpretation that "as of" may only mean "commencing on" requires a conflict with the very provision being interpreted. Section 2806(a) defines a "transition and phase-in period beginning on the effective date of this chapter (January 1, 1997) and ending, consistent with the commission's discretion under this section, January 1, 2001." Section 2806(b) begins with the statement, "Recognizing that approximately 5% of the peak load will have direct access through pilot programs..." Clearly the transition began on January 1, 1997, the effective date of the Act, and the phase-in to direct access began with the phase-in of 5% of customer load during the pilots. Interpreting "as of" to mean "commencing on" would require ignoring the cited provisions. Lastly, I note the statutory directive in Section 2806(b)(4) that grants the Commission both the discretion and the responsibility to adopt a phase-in plan that "prevents competitive disadvantages among similarly situated customers within a customer class." The above phase-in schedule is the simplest, most effective means to minimize such competitive disadvantages.

Consumer Education

A massive, well-funded consumer education effort is vital as all the customers of Duquesne Light transition to retail competition. There is a great deal for all of us to learn. With the action of the Commission today, the Commission indicates that $10 million will be provided to educate consumers of Duquesne Light.

Conclusion

Chairman Quain's Motion keeps the promise of the Act. Duquesne Light receives a fair transition and customers receive some of the many benefits that genuine competition will create. For these basic reasons, I am pleased to support this Motion.

April 29, 1998
DATED

John Hanger
JOHN HANGER, COMMISSIONER

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REP

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

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

PUBLIC MEETING-
April 30, 1998
OSA-203

R-00974104 &
R-00974104C0001-C0004

MOTION OF CHAIRMAN JOHN M. QUAIN TO DISPENSE WITH NON-BINDING POLLING

On August 1, 1997, Duquesne Light Company ("DQE" or "Company"), in conformity with Section 2806 of the Electricity Generation Customer Choice and Competition Act[1], filed a restructuring plan to implement direct access to competitive electric generation.

I would note from the outset that the restructuring proceeding conformed to the directive language of the statute, and Administrative Law Judge Corbett ("ALJ") provided our Commission with a thorough, well-organized and reasoned decision. In its briefings and exceptions to the Recommended *Decision*, DQE has also made a sound effort to coordinate the positions of the parties on a common basis, greatly assisting our consideration of the Decision and the respective positions of the parties. DQE has re-stated adjustments to insure that the record is complete and so that the impact of adjustments is known.

[1]66 Pa. C.S. §2801, *et seq.*, Act of December 3, 1996, P.L. 802, No. 138.

In many respects, I believe we can agree with the Judge's Decision, and with the exception of specific modifications set forth in this Motion, I will move the adoption of the Judge's recommendations. In those areas where it may be helpful to comment on the reasoning that underlies the Decision, I will offer that commentary. In a number of areas, and after a review of the record in this proceeding, I will move that we modify the Judge's decision as set forth in this Motion and the series of Attachments hereto.

Phase-in of Customer Choice

Method of Customer Selection - I move that we adopt the position of the Judge, which supports system-wide, "first-come, first-served," selection for residential customers, the Office of the Small Business Advocate ("OSBA") proposal to split small commercials on a, "first-come, first-served," basis, and PECO Energy's pro-rata subscription for industrial customers.

In making this determination, we reject Duquesne's proposed method to select customers for phase-in to direct retail access to the competitive generation market. In moving toward this market, the Legislature in the Competition Act directed, " . . . the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, . . . and other affected parties." 66 Pa. C.S. §2802(8). Further, "[t]he procedures 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). Therefore, whichever method is determined to be appropriate for customer selection must assure a fair and orderly transition.

As argued by the Office of Consumer Advocate ("OCA") on this record, the Commission should determine a, "first-come, first-served" selection process as the fairest and most orderly process for customer selection as they did in *PECO Energy Restructuring*, Slip Op. at 47-49. Accordingly, the Commission should direct Duquesne to implement this approach for residential customers. Beginning July 1, 1998, Duquesne should conduct an open enrollment period for residential customers on a, "first-come, first-served," basis. If less than 33% of the customer load for that tariff class enrolls as of August 14, 1998, Duquesne shall notify all customers who have volunteered as of that date that they can participate in the phase-in beginning January 1, 1999. Id. at 48. If more than 33% of the customer load for that tariff class enrolls as of August 14, 1998, Duquesne shall have an independent party, approved by this Commission, conduct a lottery to determine which customers may participate in the phase-in beginning January 1, 1999. Id.; *See also*, *PECO Energy Restructuring Order*, Slip Op. at 22

In the *PECO Energy Restructuring Order*, Slip Op. at 22, the Commission departed from a strict, "first-come, first-served," selection process for large industrial customers. Instead, subscription for large industrial customers for each stage of the phase-in will occur on a first-come, first-served basis, unless a class load is oversubscribed. In such event, each customer nominating a portion of load in the

oversubscribed class will experience a pro-rata reduction in their nominated load, so the total load available for direct access in that class meets the Act's 33% requirements for that phase. 66 Pa. C.S. §2806(b). This adjustment reflects the concern for competitive disadvantages this class may otherwise face, as the intervenors in this application so eloquently argue. Pennsylvania Retailers Association ("PRA") has requested similar treatment for customers above 300 kW. Since no persuasive reason exists in the record of this case for a less than uniform approach to this issue, the Commission will adopt the same method here for the large customers above 300 kW, as per the Judge.

The Commission, however, apparently did not address the same competitive concerns of smaller commercial customers in the *PECO Energy Restructuring* case. For that reason, I move the adoption of the proposal of the OSBA, as herein modified, and as it relates to small business customers receiving service from Duquesne via Rate GS/GM, which is available to all non-residential customers whose billing demands do not exceed 300 kW. However, as the OSBA explains, Rate GS/GM is not homogeneous, but contains customers with inherently diverse billing demands, usage patterns and physical size. OSBA St. 1R at 12-13. Thus, Duquesne should segment the Rate GS/GM class group into "Small Rate GS/GM" and "Large Rate GS/GM." Id. at 14. The OSBA suggests a segment limitation for the Small Rate GS/GM at a 40-kilowatt load; however, the Company may determine a more appropriate breakpoint after a detailed billing frequency analysis of all Rate GS/GM accounts. Id. Thereafter, customers within each class may designate their loads in the same manner described above for large industrial

customers until one-third of the peak load of each class for that phase-in period is reached.

For all other customers, the "first-come, first-served" approach described above for residential customers should apply.

Finally, I note that the Environmentalists propose the same "Better Choice Plan," which they claim will supplement the phase-in process as they did in *PECO Energy Restructuring Order.* Env. St. 2 at 42-58. In *PECO Energy Restructuring Order,* Slip Op. at 135, the Commission stated it would " . . . further consider the proposal of the Environmentalists when it promulgates regulations required by Sections 2807(e)(2) and (3)." No justification appears in this record to deviate from that strategy at this time. Therefore, the Commission should consider the Environmentalists proposal at a later date.

Timetable for Phase-In (Issue to be polled)

Transmission and Distribution Rates: Unbundling Issues

1996 Test Year Cost of Service - I move that the Commission adopt the ALJ's recommendation to accept the Company cost of service calculation, to reject the Hospital Shared Services adjustment to remove 1986-1996 distribution plant additions, to accept the company's functionalization, to reject the ENRON sales expense adjustment, to reject the ENRON Account 908 adjustment, and to reject the ENRON uncollectibles adjustment.

I would note that we denied the same objections of ENRON in *PECO Energy Restructuring Order*, Slip Op. at 59-61, to that utility's proposed allocations for uncollectibles, customer accounts, customer service and sales. The same treatment should be accorded Duquesne in this application. In reaching this result, in the *PECO* proceeding, we noted that PECO's Transmission and Distribution ("T&D") rates continued to be subject to Chapter 13 of the Public Utility Code and subject to the Act's rate caps. Parties may challenge existing rates in future proceedings. Further, the Commission noted in the *PECO* case that as functions continue to be unbundled, a utility's rates may be reexamined to determine if they provide for charges which encompass generation or other unbundled services. Id. at 61.

I agree with Duquesne that the Commission should reject the position of Hospital Shared Services and Administrative Resources, Inc. ("HSS/ARI") on this issue. An intervenor must raise, "credible issues," regarding an expenditure in order to overcome the, "presumption of reasonableness." *Equitable Gas Co.*, supra. The HSS/ARI have failed to do so. Therefore, the Commission should accept Duquesne's 1996 cost of service study, subject to the adjustments denoted below.

Required versus Realized Rates of Return

I move that we adopt the Judge's disposition that uses realized rather than required returns for setting of the distribution rates. This case is an unbundling of present rates. To redesign rates to the required return would disaggregate earnings such that distribution would

earn at a different level than generation. Such earnings separations increase stranded cost potential by depressing earnings from generation in order to fund full earnings on T&D from the cap rate levels.

As stated in the Recommended Decision, OCA, Duquesne Industrial Intervenors ("DII") and ENRON argue that the Company's use of a, "required" rate of return to develop Transmission and Distribution ("T&D") rates constitutes an inappropriate cost-shift and a violation of the Act's rate cap. 66 Pa. C.S. §§2808(a), 2804(7) & 2804(4)(i). While Duquesne is correct that development of a, "required" rate of return follows traditional rate-making principles, the purpose of this proceeding is to unbundle existing rates in a manner that does not shift costs or violate the rate caps. *See*, 66 Pa. C.S. §§2802(14), 2804(3), 2804(7) & 2808(a). As the Recommended Decision correctly holds, one day after implementation of new rates as approved by this Commission, a utility begins earning a, "realized" or, "earned" rate of return and not a, "required" rate of return. We are reminded that ratemaking provides an opportunity to earn a fair rate of return not a guarantee of its realization.

Duquesne will have an opportunity to adjust its rates (and possibly move the class rate of return toward system average) after the T&D rate cap mandated in Section 2804(4)(I), expires.

Distribution Losses

DQE has already agreed to remove distribution losses from its distribution rates. I therefore move that we accept the Judge's recommendation that customers be allowed to procure distribution losses from alternate suppliers. I also agree with the Judge that to the extent a portion of embedded costs allocated to distribution losses will become potentially stranded, they may be included in the Competitive Transition Charge ("CTC").

Ancillary Services

In resolving this issue, I would note that ancillary services are F.E.R.C. jurisdictional transmission support services which are provided by generating facilities. Although these are bundled for retail service, Order No. 888 contemplates ancillary services as competitively provided transmission services. As retail rates are unbundled, ancillary services could be classified either as generation or transmission. Transmission services are billed to the Electric Generation Supplier ("EGS") not to the end user[2], and they should be in this case as the services will be pool-based through either the Midwest ISO or the PJM Interconnection. The issue before us is whether these services are competitively procured, and if so, does that create a stranded cost.

As the Recommended Decision correctly states, a traditional rate making principle is that assignment of costs follows function. Since Duquesne admits their generating units can

[2]The only time the end user should see the charge is when the provider of last resort bills at the equivalent cap rate.

provide the ancillary services, Duquesne M.B. at 15, and the costs associated with the challenged adjustments to transmission services were estimated as portions of the revenue requirement associated with generating units estimated to be required to provide these services, OCA St. 4 at 4, then it naturally follows that the costs of ancillary services should be attributed to the generation function, if the particular service can be competitively procured, and any stranded costs associated therewith should be recovered in the CTC. Duquesne and the intervenors apparently agree on this general principle.

With respect to ancillary services, the question is which ancillary services can be competitively procured. Order No. 888 holds that all public utilities must offer ancillary services to direct access customers at regulated rates. Yet, the F.E.R.C. also distinguishes between services that can only be offered by the host public utility and others that can be competitively procured, assuming that regional reliability rules permit it. Duquesne contends that its regional reliability council, the East Central Area Reliability Coordination Agreement ("ECAR"), imposes significant restrictions on when many of these ancillary services can be competitively procured. Duquesne St. 7 at 13-14; Duquesne St. 5R at 19. Duquesne's own witness admits this may not be the case. N.T. 772. The ability to competitively procure the ancillary services at issue is a decision the F.E.R.C. will determine. Our scope of jurisdiction does not permit us to decide this option. These services are transmission tariff related, any stranded costs created by their competitive procurement is not pursuant to Chapter 28, but to Order No. 888. These costs should not be shifted from the F.E.R.C. regulated Tariff recovery to the Pennsylvania authorized stranded cost recovery. Similarly,

the Duquesne proposed scheduling and imbalance charges should be directed to the F.E.R.C. for inclusion in the F.E.R.C. tariff.

Voltage-Differentiated Rates

I move that we accept the Judge's decision which rejects the ENRON voltage-differentiated rates proposal. I agree with the Judge that insufficient evidence has been presented by ENRON to demonstrate that ENRON's voltage-differentiated rates will not violate the Act's prohibition against cost-shifting or exceeding the rate cap on non-generation rates.

Other Issues

Minimization of New Capital Spending - Hospital Shared Services and Administrative Resources, Inc. (HSS/ARI) cite the holding in *PECO Energy Restructuring Order* for the proposition that the Commission should disallow 10% of Duquesne's projected distribution-related capital additions because the Company has a history of over-budgeting future capital improvements. The Act does not compel such a result. HSS/ARI overlook the fact that transmission and distribution rates will still remain regulated after implementation of this restructuring plan. If they believe T&D rates are still unreasonable at that time, HSS/ARI can challenge those rates in a future proceeding before this Commission.

Transition or Stranded Costs

Overview of Stranded Cost Valuation and Recovery Approaches - As accepted by the Judge in the Recommended Decision, I would accept the rejoinder offer of DQE to divest itself of generation if the proposed DQE-APS merger is not consummated. I move that we accept Duquesne's proposal to offer that divestiture of its generating assets in order to determine the value of its stranded assets. In the event the proposed merger with APS is not consummated for any reason whatsoever, divestiture should occur, preferably within 18 months of entry of the Commission's final Order disposing of this application. As noted in Duquesne's exceptions, however, a longer time frame may be necessary.

Within 90 days of entry of the Commission's final Order in this case, and in conformity with the guidelines established, below, Duquesne should file a plan of divestiture of its generating assets, together with a proposal for addressing its continuing obligation to serve under the rate cap. All interested parties should have an opportunity to respond to the divestiture and/or obligation to serve proposals.

Concerning the issue of an interim CTC to take effect January 1, 1999, Duquesne should apply the same rates and credits approved in the pilot program for customers electing direct access during this interim period. Relating to the issue of what method to use for calculating a "permanent" CTC, using market values produced by the auction, the Company is directed to adopt the general approach used in *PECO Energy Restructuring Order.*

Duquesne should be permitted to fully recover (*e.g.*, with no "sharing" and a compensatory return on equity) its stranded costs as established by the market values

produced by the auction. The Company should also submit a final proposal to address its continuing obligation to serve at the same time that it files a final CTC calculation, using market values produced by the auction.

DQE is directed to provide the following items in its divestiture plan:

1. Company shall file the proposed plan for divestiture within 90 days.

2. The plan shall be served on all parties to this proceeding.

3. Parties shall file comments to the filed plan within 60 days.

4. DQE shall file a response to comments and accepted revisions within 30 days, thereafter.

5. The plan shall detail a schedule for pre-bid conferencing and the exchange of relevant information.

6. The plan shall disclose those assets and/or operational criteria of an asset essential for the continued reliability of service in the DQE territory.

7. The plan shall include a discussion of the treatment of shares of nuclear and fossil units for whom Duquesne is a minority owner. Specifically, the plan shall delineate Duquesne's proposed treatment of nuclear ownership shares should no bids materialize for those shares, as well as Duquesne's ability to sell its stake in Beaver Valley 2 and Perry 1 to the other owners of those units or to swap Duquesne's stake in these units with the owners for the output of other fossil units.

8. Divestiture shall include both fossil and nuclear assets.

9. Proposals may be accepted for an individual asset or portion thereof.

10. The plan shall detail the approvals necessary for the acquisition of an individual asset or portion thereof.

11. The plan shall disclose environmental obligations of a particular asset and enforcement agreements entered into by Duquesne associated with an asset. The plan should detail the handling of current trust funds and reserves associated with

environmental liabilities.

12. The plan shall describe the transmission access available to a particular asset and any general transmission agreements associated with a particular asset.

13. The plan shall include tracking and accounting for the transaction costs associated with the divestiture activities, both internal and external.

14. The plan shall describe the ratemaking accounting for use of proceeds of the plan as it relates to offsetting the generation and regulatory stranded costs and the computations of the CTC and shopping credit.

15. The plan shall include opportunity provisions for the continued sale of output to permit Duquesne to satisfy its obligation as provider of last resort.

16. The plan shall set forth transitional issues and the resolution of those issues in a manner that is fair to customers, investors, the employees of the Company, local communities, and other affected parties.

I would also note that as divestiture may not be accomplished by January 1, 1999, for the interim period the shopping credit in use shall continue to be the pilot Customer Participation Credit ("CPC") and energy credits.

Post-merger Conditions

The issue remains as to the conditions the Commission would apply if the merger with APS is consummated. The Companies are free and encouraged to divest of generation in order to determine the market value of the facilities and to mitigate the remainder of the stranded costs. The subsequent discussion, however, will detail the Commission's position regarding the valuation and recoverability of the stranded costs associated with Duquesne's territory after the merger.

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

Net Book Value - In determining the Total Net Book Value under the merger scenario, the principal starting point shall be the OCA valuation as expressed by Duquesne in its appendix of its Reply Brief in this proceeding. A one-time administrative valuation of stranded costs is required as of January 1, 1999, and we will adopt the Company's calculation of net book value for its generation-related stranded costs, with the following adjustments. We will adopt the OCA's level of working capital of $61.53 million as this claim appears reasonable and supported by the evidence of record. We will also allow the Company its stated claim of $475.57 million representing the lease expense for Beaver Valley 2, but, for the reasons the OCA advances, we will treat the lease payments as "owned-generation," rather than as a regulatory asset subject to recovery under Section 2808(c)(1).

I move that we accept the Office of Trial Staff ("OTS") adjustment to disallow the Company's claim of fossil plant stranded costs of $65.58 million net book value for Units 1, 2, 3, and 4 at Phillips Power Station and Units 3 and 4 at Brunot Island Power Station. The reasoning behind this denial is as follows: Section 2803 of the Act defines "stranded costs" as costs that are traditionally recoverable under a regulated environment. Costs for generating plants that are not, "used and useful" are not traditionally recoverable under a regulated environment.[3] While the Act provides an exception for costs attributable to

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[3] *See, e.g., Barasch v. Pa. P.U.C.*, 516 Pa. 142, 169-170, 532 A. 2d 325, 338-339 (1987), *aff'd*, 488 U.S. 299, 109 S.Ct. 609 (1989).

physical plants no longer used and useful because of the transition to retail competition, Duquesne acknowledges that these units were placed in cold reserve and removed from rate base more than ten years ago, when no competitive electric generation market for Duquesne's end use customers existed. N.T. 195-196. The Act and the transition to a competitive generation market played no role in the decision to, "cold reserve" these units. Accordingly, the Act precludes the recovery of this claim.[4]

Recovery of Phillips and Brunot Island Costs

I move to accept the Judge's Decision which accepts the OTS adjustment removing the Phillips and Brunot Island plant costs as not stranded by the advent of competition. Those plants were closed in 1996 for reasons not tied to the passage of the Act.

Recovery of Warwick Costs

With respect to the Warwick issue, I would reverse the Judge to the extent that the Warwick recovery of capital investment as a stranded generating cost should be allowed, while the deferred fuel regulatory asset should not be recovered. When the fuel expense deferral was authorized, there was an expectation that the market price of coal would be sufficient to provide recovery of the plant investment. It is quite apparent that coal's market

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[4] Consistent with the Recommended Decision, we reject the argument of the HSS/ARI with respect to how the burden of proof should be applied in this case as it relates to the valuation of stranded costs.

price will strand the mine investment, as electricity's market price will strand generating unit investment. To permit the accumulated deferral as a regulatory asset and the plant recovery rises to a virtual double recovery of the investment. I would permit only the plant recovery as a stranded cost. Only HSS argued to exclude both cost recoveries, while OCA, OTS and DII would permit only the plant based recovery.

Market Value

With respect to Market Price Projections, there is little variation in the projections of the Company and OCA, and I move the adoption of the Judge's Decision which recommends the approach of OCA, with modifications.

As explained by the Judge, the Company and the OCA both utilize a net margin analysis to determine the market value of Duquesne's generating facilities. The difference in results – $272 million – produced by those analyses is primarily attributable to two factors: (1) different market price projections, and (2) assumptions regarding treatment of generating facilities at the end of their useful lives (life extension). As the Judge points out, we specifically endorsed the OCA's approach to valuing owned-generation stranded costs in *PECO Energy Restructuring Order*, Slip Op. at 90, finding that OCA witness' approach "best balances all of our considerations." In particular, we found the OCA witness Smith's analysis of market value the most credible, convincing, and reasonable and was truly an "objective" analysis as compared to the other market value witnesses in the case. *PECO Energy Restructuring Order*, Slip Op. at 88. The ENPRO model Mr. Smith used, " . . .

fairly represents several other important matters such as unit commitment, Non-Utility Generator ("NUG") operations, fuel prices, imports and exports, and heat rates." Id. at 89. We also agreed with Mr. Smith's "approach to fuel use by dual fuel units, the cost of new generation, and the use of average heat rates." Id. at 90. OCA asserts that it uses the same model in this case as in *PECO Energy Restructuring Order*. While none of the analyses proposed in this case escape criticism, the weight of the evidence favors the OCA's approach.

Economic Life Extension

I move the rejection, however, of the OCA's adjustment, adopted by the ALJ, of $170.72 million to reflect an appropriate economic life extension for the Company's generating plants. It is unclear from the record, given the age of the Duquesne units, that life extension is feasible. Further, the costs associated with extending the life of the units for 15 years have not been included in the analysis by OCA.

Plant Shutdowns and Costs Independent of Operations

The Company has included in its rebuttal a claim for costs stranded, independent of operations. This adjustment is adopted by the ALJ. It is apparent that this claim is only operable if a unit is shut down, as these are continuing costs for the property absent energy production. These costs would offset the removal of the plant values from the analysis. This adjustment to stranded costs is unnecessary for our purposes since no shutdown is ordered,

and would only be accounted should a future shutdown decision be authorized. I would, therefore, reverse the ALJ on this matter.

Productivity Gains

The OCA has incorporated into its market value calculation a productivity gain in the performance of the Duquesne generating units. The Judge, however, rejected that adjustment. After reviewing the presentation by the OCA, I believe that the OCA has demonstrated that it is reasonable to expect Duquesne generating units to improve their productivity. I move, therefore to accept the OCA productivity gain as a part of market value calculation.

Projected Capital Additions and O&M Expenses

I concur with the Judge in this area and would move to accept his recommendation while rejecting the HSS adjustment as unsupported by sufficient evidence.

Environmental Regulations

I agree with the Judge that his recommendation of the OCA market value study resolves this issue as the OCA study adjusts for the impact of known environmental regulations; thus, no further adjustment should be allowed. At the same time, I would move the rejection of DQE's proposal to further adjust its stranded costs.

Merger Savings

This portion of the Recommended Decision provides guidance to conditions applicable if the merger goes forward and is successfully consummated. Consequently, I would move the adoption of merger savings as an offset to the stranded cost figure of $152.28 million. The recommendation of OCA in this regard is persuasive, and I move its adoption.

OCA also proposes an immediate rate reduction of $15 million to begin January 1, 1999, to reflect merger savings associated with distribution operations. The Company had proposed that a rate reduction occur in 2001 to reflect distribution expense reductions, and I agree that some time must pass before such savings can be generated by the restructuring attendant to the merger. The record reflects, however, that both companies have been working to create these savings since the merger was announced last year. Merger savings from distribution revenues is one item that benefits all customers whether they shop for generation or not. This is a strong indicator of the benefits gained from a merger. I would, therefore, accelerate the customer rate reductions to begin January 1, 2000, rather than in 2001, as the Company proposed. The reduction of $15 million in distribution revenues as proposed by OCA is in the public interest.

Decommissioning

Nuclear Decommissioning - I move the adoption of the Judge's recommendation which adopts the Duquesne Industrial Intervenors' calculation. The DII calculations are supported by substantial evidence and, as the Judge correctly points out, are consistent with our decision in, *Pa. P.U.C. v. Pennsylvania Power & Light Company*, 85 Pa. P.U.C. 306 (1995).

Fossil Decommissioning - I move the adoption of the Judge's recommendation which cites the *PECO Energy Restructuring Order* as controlling. We would, therefore, deny DQE's claim for fossil plant decommissioning costs in its entirety.

Regulatory Assets and Liabilities: Disputes Regarding Specific Claims

SFAS 109 Deferred Taxes - I move the adoption of the Judge's recommendation as consistent with the treatment of this issue in *PECO Energy Restructuring Order* and the approach of the OCA. This should avoid the problem of double recovery, and allow for consistency in the application of the analysis for the recovery of stranded costs. DQE's SFAS 109 obligation should be treated as a tax liability from the balance of plant in service and not as a regulatory asset. This adjustment will reduce DQE's regulatory asset claim by $62.94 million. This adjustment refers to a plant number accepted by the company.

Unamortized Debt Costs - I move the adoption of the Judge's recommendation which adopts the position of the OCA. The claim for unamortized debt costs should be valued as of December 31, 1998.

Unamortized Sale/Leaseback Premiums - Consistent with the Recommended Decision, I

would adopt the DQE claim for unamortized sale and leaseback premiums as modified by the OCA treatment.

Deferred Rate Synchronization Costs - I move the adoption of the Judge's recommendation which accepts the revised DQE claim. The Judge specifically finds that the record supports the DQE claim, and I would permit recovery of $23.5 million, on a net present value basis.

Deferred Employee Costs - I move the adoption of the DQE claim for compensated absences, injuries and damages of $14.24 million, as computed by OCA, on a net present value basis, as supported by the record. I would also reject the HSS/ARI adjustment as recommended by the Judge.

Deferred Coal Costs - I move the adoption of the Judge's recommendation which would disallow the DQE claim for deferred coal costs of $13.5 million in its entirety. In this sense, I believe the Judge is correct that DQE has failed to show that these costs would be recoverable in a regulated environment.

Deferred Caretaker Costs - I move the adoption of the Judge's recommendation which holds that the assets to which these claimed costs relate (the Phillips and Brunot Island plants) are not, "used and useful." I will, therefore move the denial of those costs of $3.92 million on a net present value basis in their entirety.

Pre-Accrual of Nuclear Outages - I move to reject the Judge's recommendation to allow the Company to claim as a regulatory asset pre-accrual of nuclear outages in the amount of $10.29 million, on a net present value basis. As the OCA contends, in their analysis this adjustment is included in plant operations and allowance as a regulatory asset would double

count the expenses of a nuclear outage.

Transition Costs - I move the adoption of the Judge's recommendation that we allow DQE to claim the full amount of transition expenses in the amount of $10.59 million on a net present value basis. I would note that there is no support for the DII contention that the DQE claim includes $8.3 million in Customer Advanced Reliability System ("CARS") related expenses.

SFAS 106 Deferred Costs - I move the rejection of the Judge's conclusion that since it appears SFAS 106 is not a regulatory asset (because all suppliers in the competitive environment will be subject to SFAS 106), the Commission should deny Duquesne the entire amount of its claim of $1.92 million, on a net present value basis. I move instead the adoption of the Company/OCA/OTS allowance of $1.92 million. To adopt the ALJ's DII reasoning would be a reversal of our prior Commission policy on 106 transition recovery and force a flash cut writeoff.

Warwick Mine Costs - Consistent with the reasoning in the Judge's recommendation, I would grant the adjustment and deny this claim in its entirety.

Pilot Program/Customer Education Expense - These expenses are a part of the transition cost claim. DQE is referred to our Consumer Education docket for assignment of these costs to DQE and recovery through the CTC reconciliation procedure. We estimate that these costs will amount to $5 per customer, per year, and we have included $10 million in our computation for this transition cost.

Compensated Absences - These expenses are contained in Deferred Employee Costs.

Injuries/Damages - These expenses are contained in Deferred Employee Costs.

Recovery of Stranded Costs: Proposals to Adjust the Level of Stranded Cost Recovery

Mitigation - I would move the adoption of the Judge's decision that DQE's past actions have been adequate, but DQE's must also continue a commitment to mitigation. While the record before us does not support any immediate adjustment to the mitigation efforts already undertaken by DQE, this is an area that requires constant diligence on the part of the Company.

Sharing of Stranded Costs - I move to reject the Judge's conclusion that the Act prohibits sharing of stranded costs and that any sharing amounts to takings. The Act contemplates the Commission deliberation as to the just and reasonable rate for recovery of stranded costs. It is quite apparent that the Act does not restrict the Commission deliberation. The fact that sharing is not explicitly detailed, was to provide the Commission the full opportunity to customize the stranded cost result and recovery to the circumstances of the individual utility.

Securitization - I would conditionally accept the Recommended Decision. The Act provides that Securitization may be proposed by the company. While Duquesne as a stand alone company does not believe it can securitize within its sale/leaseback and financial covenants, the post merger company should examine the option for both operating territories and determine after a fresh look whether securitization can provide benefits for both companies and customers.

Methods of Stranded Cost Recovery

Accelerated Amortization - I move that the Commission adopt the levelized CTC method for CTC calculation. The Company proposed a flexible valuation and recovery mechanism which would reset the CTC every year. Because we are determining stranded costs and the CTC for their recovery, the need for flexible amortization as proposed by the company is removed.

I would also note that the particulars of the Company proposal had been challenged by a number of parties with respect to its equity benchmark and its ongoing regulatory oversight requirements. I believe the parties are correct in their concerns with respect to the Company proposal.

Immediate Rate Reductions (OCA Proposal) - I move the rejection of the OCA Immediate Rate Reduction Proposal consistent with the reasoning of the Judge. There is nothing to be gained by extending the transition period, which is what the OCA proposal would require. Rate reductions are a function of shopping, or, as the Judge so eloquently states: "[T]he most satisfactory way to achieve rate relief for Duquesne's beleaguered customers is to move as quickly as possible to a fully competitive electric generation market. One possible exception will be the merger-based reduction.

Rate Cap/CTC Extension - I concur with the Judge that rate cap/CTC extension is unnecessary in order to recover the allowable stranded costs under the rate cap.

The Competitive Transition Charge - *Duquesne's* Rate Redesign Proposal

Without engaging in a lengthy analysis of the conceptual disputes regarding calculation of the CTC/CGC in the record, I move the adoption of the levelized CTC, adjusted annually for reconciliation, as the primary method for calculating the CTC.

Consistent with the Judge's recommendation, I move to reject the optional rate design for customers to choose for their CTC payments.

Rate of Return/CTC Recovery

I move that the Commission accept the OCA's computations as reasonable for net present value discounting of stranded cost valuations. I also move the adoption of a return rate of 11% incorporated into the CTC recovery calculation.

The parties presented a number of proposals for net present value discounting and for the return to be utilized for CTC recovery computation. After reviewing the record on rate of return and considering discounted cash flow analysis, risk comparisons, and interest coverage analysis, I am persuaded that we should adopt for net present value discounting the OCA's computations.

The rate of return to be incorporated into the CTC recovery calculation has been argued as part of sharing responsibility. OCA argued that no return should be provided in the CTC calculation and that straight amortization be employed. Conversely, the Company argued for a full, pre-tax cost of capital rate of 13.39%. I believe that a rate of 11% should be incorporated into the CTC recovery calculation as just and reasonable given the reduced

risk profile of the recovery mechanism versus historic ratemaking.

As per the Judge, the stranded cost responsibility shall be spread to the various classes based upon the production cost allocatur. The CTC shall initially be computed using the Company's sales figures as shown in their Exceptions, Appendix D. The CTC shall be reconciled annually, by class, based upon actual sales.

Special Customer Classes

Rule 4 Contracts - Consistent with the Judge's recommendation, I move that the Commission specifically direct DQE to unbundle its contracts for distribution, transmission and generation CTC charges. Customer shopping will be governed by the language of the contract. Realized CTC charges should be computed and reconciled by tariff class.

Riders 8 and 20 - All existing customers under a special discount contract will have the opportunity to shop for generation no later than January 1, 2001, as provided for in the Act. I move the adoption of the Judge's recommendation that we approve DQE's proposal to phase out these special customer discount contracts as they expire over the next five years, provided that the affected customers are fully phased in to direct access to the generation market at the time of contract expiration. The Judge, however, correctly points out that DQE's offering special discount contracts to new or existing customers with new load constitutes discriminatory treatment proscribed by the Act. DQE can acquire new customers or new load in the competitive market place. I agree with the Judge and move that we approve the Company's proposal for Rider 8, as modified, but deny the Company's proposal

for Riders 9 & 20.

Other Tariff-related Issues - I move the adoption of the Judge's recommendation that we deny DQE's proposed changes to its current tariffs for Interruptible Service (Rider 7), Time-of-Day Service (Rider 5), and High Voltage Power Service (HVPS) for the reasons advanced by DII.

Net Metering

The Environmentalists have proposed that Duquesne implement a net metering based tariff for renewable energy and fuel cell installations which have a capacity of 10 kW or less. The Judge rejected that proposal as in conflict with Section 2808(a) regarding a non-bypassable CTC. Section 2808(a), however, is conditioned upon significant reductions in the purchases of electricity. It is unlikely that the size of these installations will materially affect the recovery of stranded costs by the company. Therefore, in order to remove a barrier to the development of these small installations, we direct DQE to include a net metering based tariff schedule consistent with the Environmentalist proposal.

Competitive Safeguards

Code of Conduct - I move the adoption of the ALJ adjustments to the proposed DQE Code of Conduct. I believe that it is important to underscore our desire to establish state-wide consistency in this area. The Code of Conduct will be in effect until such time as the Commission adopts regulations establishing a permanent Code of Conduct. Until those

regulations are finalized in Docket L-980132, an interim Code of Conduct must be established in this proceeding. I also agree with the Judge that in order to bring Duquesne's proposed Code of Conduct within the parameters established in *PECO Energy Restructuring Order*, the Commission should direct the Company to modify it in the following respects:

1. Duquesne's interim Code of Conduct must prohibit preferential treatment between affiliated and non-affiliated suppliers.

2. Duquesne's interim Code of Conduct must require all tariffed services to be offered in the same manner to affiliates and non-affiliates alike.

3. Duquesne's interim Code of Conduct must include a prohibition on anti-competitive pricing.

4. Duquesne's interim Code of Conduct must require it to make confidential market information available simultaneously to all suppliers, affiliated and non-affiliated alike.

5. Duquesne's interim Code of Conduct must require physical separation of employees, and must require segregated accounts and records or allocation of shared facilities.

6. Duquesne's interim Code of Conduct must prohibit the tying of regulated and unregulated services.

7. Duquesne's interim Code of Conduct must preclude the EDC from promoting "its competitive affiliate any differently than non-affiliated suppliers."

Pro Forma Tariffs - While I concur with the Judge that the issue of a Pro Forma Electric Generation Supplier Tariff is better suited to consideration in a generic proceeding, our timely implementation of the Act requires that such a tariff be filed as part of the Company's compliance filing. The Company should use as a guide the Commission decision in Docket

R-984298, and prepare an EGS tariff consistent with the requirements of its service territory.

We agree with the Exceptions of ENRON and MAPSA that implementation of retail direct access pursuant to the Act requires a comprehensive Supplier Tariff that includes all rules, procedures and protocols appropriate and necessary for the seamless and efficient implementation of retail access. We direct DQE to include a specific Supplier Tariff as part of its compliance filing.

The Supplier Tariff is not a services agreement; it is a set of rules and procedures. It should include no fees or other charges except as have been approved by the Commission upon documentation of incremental cost. The Supplier Tariff must address customer sign-up and switching, balancing, billing, and data exchange.

We agree with ENRON's and MAPSA's Exceptions concerning imbalances. Inclusion of energy imbalances in the F.E.R.C. open access tariff does not preclude the development of supplemental rules, consistent with those of the F.E.R.C., but related to retail access. We agree with the Judge's Decision and the exceptions of ENRON and MAPSA that the Supplier Tariff must include procedures to permit trading such imbalances among suppliers to permit the efficient service of retail load.

Duty to Serve

Service to Returning Customers - I move the adoption of the Judge's recommendation that the Commission deny the 12-month "stay in" provision offered by DQE. As the Judge correctly states, the record does not support the suggestion that a problem will arise with

respect to returning customers engaging in "gaming" to the detriment of DQE. Unless DQE can affirmatively demonstrate that a serious problem exists, this suggestion is baseless.

Provider of Last Resort - I agree with the Judge that there is no basis in this record to warrant reconsideration of the *PECO Energy Restructuring Order* to await consideration of the Environmentalist's proposal to mandatorily assign customers to suppliers. Likewise, the decision as to whether such service should be provided at, "prevailing market prices," should await the proposed Provider of Last Resort Rulemaking.

Electric Transmission and Distribution Service - I concur with and move the adoption of the Judge's recommendation that DQE must provide all billing services, including billing for generation services, unless a customer elects to receive a separate bill directly from the supplier for generation services. A "third" billing option, that permits customers to receive a single bill from their EGS that includes billing for the Electric Distribution Company ("EDC") charges cannot be determined on the basis of this record and should await the results of the Commission's generic rulemaking. I also move adoption of the Judge's recommendation that the Commission allow billing consolidation for customers with multiple sites to aggregate their load to a single EGS.

Metering - I concur with and move the adoption of the Judge's recommendation that DQE must allow customers the option, in conjunction with their EGS, to request the use of a, "qualified meter," that has been approved by the Commission. As the regulated EDC, Duquesne shall be responsible for all physical work related to the meter, and the customer shall pay as a regulated rate any net incremental cost incurred by DQE as a result of the

customer's metering choice.

Consumer Protection and Service Issues - Termination - I move the adoption of the Judge's recommendation, as agreed to by the parties, that as an EDC Duquesne cannot terminate service to a customer for that customer's failure to pay an alternative supplier's charges. Likewise, Duquesne cannot condition restoration or reconnection on the payment of past-due supplier charges, unless those charges are owed to the territory's provider of last resort.

Consumer Protection and Service Issues - Switching Fees - I move that the Commission deny the DQE claim for a fee for switching suppliers as unsupported in the record, until such time as DQE can substantiate the cost-basis for such a charge. I move, however, that the Commission adopt what the Judge considers an "anti-slamming" measure: that subject to modification by our rulemaking at Docket L-970121, proposed Tariff Rule 27 will allow for a change of supplier based upon either an oral or written confirmation from the customer, but not allow the supplier to contact DQE on behalf of the customer without written proof of authorization. I move for adoption DQE's five day notice requirement to switch suppliers and obtain a meter reading.

Universal Service and Energy Conservation

Based upon a review of the record and the contentions of the parties, I move that we adopt a conclusion that the Company should expand continue its Low Income Usage Reduction Program ("LIURP"), over the next four years to serve 1750 customers annually at a cost of $1,000 per customer and that the Customer Assistance Program ("CAP") can be

realistically expanded over the next four years to serve 15,000 customers at a cost of $350 per customer.

Our yearly estimates of the expenditures for the two programs are as follows:

Year	CAP Dollars	LIURP Dollars
1999	$1 million	$1 million
2000	$2.245 million	$1.25 million
2001	$3.85 million	$1.5 million
2002	$5.275 million	$1.75 million

The questions of funding and enrollment are intertwined issues for the provision of universal service programs. The Company's LIURP program has been in place for a number of years and serves 700 customers annually at an average program cost of $1,000 per customer. OCA has proposed to expand the funding of this program to $2,200,000. LIURP has been one of the Commonwealth's most successful programs for assisting low income customers. I find that enlarging the service provided by the LIURP program over four years to the higher level of funding of $1,750,000 is reasonable. This LIURP program is unique in its emphasis on base consumption reduction due to the lack of heating customers in the territory. LIURP services for heating in DQE's territory are primarily provided by natural gas companies.

The Company's Customer Assistance Program is still in the pilot phase serving 1,600 customers at a cost of $343 per customer. I recognize that some expansion of the CAP program is necessary to meet the needs of customers. Currently, funds are being expended to find defaulting customers in order to collect bills, and writeoffs of uncollectible amounts

are occurring. The Company has identified an amount in excess of $12 million expended in these efforts.

The premise of the CAP program is that it is more effective to devote a portion of collection funds to provide direct customer discounts which in turn provide more affordable bills. The overall goal of the CAP program is to secure more stable revenue from the affected customers at lower cost.

OCA proposed a rapid expansion of the CAP program to serve 24,000 customers annually at an annual cost of $5,725,000, or approximately $238 per customer. This rapid expansion of the CAP program could give rise to serious implementation problems. OCA's funding proposal for CAP is based on a budget of 0.5% of gross revenues. That proposal, however, does not reflect the fact that generation will be competitive, and gross revenues will decline to reflect only transmission, distribution, and CTC revenues.

The Community Action Association of Pennsylvania proposed that the Company's CAP program can be realistically expanded to serve 13,500 customers. It is evident that there is a potential need for expanded CAP services in the Duquesne territory. It is reasonable to take a measured approach and to expand the program over four years. Using an average cost of $343 per customer the CAP program should be increased to serve 15,000 customers with a budget of $5,275,000.

Consistent with sound management, the CAP program should be expeditiously expanded to meet the community's needs. The Company could enroll as many as 4000 new customers in its first year of operation post-restructuring. This would correspond to the CAP

expansion supported by the Company's proposed merger partner, Allegheny Power.

With respect to energy conservation, consistent with the Recommended Decision and the Judge's discussion therein, I do not believe that any further action is warranted on the Company's energy conservation proposals.

Miscellaneous Issue - Million Solar Roof Program

The Environmentalists have recommended that DQE be directed to participate in the, "Million Solar Roof Program." This is a joint effort by the U.S. Department of Energy and the Utility Photovotaic Group. This program is a loan fund for the installation of solar energy systems. Loans are offered by participating companies at an interest rate 0.5% higher than the participating company's cost of capital.

This program has the potential to encourage the use of solar power and to facilitate its commercial application as a renewable resource in the DQE territory. Duquesne should examine this partnership program and assess its incremental costs for participation. We agree that the program has potential and should be developed at a loan level of $250,000 for the DQE territory. Recovery of the Company's costs would be permitted under their proposed Universal Service cost recovery mechanism.

Customer Education

Scope of Customer Education: Statewide versus Company Specific - Comprehensive customer education is of vital concern to the Commission. Consumers need to be well educated to exercise choice in their selection among electricity suppliers. I move, therefore, that we accept the Judge's recommendation and direct DQE to submit a customer education plan that conforms to our directions in *PECO Energy Restructuring Order*. That decision provides the necessary guidance as to the role of the EDC in local and state-wide education efforts.

Funding Levels and Recovery - I move that we adopt the Judge's recommendation and direct DQE to provide a budget for its proposed customer education program in its compliance filing. Thereafter, DQE may, upon Commission approval claim customer education costs as transition costs. With respect to allocation, 65% of the consumer education budget should be allocated to the state-wide effort, while 35% of the budget should be allocated to local efforts.

Conclusion

On the basis of the reasoning set forth in this Motion, and as supported by the record in this case, this decision results in a finding of stranded costs of $1.331 billion, which, using a 11% return rate, computes to a CTC initially estimated at 2.58 cents/kwh for 1999. The rate will be adjusted each year for system sales growth. Our transmission and distribution calculations result in a 1999 rate of 2.345 cents/kwh, which declines to 2.21 cents/kwh in

2000 due to merger reduction. Duquesne currently provides service at a bundled rate of 8.93 cents/kwh. The recovery of the CTC and the transmission and distribution charges should yield a 1999 shopping credit of 4.01 cents/kwh. Attached to this Motion are Schedules (Attachments A-D) detailing the basis for calculations offered by this Motion.

The Administrative Law Judge and the parties in this case have compiled a thorough record that allows us to make a reasoned decision in the restructuring of Duquesne Light Company. With the Order that will result from this Motion, the restructuring requirements of the Act have been met. In thanking the Judge and the parties for their efforts in this case, I also wish to emphasize the vital importance of membership for DQE and APS in a functional Independent System Operator which meets the standards of the F.E.R.C. as well as those of this Commission.

THEREFORE I MOVE THAT:

1. The Recommended Decision of the Administrative Law Judge in this matter be adopted by the Commission in all respects unless otherwise modified within this Motion.

2. That the Office of Special Assistants, in conjunction with the Law Bureau, prepare an Order for entry consistent with this Motion.

4/30/98
DATE

JOHN M. QUAIN, CHAIRMAN

Duquesne Light Restructuring		
Category/Item:		**Amount**
Book Value:		
Generating Plant Book Value	$	852.03
Beaver Valley 2 Lease PV	$	300.35
M&S Fuel Related Sunk Costs	$	-
Working Capital	$	61.53
Cost Independent of Operation	$	-
Generation Market Value:	$	(110.95)
Merger Savings:	$	(152.28)
Total Stranded Generation:	**$**	**950.48**
Decommissioning:		
Nuke Decomm.	$	42.96
Fossil Decomm.	$	-
Total Decommissioning	**$**	**42.96**
Regulatory Assets:		
FAS 109 (including Plant reversal)	$	179.00
Post '05 Unamort. Debt Costs	$	18.67
Pre '06 Unamort. Debt Costs	$	9.61
Deferred Rate Synch. (Early Window)	$	23.50
Deferred Employee Costs	$	14.24
Deferred Nuke Maintenance	$	1.90
US DOE Decommissioning	$	3.25
Deferred Coal Costs	$	-
Deferred Caretaker Costs	$	-
Pre-Accrued Nuke Outage	$	-
BV2 Training Costs	$	1.58
LL Radioactive Waste	$	2.27
Coal Costs Deferred (='ize)	$	0.12
Transition Costs	$	10.59
SFAS 106 Deferral	$	1.97
Deferred Fuel Costs	$	6.73
Other Regulatory Assets	$	0.53
Consumer Education	$	10.00
Sale-Leaseback Tax Effect (Gain)	$	55.13
Def'd Rate Synch. Costs	$	-
BV2 Tax Effect	$	0.17
Total Regulatory Assets:	**$**	**339.26**
PA Jurisdictional % (1-FERC Allocation)		99.900%
TOTAL STRANDED, w/Merger, Juris%:	**$**	**1,331.368**

Attachment B

Duquesne Light Company
CTC, T&D and Shopping Credit in Cents per kwh
Level CTC Revenue Requirement with kWh consumption as indicated (See Notes)
Stranded: $ 1,331,368,000
Pre-Tax Return: 11.00%

Year	kWh consumed	CTC Revenue Requirement	CTC Rate w/GRT	T&D Rate	Bundled Rate Today	Shopping Credit
1999	13,177,788,000	$ 324,920,295	2.58	2.345	8.93	4.01
2000	13,396,872,000	$ 319,134,110	2.49	2.219	8.93	4.22
2001	13,617,726,000	$ 312,678,356	2.40	2.219	8.93	4.31
2002	13,845,956,000	$ 305,475,549	2.31	n/a	n/a	4.40
2003	14,082,528,000	$ 297,439,241	2.21	n/a	n/a	4.50
2004	14,331,564,000	$ 288,472,982	2.11	n/a	n/a	4.61
2005	14,816,469,501	$ 278,469,157	1.97	n/a	n/a	4.75

Note: GRT Gross up is 1/(1-GRT), or 1.0460251, to reflect payment of the GRT on the GRT revenue receipt.
Note: Annual kWh is taken from Duqesne Light Co. Exceptions., and 2005 is extrapolated from this exhibit.

Total CTC Revenue Requirement: Return Of & On Stranded + Return On Unamort. Deferred Tax Balance
DLC gets return on Unamortized Deferred Tax balance (See DLC Statement No. 2, Clayton Testimony).

				Monthly Return:	Annual Return:
	Stranded	$ 1,331,368,299	$ 22,796,269	0.9167%	11.000%
Month	Monthly kwh	Stranded Beg. Of Month	Stranded Revenue Requirement	Deferrred Tax Revenue Req.	Total Monthly Revenue Req.
1	1,098,149,000	$ 1,326,300,000	$ 22,796,269	$ 4,486,348	$ 27,282,617
2	1,098,149,000	$ 1,315,661,481	$ 22,796,269	$ 4,450,039	$ 27,246,309
3	1,098,149,000	$ 1,304,925,442	$ 22,796,269	$ 4,413,398	$ 27,209,667
4	1,098,149,000	$ 1,294,090,990	$ 22,796,269	$ 4,376,421	$ 27,172,690
5	1,098,149,000	$ 1,283,157,221	$ 22,796,269	$ 4,339,105	$ 27,135,374
6	1,098,149,000	$ 1,272,123,227	$ 22,796,269	$ 4,301,447	$ 27,097,716
7	1,098,149,000	$ 1,260,988,087	$ 22,796,269	$ 4,263,444	$ 27,059,713
8	1,098,149,000	$ 1,249,750,876	$ 22,796,269	$ 4,225,092	$ 27,021,361
9	1,098,149,000	$ 1,238,410,656	$ 22,796,269	$ 4,186,389	$ 26,982,658
10	1,098,149,000	$ 1,226,966,485	$ 22,796,269	$ 4,147,331	$ 26,943,600
11	1,098,149,000	$ 1,215,417,409	$ 22,796,269	$ 4,107,915	$ 26,904,184
12	1,098,149,000	$ 1,203,762,466	$ 22,796,269	$ 4,068,137	$ 26,864,406
13	1,116,406,000	$ 1,192,000,686	$ 22,796,269	$ 4,027,995	$ 26,824,264
14	1,116,406,000	$ 1,180,131,090	$ 22,796,269	$ 3,987,485	$ 26,783,754
15	1,116,406,000	$ 1,168,152,689	$ 22,796,269	$ 3,946,604	$ 26,742,873
16	1,116,406,000	$ 1,156,064,486	$ 22,796,269	$ 3,905,348	$ 26,701,617
17	1,116,406,000	$ 1,143,865,475	$ 22,796,269	$ 3,863,714	$ 26,659,983
18	1,116,406,000	$ 1,131,554,639	$ 22,796,269	$ 3,821,698	$ 26,617,967
19	1,116,406,000	$ 1,119,130,955	$ 22,796,269	$ 3,779,297	$ 26,575,566
20	1,116,406,000	$ 1,106,593,386	$ 22,796,269	$ 3,736,507	$ 26,532,776
21	1,116,406,000	$ 1,093,940,890	$ 22,796,269	$ 3,693,325	$ 26,489,594
22	1,116,406,000	$ 1,081,172,412	$ 22,796,269	$ 3,649,748	$ 26,446,017
23	1,116,406,000	$ 1,068,286,890	$ 22,796,269	$ 3,605,770	$ 26,402,039
24	1,116,406,000	$ 1,055,283,251	$ 22,796,269	$ 3,561,390	$ 26,357,659
25	1,134,810,500	$ 1,042,160,412	$ 22,796,269	$ 3,516,603	$ 26,312,872
26	1,134,810,500	$ 1,028,917,280	$ 22,796,269	$ 3,471,405	$ 26,267,674
27	1,134,810,500	$ 1,015,552,752	$ 22,796,269	$ 3,425,793	$ 26,222,062
28	1,134,810,500	$ 1,002,065,717	$ 22,796,269	$ 3,379,763	$ 26,176,032
29	1,134,810,500	$ 988,455,050	$ 22,796,269	$ 3,333,311	$ 26,129,580
30	1,134,810,500	$ 974,719,619	$ 22,796,269	$ 3,286,433	$ 26,082,702
31	1,134,810,500	$ 960,858,280	$ 22,796,269	$ 3,239,125	$ 26,035,394
32	1,134,810,500	$ 946,869,878	$ 22,796,269	$ 3,191,384	$ 25,987,653
33	1,134,810,500	$ 932,753,250	$ 22,796,269	$ 3,143,205	$ 25,939,474
34	1,134,810,500	$ 918,507,219	$ 22,796,269	$ 3,094,585	$ 25,890,854
35	1,134,810,500	$ 904,130,599	$ 22,796,269	$ 3,045,518	$ 25,841,787
36	1,134,810,500	$ 889,622,194	$ 22,796,269	$ 2,996,002	$ 25,792,271
37	1,153,829,667	$ 874,980,795	$ 22,796,269	$ 2,946,032	$ 25,742,302
38	1,153,829,667	$ 860,205,183	$ 22,796,269	$ 2,895,605	$ 25,691,874
39	1,153,829,667	$ 845,294,128	$ 22,796,269	$ 2,844,714	$ 25,640,983
40	1,153,829,667	$ 830,246,389	$ 22,796,269	$ 2,793,358	$ 25,589,627
41	1,153,829,667	$ 815,060,712	$ 22,796,269	$ 2,741,530	$ 25,537,799
42	1,153,829,667	$ 799,735,832	$ 22,796,269	$ 2,689,228	$ 25,485,497

43	1,153,8[redacted]667	$	784,270,475	$	22,796,269	$	2,636,446	$	25,432,715
44	1,153,829,667	$	768,663,352	$	22,796,269	$	2,583,180	$	25,379,449
45	1,153,829,667	$	752,913,164	$	22,796,269	$	2,529,426	$	25,325,695
46	1,153,829,667	$	737,018,599	$	22,796,269	$	2,475,179	$	25,271,448
47	1,153,829,667	$	720,978,333	$	22,796,269	$	2,420,435	$	25,216,704
48	1,153,829,667	$	704,791,032	$	22,796,269	$	2,365,189	$	25,161,458
49	1,173,544,000	$	688,455,348	$	22,796,269	$	2,309,436	$	25,105,706
50	1,173,544,000	$	671,969,919	$	22,796,269	$	2,253,173	$	25,049,442
51	1,173,544,000	$	655,333,374	$	22,796,269	$	2,196,394	$	24,992,663
52	1,173,544,000	$	638,544,328	$	22,796,269	$	2,139,094	$	24,935,363
53	1,173,544,000	$	621,601,382	$	22,796,269	$	2,081,269	$	24,877,538
54	1,173,544,000	$	604,503,126	$	22,796,269	$	2,022,914	$	24,819,183
55	1,173,544,000	$	587,248,135	$	22,796,269	$	1,964,025	$	24,760,294
56	1,173,544,000	$	569,834,974	$	22,796,269	$	1,904,595	$	24,700,864
57	1,173,544,000	$	552,262,192	$	22,796,269	$	1,844,620	$	24,640,889
58	1,173,544,000	$	534,528,327	$	22,796,269	$	1,784,096	$	24,580,365
59	1,173,544,000	$	516,631,900	$	22,796,269	$	1,723,017	$	24,519,286
60	1,173,544,000	$	498,571,424	$	22,796,269	$	1,661,378	$	24,457,647
61	1,194,297,000	$	480,345,393	$	22,796,269	$	1,599,174	$	24,395,443
62	1,194,297,000	$	461,952,290	$	22,796,269	$	1,536,400	$	24,332,669
63	1,194,297,000	$	443,390,583	$	22,796,269	$	1,473,051	$	24,269,320
64	1,194,297,000	$	424,658,728	$	22,796,269	$	1,409,120	$	24,205,389
65	1,194,297,000	$	405,755,164	$	22,796,269	$	1,344,604	$	24,140,873
66	1,194,297,000	$	386,678,317	$	22,796,269	$	1,279,496	$	24,075,765
67	1,194,297,000	$	367,426,599	$	22,796,269	$	1,213,792	$	24,010,061
68	1,194,297,000	$	347,998,407	$	22,796,269	$	1,147,485	$	23,943,754
69	1,194,297,000	$	328,392,124	$	22,796,269	$	1,080,570	$	23,876,839
70	1,194,297,000	$	308,606,116	$	22,796,269	$	1,013,042	$	23,809,311
71	1,194,297,000	$	288,638,736	$	22,796,269	$	944,895	$	23,741,164
72	1,194,297,000	$	268,488,322	$	22,796,269	$	876,123	$	23,672,393
73	1,214,002,901	$	248,153,196	$	22,796,269	$	806,721	$	23,602,990
74	1,214,002,901	$	227,631,665	$	22,796,269	$	736,683	$	23,532,952
75	1,214,002,901	$	206,922,019	$	22,796,269	$	666,003	$	23,462,272
76	1,214,002,901	$	186,022,535	$	22,796,269	$	594,675	$	23,390,944
77	1,214,002,901	$	164,931,473	$	22,796,269	$	522,692	$	23,318,962
78	1,214,002,901	$	143,647,076	$	22,796,269	$	450,051	$	23,246,320
79	1,214,002,901	$	122,167,571	$	22,796,269	$	376,743	$	23,173,012
80	1,214,002,901	$	100,491,172	$	22,796,269	$	302,763	$	23,099,032
81	1,214,002,901	$	78,616,072	$	22,796,269	$	228,105	$	23,024,374
82	1,214,002,901	$	56,540,450	$	22,796,269	$	152,763	$	22,949,032
83	1,214,002,901	$	34,262,468	$	22,796,269	$	76,730	$	22,872,999
84	1,214,002,901	$	11,780,272	$	22,796,269	$	0	$	22,796,269
				$	1,331,368,299				

Buildup of Defer[redacted]Tax Revenue Requirement

See page 1 of Attachment C for Revenue Requirement result

Month	Monthly kwh	$ 493,344,701 Def. Tax Principal	Return: 11.000%	Return Of + On: $ 8,447,263	Def. Tax Amort.	Running Total:
1	1,098,149,000	489,419,764	4,522,326	$ 8,447,263	3,924,937	
2	1,098,149,000	485,458,849	4,486,348	$ 8,447,263	3,960,915	7,885,852
3	1,098,149,000	481,461,625	4,450,039	$ 8,447,263	3,997,224	11,883,076
4	1,098,149,000	477,427,760	4,413,398	$ 8,447,263	4,033,865	15,916,941
5	1,098,149,000	473,356,918	4,376,421	$ 8,447,263	4,070,842	19,987,783
6	1,098,149,000	469,248,759	4,339,105	$ 8,447,263	4,108,158	24,095,942
7	1,098,149,000	465,102,943	4,301,447	$ 8,447,263	4,145,816	28,241,758
8	1,098,149,000	460,919,123	4,263,444	$ 8,447,263	4,183,820	32,425,578
9	1,098,149,000	456,696,952	4,225,092	$ 8,447,263	4,222,171	36,647,749
10	1,098,149,000	452,436,078	4,186,389	$ 8,447,263	4,260,875	40,908,623
11	1,098,149,000	448,136,145	4,147,331	$ 8,447,263	4,299,933	45,208,556
12	1,098,149,000	443,796,796	4,107,915	$ 8,447,263	4,339,349	49,547,905
13	1,116,406,000	439,417,670	4,068,137	$ 8,447,263	4,379,126	53,927,031
14	1,116,406,000	434,998,402	4,027,995	$ 8,447,263	4,419,268	58,346,299
15	1,116,406,000	430,538,625	3,987,485	$ 8,447,263	4,459,778	62,806,076
16	1,116,406,000	426,037,965	3,946,604	$ 8,447,263	4,500,659	67,306,736
17	1,116,406,000	421,496,050	3,905,348	$ 8,447,263	4,541,915	71,848,651
18	1,116,406,000	416,912,501	3,863,714	$ 8,447,263	4,583,549	76,432,200
19	1,116,406,000	412,286,935	3,821,698	$ 8,447,263	4,625,565	81,057,766
20	1,116,406,000	407,618,969	3,779,297	$ 8,447,263	4,667,966	85,725,732
21	1,116,406,000	402,908,213	3,736,507	$ 8,447,263	4,710,756	90,436,488
22	1,116,406,000	398,154,275	3,693,325	$ 8,447,263	4,753,938	95,190,426
23	1,116,406,000	393,356,759	3,649,748	$ 8,447,263	4,797,516	99,987,942
24	1,116,406,000	388,515,266	3,605,770	$ 8,447,263	4,841,493	104,829,435
25	1,134,810,500	383,629,393	3,561,390	$ 8,447,263	4,885,873	109,715,308
26	1,134,810,500	378,698,732	3,516,603	$ 8,447,263	4,930,661	114,645,969
27	1,134,810,500	373,722,874	3,471,405	$ 8,447,263	4,975,858	119,621,827
28	1,134,810,500	368,701,404	3,425,793	$ 8,447,263	5,021,470	124,643,297
29	1,134,810,500	363,633,903	3,379,763	$ 8,447,263	5,067,500	129,710,798
30	1,134,810,500	358,519,951	3,333,311	$ 8,447,263	5,113,953	134,824,750
31	1,134,810,500	353,359,120	3,286,433	$ 8,447,263	5,160,830	139,985,581
32	1,134,810,500	348,150,982	3,239,125	$ 8,447,263	5,208,138	145,193,719
33	1,134,810,500	342,895,103	3,191,384	$ 8,447,263	5,255,879	150,449,598
34	1,134,810,500	337,591,045	3,143,205	$ 8,447,263	5,304,058	155,753,656
35	1,134,810,500	332,238,366	3,094,585	$ 8,447,263	5,352,679	161,106,335
36	1,134,810,500	326,836,621	3,045,518	$ 8,447,263	5,401,745	166,508,080
37	1,153,829,667	321,385,360	2,996,002	$ 8,447,263	5,451,261	171,959,341
38	1,153,829,667	315,884,129	2,946,032	$ 8,447,263	5,501,231	177,460,572
39	1,153,829,667	310,332,471	2,895,605	$ 8,447,263	5,551,659	183,012,230
40	1,153,829,667	304,729,922	2,844,714	$ 8,447,263	5,602,549	188,614,779
41	1,153,829,667	299,076,016	2,793,358	$ 8,447,263	5,653,906	194,268,685
42	1,153,829,667	293,370,283	2,741,530	$ 8,447,263	5,705,733	199,974,418
43	1,153,829,667	287,612,247	2,689,228	$ 8,447,263	5,758,036	205,732,454
44	1,153,829,667	281,801,430	2,636,446	$ 8,447,263	5,810,818	211,543,271

45	1,153,829,667	275,937,346	2,583,180	$	8,447,263	5,864,084	217,407,355
46	1,153,829,667	270,019,508	2,529,426	$	8,447,263	5,917,838	223,325,193
47	1,153,829,667	264,047,424	2,475,179	$	8,447,263	5,972,084	229,297,277
48	1,153,829,667	258,020,595	2,420,435	$	8,447,263	6,026,829	235,324,106
49	1,173,544,000	251,938,521	2,365,189	$	8,447,263	6,082,074	241,406,180
50	1,173,544,000	245,800,694	2,309,436	$	8,447,263	6,137,827	247,544,007
51	1,173,544,000	239,606,604	2,253,173	$	8,447,263	6,194,090	253,738,097
52	1,173,544,000	233,355,734	2,196,394	$	8,447,263	6,250,869	259,988,967
53	1,173,544,000	227,047,565	2,139,094	$	8,447,263	6,308,169	266,297,136
54	1,173,544,000	220,681,571	2,081,269	$	8,447,263	6,365,994	272,663,130
55	1,173,544,000	214,257,223	2,022,914	$	8,447,263	6,424,349	279,087,478
56	1,173,544,000	207,773,984	1,964,025	$	8,447,263	6,483,239	285,570,717
57	1,173,544,000	201,231,315	1,904,595	$	8,447,263	6,542,668	292,113,386
58	1,173,544,000	194,628,672	1,844,620	$	8,447,263	6,602,643	298,716,029
59	1,173,544,000	187,965,505	1,784,096	$	8,447,263	6,663,167	305,379,196
60	1,173,544,000	181,241,259	1,723,017	$	8,447,263	6,724,246	312,103,442
61	1,194,297,000	174,455,374	1,661,378	$	8,447,263	6,785,885	318,889,327
62	1,194,297,000	167,607,285	1,599,174	$	8,447,263	6,848,089	325,737,416
63	1,194,297,000	160,696,422	1,536,400	$	8,447,263	6,910,863	332,648,279
64	1,194,297,000	153,722,209	1,473,051	$	8,447,263	6,974,213	339,622,492
65	1,194,297,000	146,684,066	1,409,120	$	8,447,263	7,038,143	346,660,635
66	1,194,297,000	139,581,407	1,344,604	$	8,447,263	7,102,659	353,763,294
67	1,194,297,000	132,413,640	1,279,496	$	8,447,263	7,167,767	360,931,061
68	1,194,297,000	125,180,168	1,213,792	$	8,447,263	7,233,472	368,164,533
69	1,194,297,000	117,880,390	1,147,485	$	8,447,263	7,299,778	375,464,311
70	1,194,297,000	110,513,697	1,080,570	$	8,447,263	7,366,693	382,831,004
71	1,194,297,000	103,079,476	1,013,042	$	8,447,263	7,434,221	390,265,225
72	1,194,297,000	95,577,108	944,895	$	8,447,263	7,502,368	397,767,593
73	1,214,002,901	88,005,968	876,123	$	8,447,263	7,571,140	405,338,733
74	1,214,002,901	80,365,426	806,721	$	8,447,263	7,640,542	412,979,275
75	1,214,002,901	72,654,846	736,683	$	8,447,263	7,710,580	420,689,855
76	1,214,002,901	64,873,585	666,003	$	8,447,263	7,781,261	428,471,116
77	1,214,002,901	57,020,996	594,675	$	8,447,263	7,852,589	436,323,705
78	1,214,002,901	49,096,426	522,692	$	8,447,263	7,924,571	444,248,275
79	1,214,002,901	41,099,213	450,051	$	8,447,263	7,997,213	452,245,488
80	1,214,002,901	33,028,692	376,743	$	8,447,263	8,070,520	460,316,009
81	1,214,002,901	24,884,192	302,763	$	8,447,263	8,144,500	468,460,509
82	1,214,002,901	16,665,034	228,105	$	8,447,263	8,219,158	476,679,667
83	1,214,002,901	8,370,533	152,763	$	8,447,263	8,294,500	484,974,168
84	1,214,002,901	0	76,730	$	8,447,263	8,370,533	493,344,701
				$	493,344,701	493,344,701	

Buildup of Duquesne Light's T&D Rate

Step:			
1	Lahtinen Distribution (Duquesne Statement 5)	$	253,687,253
	remove: *Losses*	$	(10,432,197)
2	Lahtinen Transmission (Duquesne Statement 5) *with ancillary services included:*	$	50,315,742
3	Merger related Distribution savings per OCA witness Kahal:	$	(15,800,000)
	Total T&D Revenue Requirement, with Merger Savings	**$**	**277,770,798**
	Total T&D Revenue Requirement, w/out Merger Savings	**$**	**293,570,798**
4	OCA's Retail Kwh for 1999		12,519,000,000

Total T&D Rate, cents/kwh, w/ Merger Savings	**2.21879**
Total T&D Rate, cents/kwh, w/out Merger Savings	**2.34500**

REP

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29th day of April, 1998,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of RECOMMENDED DECISION an official Commission document entered, issued, or otherwise promulgated under date of April 29, 1998 at Docket No. R-00974209, R-0094209C0001 & R-00974209C002 on behalf of:

WAYNE T SCOTT ESQUIRE

OFFICE OF TRIAL STAFF

3RD FLOOR PITNICK BLDG

RECEIVED
98 APR 29 PM 2:23
PA PUC
OFFICE OF TRIAL STAFF

DOCKETED

MAY 01 1998

Mari J. Rudy
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU FILE ROOM
PA PUBLIC UTILITY COMMISSION
B-20, North Office Building
Harrisburg, PA 17105-3265

RECEIVED
98 APR 30 AM 9:29
PA P.U.C.
PROTHONOTARY'S OFFICE

DOCUMENT FOLDER

PENNSYLVANIA CITIZENS
CONSUMER COUNCIL

P.O. BOX 736
EDINBORO, PA 16412-0736

KJR

R-974149
R-973953
R-973954
R-973975
R-973981
R-974008
R-974009
R-974104
M-00981036
P-981325

May 4, 1998

OFFICE OF THE SECRETARY
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Dear Mr. McNulty:

I am receiving several copies of notices from the Commission relative to various dockets concerning electric restructuring. In order to eliminate confusion and save the PUC money, I would appreciate your office eliminating all organizations and addresses for me and use only the following:

Dr. Louis S. Meyer
PA Citizens Consumer Council
PO Box 736
Edinboro, PA 16412-0736

I am presently receiving mail from your office which comes to my home in Cambridge Springs but addressed to PO Box 736 which is in Edinboro, not Cambridge Springs. The latest item, notice of the Order for consumer education, is addressed to Louise S. Meyer, PhD, close but inaccurate. I will appreciate your taking care of this matter. Certified mail is expensive and there is no reason to receive three mailings when one will suffice. Many thanks!!

DOCUMENT FOLDER

DOCKETED
MAY 13 1998

Sincerely,

Louis S. Meyer
President

LOUISE S MEYER PHD
PRESIDENT
PA CITIZENS CONSUMER CNSL
P O BOX 736
EDINBORO PA 16412-0736

NO

LOU MEYER
PA INST FOR COMM SERVS
BOX 723 RD 2
CAMBRIDGE SPRINGS PA 16403

NO

RECEIVED

MAY 07 1998 M-00981036

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

-Tel. 814/398-4759; FAX 814/398-2081-

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 5, 1998

146441

98 MAY -5 AM 11:52

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SECRETARY'S OFFICE

A-110150F0015
R-00973981
R-00974104

The Honorable Richard F. Vidmer
Chairman
Westmoreland County Commissioners
101 Courthouse Square
Greensburg, PA 15601

Dear Chairman Vidmer:

Thank you for your recent letter to Chairman John Quain of the Public Utility Commission expressing your viewpoints about the merger proposal between Allegheny Power and the Duquesne Light Company as well as the restructuring cases of both the West Penn Power Company and Duquesne Light.

KJR

Please know that on April 30, 1998, the Public Utility Commission tentatively decided the outcome of these cases, and I have included under cover of this letter a copy of the press releases and bullet points summarizing the Commission's decisions.

Also, I have taken the liberty of forwarding your letter to the Secretary of the Commission for inclusion into the official file of these proceedings. Thank you again for the benefit of your thinking on these very important issues.

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

Enc.

cc: Chairman Quain
Secretary McNulty

DOCKETED
MAY 11 1998

DOCUMENT
FOLDER

Westmoreland County
Pennsylvania

Richard F. Vidmer
County Commissioner
Chairman
101 Courthouse Square
Greensburg, Pennsylvania 15601

AREA CODE 412
830-3020
FAX 830-3029
TDD 830-3802
800-442-6926

April 29, 1998

John M. Quain, Chairman
Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17105

Dear Chairman Quain:

I am writing you because I am concerned about the future economic well being of Allegheny Power (West Penn Power) and its employees. Allegheny Power employs approximately 1300 people in Westmoreland County and is one of the County's largest employers. With the implementation of deregulation, particularly the treatment of transition costs, jobs at Allegheny Power and the financial stability of the company may be at risk.

Allegheny Power has provided the lowest electric rates in Pennsylvania for the last thirty years. They have earned the right to be given the opportunity to compete in a deregulated electric utility industry. Therefore, I urge the PUC to review Allegheny Powers's request for transition costs fairly.

The state-appointed Administrative Law Judge has recommended to the PUC that the transition charges that Allegheny Power can collect over the five-year transition period be limited to $241,000,000. I question if these are sufficient funds to keep Allegheny Power afloat and intact so they can compete when true competition begins in the year 2005. If Allegheny Power has to sell off generating plants and get out of the generation business due to insufficient transition cost recovery, the economic impact to Westmoreland County will be significant. Elimination of the lowest cost producer of electricity in the state is contradictory to the concept of deregulation and competition.

Our local utility is an economic catalyst for creating jobs, paying taxes and supporting local businesses and community groups. Allegheny Power has historically been the lowest cost electric energy producer in the state. Keeping Allegheny Power in the electric generation business is good for Westmoreland County and good for electric competition in the state of Pennsylvania.

Sincerely,

Richard Vidmer

Richard F. Vidmer, Chairman
Westmoreland County Commissioner

RFV/jly

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 5, 1998

A-110150F0015
R-00973981
R-00974104

Mr. Michael W. Krajovic
Executive Vice President
Fay-Penn Economic Development
Council
Two West Main Street
Suite 407
P. O. Box 2101
Uniontown, PA 15401-1701

Dear Mr. Krajovic:

Thank you for your recent letter to Chairman John Quain of the Public Utility Commission expressing your viewpoints about the merger proposal between Allegheny Power and the Duquesne Light Company as well as the restructuring cases of both the West Penn Power Company and Duquesne Light.

KJR

Please know that on April 30, 1998, the Public Utility Commission tentatively decided the outcome of these cases, and I have included under cover of this letter a copy of the press releases and bullet points summarizing the Commission's decisions.

Also, I have taken the liberty of forwarding your letter to the Secretary of the Commission for inclusion into the official file of these proceedings. Thank you again for the benefit of your thinking on these very important issues.

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

Enc.

cc: Chairman Quain
Secretary McNulty

"Scenic Laurel Highlands"

FAY-PENN
ECONOMIC DEVELOPMENT COUNCIL

Two West Main Street, Suite 407 • P.O. Box 2101 • Uniontown, PA 15401-1701 • Phone: 724/437-7913 Fax: 724/437-7315

April 29, 1998

Mr. John Quain, Chairman
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Dear Chairman Quain:

I am writing to confirm me support for Allegheny Power as it strives for approval of two major issues before the Pennsylvania Public Utility Commission. These critical issues include the proposed merger with DQE and equitable treatment for Allegheny Energy in its restructuring case. The resolution of both issues will have significant impact upon Fayette County and Pennsylvania residents.

Allegheny Power (previously West Penn Power) has long been a provider of both low-cost power and exemplary service. The company's long-standing support of economic development and has contributed to the standard of living that Fayette County residents enjoy.

Like Allegheny Power, I believe that competition under the State's Electricity Generation and Customer Choice and Competition Act will be good for Pennsylvanians. However, the recent recommendations by the PUC's Administrative Law Judge (ALJ) is anything but equitable. If the PUC delays the merger and rejects the recovery of reasonable stranded costs, Allegheny Power will find itself in a desperate position to survive. It is profoundly distressing that Allegheny Power may be forced to sell the very generation (much of which is located in Pennsylvania) that has made it the lowest-cost producer in the State. Allegheny Power should not be penalized for keeping its customers' cost low.

I believe that losing Allegheny Power as a low-cost provider of electricity, as a provider of thousands of well-paying jobs, and as an integral partner in the economic growth and well-being of the state's economy would be disastrous for Pennsylvania. I urge you to reevaluate the ALJ's recommendations and approve the joint merger application of DQE and Allegheny Power, as well as Allegheny Power's restructuring case.

Thank you for your consideration of these vitally important issues.

Sincerely,

Michael W. Krajovic
Executive Vice President

pzh
c: Governor Tom Ridge
Vice Chairman Robert Bloom
Commissioner John Hanger
Commissioner David Rolka
Commissioner Nora Mead Brownell
fp/0265-98.doc

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 5, 1998

A-110150F0015
R-00973981
R-00974104

146442

98 MAY -5 AM 11:52

RECEIVED
SECRETARY'S OFFICE

The Honorable Patrick Fleagle
House of Representatives
House Post Office - Main Capitol
Harrisburg, PA

Dear Representative Fleagle:

Thank you for your recent letter expressing your viewpoints about the merger proposal between Allegheny Power and the Duquesne Light Company as well as the restructuring cases of both the West Penn Power Company and Duquesne Light.

Please know that on April 30, 1998, the Public Utility Commission tentatively decided the outcome of these cases, and I have included under cover of this letter a copy of the press releases and bullet points summarizing the Commission's decisions.

Also, I have taken the liberty of forwarding your letter to the Secretary of the Commission for inclusion into the official file of these proceedings. Thank you again for the benefit of your thinking on these very important issues.

KJR

Sincerely,

Rosemary Chiavetta, Esq.
Director of Legislative Affairs

Enc.

cc: Secretary McNulty

DOCKETED
MAY 11 1998
DOCUMENT
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PATRICK E. FLEAGLE, MEMBER
116 WEST MAIN STREET
WAYNESBORO, PA 17268-1520
PHONE: (717) 762-6001
1-800-331-0179
FAX: (717) 731-7088

HOUSE POST OFFICE BOX 202020
MAIN CAPITOL BUILDING
HARRISBURG, PA 17120-2020
PHONE: (717) 783-5218
FAX: (717) 783-3899

COMMITTEES

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MAJORITY CHAIRMAN
SUBCOMMITTEE ON EDUCATION
HEALTH AND HUMAN SERVICES
EDUCATION
ETHICS
REPUBLICAN POLICY

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

April 29, 1998

Rosemary Chiavetta
Director of Legislative Affairs
Public Utility Commission
104 North Office Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Ms. Chiavetta:

I want to express my support for the Allegheny Power merger with DQE. I feel it is important that this merger be approved by the Public Utility Commission as soon as possible.

This merger is important for the employees of Allegheny Power. If Allegheny Power is not permitted to merge with DQE or recover its stranded costs, many jobs will be in jeopardy. In addition, I feel that the low-cost and superb service that Pennsylvanians receive from Allegheny Power may be in jeopardy as well, if this merger is not approved.

Thank you for your attention to this matter. Your assistance is greatly appreciated.

Regards,

Patrick E. Fleagle
State Representative
90th Legislative District

PEF:rwk

COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, Pennsylvania 17101-1921
(717) 783-5048

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
E-Mail: paoca@ptd.net

May 15, 1998

James J. McNulty, Secretary
Secretary Bureau
Pennsylvania Public Utility Commission
Room B-20, North Office Building
P. O. Box 3265
Harrisburg, PA 17105-3265

KJR

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

Dear Secretary McNulty;

Enclosed please find an original and (3) copies of the Notice of Withdrawal of Appearance in the above-captioned proceeding.

Copies of this document have been served on all parties of record as shown on the attached Certificate of Service.

Sincerely,

Marisa A. Sifontes

Marisa A. Sifontes
Assistant Consumer Advocate

Enclosure
cc: All parties of record
Honorable John H. Corbett, Jr.

DOCUMENT FOLDER

RECEIVED
98 MAY 15 PM 2:24
PA.P.U.C.
SECRETARY'S BUREAU

47

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

NOTICE OF
WITHDRAWAL OF APPEARANCE

Please withdraw my appearance on behalf of the Office of Consumer Advocate in the above-designated matter.

Respectfully submitted,

Marisa A. Sifontes | KO

Marisa A. Sifontes
Assistant Consumer Advocate

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1921
(717) 783-5048

DATED: May 15, 1998

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Notice of Withdrawal of Appearance, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of May, 1998.

SERVICE BY INTEROFFICE MAIL

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Wayne Scott, Esquire
Office of Trial Staff
PA Public Utility Commission
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Harrisburg, PA 17105

SERVICE BY U.S. MAIL, POSTAGE PREPAID

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New Castle, PA 16103-0891

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The Peoples Natural Gas Company
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Pittsburgh, PA 15222-3197

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Robert Longwell, Esquire
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Allentown, PA 18101

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Harrisburg, PA 17101-1325

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Harrisburg, PA 17108

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Community Action Association of PA
222 Pine Street
Harrisburg, PA 17101

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

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

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Director, Regulatory Affairs
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Lombard, IL 60148

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Morgantown, PA 26505

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Pittsburgh,PA 16222

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David F. Boehm, Esq.
Boehm, Kurtz & Lowry
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Cincinnati, OH 45202

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

Marisa A. Sifontes | KO
Marisa A. Sifontes
Assistant Consumer Advocate

Counsel For
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048
43679

ORIGINAL

MidCon Gas Services Corp.
A MIDCON CORP COMPANY

3200 Southwest Freeway
Post Office Box 283
Houston, Texas 77001-0283
(713) 963-3700

1962

98 MAY 22 AM 8:47

RECEIVED
SECRETARY'S BUREAU

DOCUMENT 00981036
FOLDER A-110150 F15
R-00973981
R-00974104

May 19, 1998

Pennsylvania Public Utility Commission
Office of the Secretary
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Sir:

This letter is written in request to remove a name from your mailing list pertaining to tariffs and/or electric deregulation.

Craig Nifong
MidCon Gas Services
P.O. Box 283
Houston, TX 77001

DOCKETED
MAY 27 1998

If you have any questions, please call me on (713) 963-3246. Thank you.

Sincerely,

Renee Donaldson

Renee Donaldson
Sales Coordinator

KJR

57