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AUG 28 1998

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Pennsylvania Public Utility
Commission,
v.
Duquesne Light Company**
Application to approve
restructuring plan pursuant
to 66 Pa. C.S. § 2806(d)

Docket No. R-00974104

**PETITION FOR CLARIFICATION AND RECONSIDERATION
OF DUQUESNE LIGHT COMPANY
REGARDING STAND-ALONE RESTRUCTURING PLAN**

Pursuant to 52 Pa. Code § 5.572, Duquesne Light Company ("Duquesne") hereby petitions the Commission for clarification and reconsideration of its order issued on August 13, 1998 regarding Duquesne's compliance filing ("Compliance Order"). The petition addresses certain computational issues where the Compliance Order either appears to include an inadvertent error or is ambiguous regarding the intended treatment of a cost or revenue item. While the errors appear inadvertent, and Duquesne will submit a second compliance filing that corrects them, Duquesne is addressing them here as well out of an abundance of caution. The petition also addresses limited other issues where Duquesne is requesting that the Commission reconsider a position taken in the Compliance Order. In support of the petition, Duquesne states as follows:

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1. Deferred Fuel. In Docket No. M-00970917, the Commission held that "Duquesne is permitted to create a regulatory asset in an amount equal to its accumulated undercollection of its energy costs incurred during the period commencing February 1, 1996 through the conclusion of its restructuring proceeding." Energy Cost Rate Filing for Duquesne Light Company for Fiscal year Beginning April 1, 1997, No. M-00970917, Order at 3 (Mar. 27, 1997). Duquesne's compliance filing therefore updated the deferred fuel regulatory asset to reflect the balance as of May 29, 1998, the date of "conclusion of [the] restructuring proceeding." No party objected to this adjustment. The Compliance Order, however, mistakenly omits this updated balance in the tables attached to the Order. Duquesne's second compliance filing will therefore reflect the corrected balance.

2. ECR Roll-In. The Compliance Order states that Duquesne will not be permitted a roll-in of the ECR to reflect total energy costs of 14.7 mills/kWh. Compliance Order at 11-12. Duquesne is not requesting reconsideration of this finding. However, when restating the total energy costs to be included in rate cap calculations, the correct amount is not the 12.8 mills/kWh reflected in the body of the Compliance Order. Rather, as Mr. Clayton testified, and no witness challenged, prior overcollections must be removed from this calculation in setting an energy cost rate on a going-forward basis throughout the transition period.

Duquesne has therefore recomputed its rate cap to reflect an ECR credit of 2.737 mills/kWh. This credit reflects the difference between the approved unit fuel cost of \$13.833/Mwh and the base cost of fuel (\$16.45/Mwh) after adjustment for gross receipts tax. The difference between the roll-in amount (-2.737 mills) and the ECR effective at the end of 1996 (-3.628 mills) is equal to the over-collection (.851 mills before GRT adjustment) of fuel costs during the previous ECR recovery period. As explained by Mr. Clayton at page 60 of his rebuttal testimony (DLC St. 2-R), this over-collection must be removed to recognize established regulatory practice in Pennsylvania and to insure that the over-collection refunded to ratepayers during the April 1, 1996 - March 31, 1997 period does not carry-over throughout the transition period. Since the over-collection was fully refunded as a credit component of the ECR during the twelve-month period ending March 31, 1997, it has been removed for purposes of establishing compliance rate caps. The ECR calculation for purposes of establishing the roll-in amount is attached as Schedule 1.

3. Deferred Tax Balance. The Compliance Order adopts Duquesne's treatment of deferred taxes, including providing for a return of (but not on) the deferred tax balance and amortization of the balance on a straight-line basis. Compliance Order at 15-16. However, the Compliance Order incorrectly lists the deferred tax balance at \$493 million and states that Duquesne did not "take exception

to that number in the Compliance filing." Compliance Order at 15. This is incorrect.

Duquesne's compliance filing stated as follows:

Appendix A also provides a description and break-down of the correct deferred tax balance associated with the Commission's administrative determination of stranded costs, while excluding the deferred taxes associated with disallowed cost items, including BI and Phillips. The Final Order does not explain how the deferred tax balance contained in Attachment D was derived, but it is not correct. It will therefore be necessary to set a final deferred tax balance that is consistent with the approved amount of stranded costs, reflecting any adjustments made pursuant to the petitions for reconsideration and, in the event the merger is not consummated, reflecting the final stranded cost amount after application of the auction proceeds. For purposes of this compliance filing, the deferred tax balance in Attachment D has been adopted without correction, except for the minor adjustment required to update the deferred fuel balance to May 29, 1998.

Duquesne Compliance Filing at 2 n.2. It is therefore clear that Duquesne took exception to the Commission's calculation, provide a restated and corrected calculation (for each stranded cost item), and stated that a final calculation would be necessary once all matters on reconsideration had been resolved. Duquesne will continue to reflect this approach in its second compliance filing and its Generation Auction Plan. See Generation Auction Plan, Appendix G (filed Aug. 27, 1998).

4. Sales Volume – T&D Rates. The Compliance Order directs Duquesne to "employ the OCA's 1999 sales level of 12,519,000,000 kWh for the build-up of the T&D rates," stating that this directive "adopts the clarification requested by the OCA." Compliance Order at 9. This finding is incorrect. The

OCA did not object to, or seek clarification regarding, the use of 1996 sales volumes in the "build-up of the T&D rates."¹ Indeed, no party objected to Duquesne's correction,² as it is axiomatic that 1996 sales volumes be used for a revenue requirement based on a 1996 test year. Duquesne Petition for Reconsideration at 5 (June 15, 1998). Any other result would cause a mismatch that violates fundamental ratemaking principles. Given that no party objected to Duquesne's correction of this error, it should be approved.

5. Universal Service – Net Costs. The Commission has directed Duquesne to revise the total costs recoverable via the Universal Service Cost recovery mechanism to reflect cost savings associated with the universal service programs. The identification of such savings and inclusion in the reconciliation is inappropriate for several reasons.

First, the quantification of the savings would be an arduous and inexact exercise. Total expenses relative to the Company's credit and collection activities are impacted by many factors and events independent of the existence and success of universal service programs. For example, uncollectible balances are

¹ Rather, the OCA's requested clarification addressed the very different issue of correcting an error (related to failure to include pilot volumes) in the sales volumes used to calculate the *system average* rate for 1999. OCA Comments at 5-6.

² The error was contained in Attachment E to the Restructuring Order.

affected by weather fluctuations, the local economy, changes in other sources of assistance to customers, and so forth. Costs incurred by the Company can decrease because of the use of improved technologies or work practices. To correctly identify savings generated by the universal service programs would likely require an analysis with a level of detail whose cost may significantly diminish the savings.

Second, the Commission in its May 29, 1998 Order stated "We permit Duquesne to recover the Company's costs under their proposed Universal Service cost recovery mechanism." Accordingly, the Company views the modification of the recovery mechanism as inappropriate because there was no discussion of a savings offset on the record of the proceeding. Duquesne's proposal did not embrace a net savings approach and Duquesne was not afforded the opportunity to challenge any party's contention that savings would be identifiable.

Duquesne therefore requests that the modification to the Universal Service recovery mechanism to include "net costs" as required by its August 13th Compliance Order be reconsidered and removed.

6. Universal Service – Unspent Funds. The Compliance Order directs Duquesne to "roll over unspent funds into subsequent years. If funds are unspent in a given year, (the Commission) will review with Duquesne the reasons for the underspending and develop a plan with Duquesne to correct the underspending."

Duquesne contends that the direction and approach are inappropriate for several reasons and should be removed.

Duquesne is committed to delivering comprehensive, cost-effective universal service programs. The Commission has recognized as much in its Compliance Order. Expanding the Company's universal service programs will take time. Spending is a function of customer enrollment. It is unreasonable to expect that the number of customers needed to expend the annual funding targets will be enrolled on the first day of any calendar year. Moreover, an enrolled customer who remains in a universal service payment assistance program carries a future funding requirement which will not be recognized or accounted for in the year of enrollment.

Second, no universal service charges will be assessed or collected by Duquesne until 2001. The Company funded its pilot CAP outside of rates. The directed increases in CAP and LIURP funding are not covered in current rates and will, therefore, directly affect Duquesne's bottom line.

Third, the purpose of universal service is to enable low-income, payment troubled customers to maintain affordable service. Duquesne is committed to working to meet that goal. As a matter of principle, no company should be required to expend more funds than are necessary to achieve this goal or than can be spent cost-effectively. To make "spending" *the* goal of universal service it to miss

the point that the goal can be achieved "cost effectively" and that such achievement should be rewarded not punished.

Finally, the Company expects to be held accountable for its performance in delivering universal service programs to its customers. Spending is but one factor in its performance.

Duquesne therefore requests that the direction to "roll over unspent funds" be reconsidered and removed. In the alternative, it should not be a requirement until the Company begins to recover universal service charges beginning in July 2001. Further, any plan that is developed following performance review should "address all influencing factors" not focus on "*correct(ing) the underspending.*" Spending alone must never be the primary goal of universal service program delivery.

WHEREFORE, the petition for clarification and reconsideration should be granted. In the alternative, the Commission should find, as to the calculational issues, that these matters are more appropriately addressed in Duquesne's compliance filing and/or the Generation Auction Plan.

Respectfully submitted,



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Dated: August 28, 1998

Duquesne Light Company
Computation of Proposed Energy Cost Rate
For Roll-In

Line No.		
1	Energy Cost Rate = $(Fc/Sc - Fb/Sb - Ec/Sr) \times 1/(1-T)$	
2	Fc = Projected Cost of Energy (Schedule 2)	\$171,609,298
3	Sc = Total Sales Projected for Computation Period (Schedule 2)	12,405,852 mWh
4	E = Experienced Net Over/(Under) Collections (Schedule 8)	\$0
5	Sr = Projected Sales to Retail Customers (Schedule 13)	12,393,396 mWh
6	Fc/Sc = Projected Cost Per kWh Sold	13.833 Mills/kWh
7	B = Energy Cost in Base Rates	16.450 Mills/kWh
8	$(Fc/Sc) - B$	(2.617) Mills/kWh
9	E/Sr = Error Correction Factor	0.000 Mills/kWh
10	$(Fc/Sc) - B - (E/Sr) =$	(2.617) Mills/kWh
11	$1/(1-T)$: (T = 4.4% Gross Receipts Tax)	1.046025
	ECR = Energy Cost Rate	(2.737) Mills/kWh


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

Dated this 28th day of August, 1998.


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DATE: September 1, 1998

SUBJECT: R-00974104

TO: Office of Special Assistants

FROM: *WJA* James J. McNulty, Secretary

DUQUESNE LIGHT COMPANY APPLICATION FOR APPROVAL OF
RESTRUCTURING PLAN

A copy of Duquesne Light Company's Petition for Clarification and Reconsideration Regarding Stand-Alone Restructuring Plan, filed in connection with the above docketed proceeding, was previously forwarded to your Office.

This matter is assigned to your Office for appropriate action.

cc: Chairman and Commissioners
Law Bureau
Bureau of Fixed Utility Services

wjz

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COMMONWEALTH OF PENNSYLVANIA
Public Utility Commission
September 4, 1998

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

**Report to the Commission by the Law Bureau Regarding
the Facts Underlying the May 6 Memorandum and Related
Contact Between Duquesne Light Company Personnel
and Commission Staff**

TO: James J. McNulty ✓
Secretary

FROM: Lawrence F. Barth *LFB*
Ramona C. Cataldi *RC*
Assistant Counsel

KJR

Attached please find the Law Bureau's Report to the Commission Regarding the Facts Underlying the May 6 Memorandum and Related Contact Between Duquesne Light Company Personnel and Commission Staff. Please see that the Report is placed in the file for the above-referenced electric restructuring case. The Report should be placed in a Document (red) folder so that the public will have access to it.

Also, please see that copies of the report are served upon all parties appearing on the official service list in the above-referenced proceeding.

c. Bohdan R. Pankiw, Chief Counsel
Karen O. Moury, Deputy Chief Counsel

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COMMONWEALTH OF 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

REPORT TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
BY THE LAW BUREAU REGARDING THE FACTS UNDERLYING
THE MAY 6 MEMORANDUM AND RELATED CONTACT BETWEEN
DUQUESNE LIGHT COMPANY PERSONNEL AND COMMISSION STAFF

DOCKETED
SEP 10 1998

Report Prepared By:

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Pennsylvania Public
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P.O. Box 3265
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Date: September 4, 1998

DOCUMENT
FOLDER

Introduction

At the June 26, 1998 public meeting of the Pennsylvania Public Utility Commission (Commission), Chairman John M. Quain issued an Opinion and Order at Docket Nos. R-00974104, R-00973981 and A-110150, F0015.¹ The Order, among other things, directed the Law Bureau to investigate the factual circumstances surrounding an allegation of an *ex parte* contact between an employee of the Duquesne Light Company (Duquesne) and a member of Chairman Quain's staff. The alleged *ex parte* contact is described in more detail below. The Order specifically instructed the Law Bureau to "conduct an investigation of the matter, and to provide its findings to the Commission in a public report...." June 26 Order at 9.

Assistant Counsel Barth and Cataldi were assigned to conduct the investigation. During the course of this investigation, interviews were conducted with two employees of Duquesne and three Commission staff members. Additionally, a number of documents were reviewed, including a memorandum which was the purported written communication involved in this matter and a number of written electronic "e-mail" communications between various persons on the Commission staff. This report is the result of that investigation. Additionally, the Law Bureau makes recommendations directed at creating a better understanding of the nature of *ex parte* communications among the Commission's staff and interested members of the public.

¹ Application of Duquesne Light Company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, Docket No. R-00974104; Application of West Penn Power company for Approval of its Restructuring Plan under Section 2806 of the Public Utility Code, Docket No. R-00973981; Joint Application of DQE, Inc., Allegheny Power System, Inc. and AYP Sub, Inc., for approval of the Transfer by Merger of the Property and Rights of Duquesne Light Company to Allegheny Power System, Inc., Docket No. A-10150F0015, Opinion and Order of Chairman John M. Quain (Entered June 26, 1998) (June 26 Order).

Ex Parte Communications

The Public Utility Code bars *ex parte* communication between those involved in the PUC's decision-making process and all others. 66 Pa. C.S. § 334(c). An *ex parte* communication is defined as

any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding.

Id. A contested on-the-record proceeding is one in which the Commission is to make a decision on the basis of a record of a hearing where a protest, petition to intervene in opposition or other pleading opposing a request for Commission action has been filed. In short, it is a proceeding where there are contested issues of fact or law. Simply put, the statute prohibits off-the-record communication to, or by, the decision-maker(s) and members of the public, including the litigants to the dispute regarding the merits of substantive issues in a contested proceeding.

Background

On August 1, 1997, Duquesne filed a plan to restructure its electric services so as to facilitate the implementation of direct access to a competitive market for generation by its retail customers. The filing of the plan was made pursuant to section 2806(d) of the Electricity Generation, Customer Choice and Competition Act. 66 Pa. C.S. §§ 2801-2812. Numerous parties intervened and some of them filed pleadings opposing the plan. Following a hearing and the filing of briefs, on March 25, 1998, the Administrative Law Judge's recommended decision regarding

Duquesne's restructuring plan² was served upon the parties. Following the issuance of this decision, and in accordance with procedure, the Commissioners performed a review of the record and briefs, and exceptions and reply exceptions were filed by various parties. The Commission's Opinion and Order on the restructuring plan was entered on May 29, 1998, following a vote at a public meeting on May 21, 1998. Duquesne filed a Petition for Clarification or Reconsideration of the May 29 Order on June 16, 1998.

On June 22, Citizen Power, the Mon Valley Unemployed Committee, the Group Against Smog and Pollution, the Pennsylvania Public Interest Group, Citizens Organizations on Utility Policies, Just Harvest, the Alliance for Progressive Action and Clean Water Action ("Citizen Power") filed a Petition for Recusal and for Further Discovery, seeking *inter alia* to have Chairman John M. Quain recuse himself from all further proceedings in the above-captioned matters. On June 24, 1998, by means of a secretarial letter, the Secretary of the Commission circulated a copy of a purported written communication, with attachments, from a Duquesne employee to a member of Chairman Quain's staff to all parties in Duquesne's restructuring proceeding. The secretarial letter invited comments. Citizens Power filed comments on July 3, 1998. It was the only party to do so.

At Public Meeting on June 26, 1998, Chairman Quain declined to recuse himself and issued an Opinion and Order explaining that decision. The Order denied Citizen Power's Petition for Recusal including its request for further discovery. The Chairman ordered the Law Bureau to conduct an investigation into the factual allegations contained in Citizen Power's petition, namely that a representative of Duquesne Light Company communicated *ex parte* with

² Because of a planned merger with the Allegheny Power System, the proceedings in the three dockets referenced above are inter-related. However, the *ex parte* matter discuss here relates specifically to Duquesne's "stand-alone" restructuring proceeding.

Commission staff and therefore tainted the decision-making process of the Commissioners with regard to Duquesne's restructuring plan.

The Order addressed the legal issue of whether the communication from Frank Nadolny of Duquesne Light Company is considered *ex parte*. The Law Bureau investigated the facts underlying the matter as directed by Chairman Quain's Order and has interviewed the following individuals: Robert Rosenthal (Chairman Quain's assistant); John Rohrbach (Commissioner Hanger's assistant at the time of these events);³ Tom Maher (Fiscal Analyst in the Bureau of Fixed Utility Services); Frank Nadolny (Duquesne Light Company's General Manager of Regulatory Affairs and the author of the memorandum in question); and Nancy Krajovic (Regulatory Manager at Duquesne Light Company).

Facts Developed by the Law Bureau's Investigation

a. The May 6 Memorandum

On or about April 6, 1998, Frank Nadolny, the General Manager of Regulatory Affairs for Duquesne Light Company, contacted Robert Rosenthal, one of Chairman Quain's assistants, for the purpose of inquiring as to the scheduling of the Commission action on the recommended decision. Mr. Nadolny again contacted Mr. Rosenthal on April 14, 1998, to inform him that Allegheny Power System was holding a press conference to address the exceptions which it was filing to the ALJ Recommended Decision in its own restructuring proceeding.

At Public Meeting of April 30, 1998, the Commission approved Chairman Quain's Motion to dispense with polling and direct the Office of Special Assistants (OSA) to prepare an order approving Duquesne Light Company's restructuring

³ Mr. Rohrbach is now on the staff of Commissioner Nora Mead Brownell.

plan, with modifications, in Docket No. R-00974104. Included in the motion were various tables containing calculations reflecting the Commission's stated disposition of the contested issues in the proceeding.

On May 4, 1998, Frank Nadolny telephoned Robert Rosenthal and informed him that Duquesne believed there were errors in the Commission's calculations. Additionally, Duquesne believed that a schedule attached to the Motion incorrectly gave the utility a return "on" deferred tax revenues as part of its stranded cost claim, as opposed to a return "of" these revenues according to the text of the Motion. Mr. Nadolny indicated that he was coming to Harrisburg for other purposes and wanted to drop off a copy of what he believed were the correct calculations.

Mr. Nadolny stated that he was advised by Mr. Rosenthal that John Rohrbach of Commissioner Hanger's staff was more familiar with the calculations. Mr. Nadolny telephoned Mr. Rohrbach and asked if he could provide Duquesne's calculations and explanation of the errors, or if Mr. Rohrbach would meet with Morgan O'Brien, who arrived at the contrary calculations. Mr. Rohrbach initially agreed, then called Mr. Nadolny back within ten minutes and left a voice message stating that the issues should be raised in Duquesne's compliance filing, and that he could not discuss the numbers with Mr. Nadolny.

On May 6, 1998, Mr. Nadolny hand delivered a memorandum to Mr. Rosenthal. A copy of the memorandum is attached as Exhibit A. The memorandum contained what Duquesne considered the correct calculations based upon the language in the Chairman's Motion. The memorandum contained a handwritten cover page listing the issues addressed, a typed page detailing Duquesne's position with respect to the return "on" or return "of" the deferred tax revenues, one page of the testimony of Robert Clayton, a Duquesne witness in the proceedings, and 12 pages of tables taken from various exhibits in the proceeding,

some with hand written notes, purportedly demonstrating the utility's concerns regarding the calculations. With the exception of the cover page, the typed explanation of the deferred tax revenues matter and the notes on the tables, all of the material was drawn from the hearing exhibits.

Mr. Rosenthal stated that he told Mr. Nadolny again that he would have to talk to John Rohrbach regarding these issues, as he was more familiar with the numbers involved. Mr. Nadolny stated that Mr. Rosenthal told him he could properly file a Petition for Reconsideration if he disagreed with the Commission's calculations.

At this time, Tom Maher, a Fixed Utility Financial Analyst with the Bureau of Fixed Utility Services, became involved in the matter. Mr. Rosenthal stated that he gave a copy of Mr. Nadolny's memorandum to Mr. Maher and asked him to verify the numbers. He said he also gave a copy of the pages relevant to a deferred tax issue to John Rohrbach.⁴ Mr. Rohrbach, however, does not remember receiving the pages, and stated that following the initial telephone call from Frank Nadolny, he removed himself from the issue and did not speak with anyone concerning the calculations until some time later.⁴

Mr. Maher stated that he reviewed the calculations at that time in light of the tables given him by Mr. Rosenthal. He did not see the hand written cover page from Mr. Nadolny. His intention, he stated, was to verify the Commission's calculations. When he finished, he sent two e-mails to Mr. Rosenthal with his findings on May 11, 1998 which generally verified the Commission's calculations.

Mr. Rosenthal stated that he discussed the calculations for the Transmission and Distribution rate -- one of the matters raised by Duquesne -- with Mr.

⁴ At this time the Commission was considering a number of restructuring cases which, to a great extent, involved the same issues with different underlying facts. Mr. Rohrbach stated he could not recall with certainty details regarding conversations with respect to a specific case. He stated that he had no memory of receiving the memorandum from Mr. Rosenthal.

Rohrbach on, or about, May 14, 1998. They discussed whether schedules attached to the Motion had used the correct sales numbers. They agreed that this was an issue that could be properly raised in Duquesne's compliance filing.

Mr. Rosenthal stated that he did not at that time, or any time, discuss the memorandum or calculations with anyone in his office, including Chairman Quain. Additionally, Mr. Rohrbach stated that he did not discuss the calculations with anyone in his office, including Commissioner Hanger.

Messrs. Rosenthal, Rohrbach, and Maher all stated that they had no other communications with anyone regarding these calculations between May 14 and May 21, 1998, when the Commission voted on the Duquesne restructuring plan. At public meeting on May 21, the Commission rendered its final binding vote on the Duquesne restructuring plan. Its Order adopted the issues as approved in the Motion of April 30 with no changes. This Order was entered on May 29, 1998.

On June 4, 1998, Mr. Nadolny was at the Commission to attend the public meeting scheduled that date. After public meeting, he saw Mr. Rosenthal in the hall and, knowing that the Commission had made no changes in its May 29 Order based upon the issues he had raised in the May 21 memorandum, he asked if there was someone he might speak to about the calculations. Mr. Rosenthal referred him to Mr. Maher. Mr. Nadolny went to Mr. Maher's office and told Mr. Maher that he was interested in finding out how the Commission had developed the \$493 million deferred tax revenue level. He wished to schedule a telephone conference with Mr. Maher, Ms. Krajovic, Morgan O'Brien, and Jim Lahtinan (also from Duquesne), to discuss Duquesne's inability to duplicate a deferred tax calculation of \$493 million contained in a table attached to the Motion. Mr. Nadolny states Mr. Maher agreed to get back to him on this request.

Mr. Nadolny, who was preparing to leave for vacation, spoke with Ms. Krajovic when he returned to Duquesne, and asked her to contact Mr. Maher to

schedule a conference call between the above individuals to discuss this matter. Ms. Krajovic said that she called Mr. Maher later on June 4 to schedule a conference call for the following Tuesday, June 9 at 10 a.m. to compare the deferred tax calculations. On June 5, 1998, Ms. Krajovic received a request from Morgan O'Brien in her office that they hold an in-person meeting with Mr. Maher to discuss this issue so that Duquesne could prepare its compliance filing. Ms. Krajovic stated she called Mr. Maher to request a meeting at that time. A meeting was scheduled for Thursday, June 11, 1998.

In the meantime, Mr. Maher stated that he contacted the Law Bureau for guidance as to whether the proposed telephone conference was considered *ex parte*. He was advised by the Law Bureau that it was not advisable to meet with representatives of Duquesne at that time given that the matter could be raised in the compliance filing or by petition.

On June 10, 1998, Robert Bennett, manager of the Energy Division in the Bureau of Fixed Utility Services and Mr. Maher's superior, called Mr. Nadolny and informed him that it may not be proper to hold a meeting, and that counsel for the Commission may contact Duquesne's counsel to explain. However, Ms. Krajovic, being unsure whether the meeting was actually canceled, arrived at the Commission on Thursday June 11, accompanied by Morgan O'Brien and Jim Lahtinan. The three Duquesne employees were informed by Mr. Bennett that there would be no meeting, and the three left without talking to anyone else at the Commission.

Duquesne filed a Petition for Clarification or Reconsideration of the May 29 Order on June 16, 1998, in which it sought clarification of the same issues which had been the subject of the May 6 memorandum.

On June 22 Citizen Power, filed its Petition for Recusal and for Further Discovery, seeking to have Chairman Quain recuse himself from all further

proceedings in the above-captioned matters. Two days later, June 24, the Commission Secretary served all parties to Duquesne's restructuring proceeding with copies of the May 6 memorandum from Mr. Nadolny. The Chairman's Opinion and Order was issued at the Public Meeting of June 26. In it, he denied the request that he recuse himself and the request for additional discovery. The Chairman found that the May 6 memorandum did not constitute an *ex parte* communication. His Opinion and Order sets forth the basis for this holding and need not be repeated here. Nonetheless, in the Opinion and Order he stated that, in "an abundance of caution," Mr. Rosenthal would no longer advise him with respect to the Duquesne proceeding.

The Commission also voted on various petitions for reconsideration of the May 29 Order, denying some in-part and granting some in-part.⁵ The Order stated that the clarification of calculations could be considered in Duquesne's compliance filing.

The compliance filing, which had been made on June 19, 1998, was under review by the Bureau of Fixed Utility Services. Due to the allegation raised regarding the May 6 memorandum from Mr. Nadolny, Mr. Maher was not assigned to work on the review of the compliance filing.

b. Conclusion

Each of the individuals questioned in this matter recited the same set of facts. Mr. Nadolny detailed his role in authoring the memorandum with Duquesne's calculations, but pointed out that the numbers were a reflection of Duquesne's interpretation of the text of the Commission's Motion. Mr. Nadolny

⁵ Application of Duquesne Light Company for Approval of Restructuring Plan Pursuant to 66 Pa. C.S. § 2806(d), Docket No. R-00974104, Opinion and Order (Entered July 16, 1998).

stated that Duquesne was not attempting to modify the resolution of issues contained in the Motion; rather the purpose of the memorandum was to clarify the calculations in a way in which Duquesne felt adequately represented the intention of the Motion. Based upon our review of the matter, these statements are credible and supported by our examination of the Nadolny memorandum and the apparent ambiguity created by the inconsistencies in the Motion and the attached schedules.

Robert Rosenthal was the first to receive information from Mr. Nadolny, and he referred Mr. Nadolny to John Rohrbach. Mr. Rohrbach did nothing with the information, and refused to meet with Mr. Nadolny to discuss it. While Tom Maher stated that he reviewed, as requested, the information in an attempt to verify the Commission's calculations, ultimately he did not meet with anyone from Duquesne either. When requested to meet with Duquesne personnel, he properly sought out and received advice from the Law Bureau, and informed his supervisor, Robert Bennett, who canceled the proposed meeting. Based upon our review of staffs actions in response to the Nadolny memorandum, neither Chairman Quain or Commissioner Hanger were contacted or even aware of Duquesne's informal communications through Mr. Nadolny.

The Law Bureau notes that each PUC employee and those of Duquesne stated they were aware of the prohibitions on *ex parte* communications. Mr. Nadolny and Ms. Krajovic believed that, because the memorandum consisted primarily of material drawn from record evidence for the purpose of verifying calculations, it would not be an *ex parte* communication. However, it appears that there was some confusion among PUC staff involved as to what constitutes an *ex parte* communication. A recommendation is made below to improve education within the PUC on the regulations regarding such communication.

Based upon the conversations reported by those interviewed in this investigation and the written May 6 memorandum, the Law Bureau does not

believe that the memorandum, or related discussions between PUC and Duquesne personnel constituted *ex parte* communications. It can be reasonably concluded that Duquesne was making an effort to reconcile discrepancies it perceived existed between the Motion and the attached tables. The utility was not making an attempt to influence the Commission to change the substance of the April 30 Motion, but rather to better understand precisely what the PUC had decided on some very complex issues. In order to make a filing in compliance with the then forthcoming (May 29) Order, it was necessary for Duquesne to reconcile the language of the Motion with the supporting schedules.

With respect to the responses by the PUC staff to the memorandum and contacts by Duquesne, the Law Bureau believes that, insofar as this was an attempt to clarify the Motion and not to alter the Commission's holdings, the personnel involved did not act improperly. Nonetheless, the substance of the communications should have been recognized sooner as relating to classic compliance filing issues. As noted below, the best course for staff to take in such situations is to consult the Commission's Law Bureau when they receive written or oral communications relating to the substance of matters under Commission review.

The Law Bureau also finds that the Commission acted properly when it became aware that there may have been an *ex parte* communication between a utility and members of the PUC staff. The Petition for Recusal and for Further Discovery was filed on June 22. Within two days the May 6 memorandum was placed in the record and circulated by the Commission Secretary to all parties who were also given the opportunity to comment. This is consistent with Commission policy which states that *ex parte* communication may be cured by providing all parties with copies. Procedures Manual, § 403(K); see Attachment B. It is also consistent with Pennsylvania law. Blue Mountain Consolidated Water Co. v. Pa.

P.U.C., 57 Pa. Commonwealth Ct. 363, 426 A.2d 724 (1981). This was done as a precaution even though, at the time, there had been no determination that the communication had been of an *ex parte* nature. Moreover, Chairman Quain took the additional step of directing that the Law Bureau investigate the facts surrounding the allegation of *ex parte* contact and that its report be made public.

Commission Procedures Regarding Ex Parte Communications

The Comments filed by Citizen Power in response to the June 24 Secretarial Letter raised the following three issues: 1) what is the commission's definition of an *ex parte* communication; 2) what type of *ex parte* communication is not prohibited; and 3) what should be the Commission's standards and procedures for preventing and addressing improper *ex parte* communication. In general, the comments suggested that the PUC provide a general analysis of the Commission's *ex parte* communication policies, protections and attitudes, and recommended that this be accomplished in the form of Commission guidelines on *ex parte* communications.

The Law Bureau is aware of the serious impact *ex parte* communications may have on the administrative process and the Commission's on-going concern that its procedures and practices preserves a fair and legally sound decision-making process. The Law Bureau has, therefore, reviewed the *ex parte* procedures currently in place at the Commission with an eye toward improvement and education to all Commission employees.

a. Existing Commission Policy

Section 319(a)(3) of the Public Utility Code places a duty upon each Commissioner to “[a]void all *ex parte* communications prohibited in this part.” 66 Pa. C.S. § 319(a)(3). Section 319(a)(5) expands this prohibition to include Commissioners’ staffs and personnel, by directing Commissioners to require that their staff and personnel “...observe the standards of fidelity and diligence that apply to the commissioner...” 66 Pa. C.S. § 319(a)(5). Section 334(c) defines *ex parte* communications.

To provide further guidance to our employees, the Commission has included in its Procedures Manual a section addressing *ex parte* communications (Section 403). The section explains the meaning of *ex parte* communications, as well as addressing how the parameters apply to different bureaus and specific types of cases, and when the *ex parte* prohibition begins and ends for a given case. A comprehensive definition of *ex parte* combinations is included, and the manual describes what constitutes a “contested on-the-record proceeding” in accordance with 66 Pa. C.S. § 334(c). Additionally, the manual describes specific instances which do or do not constitute an *ex parte* communication. The manual also sets forth specific actions which prompt the beginning or ending of a contested on-the-record proceeding.

In addition to the above, the Commission Procedures Manual explains how an *ex parte* communication can be cured, by providing copies to all parties of the written communication at issue. As noted earlier, copies of the May 6 memorandum from Mr. Nadolny were served upon all the parties in this proceeding by the Commission Secretary on June 24, 1998 at the direction of Chairman Quain.

Finally, the Procedures Manual encourages employees to ask questions regarding *ex parte* communications and to seek advice from Commission counsel which may then be reviewed by the Commission at the employee's request. The section of the Public Utility Commission Procedures Manual addressing *ex parte* communications as well as a chart which summarizes Commission proceedings and the starting point for *ex parte* prohibitions is attached as Exhibit B.

With respect to training on *ex parte* procedures, new employees at the Public Utility Commission attend an orientation program which includes a presentation on ethics and new Commissioners receive briefings on various issues and procedures, including the *ex parte* prohibitions. Each employee of the Commission is provided with a copy of the Procedures Manual.

b. Findings and Recommendations

The Law Bureau has reviewed the *ex parte* procedures and definitions contained in the Commission procedures manual and is satisfied that this provides a comprehensive set of guidelines for employees to follow, as well as encouraging employees to consult with counsel when in doubt. To ensure that Commission employees understand their responsibilities with regard to *ex parte* communications, the Law Bureau recommends that the Commission continue to review the section on *ex parte* communications frequently, with a view toward refining and updating any part of the section that is necessary.

As a further response to the events detailed above, section 403 Procedures Manual and its accompanying chart should be distributed to all employees at this time, with a memorandum directing them to review the *ex parte* definitions and procedures. It should also encourage them to contact the Law Bureau with any

questions they may have any time they are approached with information regarding a contested case pending before the Commission before they accept the material or listen to discussions of pending issues any time it is more than a strictly procedural matter.

To better help employees deal with communications which may be *ex parte* in nature, the Commission should conduct training on *ex parte* and other ethical responsibilities on an annual basis. At that time, copies of Section 403 of the Procedures Manual and its related table should be redistributed to appropriate staff in order to refresh employee recollections and encourage clarification of the procedures.

Staff should be instructed to giving special attention to answering the following questions when approached by someone regarding an on-going proceeding:

- Does the contact involve a contested, on-the-record proceeding?
- Does the contact relate to a substantive issue or is it procedural in nature?
- Are all parties present?

Moreover, the Commission should encourage the utilities under its jurisdiction to educate their officers and employees with regard to the prohibitions on *ex parte* communications so as to prevent any future occurrences of this nature. With respect to the events described above, it is suggested that, in the future, utilities which wish to verify calculations contained in a Commissioner's motion or an order should express their concerns in a written communication which is served upon all parties. When a face-to-face meeting is necessary, the Commission staff could convene a technical conference open to all parties to the proceeding.

ATTACHMENT A

May 6, 1998 Memorandum
from Frank Nadolny
to Robert Rosenthal



Duquesne Light

F.M. Nadolny

Re: Attachment "c" to
Chairman QUAINS
Motion on DLE Restructuring

Bob Rosenthal

Attached for consideration

- Memo explaining corrected Nos. to Attachment "c"
- Appropriate part of DLE Statement 2 Clayton testimony refers to regulating asset .. not deferred tax liability.
- Original Attachment "c" 4 pgs showing return both of and on the deferred tax balance is \$ 493,344,701
- corrected Attachment "c" 2 pgs with straightline amortization of \$ 493,344,701 unamortized deferred tax balance over 84 months. which is consistent with traditional ratemaking.

Frank

5-6-96



Correction of Attachment C to Chairman Quain's Motion
on Duquesne Light Company's Restructuring Plan

The schedule shown on Attachment C to Chairman Quain's Motion on Duquesne Light Company's Restructuring case setting forth the Total CTC Revenue Requirement is inconsistent with the intent of the Motion and with Duquesne's testimony.

Total CTC Revenue Requirement on Attachment C is defined as the sum of "Return Of and On Stranded + Return On Unamort. Deferred Tax Balance ". Additionally, the Attachment caption states that "DLC gets return on unamortized Deferred Tax balance (See DLC Statement No. 2, Clayton Testimony)."

Duquesne did not petition for recovery of a return on its unamortized deferred tax balance. Rather, the claim was for recovery of its unamortized deferred tax balance, which is consistent with traditional ratemaking.

The testimony referenced on the schedule caption of Attachment C (See DLC Statement No. 2, Clayton Testimony) discusses the return on the regulatory asset related to FAS 109, which is distinct from and unrelated to the issue of the ultimate deferred tax balance. The misinterpretation of that portion of DLC's testimony has caused the schedule detailing Duquesne's Total CTC Revenue Requirement to be in error, by providing (in column four) for the recovery of a return on the unamortized deferred tax balance rather than the return of that deferral.

A supporting schedule entitled "Buildup of Deferred Tax Revenue Requirement" shows the return both of and on the deferred tax balance of \$493,344,701. However, only the return on that balance shown on this supporting schedule is incorporated into the Total CTC Revenue Requirement on Attachment C.

The **corrected** Attachment C shows a monthly recovery in the fourth column of \$5,873,151 (straight-line amortization of \$493,344,701 unamortized deferred tax balance over 84 months), rather than the return on that deferral. This change reflects both the intent of Chairman Quain's Motion as well as DLC's petition for recovery of deferred taxes. The caption on the corrected Attachment C is consistent with these changes.

DLC
Sl. 2

DLC statements p. 2
Clayton Testimony

1 deferred Employee Costs, DOE Decontamination and decommissioning costs, pre-accrual
2 of nuclear outage costs, deferred pilot program costs. A return as well as recovery is
3 claimed for all of the Company's other regulatory assets.

4 Q. Is it appropriate for the Company to earn a return on the regulatory asset related to FAS
5 109?

6 A. Yes. For purposes of estimating stranded costs as of 2005, the Company has reduced the
7 book value of its generation assets by the full amount of its accumulated deferred tax and
8 accumulated ITC balances. The Company proposes that the final market-based valuation
9 should similarly account for deferred taxes and ITCs. Thus, customers will be credited with
10 the full value of these balances against the book value of generation. Accordingly, it is
11 appropriate for the Company to claim a return on the tax related asset. Since the Company
12 is amortizing its tax related regulatory asset more rapidly than it is reversing its deferred tax
13 balance (i.e., the regulatory asset is being amortized over the Transition Period while the
14 deferred tax balance is being reversed over the remaining life of the Company's plants),
15 Duquesne's customers will actually incur a lower total revenue requirement than they
16 would under traditional ratemaking. Of course, both methods produce the same present
17 value of revenue requirements. If a return were to be denied on the tax related assets, then
18 an offsetting adjustment should be made to the generation related deferred tax balance.

19 Q. How were debt discounts and premiums included in your stranded cost claim?

20 A. Duquesne's cost of capital assumes that debt discounts and premiums will be amortized
21 (and earn a return equal to the Company's cost of capital) over the average remaining life of
22 its outstanding debt and preferred securities. Since the Transition Period is shorter than the
23 remaining average life of the Company's securities, a shortfall would be experienced. As

This is referring to a Regulatory Asset
Not Deferred Tax Liability



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

Handwritten initials/signature

Original Attachment C

		Stranded	\$ 1,331,368,299	\$ 22,796,269	Monthly Return: 0.9167%	Annual Return: 11.000%
Month	Monthly kwh	Stranded Beg. Of Month	Stranded Revenue Requirement	Deferred 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	1,153,829,667	\$	4,270,475	\$	22,796,269	\$	2,536,446	\$	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 Deferred Tax Revenue Requirement

See page 1 of Attachment C for Revenue Requirement result

Month	Monthly kwh	\$ 493,344,701	Return:	Return Of + On:	Def. Tax	
		Def. Tax Principal	11.000%	\$ 8,447,263	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	278,677,346	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	

Corrected Attachment

AMORTIZATION TABLE
 2012-2013
 0.1

Total CTC Revenue Requirement: Return Of & On Stranded + Return Of Unamort. Deferred Tax Balance

DLC gets return of unamortized Deferred Tax balance of \$493,344,701 over 84 months (straight-line amortization)

Month	Monthly kwh	Stranded Beg. Of Month	\$ 22,796,269 Stranded Revenue Requirement	Deferred Tax Revenue Req.	Annual Return: 11.000%
					Total Monthly Revenue Req.
		\$ 1,331,368,299			
1	1,098,149,000	\$ 1,326,300,000	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
2	1,098,149,000	\$ 1,315,661,481	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
3	1,098,149,000	\$ 1,304,925,442	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
4	1,098,149,000	\$ 1,294,090,990	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
5	1,098,149,000	\$ 1,283,157,221	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
6	1,098,149,000	\$ 1,272,123,227	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
7	1,098,149,000	\$ 1,260,988,087	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
8	1,098,149,000	\$ 1,249,750,876	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
9	1,098,149,000	\$ 1,238,410,656	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
10	1,098,149,000	\$ 1,226,966,485	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
11	1,098,149,000	\$ 1,215,417,409	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
12	1,098,149,000	\$ 1,203,762,466	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
13	1,116,406,000	\$ 1,192,000,686	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
14	1,116,406,000	\$ 1,180,131,090	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
15	1,116,406,000	\$ 1,168,152,689	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
16	1,116,406,000	\$ 1,156,064,486	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
17	1,116,406,000	\$ 1,143,865,475	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
18	1,116,406,000	\$ 1,131,554,639	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
19	1,116,406,000	\$ 1,119,130,955	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
20	1,116,406,000	\$ 1,106,593,386	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
21	1,116,406,000	\$ 1,093,940,890	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
22	1,116,406,000	\$ 1,081,172,412	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
23	1,116,406,000	\$ 1,068,286,890	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
24	1,116,406,000	\$ 1,055,283,251	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
25	1,134,810,500	\$ 1,042,160,412	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
26	1,134,810,500	\$ 1,028,917,280	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
27	1,134,810,500	\$ 1,015,552,752	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
28	1,134,810,500	\$ 1,002,065,717	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
29	1,134,810,500	\$ 988,455,050	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
30	1,134,810,500	\$ 974,719,619	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
31	1,134,810,500	\$ 960,858,280	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
32	1,134,810,500	\$ 946,869,878	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
33	1,134,810,500	\$ 932,753,250	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
34	1,134,810,500	\$ 918,507,219	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
35	1,134,810,500	\$ 904,130,599	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
36	1,134,810,500	\$ 889,622,194	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
37	1,153,829,667	\$ 874,980,795	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
38	1,153,829,667	\$ 860,205,183	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
39	1,153,829,667	\$ 845,294,128	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
40	1,153,829,667	\$ 830,246,389	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
41	1,153,829,667	\$ 815,060,712	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420
42	1,153,829,667	\$ 799,735,832	\$ 22,796,269	\$ 5,873,151	\$ 28,669,420

43	1,153,829,667	\$	784,270,475	\$	22,796,269	\$	5,873,151	\$	28,669,420
44	1,153,829,667	\$	768,663,352	\$	22,796,269	\$	5,873,151	\$	28,669,420
45	1,153,829,667	\$	752,913,164	\$	22,796,269	\$	5,873,151	\$	28,669,420
46	1,153,829,667	\$	737,018,599	\$	22,796,269	\$	5,873,151	\$	28,669,420
47	1,153,829,667	\$	720,978,333	\$	22,796,269	\$	5,873,151	\$	28,669,420
48	1,153,829,667	\$	704,791,032	\$	22,796,269	\$	5,873,151	\$	28,669,420
49	1,173,544,000	\$	688,455,348	\$	22,796,269	\$	5,873,151	\$	28,669,420
50	1,173,544,000	\$	671,969,919	\$	22,796,269	\$	5,873,151	\$	28,669,420
51	1,173,544,000	\$	655,333,374	\$	22,796,269	\$	5,873,151	\$	28,669,420
52	1,173,544,000	\$	638,544,328	\$	22,796,269	\$	5,873,151	\$	28,669,420
53	1,173,544,000	\$	621,601,382	\$	22,796,269	\$	5,873,151	\$	28,669,420
54	1,173,544,000	\$	604,503,126	\$	22,796,269	\$	5,873,151	\$	28,669,420
55	1,173,544,000	\$	587,248,135	\$	22,796,269	\$	5,873,151	\$	28,669,420
56	1,173,544,000	\$	569,834,974	\$	22,796,269	\$	5,873,151	\$	28,669,420
57	1,173,544,000	\$	552,262,192	\$	22,796,269	\$	5,873,151	\$	28,669,420
58	1,173,544,000	\$	534,528,327	\$	22,796,269	\$	5,873,151	\$	28,669,420
59	1,173,544,000	\$	516,631,900	\$	22,796,269	\$	5,873,151	\$	28,669,420
60	1,173,544,000	\$	498,571,424	\$	22,796,269	\$	5,873,151	\$	28,669,420
61	1,194,297,000	\$	480,345,393	\$	22,796,269	\$	5,873,151	\$	28,669,420
62	1,194,297,000	\$	461,952,290	\$	22,796,269	\$	5,873,151	\$	28,669,420
63	1,194,297,000	\$	443,390,583	\$	22,796,269	\$	5,873,151	\$	28,669,420
64	1,194,297,000	\$	424,658,728	\$	22,796,269	\$	5,873,151	\$	28,669,420
65	1,194,297,000	\$	405,755,164	\$	22,796,269	\$	5,873,151	\$	28,669,420
66	1,194,297,000	\$	386,678,317	\$	22,796,269	\$	5,873,151	\$	28,669,420
67	1,194,297,000	\$	367,426,599	\$	22,796,269	\$	5,873,151	\$	28,669,420
68	1,194,297,000	\$	347,998,407	\$	22,796,269	\$	5,873,151	\$	28,669,420
69	1,194,297,000	\$	328,392,124	\$	22,796,269	\$	5,873,151	\$	28,669,420
70	1,194,297,000	\$	308,606,116	\$	22,796,269	\$	5,873,151	\$	28,669,420
71	1,194,297,000	\$	288,638,736	\$	22,796,269	\$	5,873,151	\$	28,669,420
72	1,194,297,000	\$	268,488,322	\$	22,796,269	\$	5,873,151	\$	28,669,420
73	1,214,002,901	\$	248,153,196	\$	22,796,269	\$	5,873,151	\$	28,669,420
74	1,214,002,901	\$	227,631,665	\$	22,796,269	\$	5,873,151	\$	28,669,420
75	1,214,002,901	\$	206,922,019	\$	22,796,269	\$	5,873,151	\$	28,669,420
76	1,214,002,901	\$	186,022,535	\$	22,796,269	\$	5,873,151	\$	28,669,420
77	1,214,002,901	\$	164,931,473	\$	22,796,269	\$	5,873,151	\$	28,669,420
78	1,214,002,901	\$	143,647,076	\$	22,796,269	\$	5,873,151	\$	28,669,420
79	1,214,002,901	\$	122,167,571	\$	22,796,269	\$	5,873,151	\$	28,669,420
80	1,214,002,901	\$	100,491,172	\$	22,796,269	\$	5,873,151	\$	28,669,420
81	1,214,002,901	\$	78,616,072	\$	22,796,269	\$	5,873,151	\$	28,669,420
82	1,214,002,901	\$	56,540,450	\$	22,796,269	\$	5,873,151	\$	28,669,420
83	1,214,002,901	\$	34,262,468	\$	22,796,269	\$	5,873,151	\$	28,669,420
84	1,214,002,901	\$	11,780,272	\$	22,796,269	\$	5,873,151	\$	28,669,420
				\$	1,331,368,299				

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)
	<u>Total T&D Revenue Requirement, with Merger Savings</u>	<u>\$ 277,770,798</u>
	<u>Total T&D Revenue Requirement, w/out Merger Savings</u>	<u>\$ 293,570,798</u>

4 OCA's Retail Kwh for 1999 - *should be 96 since same sales for period Rev. Req. vs c* 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

1 mil x sales level = 12.4 mil in Rev

Build Up of Duquesne Light's T & D Rate

<u>Step:</u>	<u>As Filed</u>	<u>At Realized Returns²</u>
1 Distribution Lahtinen Statement 5 (Exh. JAL 1C Page 3 of 6)	\$ 253,687,253 ¹	\$249,206,321
2 Transmission Lahtinen Statement 5 w/ Ancillary Services (Exh. JAL 1C Page 3 of 6)	\$50,315,742	\$47,276,034
3 Merger related Distribution Savings per OCA Witness Kahal	(\$15,800,000)	(\$15,800,000)
4 Total T&D Rev. Requirement w/ Merger savings	\$288,202,995	\$280,682,355
5 Total T&D Rev. Requirement w/out Merger savings	\$304,002,995	\$296,482,355
6 1996 Retail kWh ³	12,413,633,000	12,413,633,000
 Total T&D, cents/kWh, w/ Merger Savings	 2.32167	 2.26108
Total T&D, cents/kWh, w/out Merger Savings	2.44895	2.38836

1 Note: Distribution revenue requirements of \$253,687,253 are net of distribution losses and require no further adjustment

2 Note: Realized returns were those filed in response to discovery in Docket No. C-00913424

3 Note: Rates were developed using 1996 test year sales the same period used to develop revenue requirements

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 Duquesne Light Co. Exceptions., and 2005 is extrapolated from this exhibit.

8.93 - incls EER Rollup
 8.75 - with EER in effect
 in 1999
 0.56 is result of using
 1999 sales volume

BUNDLED RATE TODAY – IMPACT OF CHANGING COMPOSITION OF SALES

	1996 Revenues (\$)	1996 Sales (MWh)	1996 Average Rate _1/ (c/kWh)	Percent of MWh Sales In 1996	1999 Average Rate (c/kWh)	Percent of MWh Sales In 1999
RA	3,349,885	33,848	9.90	0.3%	9.90	0.3%
RS	374,878,804	2,977,269	12.59	24.0%	12.59	22.0%
RH	25,788,406	309,038	8.34	2.5%	8.34	2.3%
GSGM	274,559,067	2,621,146	10.47	21.1%	10.47	21.2%
GMH	27,070,933	328,256	8.25	2.6%	8.25	2.6%
GL	200,554,130	2,884,888	6.95	23.2%	6.95	23.6%
GLH	29,104,629	455,219	6.39	3.7%	6.39	3.7%
L	83,607,865	1,529,590	5.47	12.3%	5.47	11.0%
HVPS	49,601,005	1,201,824	4.13	9.7%	4.13	12.8%
AL	1,323	13	10.00	0.0%	10.00	0.0%
SE	3,093,842	28,618	10.81	0.2%	10.81	0.2%
SM	12,258,677	31,448	38.98	0.3%	38.98	0.2%
SH	165,787	837	19.81	0.0%	19.81	0.0%
TRAFFIC	<u>1,615,290</u>	<u>11,639</u>	<u>13.88</u>	<u>0.1%</u>	<u>13.88</u>	<u>0.1%</u>
Total System Avg.	1,085,649,643	12,413,633	8.75	100.0%	8.56	100.0%

_1/ Maintains ECR at current level.

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	13,177,792,261	\$ 344,033,040	2.73	2.308	8.56	3.52
2000	13,396,867,288	\$ 344,033,040	2.69	2.177	8.55	3.68
2001	13,617,281,321	\$ 344,033,040	2.64	2.171	8.54	3.73
2002	13,845,460,353	\$ 344,033,040	2.60	2.166	8.54	3.77
2003	14,082,528,386	\$ 344,033,040	2.56	2.160	8.53	3.81
2004	14,331,562,413	\$ 344,033,040	2.51	2.154	8.53	3.87
2005	14,587,560,447	\$ 344,033,040	2.47	2.148	8.52	3.90

Note: Assumes total bundled and T&D rates are maintained at 1996 levels for each rate class, but system average rates decline as sales growth in forecast is expected to increase faster for commercial and industrial customers than for residential customers.

Note: Includes merger savings in distribution rates in 2000.

Note: GRT Gross up is 1/(1-GRT), or 1.0460251, to reflect payment of the portion of the GRT on the GRT revenue receipt.

Note: Annual kWh is taken from Duquesne Light Co. Exceptions.

ATTACHMENT B

Pennsylvania Public Utility Commission
Procedures Manual
Section 403, Ex Parte Communications
and Chapter 4, Appendix

- When an emergency arises involving possible harm to persons or property,
- When an inquiry or informal complaint is received by any Commissioner.
- G. Commissioners shall inform the Secretary; the Executive Director; the Director, Law Bureau; the Chief ALJ; all parties to the case and other Commissioners, of particular issues that a Commissioner wishes explored in the case - or request that the Secretary inform appropriate parties. All individuals and parties shall be notified in writing, by the Commissioner or by the Secretary.
- H. When a reason exists for one or more Commissioners to preside on a case instead of, or along with, an Administrative Law Judge, the Case Monitor shall be informed and make recommendation in this regard to the Commission prior to the setting of hearings.
- I. When a Commissioner wishes to have hearings set so he or she can attend them, the Commissioner shall notify the Case Monitor who shall inform the Chief ALJ before the setting of hearings.
- J. After the Commission has acted on an ALJ's proposed order, or recommended decision, the Case Monitor shall coordinate with the Director, OSA to ensure that the order/decision complies with specific Commission directives.

When requested by the Commission or in the case of certain remand orders, the Law Bureau (rather than the Office of Special Assistants) shall draft the Commission's final order.
- K. The Director, OSA or Chief Counsel, as appropriate, shall transmit all opinions and orders to the Secretary for issuance.

403. EX PARTE COMMUNICATIONS

- A. Section 334(c) of the Public Utility Code 66 Pa. C.S. §334 prohibits ex parte communications. The prohibition against ex parte communications is based on the due process principle that no party should have the ability to unilaterally influence the decision maker regarding a contested issue of fact or law. Subsection (b) provides that the provision is applicable to Commissioners,

Administrative Law Judges and any other Commission employee or agent associated with deciding a factual or legal issue in a Commission proceeding. Subsection (c) defines ex parte communications as follows:

Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding means a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed (emphasis supplied).

The subsection also makes clear that ex parte prohibitions do not apply to communications, prior to actual hearings, which "are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in the subsequent hearings."

Ex parte prohibitions begin only when the matter becomes a "contested on-the-record proceeding." 66 Pa. C.S. §334(c). The mere filing by a utility of an application and its subsequent docketing by the Prothonotary's Office does not in and of itself create a "contested" matter to which ex parte prohibitions would apply. A matter becomes contested only when a complaint, protest, petition in opposition or other adverse pleading is filed by another party. On the other hand with respect to existing utility rates and practices, the matter becomes contested when a consumer complaint is filed or when the Commission on its own motion institutes a complaint or order to show cause initiating a formal investigation.

In most cases, a Commission rulemaking proceeding will not take the form of a "contested on-the-record proceeding" and, as such, ex parte prohibitions will not apply. Where, however, the rulemaking is assigned to an ALJ for the development of an evidentiary record (i.e. presentation of testimony subject to cross-examination), the proceeding acquires many of the characteristics of an adjudication. Under these circumstances, considerations of basic fairness to the parties and the integrity of the hearing process weigh heavily in favor of applying the ex parte prohibitions of Section 334.

Lastly, because the Office of Trial Staff (OTS) constitutes a bureau within the Commission with "public interest" responsibilities coextensive with those of the Commission, see 66 Pa. C.S. §306(b)(1), an OTS petition to reject or modify a utility filing would not create a contested on-the-record proceeding such that the Section 334(c) ex parte prohibitions would apply. In the case of an OTS petition, the ex parte prohibitions of Section 334 would begin only when the Commission initiated a formal on-the-record proceeding regarding the issues raised. However, Section 306(b)(3) prohibits OTS ex parte communications in uncontested on-the-record proceedings, thus prohibiting the OTS from advising the Commission in such proceedings "except through the practice and procedure available to all parties to Commission proceedings."

- B. The ex parte prohibitions set forth in 66 Pa. C.S. §§306(b)(3) and 334 shall not be interpreted to restrict written communications to or from the individuals named in the statute if the case monitor, the ALJ assigned to the case and all parties are provided a copy of the communication.
- C. Ex parte prohibitions do not apply to requests that are purely procedural. Procedural requests may be directed to the Secretary, the Law Bureau, or the Chief ALJ as appropriate.
- D. Ex parte prohibitions are applicable to all formal proceedings before the Commission except for rulemaking proceedings. In a contested rulemaking proceeding, the Administrative Law Judge or case monitor may impose restrictions on ex parte communications by order.
- E. Ex parte prohibitions begin when the matter becomes a contested on-the-record proceeding (see Appendix B, Page 58). A matter becomes a contested on-the-record proceeding under the following circumstances:
 - (1) In the case of a utility-initiated filing, when a complaint, protest or other adverse pleading is filed.
 - (2) When a consumer complaint is filed against a utility's existing rates or regulations.
 - (3) When the Commission on its own motion issues a complaint or order to show cause initiating a formal investigation.
- F. Ex parte prohibitions end when any appeal period has passed after Commission action.

- G. Commissioners (and their personal staffs, special assistants and consultants) and any member of the Commission staff who is not on the hearing staff for the matter shall not make nor shall they receive ex parte communications.
- H. Administrative Law Judges (and their personal staff members) shall not make nor shall they receive ex parte communications.
- I. Commission employees on the prosecutory staff of any case shall not make ex parte communications to any Commissioner, Administrative Law Judge, or employees of the Commission staff serving in an advisory role in that case.
- J. Individuals receiving written ex parte communications shall send them to the Secretary for appropriate distribution.
- K. Written ex parte communications can be cured by providing copies to all parties. Since oral ex parte communications cannot be transcribed verbatim, all individuals should avoid oral ex parte communications. If an oral ex parte communication is received, however, the individual receiving same shall provide a written summary of the conversation to the Secretary for distribution.
- L. The ALJ assigned to a case shall initially determine the consideration to be given to ex parte communications received.
- M. All employees have the right to request advice from Commission counsel concerning the ex parte statute. Unless privileged, that advice shall be available to all personnel and shall at the employee's request be reviewed by the Commission.

404. INTERLOCUTORY REVIEW - CERTIFIED QUESTIONS

- A. The Commission will not permit interlocutory review of rulings of presiding officers, made during the course of hearings or conferences, except as hereinafter specified.
- B. During the course of a proceeding, a party may submit a timely petition to the Secretary requesting the Commission's review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served upon all parties and the presiding officer and shall state, in not more than one page, the question to be answered and the reasons why

**SUMMARY OF COMMISSION PROCEEDINGS AND
STARTING POINT FOR EX PARTE PROHIBITIONS**

<u>Commission Proceeding</u>	<u>When Ex Parte Begins</u>
§1308 voluntary rate filing	date consumer complaint or other adverse pleading is filed.
ECR/GCR filing pursuant to §1308(a)	date consumer complaint or other adverse pleading is filed.
§1307(f) reconciliation of gas costs	date consumer complaint is filed or, if no complaint, adoption date of Commission order (or Secretarial letter) initiating formal proceeding.
§1322 proceeding regarding outage electric generating unit	date consumer complaint is filed, or, if no complaint, adoption date of Commission order initiating formal proceeding.
Application pursuant to §1102	date protest or other adverse pleading is filed.
§1301 consumer complaint against existing utility rates or regulations	date consumer complaint is filed.
§1501 consumer complaint regarding quality and adequacy of service	date consumer complaint is filed.
Complaint or order to show cause issued by Commission on its own motion	adoption date of Commission order initiating formal proceeding.
OTS petition to initiate Commission investigation	adoption date of Commission order initiating formal proceeding.
Rulemaking proceeding	ex parte does not apply unless assigned to ALJ for development of evidentiary record.

NOTES:

1. The persons affected by the ex parte prohibitions of Section 334 include Commissioners and their assistants, the presiding ALJ and all advisory employees associated with the matter.
2. Because OTS constitutes a bureau within the Commission, an OTS petition to reject or modify a utility filing would not initiate ex parte prohibitions.
3. The term "consumer complaint or other adverse pleading" includes complaints filed by the Office of Consumer Advocate and, in certain cases, adverse pleadings filed by utility competitors.
4. As a general rule applicable to each of the above-mentioned Commission proceedings, ex parte prohibitions begin, at the latest, when the Commission adopts an order instituting a formal on-the-record proceeding.

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September 8, 1998

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

VIA HAND DELIVERY

**RE: Pennsylvania Public Utility Commission v. Duquesne Light Company;
Docket No. R-00974104**

Dear Secretary McNulty:

Enclosed for filing are the original and three (3) copies of the Answer of The Duquesne Industrial Intervenors In Opposition to The Petition For Clarification And Reconsideration of Duquesne Light Company Regarding Stand-Alone Restructuring Plan in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties are being duly served with the Answer. 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

DOCUMENT
FOLDER

Counsel to the Duquesne Industrial Intervenors

PCP/clc

Enclosures

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- Vice Chairman Robert K. Bloom (via hand delivery)
- Commissioner David W. Rolka (via hand delivery)
- Commissioner Nora Mead Brownell (via hand delivery)
- Commissioner Aaron Wilson, Jr. (via hand delivery)
- Cheryl Walker Davis, Office of Special Assistants (via hand delivery)
- Bureau of Fixed Utility Services (via hand delivery)
- Certificate of Service

SEP 8 1998
4:00 PM
P.A.P.U.C.
SECRETARY'S BUREAU

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, ET. AL. :

v. :

DUQUESNE LIGHT COMPANY :

DOCKET NO. R-00974104

APPLICATION FOR APPROVAL OF ITS :
RESTRUCTURING PLAN UNDER SECTION :
2806 OF THE PUBLIC UTILITY CODE :

PA. P.U.C.
SECRETARY'S BUREAU

99 SEP - 8 PM 4:00

SEP 09 1998

DOCUMENT
FOLDER

ANSWER OF THE DUQUESNE INDUSTRIAL INTERVENORS
IN OPPOSITION TO THE PETITION FOR CLARIFICATION
AND RECONSIDERATION OF DUQUESNE LIGHT COMPANY
REGARDING STAND-ALONE RESTRUCTURING PLAN

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

On August 28, 1998, Duquesne Light Company ("Duquesne" or the "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or the "Commission") the "Petition for Clarification and Reconsideration of Duquesne Light Company Regarding Stand-Alone Restructuring Plan" ("Duquesne Petition"). Pursuant to Section 5.572 of the Commission's regulations, 52 Pa. Code § 5.572, the Duquesne Industrial Intervenors ("DII") submits this Answer in Opposition to the Duquesne Petition. As set forth in detail below, DII opposes, in part, Duquesne's request for relief.¹

¹DII takes no position in this pleading regarding the universal service issues raised in Duquesne's Petition. See Duquesne Petition, pp. 5-8.

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Duquesne categorizes many issues raised in its Petition as requests for “clarification” rather than “reconsideration.” See Duquesne Petition, pp. 2-3 & 4-5. Duquesne asserts that its Petition “addresses certain computational issues where the Compliance Order either appears to include an inadvertent error or is ambiguous regarding the intended treatment of a cost or revenue item.” Id. at 1. A closer reading of the Company’s arguments, however, indicates that the Company seeks to have the Commission revisit explicit findings from its prior Orders in this proceeding. Moreover, the Commission’s decisions on the issues raised by Duquesne have a material impact on the unbundled rates established in this proceeding. As such, DII respectfully submits that the Company’s request for “clarification” is misguided; the Company ostensibly seeks reconsideration on the majority of the issues raised in the Petition. As such, DII addresses the pertinent issues as if the Company substantively seeks reconsideration.

The Commission’s standard of review in ruling on a Petition for Reconsideration requires that the party requesting reconsideration assert “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” Quick v. Pennsylvania Gas & Water Company, 56 Pa. P.U.C. 553, 559 (1982) (“Quick”). Duquesne’s Petition does not satisfy this standard. Duquesne’s arguments regarding the appropriate ECR level rolled into base rates and the correct sales volume to be used in computing transmission and distribution rates are neither new, nor novel, and were fully addressed by the Commission in reaching its decision in this proceeding, both in the Commission’s Final Order and in the Compliance Filing Order. See Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00974104, Order and Opinion entered on May 29, 1998 (“Final Order”) and Opinion and Order on Compliance Filing

entered on August 13, 1998 ("Compliance Filing Order"). As DII explains in detail below, the Company's requests for a substantive reevaluation of these issues consequently should be denied.

In addition, portions of Duquesne's Petition must be considered in light of the multiple errors that the Company will be required to correct in its revised compliance filing due on or before September 12, 1998. For example, the Company must revise the transmission and ancillary service revenue requirement to reflect the Commission's acceptance of DII's arguments on this issue in the Compliance Filing Order. See Compliance Filing Order², p. 7. In addition, the Company must unbundle its rates based on the realized rates of return from its 1996 cost of service study, instead of the returns in the 1988 study that the Company used in its original compliance filing. Id. at 9-11. Furthermore, the deferred taxes amount discussed by Duquesne in its Petition must change to reflect an extended CTC recovery period, taking into account the changes in the transmission and distribution rates. See id. at 15-16. Obviously, correcting these issues may result in significant changes to the unbundled rates submitted by Duquesne in its original compliance filing.

DII intends to fully examine the Company's revised filing to ensure it accurately and "precisely reflect[s] the balanced consideration reflected" by the Commission's Final Order and Compliance Filing Order. See Compliance Filing Order, p. 56. Because the Commission will not act on Duquesne's Petition prior to submission by Duquesne of its revised compliance filing, DII will address both the "computational errors" alleged by Duquesne in its Petition and other changes

²DII notes that the Commission's buildup of transmission and distribution rates attached to the Compliance Filing Order fails to reflect the Commission's directive on this issue. See Compliance Filing Order, Attachment "Buildup of Duquesne Light's T&D Rate," line 2. Nonetheless, the Company's revised compliance filing should reflect the treatment adopted in the body of the Order. See Compliance Filing Order, pp.5-7.

required by the Compliance Filing Order, as necessary, in its Comments on the revised compliance filing. To this end, DII expects that the Company will provide the Parties with all of the necessary data and analyses to fully examine the revised unbundled rates, including all workpapers. See id. at Ordering ¶ 7. Because of the short time period provided for the Parties' analysis of the revised compliance filing, such information should be provided on computer diskette, if available.

A. Duquesne's Request To Roll-In Its Energy Cost Rate At A Level Other Than The 12.8 Mills Per kWh In Effect On December 31, 1996, Was Clearly Rejected By The Commission

Duquesne requests "clarification" by the Commission regarding the ECR level to be rolled into base rates and reflected in the capped system average rates used to establish unbundled rates in this proceeding. Duquesne Petition, pp. 2-3. Although Duquesne claims that it is not seeking reconsideration of the Commission's finding that the ECR should not be rolled-in at the Company's originally requested 14.7 mills (See Duquesne Petition, p. 2), Duquesne argues that the portion of the ECR in effect on December 31, 1996, representing prior over-collections should be removed from the calculation of the capped rate at December 31, 1996. Id. Duquesne also provides a written description regarding the portion of the 12.8 mills per kWh ECR that represents the credit for prior over-collections. According to DII's calculations, acceptance of the Company's proposal will result in the ECR being rolled-in at a higher rate level than the 12.8 mills in effect on December 31, 1996.

DII submits that Duquesne's request for "clarification" of this issue should be rejected. The Company's "clarification" actually will result in reconsideration and reversal of the Commission's explicit finding that the ECR should be rolled-in at the actual level as of December 31, 1996, of 12.8 mills. The Commission addressed this issue in both the Final Order and the Compliance Filing Order. See Final Order, Appendix A; Compliance Filing Order, pp. 11-12. The Company's Petition

in support of revisiting this issue fails to satisfy the Duick standard. In addition, the Company's request contravenes the Act and appears to amount to selective single-issue ratemaking. Consequently, the Company's request should be denied.

The Commission's Final Order indicates that the ECR roll-in was performed in calculating the system-average unbundled rates reflected in Attachment A of the Final Order. See Final Order, Attachment A, notes. In addition, the Final Order indicates that "[n]on-shopping customers will pay the unbundled rate for generation such that the total rate will precisely reflect current existing rates." Id. at 183. In the Compliance Filing Order, the Commission explicitly confirms that this rate includes the ECR roll-in at 12.8 mils per kWh.

The OCA argues that the Company's base rates and ECR in effect, on the effective date of the Act, were designed to recover 12.8 mils/kWh. The OCA noted that throughout the restructuring case, the Company indicated that the proposed Energy Cost Rate (ECR) was higher than the ECR that was in effect at the effective date of the Act.

We will adopt the position of the OCA. Therefore, we direct Duquesne to reflect the ECR, in effect on the effective date of the Act, which is designed to recover 12.8 mils/kWh in energy costs in rate calculations.

Compliance Filing Order, pp. 11-12. Thus, the Commission clearly rejected the Company's proposals to roll the ECR into base rates at any level other than the 12.8 mils in the rate effective on December 31, 1996. No "clarification" of the Commission's ruling is needed.

The Duquesne Petition raises no new or novel arguments in favor of rolling the ECR into base rates at any level other than 12.8 mils. The Petition cites to Company testimony regarding the purported need to remove the over-collections and states that no party opposes its position. See Duquesne Petition, pp. 3-4. DII respectfully submits that a mere citation to the Company's testimony is not sufficient to satisfy the Duick standard for reconsideration. When the Commission

made the definitive statement in the Compliance Filing Order regarding the ECR level to be rolled into base rates, it presumably made that decision with full knowledge of the record evidence in this proceeding and the Company's multiple theories to inflate that ECR level. Simply reiterating that testimony does not establish a "new or novel" argument, or a consideration previously overlooked by the Commission in its prior orders.

In addition, the Commission was clearly presented in the Compliance Filing Order with a choice between the OCA's position that the 12.8 mills per kWh actual rate be used and the Company's position that a rate other than the actual be used. The OCA's Comments state:

The Company's rate calculations utilize the level of the Energy Cost Rate (ECR) that the Company proposed to roll-in to base rates. Throughout the case, the Company indicated that the proposed ECR rate was higher than the ECR that was in effect at the effective date of the Act. The OCA argued in this case that the ECR in effect at the effective date of the Act should be utilized so that rates would not be increased above the level in effect on January 1, 1997. The Commission did not specifically rule on this matter, but the issue is pending before the Commission in Duquesne's Petition for Reconsideration.

The Company's base rates and ECR in effect on the effective date of the Act were designed to recover 12.8 mills/kWh in energy costs. The Company, however, proposed to increase this amount to 14.7 mills/kWh when it rolled its ECR into base rates. The 14.7 mills/kWh represents the highest level, or cap, on the Company's energy costs from a previous settlement. Since the Commission's order did not specifically address this issue, Duquesne, in its Petition for Reconsideration, asked for clarification as to the rate adopted in the Commission's Order. The OCA answered that Petition on the issue and recommended the 12.8 mills/kWh effective rate be utilized. It is OCA's understanding that the Company has reflected the 14.7 mills/kWh rate in its compliance filing. If the Commission determines to adopt the OCA's position on this issue, the rates contained in the compliance filing will need to be modified to reflect the 12.8 mills/kWh.

OCA Comments, pp. 8-9. Noticeably, the Company's "Reply Comments" did not propose any clarification of the positions on this issue despite the OCA's definitive language regarding its position that 12.8 mills is the appropriate level for the roll-in. See Duquesne Reply Comments. The

Commission's Compliance Filing Order clearly accepted the OCA's position and, by implication, rejected the Company's position. See Compliance Filing Order, pp. 11-12. Obviously, the Company is seeking reconsideration by the Commission of its definitive statement on the ECR roll-in issue. As the Company has raised no new arguments not previously asserted on the record in this proceeding and rejected by the Commission, the request should be denied.

Furthermore, the Commission's decision regarding the ECR level to be rolled into base rates is fully consistent with the Act and principles of ratemaking. The Act clearly specifies that the statutory rate caps protecting consumers during the period of stranded cost recovery are based on the level of charges "approved by the Commission for such service as of the effective date of this Chapter." 66 Pa. C.S. §§ 2804(4)(i)(A) & (B) & 2804(4)(ii). Clearly, to the extent that a utility is requesting that the ECR rate be rolled into the base rates, the only permissible level under the Act is the actual ECR level in effect on the effective date of the Act (i.e., December 31, 1996). Although the Act provides that the rate caps can be adjusted in certain circumstances, the existence of an over-collection in the ECR in effect on December 31, 1996, is not one of the specified circumstances sufficient to vary the rate cap from the rate level in effect on December 31, 1996. See id. § 2804(4)(iii). The Duquesne proposal to adjust the ECR level at December 31, 1996, prior to rolling the ECR into base rates is contrary to the dictates of the Act and should be rejected.

In addition, Duquesne's proposal to selectively adjust elements of the rate in effect on December 31, 1996, is inappropriate and should be rejected. Duquesne takes only one portion of the calculation of the rate in effect on December 31, 1996, and proposes to change the rate cap based only on that one element. Duquesne does not address whether any items exist that may result in the ECR roll-in level being lower. Nor, under the Act, are parties and the Commission provided the

opportunity to adjust other items that would benefit ratepayers by reducing Duquesne's rates in effect on December 31, 1996. For example, the parties in this proceeding and the Commission are not aware of whether Duquesne's current fuel costs are lower than those used in the ECR calculations to arrive at 12.8 mils per kWh at December 31, 1996. Under Duquesne's theory, if current fuel costs are lower, the ratepayers should receive a benefit by an adjustment of the capped rate downward to remove the Company's over-collection in the capped rates. The parties have no way to perform such an analysis. More importantly, the Act specifically obviates the need to perform such updated calculations to individual elements of the rates because of the definitive rate caps established based on the charges in effect on December 31, 1996. See 66 Pa. C.S. §§ 2804(4)(i)(A)&(B) & 2804(4)(ii). Duquesne's attempt to selectively update the record evidence in this proceeding should be rejected.

Duquesne's request to adjust the rates in effect as of December 31, 1996, to reflect any ECR level other than the 12.8 mils per kWh actually in effect on that date should be denied. The Company's mere citation to its testimony stating the purported reasons to adjust the ECR does not satisfy the Duick standard. In addition, the Company's proposal violates the Act's rate caps and the principle against single-issue ratemaking. DII respectfully submits that the Company's request should be denied.

B. Duquesne's Request To Use 1996 Sales Volumes To Develop Transmission And Distribution Rates Was Specifically Rejected By The Commission

Duquesne requests that the Commission approve the use of 1996 sales volumes to develop transmission and distribution rates. Duquesne Petition, pp. 4-5. Duquesne used the 1996 volumes in its original compliance filing rather than using the 1999 volumes as directed in the Commission's

Final Order. Duquesne alleges that the Commission misconstrues an objection by the OCA regarding the use of 1996 sales volumes and posits that the Commission should permit the Company to use the 1996 volumes because no party objected to Duquesne's correction. Id. at 5. The Company requests "clarification" that the 1996 volumes are appropriate. Duquesne's arguments in this regard were addressed by the Commission in both the Final Order and the Compliance Filing Order. See Final Order, Attachment E; Compliance Filing Order, p. 9. It is again evident that the Company is asking the Commission to reconsider previously rejected arguments on this issue. Because Duquesne raises no new arguments in support of its position that 1996 sales volumes should be used, the Duquesne Petition fails to meet the Duick standard and should be rejected.

The Commission addressed the correct year's sales volumes to be used in calculating transmission and distribution rates in two of its orders. In Attachment E to the Final Order, the Commission specifically used the OCA's retail sales for 1999 in performing the buildup of Duquesne's transmission and distribution rate See Final Order, Attachment E, line 4. In the Compliance Filing Order, the Commission reiterated and reaffirmed its specific decision to use 1999 sales volumes to determine transmission and distribution rates, stating:

While in our May 29, 1998, Order, we adopted the ALJ's recommendation to employ Duquesne's use of its 1996 process service study as the basis for allocating all of its costs between generation, transmission, and distribution, we also concluded that it was appropriate to employ the OCA's 1999 sales level of 12,519,000,000 kWh for the buildup of T&D rates. We will adopt the clarification requested by the OCA, and we would direct Duquesne to employ the 1999 sales level.

Compliance Filing Order, p. 9 (emphasis added). In the Compliance Filing Order, the Commission again employed the 1999 sales volumes in its revised buildup of Duquesne's transmission and distribution rates. See id., Attachment "Buildup of Duquesne Light's T&D Rates," line 4. The

Commission thus has considered the issue of the correct sales volume on two occasions and on both occasions has rejected Duquesne's assertion that the 1996 sales levels should be used. No reason exists for the Commission to consider this issue for a third time under the guise of Duquesne's request for "clarification."

Duquesne raises no new or novel arguments in support of the use of the 1996 sales levels in its Petition. Duquesne simply states the belief that it is "axiomatic that 1996 sales volumes be used for a revenue requirements based on a 1996 test year." Duquesne Petition, p. 5. This mere assertion, however, is not sufficient to meet the Quick standard for reconsideration. Considering the Commission's repeated rejection of the Company's proposal, it does not appear to be "axiomatic" that 1996 volumes should be used by the Commission in performing the historically unprecedented task of unbundling Duquesne's rates. Duquesne's "axiomatic" argument is unpersuasive and should be rejected.

The Commission determined that the 1999 sales volumes should be used to establish Duquesne's transmission and distribution rates. Clearly, the Company's Petition seeks reconsideration of this decision; however, the Petition raises no new or novel arguments in support of using the 1996 sales volumes for this task. DII respectfully submits that the request for reconsideration should consequently be denied.

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that Duquesne Light Company's request for reconsideration of the appropriate sales volume to be used in calculating transmission and distribution rates, as well as reconsideration of the correct level of ECR to be rolled into base rates for rate cap purposes at December 31, 1996, should be denied.

Respectfully submitted,

McNEES, WALLACE & NURICK

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Dated: September 8, 1998

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CERTIFICATE OF SERVICE

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

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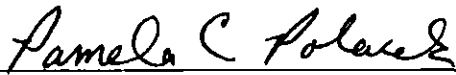
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Pamela C. Polacek, Esq.

Dated this 8th day of September, 1998, in Harrisburg, Pennsylvania.

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ORIGINAL

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September 9, 1998

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Secretary Bureau
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DOCUMENT
FOLDER

98 SEP -9 PM 3:50
SECRETARY'S BUREAU
PA.P.U.C.

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 Office of Consumer Advocate's Answer to Duquesne Light Company's Petition for Clarification and Reconsideration Regarding Commission's Compliance Order of August 13, 1998, 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,

Edmund J. Berger
Assistant Consumer Advocate

Enclosure

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

KJR

30

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED

SEP 16 1998

DOCUMENT
FOLDER

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO DUQUESNE LIGHT COMPANY'S
PETITION FOR CLARIFICATION AND RECONSIDERATION
REGARDING COMMISSION'S COMPLIANCE ORDER
OF AUGUST 13, 1998

PA. P.U.C.
SECRETARY'S BUREAU

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PROCESSED

Pursuant to Section 5.572 of the Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.572, the Office of Consumer Advocate submits this Answer to Duquesne Light Company's ("Duquesne" or "Company") Petition for Clarification and Reconsideration with respect to the Commission's Opinion and Order of August 13, 1998 regarding compliance. In support of this Answer, OCA respectfully submits as follows:

1. On May 29, 1998, the Public Utility Commission issued its Opinion and Order in this proceeding. On June 18, 1998, Duquesne Light Company submitted its Compliance Filing with respect to the May 29, 1998 Order. Thereafter, Comments on the Compliance Filing were submitted by a number of parties, including the Office of Consumer Advocate. On August 13, 1998, the Commission issued its Opinion and Order regarding that compliance filing.

2. Universal Service -- Net Costs. In the Commission's Opinion and Order of May 29, 1998, it directed that the Universal Service Fund Charge be reconcilable pursuant to Section

1307(f) of the Public Utility Code in accordance with the Commission's Guidelines on Maintaining Universal Service. Opinion and Order of May 29, 1998, at 296. Those Guidelines specifically reference the use of the "top-down" approach outlined in Equitable's EAP impact evaluation when considering expenditures. Guidelines For Maintaining Universal Service, Docket M-00960890F.0010 (Order of July 11, 1997 at 13, 34-35, Appendix D (Universal Service Order)). In its compliance filing, the Company provided a reconciliation mechanism for universal service charges which provides for annual adjustments to reconcile universal service charges to reflect actual expenditures on the program, but did not address the Equitable "top-down" approach as set forth in the Guidelines.

In OCA's Comments to Duquesne's Compliance Filing submitted on June 26, 1998, OCA submitted that as part of this reconciliation, the Company should be directed to consider and address cost savings, such as collection cost savings and savings in uncollectible expenses during the reconciliation process. OCA Comments at 11-12. As indicated there, evaluation of Equitable Gas Company's CAP has shown that CAP-type programs can provide net benefits to the Company rather than result in increased costs. *Id.* Consequently, given the Commission's adoption of a reconciliation mechanism for universal service costs, OCA submitted that the reconciliation mechanism should adjust for costs, net of savings produced by such programs. *Id.*

In its August 13, 1998 Opinion and Order, the Commission agreed with OCA's comments and determined that "Duquesne's reconciliation costs should include cost savings as well as universal service costs." Opinion and Order of August 13, 1998, at 36.

In its Petition for Clarification and Reconsideration, Duquesne takes issue with the Commission's determination. Duquesne argues that the "identification of such savings and inclusion

in the reconciliation is inappropriate for several reasons.” Petition at 5. In particular, Duquesne complains that this “would be an arduous and inexact exercise,” contending that credit and collection costs are impacted by other factors such as weather, the economy, changes in other sources of assistance to customers, new technologies and work practices. *Id.* at 6. Duquesne also argues that this modification is “inappropriate because there was no discussion of a savings offset on the record of the proceeding” and Duquesne was not afforded the opportunity to challenge such a proposal. *Id.*

Duquesne’s arguments should be rejected. The Commission has consistently indicated its view that universal service costs should be recovered net of any savings generated through such programs. Universal Service Order, *supra*; Application of West Penn Power Company, Docket No. R-00973981 (Order on Compliance of July 23, 1998 at 27-28). Additionally, the evaluation of Equitable’s CAP plan clearly demonstrated that such savings were reasonably quantifiable and could extensively, if not entirely, offset the program costs. The OCA submits that if Duquesne believes that the task of determining the savings is “too arduous” then it should simply be assumed that the Equitable evaluation is correct and there are no increased costs to defer or reconcile, rather than simply assume that there are no savings.

The OCA submits, however, given the Commission’s directive in its August 13, 1998 Order that the Bureaus of Consumer Services and Audits develop a standardized reporting format to be used for application and reconciliation of universal service charges, including “the appropriate method to be used for determining cost savings associated with universal service programs,” a methodology for determining such savings with reasonable certainty and exactness, and without an “arduous” effort will be developed. As such, Duquesne’s argument should be rejected.

With respect to the Company's argument that it has not had the opportunity to challenge the proposal for a savings offset and that the proposal was not developed on the record of this proceeding, the Company's argument is meritless given that the Company's proposal to defer recovery of universal service costs was made for the first time in its compliance filing. Until that point in time, the Company had proposed that "if it needs funds beyond those currently allocated for universal service and energy conservation programs, it will request that the PUC permit it to exceed the rate cap to recoup these costs." Duquesne St. 14-R at 10. In other words, prior to its compliance filing, the Company had not requested any mechanism for recovery of universal service costs beyond the level already reflected in rates, but would only seek such recovery if the need became apparent. The Company itself changed this when it proposed in its compliance filing a reconciliation mechanism with deferred recovery for any differences between the amount included in rates and its actual expenditures. Although this was understandable given the Commission's approval of such a mechanism for other electric utilities in their restructuring filings, OCA's concerns about the accounting for any savings offsets only became ripe when Duquesne injected this cost recovery issue into this proceeding in its compliance filing without following the Commission's Guidelines on reflecting cost savings, as instructed in the Commission's Order. Thus, the Company's limited opportunity to respond on this issue is simply the result of its own injection of this issue at the compliance phase of this proceeding. Consequently, Duquesne has had a full and fair opportunity to respond under the circumstances.

Finally, OCA would emphasize that the Commission's determination to require a savings offset in the determination of universal service costs is consistent with its decisions in other electric restructuring proceedings where it has allowed deferred recovery of universal service costs.

See, West Penn Compliance Order, *supra*.

3. Universal Service--Unspent Funds In the Commission's Opinion and Order of August 13, 1998, the Commission directed Duquesne to roll over unspent universal service funds into subsequent years. The Commission indicated that it would work with Duquesne to determine the reasons for the underspending and to develop a plan with Duquesne to address the matter. Order at 36. Duquesne argues that this requirement is inappropriate. The OCA submits, however, that this requirement is essential in ensuring that universal service is adequately and reasonably provided in Duquesne's service territory. The Commission's direction to work with the Bureau of Consumer Services to address underspending, and the reasons for the underspending, provide sufficient flexibility to Duquesne to address the problems and issues raised in its Petition for Reconsideration. The OCA agrees that the goal of the Commission's Order was not to produce spending on universal service that was not cost-effective. The OCA submits, however, that as set forth in the OCA's testimony in this proceeding, the need for universal service in Duquesne's service territory is great. As OCA witness Nancy Brockway testified, there are approximately 117,000 households in Duquesne's service territory with incomes at or below 150% of the federal poverty level. OCA St. 6 at 32. The level of funding approved by the Commission would target approximately 25,000 to 34,000 of these households. Clearly, the level of spending approved by the Commission should be able to be put to cost effective use given the level of need in Duquesne's service territory.

The OCA submits that proper design of the programs is essential for providing universal service, and the "roll-over" provision ensures that the Company's motivation is to design programs to reach all eligible households. The OCA submits that the Commission's Order, which provides for consultation with the Bureau of Consumer Services in the unlikely event that the dollars

cannot be spent on cost-effective programs, resolves Duquesne's concern. As such, the OCA submits that the Company's Petition for Reconsideration on this issue should be dismissed.

4. ECR Roll-In. In its Petition for Clarification and Reconsideration, Duquesne indicates that it is not seeking reconsideration of the Commission's determination that it will not be permitted a roll-in of the ECR to reflect total energy costs of 14.7 mills/kWh. The Commission's determination in that respect was indicated on pages 11-12 of its Opinion and Order of August 13, 1998. There the Commission adopted OCA's position that the ECR in effect on the effective date of the Act -- 12.8 mills/kWh -- should be utilized.

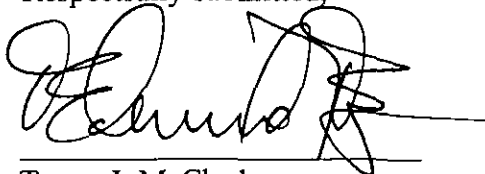
However, Duquesne's Petition for Clarification and Reconsideration does, in fact, request reconsideration of this determination. Effectively, Duquesne is seeking a determination that the appropriate ECR to roll in is not 12.8 mills/kWh as determined by the Commission on August 13, 1998 but 13.713 mills/kWh. The Company argues that 13.713 mills/kWh is the appropriate amount because it removes the overcollection balance that was reflected in the ECR rate on the effective date of the Act. Petition at 3. However, the issue here is not what components made up the rate on the effective date of the Act but what the total ECR rate was on the effective date of the Act. Given the Commission's determination that the ECR should be rolled in at a rate of 12.8 mills/kWh in its August 13, 1998 Opinion and Order, the Commission clearly adopted OCA's position that to be consistent with the Act's rate cap requirement, it must utilize the effective rate on the date of the Act rather than examining the underlying components of that rate.

OCA would emphasize that the Company's Petition does not raise any new or novel arguments or matters overlooked by the Commission and thus does not qualify for reconsideration under the standards established in Duick v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553,

559 (1982). While the Company cites to testimony to which other parties did not specifically respond, as the Commission well knows a specific response to every position taken in testimony is not necessary to preserve a party's position on an issue. OCA's position with respect to the appropriate level of the ECR was indicated in its Direct Testimony and Briefs and reiterated in response to each of Duquesne's post-decision pleadings. OCA has never indicated agreement with the Company's position in light of the fact that it is inconsistent with the plain requirements of the Act with respect to the establishment of the rate cap based on the level of rates at the effective date of the Act. OCA would also echo the comments of Duquesne Industrial Intervenors in its response to the Company's Petition in that Duquesne essentially seeks an adjustment to one element of its ECR rate without any examination or adjustment to other aspects of its ECR rate -- such as its fuel cost -- let alone other aspects of its rates. Given Duquesne's own strong earnings expectations, OCA submits that, even given considerations of equity, there is no justification for Duquesne's proposed rate increase or for an exception to the rate cap under these circumstances.

WHEREFORE, Duquesne's Petition for Clarification and Reconsideration as to the Universal Service Cost Issues (Netting of Savings and Rollover of Unspent Funds) and the ECR Roll-In Issue should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tanya J. McCloskey', written over a horizontal line.

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Assistant Consumer Advocates

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Dated: September 9, 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,
Office Consumer Advocate's Answer to Duquesne Light Company's Petition, 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 9th day of September, 1998.

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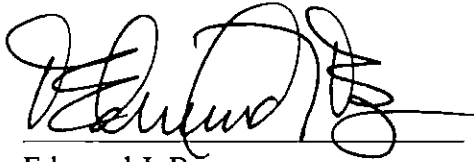
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2001/09/09

I N T E R

MEMO

O F F **DOCUMENT**
FOLDER

September 11, 1998

Subject: R-00974104; Duquesne Light Company Application for Approval of Restructuring Plan

To: James J. McNulty
Secretary

From: Cheryl Walker Davis, Director
Office of Special Assistants



KJR

On September 1, 1998, a Petition for Clarification and Reconsideration Regarding Stand-Alone Restructuring Plan, was assigned to this office. After discussion with Robert Bennett of the Bureau of Fixed Utility Services, it has been determined that this matter will be addressed by FUS in conjunction with another assignment at this docket. Accordingly, please reassign this matter to the Bureau of Fixed Utility Services.

If you have any questions, please feel free to contact me.

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SEP 29 1998

RECEIVED
SEP 11 1998

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU