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June 24, 1998

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Room 206, North Office Building  
Harrisburg, PA 17105-3265

RE: Application of Duquesne Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104; **ANSWER OF THE MID-ATLANTIC POWER SUPPLY ASSOCIATION TO VARIOUS PETITIONS FOR CLARIFICATION AND RECONSIDERATION OF MAY 29, 1998 COMMISSION ORDERS**

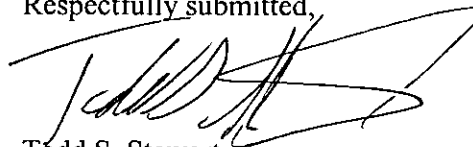
Dear Secretary McNulty:

Enclosed, for filing with the Commission, please find an original and nine (9) copies of the Answer of the Mid-Atlantic Power Supply Association in the above-captioned proceeding.

As evidenced by the Certificate of Service, attached to MAPSA's Answer, all parties to this proceeding have been served with a copy of this document.

If you have any questions concerning this filing, please direct to me.

Respectfully submitted,



Todd S. Stewart

Counsel for The Mid-Atlantic  
Power Supply Association

TSS/bes  
Enclosures

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ORIGINAL**

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

Docket No. R-00974104

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**ANSWER OF THE MID-ATLANTIC  
POWER SUPPLY ASSOCIATION (MAPSA)  
TO VARIOUS PETITIONS FOR  
CLARIFICATION AND RECONSIDERATION  
OF MAY 29, 1998 COMMISSION ORDERS**

AND NOW, this 24th day of June, 1998, comes the Mid-Atlantic Power Supply Association ("MAPSA"),<sup>1</sup> by its counsel, Malatesta Hawke & McKeon LLP, and files the following Answer to the petitions for reconsideration and clarification filed by Duquesne Light Company ("Duquesne") in response to the Opinion and Order entered on May 29, 1998, in the above-captioned matter by the Pennsylvania Public Utility Commission ("Commission").

1. On August 1, 1997, Duquesne filed with the Commission its restructuring plan pursuant to Section 2806 of the Public Utility Code ("Restructuring Plan"). After hearings and the filing of briefs, a Recommended Decision was issued by Administrative Law Judge John H. Corbett, Jr. Exceptions were filed and, on May 29, 1998, the Commission issued its Opinion and Order ("Order") deciding the issues related to Duquesne's Restructuring Plan. That Order

<sup>1</sup> The Board of Directors of the Mid-Atlantic Power Supply Association includes representatives of CNG Energy Services Corporation; Cogen Technologies, Inc.; Columbia Electric; Conectiv Energy; DTE Edison America; DuPont Power Marketing, Inc.; Enron Capital & Trade Resources; Green Mountain Energy Resources; mc2, Inc.; NGC Destec; Odyssey Strategies, Inc.; PG&E Energy Services and Statoil Energy, Inc. (formerly The Eastern Group). The comments contained in this filing represent the position of MAPSA as an organization, but not necessarily the view of any particular member with respect to any specific issues.

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required Duquesne to file a Compliance filing, indicating the Commission's modifications to Duquesne's original plan.

2. On June 12, 1998, Duquesne filed a "Petition for Clarification or Reconsideration" of Duquesne's "Stand-Alone" Restructuring Plan and a "Petition for Expedited Reconsideration" of the Commission's Order with respect to the merger of Duquesne and Allegheny Power Company ("Allegheny") (collectively, the "Petitions").

3. On June 18, 1998, Duquesne file its Compliance Filing as directed by the Commission.

4. The various Petitions filed by Duquesne seek reconsideration or clarification of certain aspects of the Commission's May 29, 1998 Order. Duquesne requests approval of the Commission to include certain "corrections" to the Commission's Order in its Compliance filing.

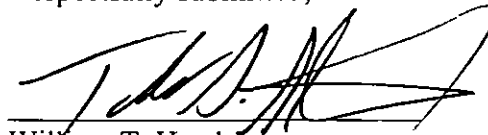
5. MAPSA believes reconsideration or clarification of the Commission's Final Order in this matter is not necessary in that the Commission's Order was well thought out and carefully considered all issues related to Duquesne's Restructuring Plan and the merger of Duquesne and Allegheny. More importantly, Duquesne has not suggested, let alone demonstrated, any significant or substantial change in circumstances or any other reason why the Commission should reconsider or amend its May 29, 1998 Order. The arguments raised by Duquesne in the various Petitions are not matters which were overlooked or not addressed by the Commission; accordingly, the Petitions must be denied. Duick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 553 (1982).

6. Duquesne characterizes its Petition as seeking to correct "computational errors," when in reality, the majority of the so-called "computational errors" would have significant policy and/or financial impact if "clarified" in the fashion suggested by Duquesne. Duquesne

has stated no rationale for the Commission to depart from its previously stated positions on these issues. Nor has it provided the Commission with any indication of the magnitude of the impact of the "corrections." The descriptions of the "errors" are also lacking in sufficient detail.<sup>2</sup> Duquesne is simply attempting to convince the Commission to substantially modify its Order where there exists no basis for doing so.<sup>3</sup> These deficiencies require rejection of Duquesne's Petitions.

WHEREFORE, for all of the foregoing reasons, the Petition for Reconsideration or Clarification of the Commission's Order with respect to Duquesne's Stand-Alone Restructuring Plan and the Petition for Reconsideration of the Commission's Order with respect to the merger of Duquesne Light Company and Allegheny Power Company should each be denied.

Respectfully submitted,



William T. Hawke  
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Counsel The Mid-Atlantic  
Power Supply Association

DATED: June 24, 1998

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<sup>2</sup> At a minimum Duquesne should have filed documentation explaining the impact of its "corrections."

<sup>3</sup> Indeed, if, as Duquesne claims, they seek correction of "computational errors, then the Petition is premature and unnecessary, as it seeks pre-approval of Duquesne's compliance filing, which is wholly inappropriate. If the Commission were to grant the modifications that Duquesne requests, it would detract from the ability of parties to address the compliance filing.

## CERTIFICATE OF SERVICE

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

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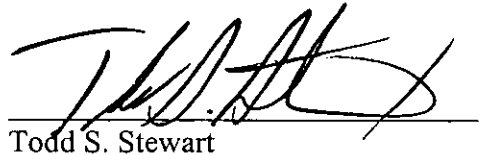
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John Wilson, Executive Director  
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Harrisburg, PA 17101



Todd S. Stewart

DATED: June 24, 1998

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June 24, 1998

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SECRETARY'S BUREAU

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EXECUTIVE DIRECTOR  
John A. Wilson

**VIA FEDERAL EXPRESS**

Mr. James McNulty, Secretary  
Pennsylvania Public Utility Commission  
North Office Building, Room B-20  
North Street and Commonwealth Avenue  
Harrisburg, PA 17105-3265

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

Dear Mr. McNulty:

Enclosed for filing in the above-captioned proceedings are an original and nine (9) copies of the EXCEPTIONS TO DUQUESNE LIGHT COMPANY COMPLIANCE FILING Community Action Association of Pennsylvania, Active Intervenor and Complainant, along with a diskette copy in Microsoft Word 6.0 format.

As indicated on the attached Certificate of Service, I have served copies of the enclosed EXCEPTIONS TO DUQUESNE LIGHT COMPANY COMPLIANCE FILING to the Commission's Office of Special Assistants, along with a diskette copy in Microsoft Word 6.0. format, as well as all active parties in the above proceeding.

If you have any questions regarding this filing, please call.

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Sincerely,

John A. Wilson

ORIGINAL

Enclosures

cc: Certificate of Service

COMMUNITY ACTION ASSOCIATION OF PENNSYLVANIA



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

---

DOCKET NO. R-00974104

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EXCEPTIONS TO  
COMPLIANCE FILING OF DUQUESNE LIGHT COMPANY  
REGARDING STAND-ALONE RESTRUCTURING PLAN

OF

(CAAP)

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

ACTIVE INTERVENOR AND COMPLAINANT

---

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**DOCKETED**

JUN 25 1998

Dated: June 24, 1998

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**DOCKET NO. R-00974104**

**EXCEPTIONS TO  
COMPLIANCE FILING OF DUQUESNE LIGHT COMPANY  
REGARDING STAND-ALONE RESTRUCTURING PLAN**

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**Introduction.**

The Electric Generation and Customer Choice Act for the first time imposed a mandate that electric distribution utilities (EDUs) provide universal service and energy conservation policies, activities, and services, including Customer Assistance Programs (CAPs) and Low Income Usage Reduction Programs (LIURPs). In fulfilling this mandate, the Act charged the Commission with ensuring that such programs are appropriately funded and available in each electric distribution territory. The Act further directed that the Commission encourage the use of community-based organizations as direct providers of services or programs which reduce energy consumption or otherwise assist low income customers to afford electric services. §2804(9).

At its May 21, 1998 Public Meeting, the Commission issued its Order regarding Duquesne's Restructuring Plan Filing which, among other things, addressed Duquesne's proposal for meeting its universal service and energy conservation obligations. The Order found that

Duquesne's CAP proposal did not meet the level of need in its service territory, and directed that CAP funding be increased to \$5,275,000 over four years 15,000 customers annually. Similarly, the Order found that, based on the record, Duquesne's LIURP proposal did not meet the level of need in its service territory, and directed that Duquesne expand the program over four years to serve 1750 customers annually with total annual funding of \$1,750,000.

In summary, the Commission directed that Duquesne expand its CAP and LIURP funding over four years according to the following schedule.

<u>Year</u>	<u>CAP Dollars</u>	<u>LIURP Dollars</u>
1999	\$1 million	\$1 million
2000	\$2.245 million	\$1.25 million
2001	\$3.85 million	\$1.5 million
2002	\$5.275 million	\$1.75 million

Pursuant to the Commission's May 21, 1998 Order, Duquesne Light Company (Duquesne) submitted its compliance filing regarding its stand-alone restructuring plan on June 18, 1998. Among other things, Duquesne's Compliance Filing seeks to address the issues of increased CAP and LIURP participation and funding, as well as the Act's mandate that use of community-based organizations be encouraged in the delivery of CAP, LIURP, and other universal service and energy conservation program services.

The following specific comments and recommendations are offered in response to Duquesne's Compliance Filing.

**Customer Assistance Program.**

The Commission's May 21, 1998 Order mandates significant increases in Duquesne CAP funding and participation over the next four years. To meet this mandate, Duquesne proposes a five-part CAP with the separate eligibility requirements for each part. Duquesne's five-part CAP proposal should be rejected for non-compliance with the Commission Final Order on Universal Service and Energy Conservation Guidelines (Final Order Guidelines), and the Commission's Order in this proceeding.

Though Duquesne's five-part CAP plan may have some appeal for prioritizing participation, the bottom line is that its adoption will unreasonably complicate the enrollment and eligibility verification process. Further, its adoption will significantly limit participation by imposing additional eligibility requirements not called for, nor supported by, the Commission's Final Order Guidelines, and the Commission's Order in this proceeding.

One of the purposes of this Compliance Filing is to propose a workable structure for meeting the Commission's mandate that universal service and energy conservation programs be appropriately funded and available in Duquesne's service territory. The Commission's Order in this proceeding has defined minimum funding and participation increases to be met over the next four years. Duquesne Compliance Filing, as presented, fails to provide adequate detail as to the steps it plans on taking to meet the Commission's mandate. As such, it should be rejected.

The Commission should require Duquesne to re-submit its Compliance Filing to include the following recommended changes regarding its CAP.

**Recommendations.**

- **Require Duquesne to develop and implement a basic CAP that offers**

**participation on a first come, first served basis to all ratepayers that meet the following Final Order Guideline eligibility criteria:**

1. Status as a ratepayer or new applicant is verified;
2. Household income is verified at or below 150% of the Federal Poverty Guidelines; and
3. The CAP applicant must be payment troubled, where payment troubled is defined as a household who has failed to maintain one or more payment arrangements. (Final Order Guidelines, p. 33).

- **Require Duquesne to establish and fund a CAP Review Board as part of its CAP administrative structure.** Funding for CAP comes from the ratepayers. As such, ratepayers should have a say in the design and implementation of the program. The CAP Review Board should include representatives from Duquesne, the PUC, OCA, local Community-Based Organizations, and residential and low income residential ratepayers. The purpose of the CAP Review Board would be to advise Duquesne on CAP design and implementation to ensure that the policy goals of the PUC and the Customer Choice Act continue to be met.
- **Require Duquesne to submit a detailed, four-year plan for meeting the Commission's mandated CAP funding and participation goals.** This plan should be subject to review by the PUC and all interested stakeholders. The Commission Order requires significant increases in annual participation and funding over the next four years to ensure that the

program is adequately funded and available. The design of the program will be a substantial factor in determining whether the program meets the its funding and participation requirements.

- **Require Duquesne to expend all mandated CAP funds within each budget year.** Any funds not spent during any budget year should be added to the next years budget and usage and/or other eligibility criteria should be adjusted to ensure that all funds are expended during subsequent years. Unduly restrictive eligibility criteria should not serve as the basis for artificially limiting participation and spending.

**Low Income Usage Reduction Program.**

Historically, Duquesne has limited participation in its Smart Comfort LIURP to customers with household incomes at or below 150% of the federal poverty guidelines, and whose electric usage is between 20 and 27 kWh per day. The primary purpose behind the usage requirements was to provide a means for targeting limited funds to those most in need, and not to necessarily limit participation in the program.

By targeting funding to the highest energy users, Duquesne has been able to achieve average household energy savings far beyond the 7-12 year paybacks called for in the LIURP regulations. Duquesne's historically high average household energy savings have always suggested that Duquesne could significantly lower its minimum usage requirements and still meet the minimum 7-12 year payback goals. The one barrier to reducing the minimum usage requirements was limited funding. The significant increases in Smart Comfort LIURP funding mandated by the Commission over the next four years have finally removed this barrier.

Given that there is no longer a need to limit LIURP benefits to the highest energy users through minimum usage requirements, one would expect Duquesne to be proposing significant reductions in its Smart Comfort minimum usage requirements in its Compliance Filing to allow more ratepayers to benefit from the program. But this is not the case in this filing.

Despite significant increases in funding, Duquesne is proposing only two minor changes to its Smart Comfort program. First, Duquesne proposes to reduce its Smart Comfort usage requirement to 15 kWh per day for families of three or less, provided they have resided at their current address for at least six months. Second, Duquesne proposes to “invite” low income customers whose usage is less than 15 kWh/day of more than 27 kWh/day to conservation workshops.

Duquesne must be required to do more if the Commission is to ensure that universal service and energy conservation programs are appropriately funded and available as mandated by the Customer Choice Act. The goal should be to reduce the minimum usage requirements such that a maximum number of households could participate in the Smart Comfort program each year while still taking into consideration funding constraints and the desire to meet the 7-12 year simple payback goals outlined in the LIURP regulations.

Again, one of the purposes of this Compliance Filing is to propose a workable structure for meeting the Commission’s mandate that universal service and energy conservation programs be appropriately funded and available as defined by its minimum four-year funding and participation levels. Duquesne Compliance Filing fails to meet this goal. As such, it should be rejected.

The Commission should require Duquesne to re-submit its Compliance Filing to include the following recommended changes regarding its Smart Comfort LIURP.

**Recommendations:**

- **Require Duquesne to submit a detailed, four-year plan for meeting the Commission's mandated Smart Comfort LIURP funding and participation goals.** Given that the funding for the Smart Comfort LIURP comes from the ratepayers, and not Duquesne, this plan should be developed through a process that solicits input stakeholders in the local communities. The Commission Order requires significant increases in annual participation and funding over the next four years to ensure that the program is adequately funded and available. The design of the program will be a substantial factor in determining whether the program meets the its funding and participation requirements.
- **Require Duquesne to relax its Smart Comfort minimum usage and other non-eligibility requirements.** These minimum usage requirements were established to ensure that limited funds would be targeted to the highest energy users and are no longer relevant. The Customer Choice Act mandates that Universal Service and Energy Conservation be appropriately funded and available. The Commission has defined participation and funding levels necessary to meet his mandate. Duquesne should be required to adjust its minimum usage requirements accordingly.
- **Duquesne must be required to establish and fund a Smart Comfort**

**LIURP Review Board as part of its LIURP administrative structure.**

Funding for Smart Comfort LIURP comes from the ratepayers. As such, ratepayers should have a say in the design and implementation of the program. The LIURP Review Board should include representatives from Duquesne, the PUC, OCA, local Community-Based Organizations, and residential and low income residential ratepayers. The purpose of the LIURP Review Board would be to advise Duquesne on LIURP design and implementation to ensure that the policy goals of the PUC and the Customer Choice Act continue to be met.

- **Duquesne must be required to expend all mandated Smart Comfort LIURP funds within each budget year.** Any funds not spent during any budget year should be added to the next years budget, and usage and/or other eligibility criteria should be adjusted to ensure that all funds are expended during subsequent years. Unduly restrictive eligibility criteria should not serve as the basis for artificially limiting participation and spending.

**Use of Community-Based Organizations.**

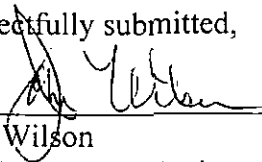
Section 2804(9) of the Customer Choice Act directs the Commission to encourage the use of community-based organizations as direct providers of services or programs which reduce energy consumption or otherwise assist low income customers to afford electric services. Though Duquesne's Compliance Filing acknowledges this requirement, it fails to provide any details as to how it plans to meet this mandate.

**Recommendation:**

- **Require Duquesne to re-submit its Compliance Filing to include a detailed plan for encouraging the use of community-based organizations in the delivery of its universal service and energy conservation program services, including CAP and Smart Comfort LIURP.** This plan should include an inventory of all community-based organizations within its service territory that have the necessary technical skills and experience to provide CAP, LIURP, and other program services. Additionally, this plan should specify the means by which community-based organizations can apply to Duquesne become service providers, including a listing any minimum qualifications required of a service provider.

**WHEREFORE**, the Community Action Association of Pennsylvania respectfully submits that CAAP's exceptions and recommendations regarding Duquesne's Compliance Filing in response to the Commission's Opinion and Order in the matter of Duquesne's Restructuring Plan Application should be accepted and adopted.

Respectfully submitted,

  
\_\_\_\_\_  
John Wilson  
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Dated: June 24, 1998

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 24 1998

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that on June 24, 1998, I served a true copy of the EXCEPTIONS TO DUQUESNE LIGHT COMPANY COMPLIANCE FILING the Community Action Association of Pennsylvania, Active Intervenor and Complainant upon counsel for the active participants, listed below.

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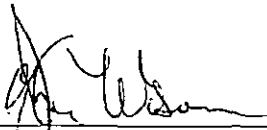
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**ORIGINAL**

June 25, 1998

VIA FACSIMILE AND OVERNIGHT MAIL

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JUN 26 1998

Re: Duquesne Light Company  
Docket No. R-00974104

PUBLIC UTILITY COMMISSION  
 SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed is an original and three copies of the Answer of Duquesne Light Company to Citizen Power's Petition for Recusal and Further Discovery. I also have enclosed two additional copies and request that your office time-stamp them and return them in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Sincerely,



John S. Moot  
 Counsel to  
 Duquesne Light Company

Enclosure

- cc: All Parties (via facsimile)  
 The Honorable John M. Quain (via facsimile)  
 The Honorable Robert K. Bloom (via facsimile)  
 The Honorable David W. Rolka (via facsimile)  
 The Honorable Nora Brownell (via facsimile)  
 The Honorable Aaron Wilson (via facsimile)  
 Office of Special Assistants (via facsimile)

**DOCKETED**

JUN 26 1998

**DOCUMENT  
 FOLDER**

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF DUQUESNE LIGHT COMPANY  
TO PETITION FOR RECUSAL AND FURTHER DISCOVERY

Pursuant to 52 Pa. Code § 5.61, Duquesne Light Company answers the Petition of Citizen Power for Recusal and Further Discovery.

1. The petition of Citizen Power is a sad and meritless attempt to discredit fair and dedicated public servants. The facts, contrary to those alleged and implied by Citizen Power, are as follows. On April 30, 1998, the Commission adopted, by unanimous vote, a motion of Chairman Quain regarding Duquesne's restructuring plan. Upon review of the tables attached to that motion, it became apparent to Duquesne that they included calculational errors that did not accurately implement the findings in the motion. Given that the motion had commended Duquesne for "restat[ing] adjustments to insure that . . . the impact of adjustments is known" (Motion at 1), Duquesne promptly informed the Commission staff of the errors. Duquesne provided this information to Commissioner Quain's assistant, Mr.

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SECRETARY'S BUREAU

Rosenthal, but Mr. Rosenthal referred Duquesne to Commission Hanger's assistant as the person more familiar with the calculations. Commissioner Hanger's assistant initially agreed to discuss the matter, but later recanted. Mr. Rosenthal then informed Duquesne that, if it wished, Duquesne could pursue them in a petition for reconsideration. Duquesne has now done so.

2. The petition, stripped of its rhetoric, is nothing more than a publicity stunt. Its sole purpose is to discredit Chairman Quain with the allegation that, since the departure of Commissioner Hanger, "the PUC has changed radically." Press Statement of David Hughes, Executive Director of Citizen Power (June 23, 1998). That, of course, is preposterous. Duquesne's restructuring order is based on the same stranded cost findings that Commissioner Hanger, with a 3-2 vote, imposed on PECO Energy in its restructuring case.<sup>1</sup> Indeed, on the very "deferred tax" issue that is the subject of the petition, the correction conforms the deferred tax recovery for Duquesne to the approach approved for PECO Energy on its SFAS 109 deferred tax balance.<sup>2</sup>

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<sup>1</sup> These findings adopt the position of the Office of Consumer Advocate ("OCA") regarding the expected market price of power and the appropriate treatment and recovery of regulatory assets.

<sup>2</sup> In that case, the Commission held that PECO should not earn a return "on" its SFAS 109 deferred tax balance, but rather only a return "of" that balance. PECO Energy Restructuring Reconsideration Order, No. R-00973953, slip op. at 15 (Jan. (continued...))

3. Duquesne also finds it odd that David Hughes, the Executive Director of Citizen Power, is now fashioning himself as a champion of the ex parte rules. The Presiding Judge in this case informed Duquesne of ex parte contacts by Mr. Hughes on several occasions and, in each instance, Duquesne agreed to consider the issue being raised by Mr. Hughes on the merits. We have, at all times, treated him with the utmost fairness and respect and have addressed the substance of his complaints, rather than engaging in the ad hominem attacks he now employs.

Mr. Hughes' real problem is not with ex parte contacts (much less with Duquesne's treatment of "deferred taxes"), but rather with the reality that the Commission has, with Commissioner Hanger's support, unanimously rejected all his litigation positions in Duquesne's restructuring case. To be sure, Mr. Hughes may be disappointed in that result, but it does not justify venting his anger through a publicity stunt designed to tarnish the reputations of honest public servants. Indeed, it is telling that Mr. Hughes could not find a better pretext for this stunt than a calculational issue that conforms to the very decision, PECO Energy, that Citizen Power now applauds and that was authored by the very Commissioner whose departure it now bemoans.

---

<sup>2</sup>(...continued)

16. 1998). That is the very treatment supported by Duquesne and it has not been opposed by any party to the case.

4. Citizen Power's arguments of law have no merit. Section 319(a)(3) of the Public Utility Code, contrary to the suggestion of Citizen Power, does not prohibit all informal contacts with the Commissioners or their staff. Rather, it applies only to contacts regarding "the merits or any fact in issue."<sup>3</sup> It does not apply to Duquesne's communication, as that communication did not address the "merits" of any finding. Rather, as indicated, the communication identified a calculational error associated with implementing a finding. For the same reason, the communication did not contest a "fact in issue"; it identified an error related to a deferred tax calculation that no party had disputed.

Finally, even if a technical violation did occur, the Petition cannot be granted. As Citizen Power concedes, the communication had no effect whatsoever on the Commission's Final Order. Pet. at 2 n.2.<sup>4</sup> Under such circumstances, the courts and this Commission have held that no relief should be granted. Commonwealth of Pennsylvania v. Bradley, 501 Pa. 25, 26, 459 A.2d 733, 734 (1983) ("only those ex parte communications . . . which are likely to prejudice a party will require reversal"); In re Bell Atlantic- Pennsylvania, Inc., 1994 Pa. PUC LEXIS 142 \*18

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<sup>3</sup> It allows communications that are procedural in nature and also allows communications related to "corrections" under some circumstances.

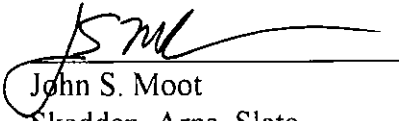
<sup>4</sup> Moreover, Duquesne raised the same corrections in its publicly filed petition for reconsideration and compliance filing, which currently are pending before the Commission and are subject to comment by any party.

(1994) (no remedial action necessary where ex parte communication was not  
"considered or relied upon . . . in reaching a decision on the merits").

WHEREFORE, there being no substance to the petition, it should be  
*dismissed summarily.*

Respectfully submitted,

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Dated: June 25, 1998

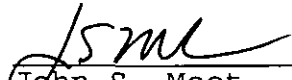
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility )  
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 )  
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 facsimile, upon the participants on the attached service list in accordance with Section 1.54 of the Commission's regulations.

Dated this 25<sup>th</sup> day of June, 1998.

  
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June 25, 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 nine (9) copies of the Comments of the Duquesne Industrial Intervenors to the Compliance Filing of Duquesne Light Company.

As evidenced by the attached certificate of service, all parties to this proceeding have been duly served. Please date stamp the extra copy of this transmittal letter and return it for our filing purposes.

Very truly yours,

McNEES, WALLACE & NURICK  
By *Pamela C. Polacek*  
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ORIGINAL

Counsel to the Duquesne Industrial Intervenors

PCP:clc  
Enclosures

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

62

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, ET. AL.

v.

DUQUESNE LIGHT COMPANY

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

DOCKET NO. R-00974104

DOCUMENT  
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COMMENTS OF THE  
DUQUESNE INDUSTRIAL INTERVENORS  
TO THE COMPLIANCE FILING OF  
DUQUESNE LIGHT COMPANY

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Dated: June 25, 1998

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## I. INTRODUCTION

By Opinion and Order entered in this proceeding on May 29, 1998, the Pennsylvania Public Utility Commission ("PUC" or "Commission") ordered that the Duquesne Light Company ("DLC," "Duquesne" or "the Company") make its compliance filing on or before June 18, 1998. Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Opinion and Order entered on May 29, 1998 (hereinafter "Final Order"). Duquesne submitted its compliance filing by the specified date. The Duquesne compliance filing consists of an analysis for the merger scenario and an analysis for the stand-alone scenario (hereinafter "Compliance Filing — Merger" and "Compliance Filing — Stand-Alone"). Many issues that apply to both scenarios were addressed by DLC only in the stand-alone portion of its filing.

The Final Order states that parties have seven days to file comments to DLC's Compliance Filing. Pursuant to that directive, the Duquesne Industrial Intervenors ("DII"), an active participant in this proceeding, provides these comments. DII members consume large amounts of electricity pursuant to tariffs, rules and riders provided by DLC, including Rates GL, L and HVPS, Riders 7, 8 and 20, and contracts pursuant to DLC's Rule 4. Accordingly, DII concentrates its efforts in these comments mainly on the unbundling of rates and tariff provisions applicable to larger customers. DII seeks to ensure those provisions comply with the Commission's Final Order and the dictates of the Competition Act (66 Pa. C.S. § 2801 et seq.). Because the Act's rate caps and the anti-cost shifting provisions are central to DII's concerns as expressed in these comments, a short summary of these requirements is being provided.

Section 2804(4)(i)(A) provides that any customer purchasing generation from the utility shall maintain total charges that are capped as of January 1, 1997, for a period of 54 months. 66 Pa.C.S.

§ 2804(4)(i)(A). Likewise, Section 2804(4)(i)(B) provides that for any customer purchasing generation from a supplier other than the electric distribution utility, the charges for any non-generation services shall not exceed the level of those charges as of January 1, 1997. Id. § 2804(4)(i)(B). Likewise, the generation component of the utility's charges to any customer purchasing generation from the utility (inclusive of the competitive transition charge or intangible transition charge) shall not exceed the generation charge to the customer as of January 1, 1997, for a period of nine years or until the utility is no longer recovering stranded costs (whichever is shorter). Id. § 2804(4)(ii). In short, a customer's total charges, including charges for generation, are capped for an extended period, to the extent that the customer continues to receive generation service from the utility; all other non-generation charges are to be similarly capped, in the event that the customer receives generation service from an entity other than the utility.

The Act also sets forth that restructuring must not unreasonably discriminate against one customer class to the benefit of another; i.e., there must be no cost shifting among customers or customer classes. Id. § 2804(7). Indeed, the Competition Act specifically recognizes that in allocating the CTC and unbundling all component charges, the allocation must occur in a manner that does not shift inter-class or intra-class costs. Id. § 2808(a).

## II. COMMENTS

### A. **Duquesne's Distribution Revenue Requirement Is Overstated Because Ancillary Service Costs Were Originally Included In T&D Revenue Requirement At Estimated Rather Than FERC OATT Costs.**

A major flaw exists in DLC's calculation of the distribution revenue requirement that overstates that requirement by at least \$5 million. This overstatement of the distribution requirement should be properly assigned to generation. The error occurs in DLC's "reconciliation" of its T&D rates to the PUC's Final Order.

DLC maintains that the PUC's Final Order understates the Company's total transmission and distribution revenue requirement by approximately \$3 million because of a failure to properly effectuate removal of distribution losses from DLC proposed rates and because of the failure by the PUC to account for the change in the rate of return it authorized for use in unbundling T&D rates. DLC submits an attachment titled "Reconciliation of Duquesne Light's T&D Rates to Pa. PUC Order" to illustrate these errors. See Compliance Filing — Stand-Alone, Appendix B, Attachment 4; See also Compliance Filing — Merger, Appendix A, Attachment F. The top of DLC's reconciliation adjusts the transmission, distribution, and ancillary services costs from its original filing to properly treat the rate of return, tax and distribution loss issues. In doing so, the Company arrives at the following "Revised Duquesne Filing" figures:

	<b>PA PUC Table</b>	<b>Revised DLC Filing</b>
<b>Transmission Costs With Ancillary Services</b>	\$50,315,742	\$47,276,037
<b>Total Distribution Costs</b>	\$243,255,056	\$249,229,322
<b>Total T&amp;D Costs (without merger savings)</b>	\$293,570,798	\$296,505,359

Except for the rate of return used to adjust the costs,<sup>1</sup> DII agrees with the Company's treatment of these issues to this point in the analysis.

The remainder of the DLC reconciliation is in error. From its revised total T&D costs, the Company removes its actual costs for transmission (\$32,290,377) and ancillary services (\$9,932,713) as established in the Cost of Service study ("COSS") supporting DLC's Open Access Transmission Tariff ("OATT"). According to DLC, the remainder is its revamped "Revised Distribution Revenue Requirement" of \$254,282,269, or, \$5,029,947 more than its Adjusted Total Distribution Costs. In performing this calculation, DLC overstates its distribution revenue requirement and impermissibly shifts costs from generation to distribution, as explained in detail below.

In its original filing, DLC provided a COSS that calculated the revenue requirements for transmission, distribution and ancillary services. See Duquesne Exhibit JAL 1(c), p. 3. Duquesne included the costs of certain generation related ancillary service in the transmission revenue requirement in that cost study because those ancillary services are necessary for transmission system integrity. The Commission's Order explains the Company's proposed treatment of ancillary service costs as follows:

While generating units provide a number of these services, Duquesne made adjustments to functionalize as transmission costs \$4,021,675 for reactive power, \$5,187,040 for regulation and frequency control, and \$8,913,265 for operating spinning reserve for a total of \$18,121,980.

Final Order, slip op. at 43-44. In other words, the Company took over \$18 million of costs that otherwise would be functionalized as generation (and allocated to the generation revenue

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<sup>1</sup>See Section II. H, infra.

requirement because those functions are performed by generating units) and reallocated those costs to the transmission revenue requirement for the purposes of ancillary services. Over the objection of some parties, including DII, the Commission permits DLC to retain in its transmission revenue requirement the costs of any generation-related ancillary services that cannot be competitively procured. *Id.* at 50-51.

In its compliance filing, DLC determines its distribution revenue requirement by removing the costs for transmission and ancillary services from its total T&D rate. In doing so, the Company removes transmission and ancillary services costs at the FERC approved revenue requirement as established in the Company's OATT. The FERC approved costs are as follows:



Consequently, to arrive at its distribution revenue requirement, DLC took its revised T&D rate of \$296,505,359, and subtracted the FERC-approved costs for transmission (\$32,290,377) and ancillary services (\$9,932,713) to arrive at a distribution revenue requirement of \$254,282,269. The Company subsequently used this revenue requirement to establish distribution rates for each class.

The Company's calculations overstate the distribution revenue requirement. The "Revised Duquesne Filing" transmission and ancillary service cost calculation produced a revenue requirement of \$47,276,037. When the Company removed the transmission and ancillary services costs from the

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<sup>2</sup>Reactive power, regulation and frequency control, operating spinning reserves and related gross receipts taxes.

revised T&D rate, however, it only removed \$42,223,090. The entire difference between the transmission costs and ancillary services costs included in the "Revised Duquesne Filing" T&D revenue requirement and the FERC-approved costs is properly allocated to the generation function.

The entire difference appears to be due to the difference between the ancillary service costs in the original filing and the ancillary service costs approved by the FERC in the OATT. This chart compares the original figures from the filing with the FERC figures.

	<b>Original COSS</b>	<b>FERC OATT</b>	<b>Difference</b>
<b>Transmission</b>	31,729,402	32,290,377	-560,975
<b>Reactive Power</b>	4,017,929	4,856,112	-838,183
<b>Regulation &amp; Frequency Control</b>	5,182,209	2,319,781	2,862,428
<b>Operating Spinning Reserve</b>	8,904,963	2,319,781	6,585,182
<b>Ancillary Service-Related Gross Receipts Tax</b>	481,238	437,039	44,199
<b>Total</b>	50,315,741	42,223,090	8,092,651

In its original filing Duquesne transferred over \$18 million in ancillary service costs from the generation revenue requirement to the transmission revenue requirement as follows:

•	Reactive Power	4,017,929
•	Regulation & Frequency Control	5,182,209
•	Operating Spinning Reserve	8,904,963
•	GRT	<u>481,238</u>
		18,586,339

DLC unbundled its current rates starting with the bundled rate, then removing transmission and distribution revenue requirement to produce the generation revenue requirement. The generation component was further divided into the CTC and the competitive generation credit ("CGC").

Because the \$18 million in ancillary service costs are generation-related, but for the Commission's decision to permit DLC to recover these costs as transmission costs until competitive procurement is possible, the generation revenue requirement would have been over \$18 million higher. The Company now claims that the proper cost of those ancillary services is lower than the Company originally filed. Accordingly, at least \$5 million must be removed from DLC's Revised Transmission and Distribution revenue requirement and replaced into the generation revenue requirement.

The Company attempts to shift the difference between its original calculation of \$18 million and the FERC-approved ancillary service costs to distribution. This results in an increase of customers' distribution rates over the level in effect on December 31, 1996. This is improper under the Act, which caps transmission and distribution rates for 4½ years. 66 Pa. C.S. § 2804(4)(i). The DLC proposal must be rejected.

When the proper treatment of this excess ancillary service cost claim is performed, the Company's distribution revenue requirement is \$249,229,322, which is the exact figure computed by the Company as the "Revised Duquesne Filing" distribution cost. The Company must be directed to submit a revised compliance filing treating the ancillary service costs consistent with these comments and increasing its generation revenue requirement by at least \$5 million.

**B. The Company Improperly Unbundles Rule 4, Rider 8 And Rider 20 And Limits The Ability Of Customers On These Rate Options To Access Generation Supply.**

The Company's compliance filing does not treat Rule 4, Rider 8 and Rider 20 customers in accordance with PUC directive set forth in the Final Order. The Company inappropriately proposes to force Rule 4, Rider 8, and Rider 20 customers to take service under a firm rate schedule, if they

access alternative supply. In addition, the Company's unbundling of rates for these customers is wholly inadequate and contrary to the dictates of the Order.

The Commission's Final Order requires that "all tariff classes should be unbundled, permitting all customer classes to shop." Final Order, slip op. at 221.<sup>3</sup> The Commission specifically directs Duquesne "to unbundle its contracts for distribution, transmission and generation CTC charges." Id. at 217. Further, as contracts are unbundled, "customers with existing discounts must receive an allocated discount to the T&D portion of the bill unless the nature of the discount is exclusively on the generation component." Id. at 221. It is the goal of the Commission "to permit customers to continue to receive the economic benefits of existing contracts until the CTC expires." Id. at 218. To this end the Commission specifies that, although contracts need not be extended upon expiration, "the rate caps remain applicable as provided in Section 2804(4)." Id. at 221.

The Duquesne proposed tariff provisions for Rule 4 and Riders 8 and 20 do not comply with the Commission's directives. First, the proposed tariff provisions inappropriately force these customers to return to a firm rate schedule upon accessing competitive supply, rather than keeping charges as capped at December 31, 1996, in accordance with Section 2804(4). Second, Duquesne does not appropriately unbundle the rates for Rule 4 and Riders 8 and 20 customers because the

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<sup>3</sup>The Commission's Final Order discusses Rule 4 contracts and Riders 8 and 20 in succeeding sections and appears to conflate the types of arrangements at issue. See Final Order, slip op. at 214-222. Because the issues with regard to both types of rates are highly similar, DII treats the statements in these sections of the Final Order as applicable to both Rule 4 contracts and Rider 8 and 20 customers.

Company does not allocate any portion of the discount embedded in customers rates to the CTC. Specifically, the shortcomings of the DLC Compliance Filing as it pertains to Rule 4, Riders 8 and 20 are as follows:

**1. Duquesne's Proposed Tariff Language is Inappropriate.**

In proposed Tariff Rule 4, DLC describes its duty with respect to the unbundling of Rule 4 contracts as follows:

For contracts that do not contain provisions governing the customer's rights under direct access, the customer may continue to purchase electricity from the Company in accordance with the terms and conditions of the contract, or, terminate the contract and obtain electricity from an EGS subject to their eligibility under direct access. For customers who continue to purchase power from the Company through the contract, the Company will unbundle the contract in a manner that retains the customer discount and that reflects the T, D and CTC charges embedded in the customer contract. For customers who elect to terminate their contract and obtain electricity from an EGS, the customer will return to the otherwise applicable tariff rates.

For contracts that contain provisions governing the customer's rights under direct access, the Company will unbundle the customer's contract and the customer will be eligible to obtain electricity from an EGS only in accordance with the terms and conditions of the customer's contract.

Proposed Tariff, p. 8. Riders 8 and 20 contain similar language governing access to competitive supply. Id. at 93 & 122. DII respectfully submits that the Company's proposed tariff provisions regarding the ability of Rule 4 and Rider 8 and 20 customers to access competitive supply and the terms that will apply when those customers access supply are contrary to the Commission's directives on special customer classes. DII requests the Commission order the Company to revise this language consistent with the discussion below.

**a. A customer is not required to “terminate” a contract to access competitive supply.**

First, contrary to the implication of Duquesne’s tariff language, a customer is not required to terminate its contract with Duquesne in order to access competitive supply. All customers have the right to access competitive supply, unless their preexisting contract with DLC specifically prohibits them from doing so. Final Order, slip op. at 218. Although a customer may stop taking generation supply under the contract (because it is receiving supply competitively), the customer retains all other portions of the contract.<sup>4</sup> The contract is not “terminated”; rather, the contract is simply unbundled and the customer is permitted to access competitive supply for one portion of the contract (generation supply), while retaining the other portions of the contract. Duquesne tariff language that indicates anything to the contrary must be revised or eliminated.

**b. Customers taking competitive supply do not switch to a different rate schedule.**

Second, it is completely inappropriate to force a customer accessing competitive supply to switch to a firm rate schedule. Duquesne’s proposed tariff language specifically provides that a Rule 4 or Rider 8 or 20 customer that takes service from a competitive supplier “will return to the otherwise applicable tariff rates.” Proposed Tariff, pp. 8, 93 & 122. This is contrary to the Commission’s Order, the rate cap provisions of the Act and the economic development goals of the Act.

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<sup>4</sup>The customer retains the transmission, distribution and CTC portions of the unbundled contract upon accessing competitive supply. The proper method for unbundling Rule 4 contracts and Rider 8 and 20 rates is discussed in detail infra.

By reverting to another rate schedule, these customers will lose the benefits of the discounts applied to other portions of the rate. Because of this, the rate cap provisions of the Act will be violated. See 66 Pa. C.S. § 2804(4). The Commission Order specifically provides that these customers retain the protection of the rate caps throughout the statutory protection period and retain the benefits of their current rate arrangements. Final Order, slip op. at 218. In addition, DLC's proposed tariff language ostensibly discourages customers from exercising their statutory right to access competitive supply: If customers exercise their right to access competitive supply, they then lose other discounts in the rate. The DLC proposal is anti-competitive, violative of the PUC Order, contrary to the Act and must be rejected.

The Commission addressed a similar proposal by PP&L that would have forced interruptible customers on PP&L's system that access competitive supply to revert to the firm rate schedule (and a much higher CTC) if they were to access competitive supply. The Commission specifically rejected the PP&L proposal, stating as follows:

As discussed previously in this Opinion and Order, customers on all tariffs are entitled to shop and are protected by the applicable rate cap. Each interruptible tariff, as well as residential rate schedules RTD and RTS, for which PP&L has proposed similar limitations, must be unbundled in order to permit customers to shop. While we agree that PP&L has done so, it does impose a higher CTC based on a firm rate schedule for customers that shop.

\* \* \*

Based on the foregoing, we agree with PPLICA that PP&L's proposal is anti-competitive, impermissibly shifts costs, violates the rate cap provisions, discriminates against customers who shop and is contrary to reliability considerations by undermining the availability of interruptible service.

Pennsylvania Public Utility Commission v. Pennsylvania Power & Light Company, Docket No. R-00973954, Opinion and Order entered on June 15, 1998, slip op. at 93-93. Aside from reliability

the concerns, the other reasons that the Commission stated in rejecting the PP&L proposal directly apply to the Duquesne proposal to force customers on Rule 4 contracts or Riders 8 and 20 to revert to other rate schedules upon accessing competitive supply.

In addition, the Commission specifically addressed a proposal by PP&L to limit the availability of economic development rates (such as Rider 8 and 20) to only those customers purchasing generation from PP&L.

On consideration of the foregoing, as well as the record on this issue, we conclude that PP&L may not limit the availability of incentive rates to customers purchasing generation from PP&L. This is suggestive of anticompetitiveness and would be contrary to the Act. If the nature of the discount in the exiting tariff is specifically within the generation component, a customer choosing to purchase generation from an EGS will receive no continuing benefit from remaining on the PP&L schedule. However, we do not agree that economic development rates are inherently allocable only to generation. Unless the exiting benefits are specified as generation benefits in the tariff, each rate must be unbundled in a manner that allocates the exiting discount, pro rata, to each component of the bill. A shopping customer, therefore, would lose the generation portion of the discount.

Id. at 97. Clearly, the Commission's Duquesne Order intended that ratepayers in the Duquesne service territory are entitled to similar treatment and the ability to access competitive supply without losing the benefits of the other portions of their pre-existing rate discount.

DLC's proposed limitations on the availability of Rule 4, and Riders 8 and 20 must be rejected. Customer do not lose the benefits of the rate caps by virtue of accessing competitive supply. The DLC proposals are anti-competitive and contrary to the dictates of the Act and not in compliance with the Final Order. Consequently, DII requests that the Commission order DLC to submit a revised filing eliminating this limitation.

- c. **Duquesne's tariff must be revised to specify that any customer with a Rule 4 contract or Rider 8 or 20 arrangement that expires prior to the end of the stranded cost recovery period retains rate cap protections.**

Some of Duquesne's tariff offerings to customers will expire prior to the end of the stranded cost recovery period. For example, Duquesne's Rule 4 contracts have a duration between 5 and 10 years. In addition, under Riders 8 and 20, customers have a maximum contract duration of only 5 years. During the proceeding, DII argued that in order to ensure that the Act's rate cap provisions are not violated, Duquesne should extend the term of the contracts and economic development riders through the end of the CTC recovery period. See, Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Main Brief of the Duquesne Industrial Intervenors submitted on February 10, 1998, pp. 90-92 ("DII Main Brief"). Although the *Final Order* rejects DII's argument that the contracts and riders themselves must remain in place throughout the transition period, the Order specifically states:

Upon expiration, contracts need not be extended, but the rate caps remain applicable as provided in Section 2804(4).

Final Order, slip op. at 221. The Duquesne tariffs contain no language to effectuate this Commission directive. DII respectfully requests that such language be added.

2. **Duquesne Fails to Submit Information Regarding How Rider 20 Rates will be Unloaded.**

The *Final Order* requires Duquesne to unbundle rates for customers on Riders 8 and 20. Final Order, slip op. at 221. The analysis submitted by Duquesne fails to explain how it will accomplish the required unbundling for Rider 20. See Compliance Filing — Stand-Alone, Appendix

D, “unbundling of Rule 4 Contracts and Sales Under Riders 8 & 9 For Test Year Sales Per Pilot Methodology/Stand-Alone Case;” see also Compliance Filing-Merger, Appendix A, attachment “Unbundling of Rule 4 Contracts and Sales Under Riders 8 & 9 For Test Year Sales 1996 Per Merger Scenario.” DII submits that Duquesne must submit unbundled Rider 20 rates with its revised compliance filing.

**3. Duquesne’s Unbundling of Rule 4 Contracts and Riders 8 and 20 is Inappropriate.**

Duquesne submits with its compliance filing a description of how it intends to unbundle Rule 4 contracts and the rates for customers on Riders 8 and 9. Id. Presumably, the Company will use the same methodology to unbundle the rates for customers on Riders 20. The Duquesne proposal is inadequate because it does not allocate the discount embedded in the rate to the appropriate components of the unbundled rate. The Duquesne proposal must be modified.

The Commission’s Final Order clearly requires Duquesne to unbundle Rule 4 contracts and customer rates for Riders 8 and 20. Final Order, slip op. at 217 & 221. This unbundling requires an allocated portion of the discount in each arrangement to be assigned to the T&D portion of the bill, unless the nature of the discount is exclusively on the generation component. Id. at 221.

Duquesne proposes to unbundle Rule 4 contracts and rates for Riders 8 and 20 according to the rate schedules on which those customers would otherwise receive service from Duquesne (e.g., Rule 4 contracts are unbundled based on whether the customer would otherwise take bundled service under Rate GL, GM, L or HVPS). See Compliance Filing — Stand-Alone Filing, Appendix D, “Unbundling of Rule 4 Contracts and Sales Under Riders 8 & 9 For Test Year Sales 1996 Per Pilot Methodology/Stand-alone Case.” Duquesne “unbundles” the respective rates and assigns a portion

of the discount inherent in the arrangement to each unbundled rate element. See id. at Attachment "Unbundled Rule 4 Contracts." Duquesne then compares the CTC element that will be realized from that initial unbundling of the contracts to the full CTC that would be realized from other customers on the normally applicable rate without the discount arrangement. Duquesne adjusts the CTC for each class of contracts to equal the CTC revenues that a customer on the same rate schedule without a contract would pay. Because this always leads to an increase in the CTC, in order to comply with the rate cap the Company decreases distribution rates and the CGC by the amount that the CTC was increased.

The Company's unbundling of Rule 4 Contracts and Riders 8 and 20 is improper. The Company's unbundling methodology produces an inter-class cost shift in the recovery of stranded costs. The contracts and riders must be unbundled based on the component discounts embedded in rates as of December 31, 1996. By assigning Rule 4 and Rider 8 and 20 customers additional CTC recovery above what the customer would have been responsible at December 31, 1996, the Company also violates the component rate cap and shifts cost. 66 Pa. C.S. §§ 2804(4)(ii) & 2808(a). The assignment of the full CTC from the otherwise applicable rate schedules is unlawful and inconsistent with the Commission's Order.

Although no contract may permit bypass of the CTC, the Order clearly requires that "[r]ealized CTC charges should be completed and reconciled by tariff class." Final Order, slip op. at 218. The "realized" CTC charge for Rule 4 and economic development rider customers is the "realized" CTC as depicted in the Company's unbundling analysis. As DII explains in its Reply Exceptions:

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

Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Reply Exceptions of the Duquesne Industrial Intervenors filed on April 24, 1998, pp. 16-17.

This result is completely consistent with the Commission's Order. The Order requires the Company to make a determination as to what portion of the customer's service it was providing a discount on as of January 1, 1997. The unbundled rate should reflect this determination by assigning the discount to the proper elements of the rate. The DLC analysis demonstrates that, for the most part, this discount is generation-related, as evidenced by the CTC implicit in the rates. See Compliance Filing — Stand-Alone, Appendix D, "Unbundling of Rule 4 Contracts and Sales Under Riders 8 and 9 for Test Year Sales 1996 Per Pilot Methodology/Stand-Alone Case." The CTC depicted in this analysis is the proper CTC to be applied to Rule 4 and Rider 8 and 20 customers regardless of whether they access competitive supply.

Any generation related portion of the discount should be assigned to decreasing the CTC first. The utility provided the customer this discount to persuade the customer to remain with DLC

or to increase electricity usage. See e.g., Duquesne Statement No. 6-R, p. 4. In many cases, the customers were considering alternative energy sources or locations because DLC's tariff prices were too high. Tariff prices were too high because of the existence of costs that the Act now considers to be "stranded costs" (i.e., generation-related costs that typically would be recoverable under regulation and the tariff rates, but may not be recoverable in the competitive market). By entering into the special arrangements, the Company already decided to forego recovery of these costs in order to keep the individual customer's load. The customer's charges as of December 31, 1996, contain this foregone recovery as a component of the rate. The Company cannot now claim full recovery of stranded costs from these customers as if it never entered into a special contract, especially where the Company reallocates costs from the CGC to the CTC in order to gain "full" recovery. This reduction is unwarranted and contrary to the Act's rate caps, the prohibition against cost shifting and the Commission's Order. The Duquesne unbundling must be rejected.

**4. DII Submits that the Tariff Language In Duquesne's Tariff Should Track the Language on these Issues Adopted by the Commission in PECO's Direct Access Tariff.**

The Commission and Duquesne have a readily available source for appropriate language regarding the proper treatment of special contracts and economic development rates. Specifically, the Commission has already reviewed and approved language on similar issues in PECO's compliance filing. DII respectfully submits that similar language should be adopted at this docket.

PECO's tariff contains the following statement regarding the ability of special contract customers to access competitive supply:

For contracts that do not contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract effective as of January 1, 1999 in a manner that retains the customer's discount and that reflects the amount of Transition and Stranded Costs presumptively embedded in the customer's contract. The dollar value of the customer's discount will be reflected in the CTC component of the bill and if that reflection produces a CTC less than zero, the CTC will be set at zero and the remainder of the discount will be reflected in the customer's Energy and Capacity Charge. For contracts that do contain provisions governing the customer's rights upon the advent of Direct Access, the Company will unbundle the customer's contract in accordance with its terms and conditions.

PECO Energy Company Tariff Electric Pa. P.U.C. No. 3, Original Page 13, effective January 1, 1999 ("PECO Direct Access Tariff"). DII submits that this language adequately addresses the directives of the Commission regarding the unbundling of special contracts and the treatment of special contract customers through the stranded cost recovery period. Duquesne should be directed to adopt similar language in Rule 4 of its direct access tariff.

Regarding the economic development rates, DII submits that the Company should employ language similar to that adopted in the PECO tariff for the Economic Efficiency Rider ("EER"):

**RATE, BILLING AND UNBUNDLING.**

\* \* \*

Effective as of January 1, 1999, the Company will unbundle EER contracts as follows:

For contracts that do not address the right to Direct Access and/or unbundling, and that contain discount factors applicable to the capacity charge and first two energy blocks of the bundled Rate HT or to some subset of those three charges (in effect as of the effective date of the contract), the unbundled charges will be, starting January 1, 1999: (i) the Rate HT unbundled Distribution Service Charges, and Energy and Capacity Charges; and (ii) the Rate HT CTD/ITC charges discounted to yield total charges that are less than what the total Rate HT charges would be by an amount determined using the Customer's negotiated overall percentage discount. If this process would yield a negative CTC/ITC charge due to the magnitude of the customer's negotiated overall percentage discount, the CTC/ITC charge will be set

to zero. Any remaining discounts required to achieve the customer's negotiated overall percentage discount will be applied to the Energy and Capacity Charges.

**TERM OF CONTRACT/RIGHTS AND CONSEQUENCES ASSOCIATED WITH DIRECT ACCESS.**

\* \* \*

For contracts in effect at any time before December 31, 1996, that do not contain provisions governing the customer's rights upon the advent of Direct Access and/or unbundling, and that contain discount factors applicable to the capacity charge and first two energy blocks of bundled Rate HT or to some subset of those three charges (in effect as of the effective date of the contract), the term of contract will be extended to the later of any applicable statutory rate cap period or any rate cap period contained in the Joint Petition for Full Settlement then in effect. Customers with such contracts may continue service under their contract while also obtaining Competitive Energy Supply. If such a customer obtains Competitive Energy Supply, the customer will continue to pay the unbundled Distribution Service Charges and Competitive Transition Charges as designed in accordance with the "Rate And Billing And Unbundling" section, above.

For contracts in effect at any time on or before December 31, 1996, that contain provisions governing the customer's rights upon the advent of Direct Access and/or unbundling, the term of contract will remain as stated in the contract, and the customer will be entitled to obtain Competitive Energy Supply only in accordance with the terms and conditions of the customer's contract. Contract expiration shall not affect the applicability of any statutory rate cap or any rate cap contained in the Joint Petition for Full Settlement then in effect.

For contracts first effective after December 31, 1996, the term of contract will be as stated in the contract, and the customer will be entitled to obtain Competitive Energy Supply only in accordance with the Customer's contract. Contract expiration shall not affect the applicability of any statutory rate cap or any rate cap contained in the Joint Petition for Full Settlement then in effect, which rate caps will be those applicable to the Customer's base rate.

PECO Direct Access Tariff, Original Pages 75-76. The PECO tariff provisions accurately reflect the Commission's directives regarding Duquesne's economic development riders. DII submits that similar provisions should appear in DLC's direct access tariff for Rule 4 and Riders 8 and 20.

**C. The "Minimum Charges" Stated In Tariffs GL, L And HVPS Are Improperly Defined And Calculated.**

Duquesne specifies a "minimum charge" that will be applicable to customer on tariff rates GL, L and HVPS. Although imposition of a monthly minimum charge is acceptable in these circumstances because a similar provision exists in the current tariff applicable to these customers, *the Company's statement of how the charge will be calculated is improper. In addition, the minimum charge specified in the proposed tariff must be changed.*

The Company proposes the following tariff language to describe the "minimum charge" applicable to customers taking service under Rate L:

The Minimum Charge shall be the Demand Charge based on 70% of the Contract On-Peak Demand, but not less than \$71,289.00.

Proposed Tariff, p. 50. The proposed tariffs for HVPS and GL contain similar provisions. Id. at 44 & 54. This language is improper in two respects.

First, the minimum charge must be based only on the distribution, transmission and CTC components of the rate. The minimum charge cannot be based on the generation component, for which the customer has the ability to access alternative supply. Application of a minimum charge that includes a generation component will ultimately lead to the customer potentially compensating the EDC for supply that it is not required to obtain from the EDC. The EDC is entitled to a minimum charge based only on the unbundled rate elements that the customer is required to receive from the EDC.

Second, the minimum monthly charge specified in the tariff must be adjusted. The \$71,289.00 in the proposed tariff is equal to the minimum monthly charge in the current tariff. However, the minimum charge in the current tariff is based on the assumption that the customer

receives transmission, distribution and generation supply services from Duquesne. Customers are no longer required to take generation service from Duquesne. Consequently, a portion of the monthly charge must be removed to account for this.

DII submits the "minimum charge" provisions in the proposed tariff for Rates GL, L and HVPS *must be modified*. The *minimum charge can be based only on the rate elements that the customer is required to obtain from DLC*. In addition, the specified minimum charge must be adjusted downward to eliminate any portion allocable to electricity supply. DII requests that the Commission require DLC to submit a revised filing consistent with DII's comments on this issue.

**D. The Company Must Clarify The Scope Of Its Ability To Require Customer To Enter Into Special Contracts.**

The Company retains the right to require customers to enter into contracts under Rule 4 if a customer requests an extension of facilities for the customer's exclusive use. The Company does not identify what portions of the unbundled rates will be required to be specified in these contracts. DII submits the tariff language must be clarified to state that the contract will specify only rates for distribution, transmission and a CTC; the contract must not include a rate for generation service or otherwise require the customer to take generation service from Duquesne.

The proposed tariff contains the following provision regarding customer contracts:

The Company reserves the right to require the customer to sign a written contract indicating the rate for electric service and to required a contract term which, in the judgment of the Company, is sufficient to justify the cost of any facilities installed for the exclusive use of the customer.

Proposed Tariff, p. 8. Pursuant to the Act, customers have the right to direct access to competitive supply and are not required to take generation service from Duquesne. See 66 Pa. C.S. § 2802(12).

It is improper for Duquesne to condition the extension of its facilities for a customer's exclusive use

on the customer's agreement to buy generation service from Duquesne. Duquesne is entitled to request a contract for the regulated services that the customer must take from Duquesne (i.e., distribution) and to specify the CTC applicable to the customer. Duquesne is not entitled to deprive a customer of the right to direct access in order for that customer to use the Company's regulated monopoly services. The tariff should be clarified to guarantee the right of customers to access competitive supply in this circumstance.

**E. The "Electric Charges" Portion Of Rates GL, L And HVPS Must Be Clarified To Include The Possibility That Electric Generation Supply Can Be Simultaneously Obtained From Both Duquesne And An Alternative Supplier.**

The proposed tariff for Rates GL, L and HVPS states that customers can purchase their electricity "from the company or from an EGS." Proposed Tariff, pp. 44, 50 & 54. This language must be modified to specify that the customer can obtain part of its supply from the EDC and part from the EGS in a month (i.e., load splitting).

The Commission's Final Order did not address whether a customer on rates GL, L or HVPS can obtain partial load from the EDC and EGS in a given month. The Order did address, however, the proposal by Duquesne to restrict the availability of Interruptible Service to only customers taking full service from the Company. See Final Order, slip op. at 226. The Commission rejected this proposal. Id. at 227.

Clearly, the Company cannot limit Firm Service customers to only taking full load from the Company. The pro rata phase-in approach adopted by the Commission for commercial and industrial customers allows each customer to have at least 33% of its load supplied by an EGS on January 1,

1999, and at least 66% of its load supplied by an EGS on January 2, 1999. Final Order, slip op. at 28-29. This means that the EDC will still supply 67% of load on January 1, 1999, and 34% on January 2, 1999.

If load splitting is not permitted under the tariff, then no commercial or industrial customer will be able to participate in direct access until it has direct access for 100% of its load on January 2, 2000. This is contrary to the phase-in approach adopted by the Commission, and contrary to the pro-competition and economic development goals of the Act. The language must be modified to acknowledge the possibility of a customer simultaneously obtaining electricity from both the EGS and the EDC.

**F. The Company's Claim For A Gross-Up On Stranded Cost For Income Tax Is Improper And Must Be Rejected.**

In the portion of the compliance filing addressing the merger scenario, the Company increases its stranded cost claim by \$532 million over the \$1.331 billion the Commission found proper. The Company has done this by revising an attachment to the Final Order including so-called deferred taxes. This action is improper. First, the Commission's Order does not authorize a gross-up on stranded cost for deferred taxes. Second, DLC will be fully compensated for all tax effects of its stranded costs, with no deferred tax gross-up due to recovery of its SFAS 109 regulatory asset. Thus, not only is the Company's treatment improper, it provides for recovery of the same stranded costs twice.

In its Petition for Clarification or Reconsideration regarding the stand-alone proceeding filed on June 15, 1998, Duquesne explains its concerns regarding the stranded cost gross-up as follows:

Attachment D sets forth a revenue requirement for deferred taxes and a monthly schedule for a return “on” (but not of) the deferred tax balance. The appropriate treatment of deferred taxes, which will be reflected in the compliance filing, is as follows. First, the Final Order approves a specific level of stranded costs (net of deferred taxes) and also determines a deferred tax balance associated with the approved stranded cost amount. Second, Duquesne is entitled to recovery of the deferred tax balance, but is not entitled to a return on that balance.

Duquesne Petition for Reconsideration — Stand Alone, p. 6 (emphasis in original).

Duquesne’s treatment of stranded costs is in error. Although the Commission included a schedule depicting a revenue requirement due to so-called deferred taxes, the Commission did not address this issue in the Final Order or make findings sufficient to authorize the Company to recover stranded costs in an amount grossed-up for deferred taxes. In its discussion of stranded cost recovery in the event that the merger is not consummated, the Commission adopted the treatment of the OCA.

Final Order, slip op. at 90-93. The Commission specifically stated:

As described in the following sections of this Order, we determine the net present value of Duquesne’s stranded costs, recoverable under the definition of stranded costs in the Act, as of January 1, 1999.

*Id.* at 79. *The Commission did not address the issue of whether this total should be grossed-up for deferred taxes because the parties never litigated this issue.* Duquesne did not raise this claim in its testimony, it only submitted “revised” calculations as an appendix to its Main Brief showing a so-called deferred tax amount. The Company did not raise the issue of whether its properly claimed and quantified stranded cost should subsequently be inflated by adding deferred taxes. Because the Commission did not address the issue in its Final Order, recovery for these costs is not authorized. Duquesne must be required to resubmit its compliance filing for the merger scenario containing rates that exclude the recovery of any deferred taxes.

In addition, if Duquesne had raised the claim that it should be permitted to inflate its stranded cost recovery for deferred taxes, the Commission certainly would have found this action to be improper. The Commission adopted the OCA calculation of DLC's stranded costs. The OCA (and DII) used a net book value methodology using an after-tax discount rate. This methodology determines stranded cost as if the assets in question were sold by the Company on January 1, 1999. Duquesne is only entitled to recover the net present value of its properly claimed and quantified stranded generation costs at January 1, 1999. Final Order, slip op. at 79; 66 Pa. C.S. § 2803. Duquesne is not entitled to any gross-up for taxes.

Furthermore, Duquesne is compensated fully for deferred taxes as part of its SFAS 109 regulatory asset. To allow an additional gross-up will result in excessive, unreasonable and unjust rates. In addition, allowing the gross-up is inconsistent with the Commission's treatment of other EDC's stranded cost claims. PECO was not permitted to gross-up its stranded costs for deferred taxes. See Pennsylvania Public Utility Commission v. PECO Energy Company, Docket No. R-00973953, Opinion and Order entered on December 23, 1997, 181 PUR 4<sup>th</sup> 517, 567 (1997). Duquesne should not be authorized to do so either.

Moreover, assuming the Commission does authorize recovery for the deferred taxes, insufficient support has been provided by the Company in its filing and by the Commission on Attachment D to determine whether either calculation is correct. The Company simply states: "The Final Order does not explain how the deferred tax balance contained in Attachment D was derived, but it is not correct." Compliance Filing — Merger, p. 2 n. 2. Considering the magnitude of the recovery at issue, DII urges the Commission to reject the Company's claim, or alternatively, to fully investigate the Company's claims and to request further information, if necessary.

**G. The Company Must Clarify Issues Regarding Phase-in And The Selection Of Customers.**

The Company's proposed implementation plan for phase-in needs to be clarified on certain issues regarding the phase-in and selection of industrial and large commercial customers. See Compliance Filing — Stand-Alone, Appendix A. DII requests further clarification of the phase-in implementation plan consistent with the following discussion.

The Company states that the pro rata reductions by rate class will be calculated once for each customer class on 8/28/98. Because customers are not required to notify the Company of their chosen supplier by that date, Duquesne apparently intends to make the reductions based on the volunteered load. The amount of load volunteered on 8/28/98 that is adjusted by the pro rata process, however, may not be the amount of load that is competitively supplied on 1/2/99. Customers may volunteer for participation, receive a portion of the eligible load, but fail to choose a supplier in time to have delivery of 66% of their load on a competitive basis on 1/2/99. Furthermore, it is possible that some customers that volunteer will not choose an alternative supplier.

It is unfair and contrary to the economic goals of the Act for the load assigned to these customers that do not choose a supplier to be withheld from industrial customers eager and willing to participate in the competitive market. A cut-off date must be established for customers to choose an alternative supplier or lose their pro rata portion of eligible load. After such cut-off date, a second calculation must be performed to apportion any unused potential competitive load to the customers actually exercising their right to direct access.

**H. The Company Should Unbundle Transmission And Distribution Rates Based On The Realized Rate Of Return For Each Class Implicit In Bundled Rates As Of December 31, 1996.**

The Company submits unbundled transmission and distribution rates based on the rate of return for each class shown in a 1987 COSS. The Company believes this is consistent with the Commission's resolution of the dispute in the proceeding regarding whether the "required" or "realized" rate of return should be used in unbundling rates. DII submits the Company misconstrues the record evidence on this issue.

*The Commission's Final Order requires Duquesne to unbundle transmission and distribution rates using the realized rate of return for each customer class. Final Order, pp. 40-41. Duquesne interprets the Commission's decision as authorizing it to use the class rates of return for the test year of the Company's 1987 base rate case to perform the unbundling. Compliance Filing — Stand-Alone, Appendix B, "Description of Adjustments to T&D Allocated Cost of Service for Class Realized Rates of Return." Although language in the Final Order seems to authorize this action, DII submits the Company misconstrues the Commission's directions and intention regarding this issue.*

All unbundling in this proceeding is performed based on the 1996 COSS. The use of the 1996 study is a logical extension of the requirement under the Act that rates are capped at their December 31, 1996, levels. See 66 Pa. C.S. § 2804(4). The contested issue in this proceeding was whether DLC could adjust the class rates of return implicit in that COSS to a "required" return level of 9.61%. DII argued that the Company's proposed use of the required rate of return was a cost shift and a violation of the Act's rate caps. DII Main Brief, pp. 10-12. The Commission agreed with DII. Final Order, slip op. at 40-41.

Given the centrality of the 1996 COSS to this proceeding, the reversion to the COSS for the test year in the 1987 base rate proceeding is perplexing. The 1987 study shows the rate of return that classes were earning in 1987, not the rate of return implicit in rates at December 31, 1996. In addition, the 1987 study does not include certain rates in effect as of December 31, 1996 (e.g., RA, HVPS and AL). The use of the returns from the test year for the 1987 base rate case is illogical and produces results for the HVPS class that are inconsistent with the results for other classes.<sup>5</sup>

DII submits that the Company should be required to submit a revised compliance filing using the class rates of return realized in rates as of December 31, 1996, as the basis for unbundling transmission and distribution rates.

**I. The Company's Treatment Of The Interruptible Credit In Rider 7 Is Improper.**

Current interruptible customers on DLC's Rider 7 receive a \$2.01 credit per kW of contracted interruptible load. As part of its compliance filing, DLC does not allocate this credit between the portions of the unbundled rates for interruptible customers; rather, the tariff states "the Demand Charge of the applicable rate under which the customer received electrical service will be reduced by a \$2.02 credit per kW of contracted interruptible load." Proposed Tariff, p. 85. DII submits that this treatment of interruptible customers is improper.

All rates must be unbundled into transmission, distribution, CTC and a generation credit. Final Order, slip op. at 221. In performing this unbundling, the Company must ensure that the rate caps in Section 2804(4) are maintained and that costs are not shifted between customer classes. See

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<sup>5</sup>For example, the HVPS CTC and shopping credit are essentially flat for the entire CTC collection period, while most all other classes show declining CTCs and increasing shopping credits from 1999-2005.

66 Pa. C.S. §§ 2804(4) & (7). For discounted rates such as Rider 7, this requires that the credit inherent in the customers rates as of December 31, 1996, be allocated to the portions of the unbundled rate. This allocation of the discount is necessary to ensure that customers continue to receive the economic benefits from existing rate arrangements until the CTC expires. See Final Order, slip op. at 218.

Similar to the allocation of the discount in special contracts and economic development rates, *the first rate component that should be allocated the credit contained in Rider 7 is the CTC.* See Section II B 3, supra. Interruptible customers were used in the past as generation-equivalent resources. Rather than building new generation capacity to meet anticipated peak load, Duquesne could offer customers a reduced rate in return for the ability to interrupt the customer's supply if demand on the system was too excessive for Duquesne's installed generation. If an interruptible customer had not agreed to such an arrangement, Duquesne would have been forced over the years to build more generation, possibly further increasing stranded costs in this proceeding. Because Rider 7 customers were willing to serve as a generation equivalent resource, the credit in Rider 7 should be allocated first to the CTC.

Duquesne's proposed tariff improperly allocates the credit in Rider 7 only to energy charges. *The credit should properly be allocated first to CTC responsibility.* DII requests this modification be performed by Duquesne in a revised compliance filing.

**III. CONCLUSION**

**WHEREFORE**, the Duquesne Industrial Intervenors respectfully request that the Commission order Duquesne to revise or amend its Compliance Filing consistent with the foregoing comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Pamela C. Polacek, Esq.

Dated this 25<sup>th</sup> day of June, 1998, in Harrisburg, Pennsylvania.

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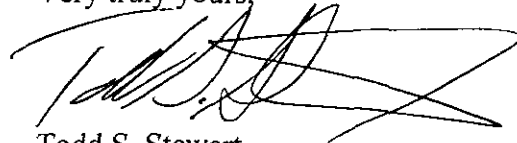
RE: . Application of Duquesne Light Company for Approval of its Restructuring  
Plan Under Section 2806 of the Public Utility Code; Docket No. R-00974104;  
**COMMENTS OF MID-ATLANTIC POWER SUPPLY ASSOCIATION  
TO DUQUESNE LIGHT COMPANY'S JUNE 18, 1998 COMPLIANCE  
FILING**

Dear Mr. McNulty:

Enclosed, for filing with the Commission, are the original and fifteen (15) copies of the  
Comments of the Mid-Atlantic Power Supply Association to the above-captioned docket.

If you have any questions concerning this filing, please direct them to me.

Very truly yours,



Todd S. Stewart

Counsel for the Mid-Atlantic  
Power Supply Association

TSS/bes  
Enclosures

**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**DOCUMENT FOLDER**  
**COMMENTS OF THE  
MID-ATLANTIC POWER SUPPLY ASSOCIATION  
TO DUQUESNE LIGHT COMPANY'S  
JUNE 18, 1998 COMPLIANCE FILING**

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Mid-Atlantic Power Supply Association ("MAPSA")<sup>1</sup>, by its counsel offers the following Comments to the Pennsylvania Public Utility Commission ("Commission") in response to the filing of the two separate compliance filings by Duquesne Light Company ("Duquesne") on June 18, 1998. Duquesne filed a compliance filing for its "stand-alone" restructuring plan as well as a compliance filing for the merged company. The fact that MAPSA has offered comment on certain provisions of Duquesne's Code of Conduct and Supplier Tariff, while not commenting upon other provisions of the compliance filing, should not be construed as agreement with any of the other provisions of Duquesne's compliance filings that are not specifically identified in these Comments. MAPSA respectfully recommends that the Commission direct Duquesne to make the changes to its Code of Conduct and its Proposed Supplier Tariff as set forth below in these Comments.

**DOCKETED**  
JUN 29 1998

<sup>1</sup> MAPSA is an association of power marketers, independent power producers and a broad range of companies who support the electric services industry with an interest in the emerging electric power supply market within the Commonwealth of Pennsylvania and the Mid-Atlantic region. MAPSA's current Board of Directors includes representatives of CNG Energy Services Corporation; Cogen Technologies, Inc.; Columbia Electric; Conectiv Energy; DTE Edison America; DuPont Power Marketing, Inc.; Enron Capital & Trade Resources; Green Mountain Energy Resources; mc2, Inc.; NGC Destec; Odyssey Strategies, Inc.; PG&E Energy Services and Statoil Energy, Inc. (formerly The Eastern Group). The Comments contained in this filing represent the position of MAPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

## Code of Conduct

The Commission mandated<sup>2</sup> that Duquesne's interim Code of Conduct was to follow PECO's Code as approved by the Commission in its PECO Compliance Filing Order of February 5, 1998.<sup>3</sup> Duquesne's Compliance Filing, with a few notable exceptions which obviously need to be corrected, complies with the Commission's Order.

First, the PECO Code of Conduct provides that PECO cannot give its affiliated or divisional suppliers "preference over a non-affiliate in the provision of goods and services such as processing requests for information . . . ." Instead of simply repeating this language verbatim, Duquesne added language to its Rule 1 so that it prohibits the granting of a preference in "the provision of *customer* goods and services, *such as processing a request by a customer for those services that Duquesne is required to provide for direct access, including, for example, requests for information . . . .*" (Language added by Duquesne italicized). This language is wholly inconsistent with the specific language of the PECO Code and could possibly be construed not to bar Duquesne from granting a preference to its affiliate if it were providing a good or service that is not used directly by the end user customers. For example, are billing and metering or backroom accounting services "customer goods and services"?<sup>4</sup>

Duquesne's addition is particularly troubling because the demand that this section not be limited only to "customer" goods and services was specifically spelled out by MAPSA in its

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<sup>2</sup> Duquesne Final Order at 237.

<sup>3</sup> Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953, Order entered February 5, 1998.

<sup>4</sup> Certainly, when the supplier purchases the good or service it is literally a "customer" of the EDC, but the way in which Duquesne has attempted to reword this section would clearly permit an argument that the "no preference" prohibition applies *only* to services that are provided directly to an "end-use customer" and is not applicable to a competitive supplier.

Exceptions. Expressing its agreement, the Commission quoted extensively in its Order from Enron's Exceptions:

The Recommended Decision sets forth the following additional modification and clarifications which Enron claimed, in its brief below and in its brief on exceptions, will help to bring Duquesne's Code of Conduct into conformity with the code approved for PECO:

In addressing the further modification and clarifications required by the Commission...the Commission barred an EDC from making available any goods and services to its supplier affiliate unless those goods and services are also make available to other suppliers on comparable terms and conditions. Such provisions appropriately preclude EDC promotion of its competitive business affiliate's efforts. Duquesne's proposed Code does not include such a prohibition on cross-subsidization.<sup>5</sup>

There is no good reason for diverging from that language of the PECO Code, therefore Duquesne should be required to adopt verbatim the language that appears in Rule 1 of the PECO Code.<sup>6</sup>

Second, Rule 8 of Duquesne's Code of Conduct also falls short of the standard established by the PECO Code of Conduct. Although in putative compliance with the Commission's directive to establish and file a dispute resolution procedure, Duquesne's proposed procedure is nearly identical to the arbitration procedure *initially proposed* by PECO which was later *rejected* in the Commission's PECO Revised Compliance Filing Order<sup>7</sup> as being

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<sup>5</sup> Duquesne Final Order at 235-36 (emphasis added).

<sup>6</sup> It is possible that Duquesne will contend that in adding the word "customer" to Rule 1 it was attempting to comply with another (the "Fourth") modification raised by Enron in its Exceptions (and quoted by the PUC in its Final Order at 236). Enron there pointed out that in PECO the Commission required comparable treatment of all customers in the provision of "all customer goods and services," regardless of the supplier chosen by the customer. That contention was to assure that no limitations were allowed to be placed upon the second sentence of Rule 1, which states "The EDC shall provide comparable treatment without regard to the customer's chosen EGS," not to suggest that Duquesne could limit the general rule in the first sentence that it simply can't grant any preference to its affiliate.

<sup>7</sup> Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, R-00973953, Order entered February 26, 1998.

too formal and "preclud[ing] Commission development of a record concerning the dispute."<sup>8</sup> While the Commission denied as moot MAPSA's exception recommending that the language, ultimately approved by the Commission in the PECO Revised Compliance Filing Order, be adopted in this case due to a lack of detailed discussion as to the applicability of that particular language to Duquesne,<sup>9</sup> the Commission certainly did not intend for Duquesne to adopt dispute resolution procedures that the Commission has specifically and for good reason previously rejected. In the absence of any reason given by Duquesne as to why the dispute resolution procedure in PECO is inapplicable to it, Duquesne should, in keeping with the Commission's goal "to keep the interim code of conduct as consistent as possible,"<sup>10</sup> be required to follow the following procedures for dispute resolution contained in the PECQ Settlement, Appendix H:<sup>11</sup>

- Regarding any dispute between Company EDC, and/or a Company Supplier, and an EGS (each individually referred to as "Party" and collectively referred to as "Parties") alleging a violation of any of these Code of Conduct provisions, the EGS must provide Company EDC and/or Company Supplier, as applicable, a written Notice of Dispute that includes the names of the Parties and customer(s), if any, involved and a brief description of the matters in dispute.
- Within five (5) days of Company EDC's and/or Company Supplier's receipt of a Notice of Dispute, a designated senior representative of each of the Parties shall attempt to resolve the dispute on an informal basis.
- In the event the designated representatives are unable to resolve the dispute by mutual agreement within thirty (30) days of said referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

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<sup>8</sup> PECO Revised Compliance Filing Order at 22.

<sup>9</sup> Duquesne Final Order at 238.

<sup>10</sup> Duquesne Final Order at 237.

<sup>11</sup> PECO Compliance Filing Order at 46.

- If mediation is not successful, then the matter shall be converted to a formal proceeding before a Commission Administrative Law Judge.
- Any Party may file a complaint concerning the dispute with the Commission under relevant provisions of the Public Utility Code.

Finally, Duquesne failed to include its Code of Conduct in its EDC tariff. This is problematic not only for the sake of consistency with PECO, but for the sake of clarity and accessibility. In fact, Duquesne evidently intended to follow the precedent set by PECO in this matter, as section 4.15 of its Supplier Tariff<sup>12</sup> states that “[t]he Interim Code of Conduct contained in the Company’s EDC Tariff is incorporated herein by reference.” Duquesne should be instructed to remedy this divergence from the PUC Order in the case.

### **Supplier Tariff**

As a preliminary matter, MAPSA notes that Duquesne has complied with the requirements of the Commission Order and has used the Supplier Tariff negotiated by the parties in the PECO Restructuring Proceeding as a basic template for the creation of its proposed electric generation supplier coordination tariff. MAPSA would note however, that Duquesne has made substantive changes to the document which changes have not been negotiated by Duquesne and the various competitive suppliers intending to provide generation service within Duquesne service territory.

Additionally, MAPSA notes that changes have been made or need to be made to the Duquesne Supplier Tariff to account for the fact that while PECO is a PJM, utility Duquesne is not. Each of the changes made by Duquesne is of great concern to MAPSA’s members. As such

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<sup>12</sup> Duquesne Supplier Tariff, Original Page No. 18.

MAPSA believes it is imperative that the provisions of Duquesne's Supplier Tariff be negotiated between the parties whose ultimate relationship the tariff will govern.

Duquesne has included numerous proposed fees in its Supplier Tariff. There is no basis in the Commission's Order for Duquesne to impose any fees upon supplier, in fact the Order states opposite conclusion: "The Supplier Tariff is not a services agreement; it is a set of rules and procedures. It should include no fees or other charges except as has been approved by the Commission upon documentation of incremental cost."<sup>13</sup> Inexplicably, Duquesne has filed charges that to MAPSA's knowledge have never received Commission approval. MAPSA strongly objects to these charges being filed as part of this compliance filing. Beyond the fact they do not appear to be cost based and do appear exorbitant, it is unthinkable that a party would attempt to insert items that the Commission specifically precluded from being filed. They are: Supplier Order Charge; Technical Support and Assistance Charge; Load Data Supply Charge; Supplemental Billing Information Charge; Load Proceeding Charge and Supplier Switching Charge. The Commission should require Duquesne immediately to remove any proposed fees from its Supplier Tariff.

In order to create a Supplier Tariff that is applicable to the particular requirements of Duquesne's system and service territory, and one that is acceptable the competitive suppliers that intend to offer service in Duquesne's service territory, MAPSA requests that the Commission direct Duquesne to engage in a negotiation process similar to that used in the PECO proceeding. Specifically, MAPSA requests that the Commission direct: (a) Duquesne to hold meetings with any interested parties during which all uncontested issues can be resolved; and (b) that, at the

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<sup>13</sup> Duquesne Final Order, at p. 241.

conclusion of the negotiating process evidence on contested issues be presented to an Administrative Law Judge for resolution.

In the alternative, MAPSA requests that the Commission direct PECO Energy Company to file its final Supplier Tariff in accordance with the Commission's May 21, 1998 Order in Docket No. R-00984298; and that Duquesne be directed to modify its proposed Supplier Tariff to bring it into accord with the Commission final order entered with respect to PECO's Supplier Tariff; and that all interested parties be permitted to comment on Duquesne's revised Supplier Tariff within 30 days of its filing. In such a proceeding, it would be incumbent upon Duquesne to justify any substantial departures from PECO's approved compliance filing.

For the reasons set forth above, MAPSA respectfully requests that the Commission require Duquesne immediately to remove any proposed fees from its Supplier Tariff and establish a procedure for the creation of an adequate and fair Supplier Tariff as set forth in these Comments.

Respectfully submitted,



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DATED: June 25, 1998

## CERTIFICATE OF SERVICE

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

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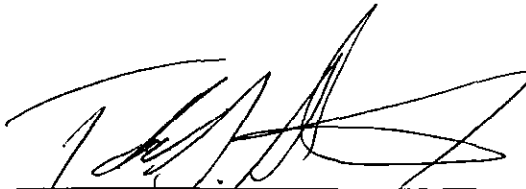
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Todd S. Stewart

DATED: June 25, 1998

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June 25, 1998

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

Dear Secretary McNulty:

Enclosed please find the original plus nine copies of the Office of Small Business Advocate's Comments on Compliance Filing of Duquesne Light Company for filing in the above captioned matter.

A copy of these Comments has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Angela T. Jones  
Assistant Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

Mr. Brian Kalcic

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

OFFICE OF SMALL BUSINESS ADVOCATE  
COMMENTS ON COMPLIANCE FILING OF  
DUQUESNE LIGHT COMPANY

EXEMPTED

JUL 09 1998

Pursuant to Ordering Paragraph 21 of the Opinion and Order ["Order"] entered May 2, 1998, the Office of Small Business Advocate ["OSBA"] files the following comments relative to the compliance filing made by Duquesne Light Company ["Duquesne"] on June 18, 1998.

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I. Phase-In Plan

In Ordering Paragraph 25 of the Commission's Duquesne Order, the Commission instructed the Company to:

" segment the Rate GS/GM class into 'Small Rate GS/GM' and 'Large Rate GS/GM' using 40 kW load as a breakpoint unless a more appropriate breakpoint is established via a detailed billing frequency analysis of all Rate GS/GM accounts."

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FOLDER

In its compliance filing, Duquesne has proposed segmenting Rate GS/GM **commercial** customers into 0-5 kW, 5-20 kW and 20-300 kW subclasses, with those commercial customers then to be selected for access to competitive generation services on a first-come, first-served basis within each segment. Further, Duquesne proposes that all Rate GS/GM industrial customers be accepted for Phase-In without reference to segmentation until August 27, 1998, with eligible industrial load pro-rated according to the amount of load volunteered (up to the minimum eligible customer load of 66% as of January 2, 1999).

The OSBA concurs with Duquesne that the above Rate GS/GM subclass breakpoints are appropriate. The OSBA submits, however, that a clarification is in order with respect to Duquesne's apparent restriction of the segmentation process to just "commercial" customers within Rate GS/GM.

Clearly, the intent of the OSBA's original segmentation proposal was to facilitate proportionate representation of all Rate GS/GM small business customers, both commercial and industrial, during the first year of the Phase-In. As filed, Duquesne's Phase-In Plan appears to deny the benefits of segmentation to small Rate GS/GM industrial customers (less than

20 kW). The OSBA understands, however, that Duquesne's reference to Rate GS/GM "commercial" accounts for segmentation purposes is actually intended by the Company to encompass all Rate GS/GM customers up to 20 kW.<sup>1</sup>

For clarification purposes, the OSBA recommends that deletions of references to "commercial" customers in Duquesne's Phase-In Plan with respect to Rate GS/GM customers with demands of less than 20 kW.

## II. Universal Service Cost Recovery

On page 296 of the Order, the Commission directs that the Universal Service Fund Charge (USFC) "shall be reconcilable pursuant to Section 1307(f)." In response, Duquesne has submitted tariff Rider No. 21 with respect to USFC reconciliation. As filed, Duquesne proposes to submit an initial USFC effective April 1, 2000 that will include costs deferred from January 1, 1999 through February 28, 2000 (deferred period).

The OSBA notes that should the allowable Universal Service expenditures incurred during the deferred period exceed the funding levels included in base rates, Duquesne's Rider

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<sup>1</sup>Apparently, Duquesne's billing system categorizes all Rate GS/GM accounts up to 20 kW as "commercial".

No. 21 would impose a distribution cost increase on ratepayers beginning April 1, 2000. Such an increase would violate Section 2804(4) of the Competition Act that establishes a cap on Duquesne's distribution rates through June 30, 2001.

The Commission should direct Duquesne to defer any such allowable USFC cost recovery until July 1, 2001.

Respectfully submitted,

A handwritten signature in cursive script that reads "Angela T. Jones". The signature is written in black ink and is positioned above a horizontal line.

Angela T. Jones

Assistant Small Business Advocate

Dated: June 25, 1998

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Comments on Compliance Filing of Duquesne Light Company on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

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Angela T. Jones  
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Date: June 25, 1998

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JUN 25 1998

PA PUBLIC UTILITY COMMISSION  
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Mr. James McNulty, Secretary  
Pennsylvania Public Utility Commission  
North Office Building - P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Duquesne Light Company Compliance Filing, Docket # R-00974104, Docket # R-00974104C0001-C0004

Dear Secretary McNulty:

New Energy Ventures appreciates the opportunity to present comments and 15 copies for consideration in regard to Duquesne Light Company's Restructuring Compliance Filing.

NEV is commenting on concepts and issues that have not been fully or adequately addressed in Duquesne Light Company's Restructuring Compliance Filing. NEV submits these comments to identify areas where Duquesne Light Company must implement change that is designed to bear out the commission's clear and precise intent to create a fully competitive market, without impediment to or favorable treatment for any entrant in the marketplace.

The attached comments are respectfully submitted.

Sincerely,

Jeffrey M. Bladen  
Manager, Corporate Development

cc: w/enclosures

The Honorable John M. Quain, Chairman  
The Honorable Robert K. Bloom, Commissioner  
The Honorable David W. Rolka, Commissioner  
The Honorable Nora Mead Brownell, Commissioner  
The Honorable Aaron Wilson, Jr., Commissioner  
Bureau of Fixed Utility Services  
Office of Special Assistants

ORIGINAL

## INTRODUCTION

In its Order of May 2, 1998, the Pennsylvania Public Utility Commission ("PAPUC" or "Commission") took steps to further the development of a robust competitive electricity marketplace. In its compliance filing of June 18, 1998, Duquesne Light Company ("DLC") failed in several key areas to comply with and/or provide definition as required by the Commission's order. In these comments, New Energy Ventures East ("NEV East") identifies the critical areas where Duquesne Light has failed to adequately provide for implementation of the Commission's Order. Duquesne Light is not in compliance regarding:

- Consolidated Billing
- Imposition of Service Fees upon Customers/EGS (Ancillary Services)
- Standards of Conduct (Interim Code of Conduct)

DOCUMENT  
FOLDER

**DOCKETED**  
JUN 29 1998

### **Consolidated Billing**

Duquesne Light's compliance filing fails to substantively address and define measures to allow for the implementation of "consolidated billing" as described in the Order on page 256.

Finally, we shall also adopt the ALJ's recommendation that we allow billing consolidation for customers with multiple sites to aggregate their load to a single EGS as we did in PECO Energy. At page 140 of the slip opinion in that proceeding, we stated that:

PECO has defined "customer" to include a single point of delivery. In challenging PECO's position, it was asserted that EGSs should be permitted to treat customers with multiple locations as a single service for purposes of billing for transmission and CTC-related charges. In other words, transmission and CTC-related charges would not change with the number of installations or meters, as they currently do, but with the amount of load placed on the system.

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

We see no reason to deviate from that rationale and shall follow it here.

While Duquesne Light states that the "...findings are self-implementing..."(pg. 10, DQE compliance filing), additional information needs to be provided as to how Duquesne Light will implement this change in the treatment of multi-facility customers. NEV suggests the inclusion of a customer definition in line with the PUC order on this issue. NEV suggests the following language "A customer with multiple locations on the same tariff rate shall have those locations treated as though a single location for purposes of billing for transmission and CTC-related charges."

**Imposition of Service Fees upon Customers/EGS (Ancillary Services)**

In Appendices F & G of its filing, Duquesne Light has enumerated various service fees to be levied upon customers and/or suppliers by Duquesne Light as the electric distribution company. Regarding such charges, the PUC order called for the creation of a Supplier Tariff that would address these issues. The Order states "The Supplier Tariff is not a services agreement; it is a set of rules and procedures. It should include no fees or other charges except as have been approved by FERC or this Commission upon documentation of net incremental cost." (Pg. 52, Order) As such, it is Duquesne Light's burden to identify the source of and justify any charges it wishes to impose.

With this standard in mind, NEV does not believe Duquesne Light has provided the level of information required. In Appendix G, there has been an inadequate effort to identify and justify the net incremental cost of the services for which Duquesne Light wishes to charge a fee.

1. **Supplier Administration Charge** Duquesne Light has not met the burden required by the PUC in order to impose these charges. It is unclear if Duquesne Light has investigated whether use of the Advantis VAN represents the most cost-effective option to fulfill the need of this interchange, nor compared the Advantis VAN with other service providers. The proposed charges of \$.19 per file/electronic envelop and \$.046 per 1000 characters transmitted, when added to supplier side VAN charges, represent a significant cost that could be detrimental to the development of a competitive market. There also appears to be little if any incentive for Duquesne Light to be efficient in the use of the data interchange system. If Duquesne Light is allowed to pass on to suppliers all of the VAN charges for data interchange, no incentive exists for Duquesne Light to be efficient in its exchange operations. This proposition will deter suppliers because of the high cost of doing business.
2. **Supplier Switching Charge** Duquesne Light has failed to justify why the cost associated with a customer switch are as they have stated. A good example of NEV's concern is the \$.32 first class postage built into this charge. Very few businesses pay

full first class postage on mailings that will be sent out in the volume required of this type. Duquesne Light has not justified this or other line items adequately.

3. **Technical Support and Assistance Charge** Duquesne Light has proposed imposing a significant charge upon suppliers for technical issues. This charge should be disallowed as unjustified. Duquesne Light will be imposing upon suppliers the use of Duquesne Light's technical system. Costs associated with learning to use this system should not, in any way be born by the supplier. The supplier has no choice but to accept the system as designed by Duquesne Light regardless of how difficult it may be to utilize. NEV East believes that to require suppliers pay for Duquesne Light's time spent in providing technical assistance for utilizing a system that was imposed upon suppliers is without merit.
4. **Load Data Supply Charge** This charge is not appropriate for a supplier tariff. The supplier tariff should include only items that are required to do business with Duquesne Light. As such, this charge should be removed. Any charges for this service should be a negotiated rate between the parties (subject to fairness doctrines set out in the standards of conduct) and should not be proscribed in the tariff.
5. **Load Forecasting Services Charge** Duquesne Light's request to charge for load forecast services should be disallowed. Duquesne Light has not documented or substantiated the basis for these costs in the compliance filing. In addition, Duquesne Light has previously invested in systems to do this type of forecasting, and the costs of this type of service will be recovered through the stranded cost recovery mechanism. If Duquesne Light believes additional costs are incurred, then a full net-incremental cost analysis should be done to show that recovery is not occurring by any other means.

**Standards of Conduct (Interim Code of Conduct)**

It is NEV East's view that a robust Code of Conduct for the Electric Distribution Company is critical for enabling the development of a truly competitive market. Any Code should, at a minimum, prevent any advantages to particular suppliers based on their affiliation with the EDC.

NEV has provided (Appendix I) a copy of the code of conduct adopted as part of the California Electric restructuring process as an example of the type of code that encompasses many of the issues with which we are concerned and the solutions provided. The California Code also represents a comprehensive approach that is in line with the NEV East's recommendations to the PAPUC in regard to the development of a code of conduct.

Duquesne Light provided a Code of Conduct that lacks the depth and specificity necessary to adequately deal with the potential market power issues, even in the short-run. An interim code of conduct requires better direction about transfer of employees, record keeping, the meaning of preferences, and sharing of information regarding customers, none of which are mentioned in detail in Duquesne Light's submission. NEV suggests that the California Code adequately addresses many of these issues and could be adapted to Pennsylvania. The most glaring omission in Duquesne Light's filing regards corporate identification and advertising. NEV believes strongly that the following language must be included in any interim Standards of Conduct.

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor utilize the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
  - a. the affiliate "is not the same company as Duquesne Light, the utility";
  - b. the affiliate is not regulated by the Pennsylvania Public Utility Commission; and
  - c. that customers do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

Another area that is lacking in the Duquesne Light code is its failure to address access to regulated EDC communications (including the ability to place bill inserts). Duquesne Light makes no mention of equal access to such crucial communication channels. NEV suggests that it should be stated that if these channels are open to one, they should be open to all market participants at the same cost.

Other serious problems with the Duquesne Light code of conduct listed by relevant section number are:

1. This section should not be limited to supplier affiliates. It should cover potential preference given by Duquesne Light to ANY affiliate or subsidiary of the EDC. This section should also be more specific regarding the types of information requests covered and should state that all information requests, of any nature, will be treated equivalently. Because of its significance, complaint processing should be given a section unto itself and more detail should be provided to ensure the fair processes are followed.
2. This section, regarding the non-discriminatory application of rules and tariffs and the supply of services, is so vague as to be virtually worthless. Details should be spelled out explicitly. More is required than a simple statement that the EDC will not give preference.
3. The term "anti-competitive cross subsidy" should be defined. Without such a definition the issue is highly debatable and enforcement would be significantly more difficult.
4. Once again the section is vague in defining adequately that information covered by the section. "Not in the public domain" is an indeterminate standard. A more

definitive term must be substituted. Duquesne Light also fails to describe what process would provide the information. NEV suggests that "information is provided in electronic format by posting to a pre-determined location."

5. Duquesne Light's proposal is highly inadequate. NEV refers to above recommendation regarding cross-promotion and affiliate use of EDC name.
6. This section must be clearer in stating that offices will be physically separated. In one sentence it states they will be physically separated, while in the next it provides rules for "shared facilities." NEV recommends the code state an explicit prohibition against shared facilities. NEV further recommends that the sentence on accounts and records include a statement that such records "should be presented on a regular basis to the Public Utility Commission for review."
7. No comment.
8. NEV recommends that this section, "public notification requirements" include a statement that "these facts must be prominently displayed and clearly stated in all materials distributed for marketing or other similar purposes by an affiliated company."
9. This section on dispute resolution is an attempt to further weight the process in favor of the incumbent utility. This section should be removed and replaced. NEV suggests that disputes that can not be resolved informally by the parties should be referred to the PUC for adjudicatory proceeding and decision.

**Affiliate Transaction Rules**

**I. Definitions**

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are

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not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

### **II. Applicability**

- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

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relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

- C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.
- D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.
- E. Existing Rules: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.
- F. Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- G. Exemption (Advice Letter): A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:
  - 1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
  - 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
    - a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

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letter to the Executive Director, served on all parties to this proceeding;  
and

b. Agree in this notice to comply with the Rules in their entirety.

H. Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

### **III. Nondiscrimination**

A. No Preferential Treatment Regarding Services Provided by the Utility:

Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. Affiliate Transactions: Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

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1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.
  2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.
  3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
  4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.
  5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.
- C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

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- D. No Assignment of Customers: A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.
- E. Business Development and Customer Relations: Except as otherwise provided by these Rules, a utility shall not:
1. provide leads to its affiliates;
  2. solicit business on behalf of its affiliates;
  3. acquire information on behalf of or to provide to its affiliates;
  4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
  5. request authorization from its customers to pass on customer information exclusively to its affiliates;
  6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
  7. give any appearance that the affiliate speaks on behalf of the utility.
- F. Affiliate Discount Reports: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:
1. the name of the affiliate involved in the transaction;
  2. the rate charged;
  3. the maximum rate;
  4. the time period for which the discount or waiver applies;

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5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and
14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

#### **IV. Disclosure and Information**

- A. **Customer Information:** A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.
- B. **Non-Customer Specific Non-Public Information:** A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or

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operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

### C. Service Provider Information:

1. Except upon request by a customer or as otherwise authorized by the Commission, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities.
2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

- D. Supplier Information: A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative

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authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

- E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.
- F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

- G. **Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.
- H. **FERC Reporting Requirements:** To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

### **V. Separation**

- A. **Corporate Entities:** A utility and its affiliates shall be separate corporate entities.

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- B. Books and Records: A utility and its affiliates shall keep separate books and records.
1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).
  2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.
- C. Sharing of Plant, Facilities, Equipment or Costs: A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).
- D. Joint Purchases: To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

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- E. **Corporate Support:** As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

- F. **Corporate Identification and Advertising:**

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
  - a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";
  - b. the affiliate is not regulated by the California Public Utilities Commission; and

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- c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, *but are not limited to* the following:
  - a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;
  - b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
  - c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. Employees:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, *except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules.*
2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
  - a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).
  - b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the

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benefit of the affiliate or to the detriment of other unaffiliated service providers.

- c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.
- d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.
- e. A utility shall not make temporary or intermittent assignments, or rotations to its affiliates.

H. **Transfer of Goods and Services:** To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, all such transfers shall be subject to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

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2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.
3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

### **VI. Regulatory Oversight**

- A. Compliance Plans: No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).
- B. New Affiliate Compliance Plans: Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall

demonstrate how the utility will implement these Rules with respect to the new affiliate.

- C. **Affiliate Audit:** No later than December 31, 1998, and every year thereafter, the utility shall have audits prepared by independent auditors that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file this audit with the Commission's Energy Division beginning no later than December 31, 1998, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.
- D. **Witness Availability:** Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

## **VII. Utility Products and Services**

- A. **General Rule:** Except as provided for in these Rules, new products and services shall be offered through affiliates.
- B. **Definitions:** The following definitions apply for the purposes of this section (Section VII) of these Rules:
  - 1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.
  - 2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.
  - 3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.
  - 4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.
- C. **Utility Products and Services:** Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility

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offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;
  2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;
  3. New products and services that are offered on a tariffed basis; and
  4. Products and services which are offered on a nontariffed basis and which meet the following conditions:
    - a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
    - b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
    - c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
    - d. the products and services can be marketed with minimal or no incremental capital, minimal or no new forms of liability or business risk being incurred by the utility, and minimal or no direct management control; and
    - e. the utility offering is restricted to less than 1% of the number of customers in its customer base.
- D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:
1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;
  2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing

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mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and
  4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.
- E. Requirement to File an Advice Letter: Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.
1. The advice letter shall:
    - a. demonstrate compliance with these rules;
    - b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
    - c. demonstrate that the utility has not received recovery in the Transition Cost Proceeding, A.96-08-001, or other applicable Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and
    - d. address the potential impact of the new product or service on competition in the relevant market.
  2. In the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter.
  3. A protest of an advice letter filed in accordance with this paragraph shall include:
    - a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or

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- b. An explanation of the specific harm the protestant will allegedly suffer.
4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.
  5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.
- F. Existing Offerings: Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.
- G. Section 851 Application: A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those

## Appendix I

items which would otherwise appear in the advice letter as required in this Rule.

- H. **Periodic Reporting of Nontariffed Products and Services:** Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:
1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;
  2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);
  3. The costs allocated to and revenues derived from each category; and
  4. Current information on the proportion of relevant utility assets used to offer each category of product and service.
- I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

(END OF APPENDIX A)



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VIA FEDERAL EXPRESS

June 25, 1998

Mr. James McNulty  
Secretary  
Pennsylvania Public Utility Commission  
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RECEIVED

JUN 25 1998

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Comments of Strategic Energy Ltd. ("SEL") on the  
Duquesne Light Company Compliance filing - Docket No. R-00974104

Dear Secretary McNulty:

Attached are Strategic Energy Ltd.'s ("SEL's") comments on the Supplier Tariff contained in the Duquesne Light Compliance filing submitted to the Commission on June 18, 1998. SEL is a licensed Electric Generation Supplier in Pennsylvania and an active participant in the Commission's electric restructuring program. While we are not a direct intervenor in the Duquesne Light restructuring proceedings, we have provided input to MAPSA in support of their intervention efforts in the restructuring proceedings of Electric Distribution Companies throughout the state.

We have limited our comments to the portion of Duquesne Light's compliance filing that is embodied in their Supplier Tariff since this is the portion of their restructuring plan that most impacts our ability to provide competitive electricity to end-users. Our experience in the retail pilot program along with our continuous efforts to prepare for aggregating end-users and supplying their electric generation requirements under full retail competition allows us to provide essential and meaningful input to the Supplier Tariff.

For these reasons, along with additional reasons detailed in our comments, we respectfully request that the Commission consider our comments in rendering their decision regarding the Supplier Tariff portion of this compliance filing.

Sincerely,

John E. Molinda, P.E.

JEM/lpp  
Enclosure

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ORIGINAL

RECEIVED

JUN 26 1998

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Duquesne Light Company  
Proposed Supplier Tariff portion of  
Compliance Filing Under  
Restructuring Final Order

Docket No. R-00974104

---

STRATEGIC ENERGY LTD.

COMMENTS

---

DOCUMENT  
FOLDER

**DOCKETED**  
JUN 29 1998

John E. Molinda  
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Dated: June 25, 1998

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1 **I. Rationale for Strategic Energy Limited (“SEL”) Comments**

2 Duquesne Light might object to SEL providing comments on its Supplier Tariff on the  
3 grounds that the proposed Supplier Tariff is part of Duquesne Light’s compliance filing  
4 and SEL did not intervene in Duquesne Light’s restructuring process. Although SEL  
5 was not an intervening party in Duquesne Light’s restructuring proceedings, SEL is  
6 participating in the restructured markets in Pennsylvania as a licensed EGS. As a  
7 licensed EGS, SEL will be subject to Duquesne Light’s Supplier Tariff. Furthermore,  
8 SEL’s concerns about Duquesne Light’s Supplier Tariff could not have been foreseen at  
9 the beginning of the restructuring proceedings when it would have been necessary for  
10 SEL to act to become an intervenor. Therefore, it is unreasonable to require that SEL be  
11 an intervenor in the entire Duquesne Light restructuring process in order to “qualify”  
12 SEL to provide comments now.

13  
14 SEL also pleads with the Commission not to dismiss SEL’s comments on the grounds  
15 that other EGSs are represented in the restructuring case. SEL interests in regards to  
16 Duquesne Light’s Supplier Tariff are not necessarily represented by any intervenors in  
17 Duquesne Light’s restructuring case. SEL is concerned that Duquesne Light’s Supplier  
18 Tariff is designed to serve the requirements of EGSs that have chosen to rely on  
19 Duquesne Light to provide a level of technical service that SEL does not require. For  
20 example, Duquesne Light intends to mandate that EGSs take load forecasting and pre-  
21 scheduling services, and Duquesne Light intends to charge amounts to be determined  
22 later. Other EGSs may prefer such an arrangement and may not object. Hourly

1 Metering is closely related to the forecasting issue, and SEL's unique capabilities and  
2 requirements may not be well-aligned with those of other EGSs.

3  
4 This is SEL's first opportunity to review Duquesne Light's proposed Supplier Tariff, and  
5 it would be unfair, at best, and anti-competitive, at worst, to deny SEL the opportunity to  
6 comment on whether Duquesne Light's proposed tariff is fair and supports a robust  
7 competitive market. However, if the Commission prefers not to incorporate these  
8 comments into its consideration of Duquesne Light's Supplier Tariff, SEL will work  
9 with the Commission to provide these comments as complaints through the  
10 Commission's normal complaint procedures. SEL prefers that the Commission consider  
11 SEL's comments now in its normal course of business moving Pennsylvania's electricity  
12 market toward competition. However, if this is not permitted, SEL requests the direction  
13 of the Commission as to the most efficient way to proceed to resolve the important issues  
14 described in this document.

15  
16 Although SEL has provided expert testimony in one restructuring proceeding, the  
17 testimony was technical in nature and not reflective of any procedural experience in  
18 working with the Commission. Considering how quickly January 1, 1999 approaches,  
19 SEL requests guidance from the Commission as soon as possible if SEL must use a  
20 formal complaint procedure to address concerns about Duquesne Light's Supplier Tariff.  
21 In addition, SEL requests guidance on how to proceed in submitting comments regarding  
22 other EDC Supplier Tariffs whether or not they have been submitted, as in PECO's case  
23 or, as in Penn Power's case, have not yet been submitted.

1 **II. SEL Comments**

2 **A. Scheduling of EGS Loads (Section 6.3, Page 22 of Duquesne Light's**  
3 **Supplier Coordination Tariff).**

4 SEL recommends that the EGS have the ability to alter schedules on a real-time, hourly  
5 basis. This practice will enable the EGS to more effectively pass along accurate pricing  
6 signals to customers. For example, if market prices should reach \$1,500 or more, as  
7 experienced recently in the Midwest, a customer may wish to self-interrupt and remarket  
8 its supply, thereby helping to balance supply and demand in the marketplace.

9 Alternatively, an unexpected extreme weather pattern could force load higher than  
10 expected, and the EGS should have the option to revise its schedule on a same-day basis  
11 instead of being subject to the EDC's Consumption Imbalance Charge. Especially when  
12 utilities suggest that imbalance charges are subject to FERC imbalance penalties, an EGS  
13 should have the flexibility to adjust its forecast and supply on an hour-ahead basis to  
14 better match actual demand.

15 **B. Hourly Metering**

16 Customer's who have monthly meters installed by Duquesne Light may have hourly  
17 meters installed by their EGS. Since Duquesne Light is using typical historical profiles  
18 to forecast load, traditional meters will not necessarily be better for purposes of  
19 scheduling and/or load forecasting. Therefore, SEL recommends that The Commission  
20 allow the EGS to install hourly metering equipment at their customer's site for the  
21 purpose of scheduling and load forecasting.

1           **C. Consumption Energy Imbalance (Section 8.7, Page 34 of Duquesne**  
2           **Light's Supplier Coordination Tariff).**

3     SEL requests that the methodology, algorithms and data used to calculate consumption  
4     energy imbalance and the methodology for the allocation of errors among Duquesne  
5     Light jurisdictions be released to the EGS for review or that the EGS be allowed to audit  
6     these processes. In addition, SEL objects to the OATT energy imbalance penalties being  
7     imposed on an EGS who does not have the flexibility to modify forecasts and schedules  
8     on an hour-ahead basis.

9           **D. Credit Requirements (Section 3.3, Page 12 of Duquesne Light's Supplier**  
10          **Coordination Tariff).**

11    The data requirements and credit standards described in the Tariff are vague. In addition,  
12    posing arbitrary requirements and standards is potentially inhibiting to smaller entities  
13    trying to comply with individual EDC requirements in an attempt to bring competitive  
14    supplies to their customers. SEL notes that The Commission did not permit the EDC to  
15    perform these checks on EGS's in the PA Pilot Program due primarily to the fact that the  
16    licensing statues require both the posting of a bond and proof of financial fitness from the  
17    EGS. This additional requirement by the EDC is both unnecessary and anticompetitive.

1           **E. Scheduling Coordinator Separation of Pre-Schedules and Consumption**  
2           **Energy Imbalance (Section 9.4, Page 35 of Duquesne Light's Supplier**  
3           **Coordination Tariff).**

4  
5       SEL requests that the procedures for the utilization of Scheduling Coordinators be more  
6       specific regarding an EGS that is acting as a Scheduling Coordinator for a separate EGS.  
7       SEL requests that language be added to the Tariff stating that preschedules and energy  
8       imbalance amounts be maintained and billed separately by the EDC.

9  
10           **F. Fees for Technical Services**

11  
12       Duquesne Light should provide justification for its fees listed on pages 51-56. The  
13       justification should be rebuttable by EGSs before implementation.

**CERTIFICATE OF SERVICE**

I hereby certify that this \_\_\_\_\_ day of \_\_\_\_\_, 1998 a true and correct copy  
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