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ORIGINAL

December 22, 1998

Via Overnight Mail

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
North Office Building
North St. & Commonwealth Ave.
Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

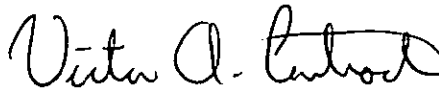
Re: Duquesne Light Company
Docket No. R-00974104

Dear Mr. McNulty:

Enclosed is an original and nine copies of Duquesne Light Company's Interim Code of Conduct Compliance Filing. 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,



Victor A. Contract
Counsel to Duquesne Light Company

Enclosure

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DEC 22 1998

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility
Commission, :

Docket No. R-00974104

v. :

Duquesne Light Company :
Application to approve :
restructuring plan pursuant :
to 66 Pa. C.S. § 2806(d) :

DOCKETED

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INTERIM CODE OF CONDUCT COMPLIANCE FILING

Pursuant to the Order on Compliance Filing issued on October 16, 1998 ("Second Compliance Order"), Duquesne Light Company ("Duquesne") hereby submits its Interim Code of Conduct Compliance Filing ("Compliance Filing"). The Second Compliance Order directed Duquesne to submit within 60 days of the Compliance Order a detailed plan for compliance with the Code of Conduct, as well as a plan for cost separations and cost allocations. Second Compliance Order at 29. Duquesne accordingly discusses the measures Duquesne has already taken, or will schedule to take, to implement the Interim Code of Conduct ("Interim Code" or "Code"). Duquesne's implementation plan is comprised of two parts: (1) communication and training; and (2) compliance oversight and enforcement.

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I. **Corporate Communications and Employee Training**

Duquesne will use a multi-faceted approach in educating Duquesne EDC and Duquesne Supplier¹ employees about the Code requirements, including, but not limited to: (1) periodic articles in Duquesne's publications (e.g. Duquesne Light News and Our People) (2) initial presentations to specific Duquesne EDC and Duquesne Supplier employee groups tailored to their operations, with follow-up supplemental training provided periodically as needed; (3) distribution to all affected employees of the Code and of any implementation documents developed; and (4) periodic electronic and hard-copy memos to such employees addressing particular Code-related issues as they arise, whether through specific employee inquiries or decided cases. To ensure easy access to information about Code interpretation and application, Duquesne will establish: (1) an internal e-mail address for questions about the Code; and (2) a Code of Conduct page on the Company's Intranet through which Duquesne EDC and Duquesne Supplier employees can access answers to frequently asked questions and obtain copies of the Code and any implementation documents.

¹ As defined in the Interim Code of Conduct, Duquesne EDC refers to Duquesne Light Company acting in its role as an electric distribution company, and Duquesne Supplier refers to any affiliated and/or divisional competitive electric generation suppliers.

Duquesne also will conduct any necessary training sessions. Attendance at training sessions will be mandatory with sign-in sheets provided to document attendance.

II. Compliance Oversight and Enforcement

To implement the Code, Duquesne will adapt the comprehensive Company-wide procedures already in place for implementation of its existing Corporate Code of Conduct. As a standard business practice, Duquesne already requires that employees comply with all applicable laws and regulations. The Corporate Compliance Program provides that Duquesne currently maintains "policies and procedures designed to assist its employees and agents in complying with federal, state and local laws and regulations and to detect and prevent criminal conduct.... It is the responsibility of each employee of the Company to perform his or her job duties in full compliance with applicable federal, state and local laws and regulations." Under these procedures, the Group Vice President and Program Manager have primary oversight responsibility and administration of all compliance programs relating to his or her Group, and, in consultation with the Chief Legal Officer, shall have primary responsibility for investigating and documenting any suspected violations. The Company also has Group Compliance Committees, which are comprised of the appropriate Group Vice President, each Program Manager

within that Group, other representatives from each Group, and an attorney designated by the Chief Legal Officer.

Employees may report any Code-related concerns directly to their supervisor or group human resources manager through the Company's Open Door Policy or they may call the Compliance Hot-Line. The Compliance Hot-Line provides a method of anonymous reporting of all suspected compliance violations. It is a confidential phone line and voice mailbox answered by the Company's Compliance Officer. The Company's Compliance Officer regularly checks the Compliance Hot-line and also keeps track of the calls.

Duquesne has already conducted some training sessions for certain employees more directly affected by the Code (*e.g.*, Customer Relations Department and the Customer Choice Implementation Team). For Duquesne EDC employee training, Company attorneys, at times in conjunction with the EDC's Customer Choice Implementation Team, will make presentations regarding the Code. Similarly, Company attorneys will work with representatives of Duquesne Suppliers to develop and make presentations for them.

Duquesne EDC and Duquesne Supplier employees also will be required to acknowledge yearly, in writing, that they have read and are familiar with the Code and agree to abide by it. Compliance with the Code, both personal and by subordinates, will be a factor in Duquesne EDC and Duquesne Supplier employees'

periodic performance appraisals. Intentional violations will result in disciplinary action, including, when appropriate, discharge from employment.

III. **Specific Interim Code of Conduct Rules and Applicable Implementation Procedures**

Notably, Duquesne already is operating under the Pilot Code of Conduct, which contains similar provisions to the Interim Code. In the Fall of 1997, Duquesne conducted training for certain employee groups more directly affected by the Pilot Code. The specific Code provisions and the Company's intended compliance measures follow:

1. The Company, in its role as the Electric Distribution Company ("Duquesne EDC"), shall not give a Duquesne Supplier preference over a non-affiliate in the provision of goods and services such as processing requests for information, complaint processing and responses to service interruptions. Duquesne EDC shall provide comparable treatment without regard to the customer's chosen EGS.

The targeted training will stress that employees who perform these functions may not treat a Duquesne Supplier or its customers better than any other EGS or its customers. Also, the same arms-length standard that applies to interactions with non-affiliated Suppliers will apply to all dealings with Duquesne Suppliers and their customers. The Company will create computer firewalls to restrict Duquesne Suppliers' access to

computer systems and to data regarding customers, their accounts and the distribution system.

2. Duquesne EDC shall supply services and apply the rules and other provisions of its Tariffs to non-affiliates in the same manner it applies them to a Duquesne Supplier.

The comprehensive training described in Section I, above, (in particular training for employees involved in tariff administration) will emphasize that Duquesne's tariffs must be applied in accordance with their terms and in a neutral manner.

3. Duquesne EDC shall not sell non-power goods or services to a Duquesne Supplier at a price below the cost or market price, whichever is higher, for said goods or services. Duquesne EDC will not purchase non-power goods or services from a Duquesne Supplier at a price above the market price for said goods or services. No transaction between Duquesne EDC and a Duquesne Supplier shall involve an anti-competitive cross-subsidy, and all such transactions shall comply with applicable law.

If and when Duquesne acquires a Duquesne Supplier, Duquesne will adopt cost allocation and asset transfer valuation rules that comply with this provision, and all goods and services will be transferred and billed in accordance with these rules.

4. Duquesne EDC shall simultaneously make available to all EGSs any market information, not in the public domain, that it provides to a Duquesne Supplier.

"Wires" employees (e.g., customer service, linemen, trouble crews, etc.) who have access to market information because of their unique access to information about the distribution system will be trained not to provide to any Duquesne Supplier sales leads or other market information obtained in the course of their employment. All Suppliers, whether affiliated or not, will access information about their customers (e.g., usage data and billing) and about the distribution system through the Customer-choice web-site, which Duquesne will use to administer its Supplier Tariff. Moreover, password protection at that site also ensures that Suppliers, whether affiliated or not, cannot access other Suppliers' information.

5. Duquesne EDC shall not promote a Duquesne Supplier any differently than a non-supplier.

The Company's proposal is described in Rule 8 below.

6. Employees of Duquesne EDC who have responsibility for operating the distribution system, such as receiving requests for power,

purchasing power, scheduling delivery, or billing and metering, shall not be shared with a Duquesne Supplier, and their offices shall be physically separated from the office(s) used by those working for the Duquesne Supplier. Such employees of Duquesne EDC may transfer to a Duquesne Supplier provided such transfer is not used as a means to circumvent this Interim Code of Conduct. Any Duquesne Supplier shall have its own direct line management. Any shared facilities shall be fully and transparently allocated between the Duquesne EDC function and the Duquesne Supplier function. Duquesne EDC accounts and records shall be maintained such that the costs a Duquesne Supplier incurs can be clearly identified.

The Company maintains books and records in accordance with generally accepted accounting principles and the Uniform System of Accounts. In addition, as described in Section IV, below, the Company maintains internal accounting controls to ensure that costs are fully allocated and all transfers are properly tracked.

7. Duquesne EDC shall not condition the provision of any PaPUC jurisdictional regulated services on the purchase of power from a Duquesne Supplier.

An indicated in Section I above, the Company will provide to all affected employees necessary training highlighting this and all other restrictions.

8. (a) Neither Duquesne EDC nor a Duquesne Supplier may directly or by implication falsely and unfairly represent:

- that the PaPUC jurisdictional regulated services provided by Duquesne EDC are of a superior quality when power is purchased from a Duquesne Supplier;
- that the merchant services (for power) are being provided by Duquesne EDC rather than a Duquesne Supplier;
- that the power purchased from an EGS that is not a Duquesne Supplier may not be reliably delivered; or
- that power must be purchased from a Duquesne Supplier to receive Duquesne EDC PaPUC jurisdictional regulated services.

(b) Duquesne EDC shall not jointly market or jointly package its PaPUC jurisdictional, regulated services with the services of a Duquesne Supplier. This prohibition includes prohibiting Duquesne EDC from including bill inserts in its EDC bills promoting a Duquesne Supplier's services, and further precludes a reference or link from Duquesne EDC's web-site to any Duquesne Supplier.

(c) When a Duquesne Supplier markets or communicates to the public using the Duquesne EDC name or logo it shall include a disclaimer that states: (1) that the Duquesne Supplier is not the same company as the Duquesne EDC; (2) that the prices of the Duquesne Supplier are not regulated by the PaPUC; and (3) that a Customer does not have to buy electricity or other products from the Duquesne Supplier in order to receive the same quality service from Duquesne EDC. When a Duquesne Supplier advertises or communicates verbally through radio or television to the public using the Duquesne EDC name or logo, Duquesne Supplier shall include at the conclusion of any such communication a disclaimer that includes all of the disclaimers listed in this paragraph.

Duquesne EDC and Duquesne Suppliers, if any, will incorporate the foregoing rules in their advertising and marketing policies as well as in any other relevant policies. Necessary training as described in Section I infra, emphasizing in particular these marketing and disclosure requirements, will be provided to all affected employees.

9. Violations of this Code of Conduct shall result in PaPUC-ordered fines at the levels determined to be appropriate by the PaPUC. Any such PaPUC action would not preclude or limit additional private remedies or civil action.

If the Commission ever determines that a fine for a proven violation is appropriate and orders Duquesne to pay such a fine, Duquesne will do so.

10. Dispute Resolution Procedures:
 - Regarding any dispute between Duquesne EDC, and/or a Duquesne 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 Duquesne EDC and/or Duquesne 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 Duquesne EDC's and/or Duquesne 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 Judges. A party may request mediation prior to that time if it appears that informal resolution is not productive.
- 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.

The Company will participate in the dispute resolution procedure outlined in this rule. In the event Duquesne EDC and/or a Duquesne Supplier receives a Notice of Dispute, a senior representative designated by the Duquesne EDC and/or the Duquesne Supplier, as applicable, will meet as required with the EGS' representative to attempt to resolve the Dispute.

11. Duquesne EDC shall file a compliance filing within 60 days of entry of the Commission's Order on Compliance Filing dated October 16, 1998 which sets forth a detailed plan for compliance with this code of

conduct as well as the PUC separation and cost allocation requirements already ordered.

This Compliance Filing fulfills this requirement.

IV. **Cost Allocation and Asset Transfer Valuation Rules**

Duquesne already maintains a system of internal accounting controls to ensure that affiliate transactions are recorded in accordance with applicable guidelines. If and when Duquesne acquires a Duquesne Supplier, Duquesne will file an affiliated interest agreement with the Commission for approval which will provide for appropriate billing of services.

V. **Functional Separation**

If and when Duquesne acquires a Duquesne Supplier, it will maintain separate offices, and separate management.

None of the Duquesne EDC employees that are responsible for the functions delineated in Provision 6 of the Code will be shared with any future Duquesne Supplier.

Respectfully submitted,

A handwritten signature in cursive script that reads "Victor A. Contract".

Larry R. Crayne
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Dated: December 22, 1998

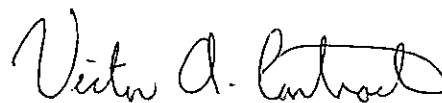
**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Dated this 22nd day of December, 1998.



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AFFILIATED WITH THE AFL-CIO

LIGHT-HEAT
4205 CHESTER AVENUE



POWER-TELEPHONE
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December 28, 1998

Barbara Bruin
Executive Director
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: R-00974104

Dear Ms. Bruin;

We are in receipt of your letter dated November 30, 1998 and appreciate the time you took to address our issues regarding the transfer of generating assets between Duquesne Light Company and FirstEnergy. In that letter you spoke about the Commission's May 29 order requiring Dusquesne's divestiture plan to resolve issues in a matter that is fair to customers, investors, employees of the Company, local communities and other affected parties.

As you well know item (6) of the October 14, 1998 Letter Agreement between Duquesne and FirstEnergy states that the Parties will cooperate to resolve labor-related matters, including with respect to union contracts, workforce levels, severance, and employee benefits, in a matter that treats employees fairly and equitably apportions any related costs between the parties.

As we stated in our October 23, 1998 letter this issue has yet to be resolved. FirstEnergy's labor relations with Local 270 has been and remains poor. We, as a labor union have no agreement with FirstEnergy concerning these transfers of assets. Part of the problem is that the parties disagree as to which contract is in effect. Local 270 has been asking FirstEnergy for months to arbitrate this issue. We were in Court on December 16, 1998 attempting to get a temporary restraining order to stop this transfer of assets until an agreement could be worked out. FirstEnergy attorneys even stated they don't know which contract is in effect. We made some suggestions on how this situation could be addressed but they went unanswered. Our labor issues do have merit because on December 23, 1998 the National Labor Relations Board issued several complaints against FirstEnergy alleging they have bargained in bad faith by engaging in surface bargaining, by unlawfully implementing its last, best and final offer prior to a valid impasse, by laying off employees and by certain other acts and conduct.

We even wrote to Duquesne trying to find a way to address this problem. Their answer was that they don't have a relationship with our Union and those issues should be addressed between FirstEnergy and our Union.

We are aware that other Unions that are involved have signed agreements pertaining to these asset transfers. The difference there is that those Unions have negotiated agreed upon contracts in place prior to these transfers of assets. Local 270 did not.

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Ms. Barbara Bruin
December 28, 1998

We thank the Commission for considering our comments. We hope that the Commission will make sure that the parties involved have lived up to the letter agreement before approving this transfer.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Kotecki", written in a cursive style.

David T. Kotecki
President/Local 270

DTK/asq opeiu 1794



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 8

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Telephone: (216) 522-3715 Fax: (216) 522-2418

December 23, 1998

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First Energy
Attn: Gary Benz, Esq.
76 South Main Street
Akron, Ohio 44308

Keith R. Wolgamuth, Esq.
1729 Superior Avenue, Suite 300
Cleveland, Ohio 44114

Re: First Energy
Cases Nos. 8-CA-29873, 8-CA-29943
8-CA-29956, 8-CA-30028, 8-CA-30067, et al

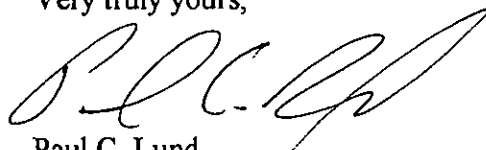
Dear Sirs and Madam:

This is to advise you that the Region has authorized the issuance of a Section 8(a)(5) and (l) complaint against First Energy and The Cleveland Electric Illuminating Company, alleging that the Employer has bargained in bad faith by engaging in surface bargaining, by unlawfully implementing its last, best and final offer prior to a valid impasse, by laying off employees and by certain other acts and conduct.

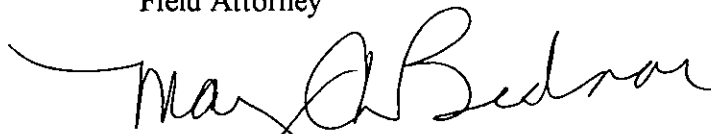
As you are aware there currently are pending numerous other charges and allegations concerning other conduct which may be violative of the Act. We expect to make determinations in connection with these matters as expeditiously as possible. Furthermore, as we have previously indicated to you, we are considering the possible merit of injunctive relief under Section 10(j) of

the Act. Again, although no final decision has been made in this connection, we are moving to a determination with all appropriate dispatch.

Very truly yours,



Paul C. Lund,
Field Attorney



Mary A. Bednar
Field Examiner

cc: Utility Workers Union of America
Local 270
Attn: David Kotecki, President
4205 Chester Avenue
Cleveland, Ohio 44103

DEC 28 1998
0 1000

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

HOSPITAL SHARED SERVICES AND
ADMINISTRATIVE RESOURCES, INC.,
Petitioner
v.
PENNSYLVANIA PUBLIC UTILITY
COMMISSION,
Respondent

R-974104

No. 1592 C.D. 1998

NOTICE OF DISCONTINUANCE

This is to notify you that the above-captioned matter has been withdrawn,
discontinued and ended.

DATE: December 31, 1998

TRIAL COURT NO: R-0097381

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MAR 24 1999

CR. [Signature]

DEPUTY PROTHONOTARY/CHIEF CLERK

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JAN 29 1999
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CERTIFIED FROM THE RECORD
AND ORDER EXIT

DEC 31 1998

CR. [Signature]
Deputy Prothonotary - Chief Clerk

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PA P.U.C
LAW BUREAU

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEC 31 1998

Hospital Shared Services, et al,
Petitioner

PA. P.U.C.
LAW BUREAU

v.

Docket No. 1593 C.D. 1998

Pennsylvania Public Utility Commission,
Respondent

DOCKETED

System Council U-10, International
Brotherhood of Electrical Workers,
Petitioner

JAN 29 1999

mtz

v.

Docket No. 1724 C.D. 1998

Pennsylvania Public Utility Commission,
Respondent

R-974104
R-974104C1 to
CY

ORDER

NOW, December 30, 1998, upon consideration of the Joint Motion of Petitioner, System Council U-10, International Brotherhood of Electrical Workers, and Respondent, Pennsylvania Public Utility Commission, in No. 1724 C.D. 1998, the motion is granted and the following relief is ordered:

1. The issues raised in the Petition for Review in No. 1724 C.D. 1998 are remanded to the Pennsylvania Public Utility Commission for further proceedings.
2. The Pennsylvania Public Utility Commission shall consolidate these issues on remand with the proceeding that is currently before the Commission at Docket No. R-00974104 concerning the Generation Auction Plan of Duquesne Light Company.
3. This remand is without prejudice to the right of Petitioner to address the issues that it raises in its Petition for Review, if necessary, through the filing of a subsequent Petition for Review upon the conclusion of the consolidated proceedings before the Pennsylvania Public Utility Commission.
4. The Petitions for Review at No. 1724 C.D. 1998 and No. 1593 C.D. 1998 are hereby severed, so that proceedings at No. 1593 C.D. 1998 will continue before this Court.

DOCUMENT
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CERTIFIED FROM THE RECORD
AND ORDER EXIT

[Signature]

S.J.

DEC 31 1998

[Signature]
Deputy Prothonotary - Chief Clerk

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DEC 31 1998
PA. P. U. C.
LAW BUREAU

Hospital Shared Services, et al.,
Petitioner

v.

Docket No. 1593 C.D. 1998

Pennsylvania Public Utility Commission,
Respondent

DOCKETED

System Council U-10, International
Brotherhood of Electrical Workers,
Petitioner

v.

Docket No. 1724 C.D. 1998

JAN 29 1999
mtz

Pennsylvania Public Utility Commission,
Respondent

R-974104
R-974104 C1 to C4

ORDER

NOW, December 30, 1998, upon consideration of the Joint Motion of Petitioner, System Council U-10, International Brotherhood of Electrical Workers, and Respondent, Pennsylvania Public Utility Commission, in No. 1724 C.D. 1998, the motion is granted and the following relief is ordered:

1. The issues raised in the Petition for Review in No. 1724 C.D. 1998 are remanded to the Pennsylvania Public Utility Commission for further proceedings.
2. The Pennsylvania Public Utility Commission shall consolidate these issues on remand with the proceeding that is currently before the Commission at Docket No. R-00974104 concerning the Generation Auction Plan of Duquesne Light Company.
3. This remand is without prejudice to the right of Petitioner to address the issues that it raises in its Petition for Review, if necessary, through the filing of a subsequent Petition for Review upon the conclusion of the consolidated proceedings before the Pennsylvania Public Utility Commission.
4. The Petitions for Review at No. 1724 C.D. 1998 and No. 1593 C.D. 1998 are hereby severed, so that proceedings at No. 1593 C.D. 1998 will continue before this Court.

CERTIFIED FROM THE RECORD
AND ORDER EXIT

[Signature]
S.J.

DEC 31 1998

DOCUMENT
FOLDER

[Signature]
Deputy Prothonotary - Chief Clerk

Scott J. Rubin
Attorney • Consultant

3 Lost Creek Drive • Selinsgrove, PA 17870 • (570)743-2233 • Fax: (570)743-8145 • sjrubin@ptd.net

December 31, 1998

ORIGINAL

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


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

Dear Mr. McNulty:

Enclosed for filing please find an original and three (3) copies of the Petition for Reconsideration, Modification, and Clarification of System Council U-10, IBEW, and Local 272, IBEW, in the above-referenced proceeding. A copy of this document has been served on all parties of record, as shown on the attached certificate of service.

Also enclosed is an extra copy of the document that I would appreciate having time-stamped and returned in the enclosed envelope. Thank you.

Sincerely,


Scott J. Rubin, Esq.

Enclosures

cc: All parties of record
Hon. John Quain
Hon. Robert Bloom
Hon. David Rolka
Hon. Nora Mead Brownell
Hon. Aaron Wilson, Jr.
Office of Special Assistants

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. R-00974104

029828

ORIGINAL

DOCKETED

PETITION FOR RECONSIDERATION, MODIFICATION, AND
CLARIFICATION
OF SYSTEM COUNCIL U-10, IBEW, AND
LOCAL 272, IBEW

JAN 06 1999

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Pursuant to 52 Pa. Code § 5.572, System Council U-10, IBEW ("System Council"), and Local 272, IBEW ("Local 272"), file this petition for reconsideration, modification, and clarification of the Opinion and Order entered by the Pennsylvania Public Utility Commission ("Commission") on December 18, 1998, in this proceeding. Specifically and as set forth in more detail below, System Council and Local 272 request reconsideration, modification, and clarification of the following aspects of the December 18 Order:

**DOCUMENT
FOLDER**

18 Order:

- The order should be modified to specifically grant the petition to intervene of Local 272;
- The order should be modified and clarified to remove the Commission's finding that the generation exchange with FirstEnergy Corporation "appears to be in the public interest," because the terms and conditions associated with that exchange, including any impacts on employees and local communities, are not yet known and have not been filed with the Commission; and
- The order should be modified to establish definite filing deadlines to ensure that Duquesne's auction process does not go too far before the Commission makes final rulings concerning whether the auction is in the public interest.

In support of this petition, System Council and Local 272 state as follows:

1. On May 29, 1998, the Commission entered an order in this proceeding that required Duquesne Light Company (“Duquesne”) to file a generation divestiture plan that included, *inter alia*, a discussion of “transitional issues and the resolution of those issues in a manner that is fair to customers, investors, the employees of the Company, local communities, and other affected parties.”

2. Duquesne filed its Generation Auction Plan on August 27, 1998. That filing contained a very brief discussion of labor issues, but no discussion whatsoever of the impact of Duquesne’s plan on its employees. That filing also did not even mention the impact of the plan on local communities.

3. On October 14, 1998, Duquesne amended its plan to include a transfer of generating and transmission assets between Duquesne and FirstEnergy Corporation (“FirstEnergy”). Duquesne provided an agreement in principle between itself and FirstEnergy, noting that the agreement was not final and that many terms and conditions remained subject to drafting and further negotiation. There was no discussion in the amended filing of the impact of the FirstEnergy transaction on the employees of either Duquesne or FirstEnergy or on local communities.

4. System Council filed a motion to suspend the proceeding on October 21, 1998. The Commission denied that motion by order entered November 19, 1998. However, in denying that motion, the Commission required Duquesne to file the final agreement with FirstEnergy and any agreements with Duquesne’s employees. The Commission also provided for additional comment periods after the filing of those agreements.

5. On November 5, 1998, Local 272, the representative of employees at FirstEnergy's Mansfield generating station, filed a petition to intervene and comments in this proceeding. No party has opposed the intervention of Local 272 in this proceeding.

Intervention of Local 272

6. The Commission's Order of December 18, 1998, refers to the comments that were filed by Local 272 (page 33), but does not discuss Local 272's petition to intervene. No party opposed Local 272's petition to intervene and it appears that the Commission simply overlooked this procedural matter. Therefore, Local 272 requests the Commission to modify its order to specifically grant Local 272's petition to intervene in this proceeding.

Finding that FirstEnergy Agreement Appears to be in the Public Interest

7. On pages 15 and 44 of its Order, the Commission finds that "the generation exchange with FirstEnergy appears to be in the public interest."

8. There is no basis for the Commission to make such a finding at this time. All that Duquesne has filed with the Commission is a non-binding agreement in principle with FirstEnergy that fails to include several critically important terms, including any discussion of labor-related issues or the impact on local communities.

9. Moreover, the Commission apparently overlooked and did not address the transfer of transmission assets that also is part of the agreement in principle between Duquesne and FirstEnergy. Duquesne has not provided any analysis of the effect of the transfer of certain transmission rights and assets on the safety and reliability of its system.

10. It is not possible for the Commission to determine whether the agreement between Duquesne and FirstEnergy is in the public interest, or even if it "appears" to be

in the public interest, unless and until: (a) Duquesne enters into a binding agreement with FirstEnergy and files that agreement with the Commission; (b) Duquesne and FirstEnergy explicitly set forth the impact of any such agreement on the employees of Duquesne and FirstEnergy and their plans for mitigating any such impacts; (c) Duquesne and FirstEnergy explicitly address the impact of any such agreement on local communities (both from changes in employment levels and from changes in tax revenues) and their plans for mitigating any such impacts; and (d) Duquesne explicitly sets forth the impact of any such agreement on its ability to ensure the reliable transmission and distribution of electricity to its retail customers.

11. The Commission's order of November 19, 1998, recognized the importance of knowing the terms of any binding agreements between Duquesne and FirstEnergy, as well as knowing the impact of that agreement and the auction plan on utility employees. That order established a procedure for filing such information with the Commission and for allowing the parties to respond to that information.

12. The Commission's order of December 18, 1998, continues to require Duquesne to follow the procedures set forth in the November 19 order. However, the Commission went further and made a finding that the "agreement" with FirstEnergy (which does not even exist) "appears" to be in the public interest.

13. System Council and Local 272 respectfully submit that the Commission erred in making any statement or finding about the proposed agreement between Duquesne and FirstEnergy. Without a binding agreement or any information about important aspects of the public interest (impacts on labor, local communities, and reliability), the Commission

has no basis for making a finding that the agreement is, or even “appears” to be, in the public interest.

14. Therefore, the Commission should modify and clarify its order of December 18, 1998, to remove any reference to the agreement with FirstEnergy appearing to be in the public interest.

Failure to Establish Time for Required Filings

15. System Council and Local 272 do not object to Duquesne being allowed to begin the first stage of the auction process (the solicitation of initial expressions of interest from potential bidders) at this time. However, Duquesne should not be permitted to proceed beyond that point unless and until the Commission makes final determinations that the auction and generation exchange with FirstEnergy are in the public interest.

16. System Council and Local 272 are concerned that the Commission has granted what appears to be open-ended approval to Duquesne to proceed with the auction through the conclusion of the bidding process, subject only to final Commission approval of the results of the auction. Such a procedure would present the Commission with a *fait accompli* – that is, either the Commission would have to approve the auction as submitted or Duquesne would have to start over again.

17. System Council and Local 272 are sensitive to the need for Duquesne to begin the auction process in a timely fashion, but Duquesne should not be permitted to begin stage 2 of the auction (the solicitation of definitive bids) unless and until the Commission issues a final order finding that the auction and generation exchange are in the public interest. As the Commission, System Council, and Local 272 have noted, such a finding cannot be made unless: (a) definitive, binding agreements have been entered into

between Duquesne and FirstEnergy and filed with the Commission; (b) the impacts of the auction and generation exchange on the employees of Duquesne and FirstEnergy have been evaluated; (c) the impacts of the auction and generation exchange on local communities have been evaluated; and (d) the impacts of the auction and generation exchange on the safety and reliability of Duquesne's transmission and distribution system have been evaluated.

18. In other words, the Commission should have placed a limit on what Duquesne can do before the Commission finds that the entire auction and generation exchange are in the public interest. To do otherwise would permit Duquesne to expend millions of dollars, and waste several months, on a process that might be found not to be in the public interest. It also will ensure that the other parties have a meaningful opportunity to address all aspects of Duquesne's plan and to ask the Commission to modify or reject aspects of the plan if such actions are needed to ensure that the plan is in the public interest.

19. Therefore, the Commission should modify its order to prohibit Duquesne from beginning stage 2 of the auction until the Commission issues a final order that finds the auction and generation exchange, as they may be modified by the Commission, to be in the public interest.

WHEREFORE, System Council U-10, IBEW, and Local 272, IBEW, respectfully request the Public Utility Commission to reconsider, clarify, and modify its Opinion and Order of December 18, 1998, as follows:

1. Modify the order to specifically grant Local 272's petition to intervene in this proceeding;
2. Modify and clarify the order to remove any reference to the agreement with FirstEnergy appearing to be in the public interest; and
3. Modify the order to prohibit Duquesne from beginning stage 2 of the auction until the Commission issues a final order that finds the auction and generation exchange, as they may be modified by the Commission, to be in the public interest.

Respectfully submitted,



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Dated: December 31, 1998

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Harrisburg, PA 17120

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RECEIVED

January 4, 1999

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

**DOCUMENT
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JAN 04 1999
PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

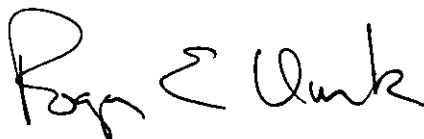
Dear Mr. McNulty:

Enclosed please find the original and three copies of the Environmentalists' Petition for Clarification and Reconsideration of the Commission's December 18, 1998 Order in the above-captioned proceeding concerning the generation exchange and generation auction plan of Duquesne Light Company.

This Petition is being served on all parties of record in accord with the attached Certificate of Service.

I have also enclosed an extra copy of the document that I ask you to time-stamp and return to me in the enclosed stamped envelope.

Sincerely,



Roger E. Clark
Attorney for the Environmentalists

Enclosure: Petition for Clarification and Reconsideration of the Environmentalists
Certificate of Service

Copies: The Honorable John M. Quain The Honorable Nora Brownell
 The Honorable Robert K. Bloom The Honorable Aaron Wilson
 The Honorable David W. Rolka Office of Special Assistants

All parties of record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 04 1999

PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

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

Docket No. R-00974104

ORIGINAL

PETITION FOR
CLARIFICATION AND RECONSIDERATION
OF THE
ENVIRONMENTALISTS

DOCKETED
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INTRODUCTION

On December 18, 1998 the Pennsylvania Public Utility Commission ("Commission") entered an Opinion and Order (the "Order") in the above-captioned docket concerning the generation exchange and generation auction plan of Duquesne Light Company ("Duquesne" or "Company"). The Environmentalists believe that the Order contains several unresolved issues regarding the proposed exchange and auction and therefore file this Petition for Clarification and Reconsideration.

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THE FIRST ISSUE FOR CLARIFICATION:

The sixteen open issues which the Company must address in subsequent filings to the Commission and the parties should be explicitly delineated.

Throughout the Order, the Commission lists numerous issues which must be addressed in future filings by the Company. However, these issues are not all repeated in the ordering paragraphs of the Order. The Environmentalists urge the Commission

to clarify its Order by accurately listing all of the issues which the Company must address before the Commission will issue its final approval of the generation exchange and the auction. According to our reading of the Order, these issues include:

- (1) the final generation exchange agreement with First Energy (see the Resolution section of Issue I.A, page 15 and Ordering Paragraph 2, page 44).¹
- (2) *the due diligence report (see the Resolution section of Issue I.A, page 15).*
- (3) the final resolution of the labor issues (see the Resolution section of Issue I.A, page 15) and an assessment of the impacts on employees (see the Resolution section of Issue V, page 35).
- (4) an assessment of the impacts on local communities (see the Resolution section of Issue V, page 35).
- (5) the final resolution of the environmental liabilities and other related issues (see the Resolution section of Issue I.A, page 15, and the Resolution section of Issue VI.F, page 43).
- (6) the final resolution of the safety issues (see the Resolution section of Issue I.A, page 15) and an assessment of the steps necessary to maintain reliable service in a reasonable, cost-effective manner (see the Resolution section of Issue VI.D, page 41 and Ordering Paragraph 10, page 45).
- (7) a report addressing the method by which the Company will transfer the nuclear decommissioning funds to FirstEnergy in the most tax-advantageous manner (see the Resolution section of Issue I.B, pages 16-17).
- (8) a report on the results of the collaborative discussions with the parties concerning the POLR service, with a showing how the Company will provide POLR customers with the equivalent competitive benefits of the CDS process (see the Resolution section of Issue III, page 24 and Ordering Paragraph 6, page 45).

¹It is interesting to note that the Agreement in Principle expected that the final generation exchange agreement would be executed on or before December 21, 1998. Agreement in Principle, October 14, 1998, paragraph 22, page 9. No final agreement has been shared with the parties to date.

- (9) a proposal by the Company for auction accounting protocols, developed either by a technical conference with the parties or, if that fails, by the Company (see the Resolution section of Issue IV.A, page 27 and Ordering Paragraph 7, page 45).
- (10) periodic updates on the auction process (see Ordering Paragraph 4, page 45).
- (11) a report on the Company's efforts to achieve the maximum proceeds from the auction, addressing such issues as the bundling of assets (see the Resolution section of Issue II, page 19).
- (12) the final agreements with the winning bidders of the auction (see the Resolution section of Issue I.A, page 15).
- (13) a report addressing the market value of any unsold generation assets (see the Resolution section of Issue IV.C, page 30).
- (14) a report addressing market power and competition issues (see the Resolution section of Issue VI.B, page 36 and Ordering Paragraph 12, page 46).
- (15) a plan for recovering ancillary service costs (as stated in the Resolution section of Issue VI.E, page 42).
- (16) a final accounting for stranded costs, including a full accounting of the Beaver Valley II lease termination costs (see the Resolution section of Issue IV.B, pages 28-29).

These issues should be explicitly delineated so that there is no question about what the Company must address in subsequent filings in order to obtain final Commission approval of its plans for the generation exchange and the auction.

THE SECOND ISSUE FOR CLARIFICATION:

The Commission should provide an explicit sequence of steps which the Company must follow in proceeding with the generation exchange and auction.

The Environmentalists urge the Commission to further clarify its Order by providing an explicit sequence of steps which the Company must follow in proceeding with the generation exchange and auction. The Order states that “[w]e are not granting “final approval” of the generation exchange at this point”² and that final approval would be granted only after the Company submits much additional information³ to the Commission and the parties for review and comment. Order, page 15. Despite this lack of final approval, the Order allows the Company to proceed with the auction. Ordering Paragraph 3, page 44.

The Environmentalists believe that the Order creates significant uncertainty about when the Company must submit the additional information necessary to obtain final Commission approval and how far the Company can proceed with the auction without this final approval. A Monday-morning-quarterback analysis of a fully-completed auction would not be in the public interest. Instead, the Environmentalists recommend a more precise schedule of actions which has definite steps:

²Instead, the Order only found that “the generation exchange with FirstEnergy *appears* to be in the public interest ...” Order, ordering paragraph 3, page 44 (emphasis added). The Order’s finding on the public interest of the generation exchange is as non-binding as the Agreement in Principle submitted by the Company.

³See the Environmentalists’ first issue for clarification, which seeks a complete listing of the many issues which must be addressed in additional filings.

(1) The Company may proceed with soliciting nonbinding indicative bids (the first phase of the bidding) at this time.

(2) Before the Company determines and announces the short list of bidders and proceeds with the second phase of bidding, it must make a filing to the Commission and to the parties that addresses issues one through nine on our list. Following the comment process provided for in the Commission's Order of November 19, 1998, the Commission determines whether it will approve the Company's proposed treatment of these issues.

(3) After obtaining Commission approval of the Company's treatment of issues one through nine, the Company may announce the short list of bidders, solicit the second round of bids and make a preliminary selection of the successful bids.

(4) Before the Company may enter into final agreements with the successful bidders, it must make it must make a filing to the Commission and to the parties which addresses issues ten through sixteen on our list and any changes to the Company's earlier filing on issues one through nine. Following the comment process provided for in the Commission's Order of November 19, 1998, the Commission determines whether it will approve the Company's proposed treatment of these issues.

(5) After obtaining Commission approval of the Company's treatment of issues ten through sixteen, the Company may negotiate final agreements with the successful bidders.

(6) Following the comment process provided for in the Commission's Order of November 19, 1998, the Commission reviews the final agreements and determines whether to give final approval to the generation exchange and auction.

This recommendation allows the Company to proceed with the auction while at the same time giving the Commission and the parties the opportunity for a reasoned review of the key issues.

THE THIRD ISSUE FOR CLARIFICATION:

The Order fails to address the public interest consequences of the generation exchange's transmission provisions.

The Environmentalists' comments on the Company's proposed generation exchange noted three problems with the generation exchange's transmission provisions:

Comment 17: The exclusion of transmission capacity for the First Energy plants reduces their market value. ...

Comment 18: The exclusion of transmission capacity for the First Energy plants will likely limit their ability to serve customers in the Duquesne service territory. ...

Comment 19: Does the transfer of transmission to First Energy exacerbate transmission access problems for customers in the Duquesne service territory? ...⁴

⁴*Comments of the Environmentalists on Duquesne Light Company's Generation Auction Plan*, filed November 9, 1998, pages 13-15.

Other than briefest mention of the transmission issue in its synopsis of the Environmentalists' comments on the merits of the generations exchange (see Issue I.A, page 12), the Order is completely silent about these series of problems with the generation exchange.

The Environmentalists believe that the asymmetrical treatment of transmission greatly reduces the value of the FirstEnergy plants in comparison to the Duquesne units and is contrary to the interest of the Duquesne ratepayers. The buyers of the units formerly owned by FirstEnergy will have to go to FirstEnergy to purchase transmission. There are no assurances in the Company's filing that such services will be made available and at a reasonable price. The combination of FirstEnergy taking power from the swapped plants in the Duquesne service territory and the buyers of the FirstEnergy plants choosing not to pay to transmit the power back to Duquesne customers will tend to reduce the power available in the Duquesne service territory and thus raise the price of power for Pennsylvania customers.

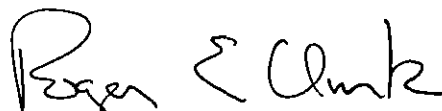
The Order should address this important aspect of the public interest and should require the Company to address this issue in its subsequent filings with the Commission.

CONCLUSION

The Environmentalists respectfully request that the Commission reconsider its Order of December 18, 1998 and clarify the Order as described above.

Respectfully submitted,

The Environmentalists
by:



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Date: January 4, 1999

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

Application of Duquesne Light :
Company for Approval of its :
Restructuring Plan :

JAN 04 1999
Docket No. R-00974104 PA PUBLIC UTILITY COMMISSION
PROTHONOTARY'S OFFICE

CERTIFICATE OF SERVICE

I hereby certify that I have served the Environmentalists' Petition for Clarification and Reconsideration of the Commission's December 18, 1998 Order in the above-captioned proceeding upon the following persons, in the manner specified and on the dates indicated:

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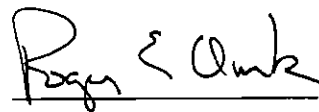
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January 4, 1999

COMMONWEALTH OF PENNSYLVANIA

DATE: January 6, 1999

SUBJECT: R-00974104

TO: Office of Special Assistants

FROM: *WJZ* James J. McNulty, Secretary

DOCKETED
JAN 06 1999

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS
RESTRUCTURING PLAN

Attached is copy of a Petition for Clarification and Reconsideration of the Environmentalists filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

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

wjz

DOCUMENT
FOLDER

DATE: January 6, 1999

SUBJECT: R-00974104

TO: Office of Special Assistants

FROM: *SRB* James J. McNulty, Secretary

DOCKETED
JAN 06 1999

APPLICATION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS
RESTRUCTURING PLAN

Attached is copy of a Petition for Reconsideration, Modification and Clarification of System Council U-10, IBEW(System Council) and Local 272, IBEW(Local 272) filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

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

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DOCUMENT
FOLDER

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January 6, 1999

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VIA HAND DELIVERY

DOCUMENT
FOLDER

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

Dear Secretary McNulty:

On December 22, 1998, the Duquesne Light Company ("Duquesne" or "Company") submitted a Fourth Compliance Filing regarding its stand-alone restructuring plan in the above-referenced proceeding. The Fourth Compliance Filing was submitted to address issues raised in the Commission's Order on Third Compliance Filing issued on December 17, 1998.

Based on our review on behalf of the Duquesne Industrial Intervenors ("DII"), the Fourth Compliance Filing appears to implement the modifications required by the Commission's Order on Third Compliance Filing, as well as the various issues adjudicated in the Commission's Final Order entered on May 29, 1998, the Order on Compliance Filing entered on August 13, 1998, and the Order on Second Compliance Filing entered on October 16, 1998. Although the Company's language appears to be purposefully vague regarding the commitment to ensure compliance with the Customer Choice Act's transmission and distribution rate cap (see Fourth Compliance Filing, pp. 2-3), DII believes the Electric Distribution Company Tariff and Electric Generation Supplier Services Tariff submitted with the Fourth Compliance Filing will allow the parties to move expeditiously and effectively to a full competitive electric generation market in the Duquesne service territory.

Consequently, DII has no further comment regarding Duquesne's stand-alone restructuring plan at this time. DII reserves the right to submit further comments as appropriate and necessary regarding the pending asset divestiture plan and generation asset exchange.


63

James J. McNulty, Secretary
January 6, 1999
Page 2

Please do not hesitate to contact the undersigned if you have questions or need more information regarding the DII position on the Duquesne Light Company's Fourth Compliance Filing.

Very truly yours,

MCNEES, WALLACE & NURICK

By 
James P. Dougherty
Pamela C. Polacek

Counsel to the Duquesne Industrial Intervenors

PCP:jag

c: Chairman John M. Quain (w/enc.) (via hand delivery)
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Commissioner Nora Mead Brownell (w/enc.) (via hand delivery)
Commissioner Aaron Wilson, Jr. (w/enc.) (via hand delivery)
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Robert Bennett, Bureau of Fixed Utility Services (w/enc.) (via hand delivery)
Certificate of Service (via first class mail)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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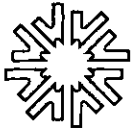
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Harrisburg, Pennsylvania 17105-3265

Re: Compliance Tariff Filing
Docket No. R-00974104

Dear Mr. McNulty:

Enclosed please find a replacement Original Page No. 3 to Duquesne Light Company's Tariff Electric – PA. P.U.C. No. 18. In the Compliance Filing made on December 22, 1998, the Table of Contents on Page No. 3 contained a number of incorrect page references. I ask that the enclosed Original Page No. 3 be inserted into the officially filed tariff to rectify the error.

Thank you for your attention to this matter.

Sincerely,

Morgan K. O'Brien
Vice President - Finance

Enclosure

c: Mr. Robert F. Wilson, Manager – Bureau of Fixed Utility Services w/enclosure

DOCUMENT
FOLDER



bc: Ms. N. J. D. Krajovic w/enclosure
Mr. M. G. Karl "
Ms. E. F. DeRiso "

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January 13, 1999

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JAN 13 1999

VIA FEDERAL EXPRESS

James J. McNulty
Prothonotary
Pennsylvania Public Utility Commission
North Office Building, Room B-20
Harrisburg, PA 17101

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Enclosed please find an original and four copies of Duquesne Light Company's Answer to Petitions for Reconsideration, Modification and Clarification to be filed in the above-captioned proceeding. Please stamp the extra copy and return it in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter. If you have any questions, please call me at (202) 371-7049.

Sincerely,



Kathleen L. Barrón
Counsel to Duquesne Light Company

Enclosures

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JAN 13 1999

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY)
COMMISSION)

v.)

Docket No. R-00974104

DUQUESNE LIGHT COMPANY)
Application to Approve Restructuring)
Plan Pursuant to 66 Pa.C.S. § 2806(d))

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JAN 20 1999

ANSWER OF DUQUESNE LIGHT COMPANY
TO PETITIONS FOR RECONSIDERATION, MODIFICATION AND
CLARIFICATION

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Pursuant to 52 Pa. Code § 5.572(e), Duquesne Light Company ("Duquesne") hereby responds to the petition for reconsideration, modification and clarification filed by System Council U-10, IBEW ("System Council") and Local 272, IBEW ("Local 272") and the petition for clarification and reconsideration filed by the Environmentalists of the Pennsylvania Public Utility Commission's ("Commission's") Opinion and Order entered on December 18, 1998, in this proceeding.

**I. SYSTEM COUNCIL AND THE ENVIRONMENTALISTS HAVE NOT
RAISED NEW AND NOVEL ARGUMENTS**

In order to meet the Commission's standard for reconsidering a prior ruling, a petitioner must raise "new and novel arguments, not previously heard, or

considerations which appear to have been overlooked or not addressed by the commission." *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. PUC 553, 51 P.U.R.4th 284, 289 (1982). Each of the issues of which System Council and the Environmentalists seek reconsideration has been raised and addressed by the Commission in the December 18, 1998 Order. The petitions for reconsideration rehash each petitioners' prior comments, and no considerations have been overlooked or not addressed.¹ For this reason, then, the petitions should be denied.

II. THERE IS NO REASON TO MODIFY THE COMMISSION'S ORDER TO REQUIRE ADDITIONAL COMMISSION APPROVAL

Both System Council and the Environmentalists complain that the Commission's Order allows Duquesne to conduct the auction without interim Commission approval. System Council at 5; Environmentalists at 4-6. Each proposes that the Commission modify its Order to require Duquesne to seek Commission approval before continuing with the second phase of bidding.

The Commission has found good cause to permit Duquesne to proceed with the auction to the execution of binding agreements with winning bidders, subject to 1) final Commission approval of all matters within its jurisdiction,

¹ The proposal that Duquesne should be required to obtain additional Commission approval after the first round of bidding was noted on page 18 of the Order, and the concern regarding Duquesne's exchange of transmission assets as a part of the transaction with FirstEnergy Corp. ("FirstEnergy") was noted on pages 11-12 of the Order.

2) a requirement that Duquesne provide the Commission with periodic updates on its progress,² and 3) the filing of certain documents (such as the Generation Exchange Agreement with FirstEnergy, which has not yet been executed). Order at 45, 5. System Council has now twice attempted to delay the auction, and its proposal has twice been rejected by the Commission.³ There simply is no reason to delay the auction for additional Commission approvals in advance of the selection of winning bidders. The Commission should adhere to the process approved in the Order.

III. THE ORDER NEED NOT BE CLARIFIED AS REQUESTED BY THE ENVIRONMENTALISTS

The Environmentalists request that the Commission rewrite the ordering paragraphs of its Order to repeat certain requirements it alleges are listed in the text. Petition at 1-3. This is, of course, unnecessary as the Commission's Order speaks for itself. *Pennsylvania Public Utility Comm'n v. Duquesne Light Co.*, 63 Pa. PUC 541, 1987 Pa. PUC LEXIS 325, *6 (1987). Furthermore, it is inappropriate for

² Duquesne is fully committed to keeping the Commission and its staff informed of the status of the auction process, and has made several information filings since the date of its Generation Auction Plan. See Letter of J. Moot to J. McNulty (Nov. 5, 1998) and Letter of J. Moot to J. McNulty (Oct. 14, 1998).

³ On October 21, 1998, System Council moved the Commission to suspend this proceeding, which was denied in the Commission's November 19, 1998 Order.

one party to rewrite a Commission Order to its liking once it has been issued.⁴ Both because it would be unnecessary and because its list is inaccurate (*see n. 3 supra*), this request should be denied as well.

IV. THE COMMISSION'S PRELIMINARY FINDING THAT THE GENERATION EXCHANGE APPEARS TO BE IN THE PUBLIC INTEREST IS JUSTIFIED

System Council requests that the Commission modify its Order to remove the Commission's finding that the proposed generation exchange with FirstEnergy "appears to be in the public interest." Petition at 3-5; Order at 15, 45. The commission explicitly noted that it was not granting "final approval" of the Generation Exchange as such approval would be impossible without knowing the terms of the Generation Exchange Agreement. Order at 15. Instead, the Commission ruled, based on the Agreement in Principle, that the known terms of the Ex-

⁴ Moreover, the Environmentalists' list of items is misleading, as it includes items on which the Commission did not order Duquesne to report. For example, the Environmentalists state that Duquesne is required to submit "a report addressing the method by which it will transfer the nuclear decommissioning funds to FirstEnergy in the most tax-advantageous manner." Petition at 2. The Commission did not require such a report, but stated that it would "continue to have the obligation to review the method by which the funding amounts may be transferred." Order at 17. The Environmentalists misstate the obligation to file a report or plan at the Commission with respect to several other issues as well, such as items 11, 13 and 15 on its list. The Environmentalists also cite the Commission's Order as demanding "a showing how the Company will provide POLR customers with the equivalent competitive benefits of the CDS process." Petition at 2. That burden is found nowhere in the Order.

change comport with the public interest. System Council has cited no authority to support its claim that such a finding is impermissible at this preliminary stage of the proceeding. As such, the Commission's finding should stand.⁵

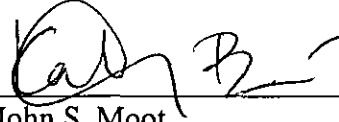
V. THE TRANSMISSION PROVISIONS OF THE GENERATION EXCHANGE ARE FULLY CONSISTENT WITH THE PUBLIC INTEREST

The Environmentalists repeat the contention that the provision for the exchange of transmission assets in the Generation Exchange Agreement in Principle "is contrary to the interest of Duquesne ratepayers." Petition at 6-7. The availability of transmission service and the amount of power available to Duquesne's current customers will be the same both before and after the Exchange. Transmission over facilities retained by FirstEnergy will be available on a non-discriminatory, open access basis under FirstEnergy's FERC-filed transmission tariff, at FERC-approved rates. Just as it is today, the power available in Duquesne's service territory will be determined by the interplay of supply and demand. There is therefore no reason to expect that the Exchange will "reduce the power available" in Duquesne's service territory as alleged by the Environmentalists.

WHEREFORE, the Commission should deny the petitions for reconsideration, modification, and clarification.

⁵ The remaining issue raised by System Council's petition is the intervention of Local 272, to which Duquesne has no objection.

Respectfully submitted,



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Dated: January 13, 1999

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY)
COMMISSION)**

v.)

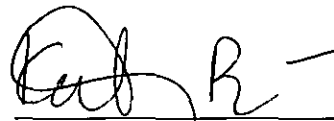
Docket No. R-00974104

**DUQUESNE LIGHT COMPANY)
Application to Approve 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 Answer of Duquesne Light Company by first-class mail upon the participants on the attached service list in accordance with Section 1.54 of the Commission's regulations.

Dated this 13th day of January, 1999.



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