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February 7, 2000

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

Re: Pennsylvania Public Utility Commission v.
Duquesne Light Company, Application of
Duquesne Light Co. for Certificate of Public
Convenience and for Commission Approval
of the Transfer of Property Used or Useful in
the Public Service
Docket No. R-00974104
Docket No. A-110150F0023

Dear Secretary McNulty:

Enclosed for filing please find an original and ten (10) copies of the Office of
Consumer Advocate's Comments in the above-captioned proceeding.

Copies have been served upon all partes of record as shown on the attached
Certificate of Service.

Sincerely,

Stephen J. Keene
Assistant Consumer Advocate

BT

Enclosures

cc: All Parties of Record
*55633

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DUQUESNE LIGHT COMPANY

Application of Duquesne Light Company for
Certificate of Public Convenience and for
Commission Approval of the Transfer of Property
Used or Useful in the Public Service

Docket No. R-00974104

Docket No. A-110150F0023

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COMMENTS
OF THE OFFICE OF CONSUMER ADVOCATE

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Stephen J. Keene
Assistant Consumer Advocate

DOCKETED
FEB 08 2000

For:

Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
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DATED: February 7, 1999

I. INTRODUCTION

The Office of Consumer Advocate ("OCA") is in receipt of the Application of Duquesne Light Company ("Duquesne") for Certificate of Public Convenience and for Commission Approval of the Transfer of Property Used or Useful in the Public Service ("Application"). In this Application, Duquesne requests Commission approval to transfer Duquesne's interest in seven electric generating stations and related transmission assets, to Orion Power Holdings (Orion), the winning bidder in Duquesne's Generation Auction. Orion has agreed to pay \$1.705 billion for the generating assets, transmission assets and the rights and obligations to supply power at wholesale to serve Duquesne's provider of last resort customers until the expiration of the CTC. As a result of the Auction, Duquesne's stranded costs have been significantly reduced, and Duquesne will be able to end its stranded cost collection through its CTC in 2001 for many major rate classes.

In this Application, Duquesne requests that the Commission (1) approve the transfer as consistent with the public interest; (2) issue certificates of public convenience approving the transfer; (3) issue an Order approving Duquesne's generation and CTC rates for the transition period; (4) issue an Order approving the tariff language that has been modified to reflect the Auction, the new rates, completion of the phase-in, and removal of the ECR; and (5) issue an Order finding that allowing Cheswick, Elrama, Brunot Island and Phillips plants to be "eligible facilities" under PUHCA will benefit consumers, is in the public interest, and does not violate Pennsylvania law. As Duquesne also notes in its Application, there will be a final accounting of the auction proceeds and a CTC reconciliation after the auction closing date with Orion.

The Office of Consumer Advocate has reviewed Duquesne's Application and provides the following Comments.

II. COMMENTS

- A. The Commission Should Make Clear That Its Action In This Application Does Not Alter Duquesne's Obligation Under The Electricity Generation Customer Choice And Competition Act To Continue As Provider Of Last Resort Until the Commission Explicitly Approves An Alternative Provider Of Last Resort.

According to the Company's Application, most of the Company's stranded costs will have been recovered by the end of 2001, and the CTC will terminate for those rate schedules for which stranded costs have been fully collected. Application at 21. Duquesne, in its Application, suggests that at the time the CTC terminates for a class, it will no longer retain any obligation as POLR for that rate class. As part of this Application, however, Duquesne has not made any proposal regarding the provision of POLR service after the CTC expires. This is a particularly important problem since the CTC will end in 2001 for many major rate classes and will actually end in a few months, at closing, for some classes.

It is the OCA's understanding that Duquesne intends to meet with interested parties over the next few weeks with the goal of developing and submitting a proposal regarding POLR after the expiration of the CTC. The OCA is committed to working with Duquesne and other interested parties in a collaborative effort to develop a proposal for the provision of POLR service after the termination of the CTC which will ensure that POLR customers are provided safe, reliable service at a reasonable price. The OCA remains concerned, however, that the CTC for many of the major classes will conclude before this process is completed. In the interim, the OCA submits that *Duquesne must still serve as POLR for those rate classes whose CTC has expired until such time as the Commission approves a new POLR plan or approves an alternative provider of last resort for Duquesne's service territory.*

In this case, the OCA submits that it is important for the Commission to make clear that Duquesne retains its POLR obligations, even after the CTC expires, until this issue is resolved. Under the Act, Duquesne retains this obligation until the Commission approves another provider of last resort. Specifically, the Act states:

Electric distribution companies should continue to be provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the commission.

66 Pa.C.S. §2802(16). The Act also provides that at the end of the transition period, the Commission “shall promulgate regulations to define the electric distribution company’s obligation to connect and deliver and acquire electricity.” 66 Pa.C.S. §2807(e)(2). Therefore, the Commission should make clear that its action in this case does not relieve Duquesne of its obligation to serve as POLR unless and until such time as the Commission explicitly resolves the issue of provider of last resort service.

B. Rate RH Shopping Credit

The OCA continues to have concern over the treatment of Rate RH customers when the new CTC and shopping credit go into effect. As the OCA explained during earlier phases of these proceedings, the Rate RH shopping credit will be very low once the new CTC and shopping credits are put in place. The average shopping credit for Rate RH is currently equal to the Pilot Program incentive credit of 3.93 ¢/kwh. Once this Application is approved and the Auction closes, the average shopping credit for this rate schedule will drop to 2.62 ¢/kwh for the remainder of year 2000. In 2001 it will increase slightly to an average of 2.71 ¢/kwh. The OCA remains concerned that these shopping credit levels will not provide Rate RH customers with a meaningful opportunity

to participate in the competitive market.¹

More importantly, the OCA is concerned that Rate RH customers who are currently shopping under the Pilot credit of 3.93 ¢/kwh will experience not only a significant loss of *anticipated savings when the shopping credit drops to 2.62 ¢/kwh*, but an actual increase in rates over what they were paying under the bundled RH rate. A Rate RH customer who is shopping and purchasing from an alternative provider for more than 2.62¢/kwh on average will experience total rates higher than Duquesne POLR customers.²

Given these circumstances, the OCA submits that certain measures must be taken to inform Rate RH customers, particularly Rate RH customers who have switched or are switching to *alternative suppliers, of the impact arising from this dramatic change in shopping credit*. These customers must also be fully apprised of their alternatives. At a minimum, the OCA submits that the Commission should direct the following actions:

- Require Duquesne to set a date certain for the change in the Rate RH shopping credit that provides customers with sufficient time to plan and arrange a switch of suppliers or return to POLR service if they so desire.

¹ In earlier phases of these proceedings, the OCA argued against Duquesne's proposal to significantly reduce the level of the Rate RH shopping credit. The OCA recommended that the shopping credit level be established after the auction results were known. The Commission approved Duquesne's proposal and Orion has submitted a bid based on Duquesne's shopping credit levels. While the OCA would like to continue to work with Duquesne and Orion to determine if there is another solution to the Rate RH problem, the OCA submits that at this point, the Commission must take steps to ensure that Rate RH customers, and all other customer classes experiencing a decrease in the shopping credit, are fully informed about this reduction in the shopping credit level.

² In response to informal discovery, Duquesne indicated that approximately 2588 or 11.2% of the 23,000 Rate RH customers are being served by alternative providers.

- Direct the Company to develop an information campaign specifically targeted to Rate RH customers. This campaign should (1) alert each Rate RH customer of the impact from the change in shopping credit, (2) explain how to compare prices with the new shopping credit as well as how to evaluate other attributes of the service, (3) explain how to search for and select a supplier with the new shopping credit, and (4) explain how to return to Duquesne POLR service.
- For Rate RH customers who have switched to an alternative supplier, in addition to the above information, the Company should be directed to provide further information to each customer on their termination rights under their contracts and termination procedures so that the customer can terminate their arrangements if they so desire.

The OCA also recommends that all suppliers serving Rate RH customers be fully involved in this process. The Commission should ensure that all suppliers serving Rate RH customers are involved in the process and that they provide the necessary information to Duquesne so that informational materials can be quickly developed.

As noted above, the OCA will continue to work with Duquesne, Orion and alternative suppliers to determine other potential solutions to this problem. The OCA submits, however, that Rate RH customers must be made fully aware of this change which may drastically alter the economic basis of their decisions to shop for alternative suppliers.

C. Disclosure Of Customer Information To Orion

The POLR Agreement requires Duquesne to provide certain customer information

to Orion, including name, address and telephone number. POLR Agreement at 18. At the outset, the OCA questions whether it is necessary for Orion, as a wholesale supplier of POLR power supply to Duquesne, to have the name, address and telephone number of Duquesne's retail customers. The OCA submits that the information necessary for Orion to conduct power supply planning can be provided by Duquesne without the disclosure of such information. The OCA recommends that only customer information necessary to Orion's functions should be disclosed.

If, however, the Commission does authorize the release of customer information to Orion, the OCA submits that customer information must continue to be safeguarded pursuant to the Commission's Customer Information Disclosure Regulations at 52 Pa.Code §54.8, relevant Commission Orders, and the provisions of the Supplier Tariff. While it appears as though Orion has agreed to comply with the Commission regulations, Orders and Supplier Tariff, the OCA seeks clarification on this point. POLR Agreement at 41.

Importantly, the OCA submits that at least the following safeguards must apply: (1) Orion's use of the customer information must be limited to Orion's generation and power supply planning functions, (2) Orion may not release or sell customer information to any other entity without the customer's express affirmative consent; and (3) Orion must abide by all Commission regulations and Orders, as well as the Duquesne Supplier Tariff, regarding the confidentiality of customer information.

D. The Company Should Provide Additional Support And Explanation Of The Final Transaction Costs Prior To The Time It Seeks Approval Of The Final Accounting Of Transaction Costs.

In Appendix B of its Application, the Company has presented its total transaction costs which will be offset against the proceeds of the Auction. App. B at 3-8. Many of these

transaction costs are projected and the Company is not requesting final approval of the transaction costs set forth in Appendix B at this time. The Company has proposed that it submit a final accounting to the Commission within 60 days of the closing of the Auction. Application at 18.

According to the Company's filing:

The parties may, at that time, submit any comments or questions they may have regarding specific auction-related transaction costs. As the Commission held in the July Order, "at the conclusion of the Auction, the Commission will engage in a review of all costs incurred to assure that the transaction costs are just, reasonable and prudent." July Order at 26.

Application at 18, fn. 11.

The OCA generally agrees with Duquesne that a final determination of the justness, reasonableness and prudence of the transaction costs should be made after the Auction has closed since these costs will not be determinable until that point in time. The OCA submits that during the final accounting, all transaction costs must be determined by the Commission to be just, reasonable, verifiable, necessary and prudent.

In order to provide the parties with sufficient information to review the Company's final transaction costs, the OCA submits that the Company should provide additional support and explanation for the various transaction costs claimed in Appendix B as soon as such information is available. For instance, the Company has identified various legal, consulting and investment banking fees which need to be verified before the Commission can approve them as necessary, auction-related transaction costs. App. B at 4. The Company also identified incremental purchase power costs from the Summer of 1999 as an additional transaction cost. App. B at 6. If the Company seeks to recover such an expense out of the proceeds of the Auction, a more detailed

explanation must be provided. Finally, the Company has identified "Miscellaneous O&M" expenses of \$5,397,000 for recovery. During the final accounting, the Company must provide additional support and explanation for such a claim.

In addition, once the Auction has closed, and the remaining transaction costs have been determined, the Company should provide additional supporting information on those final transaction costs to interested parties. The OCA would also urge the Company to convene technical conferences as necessary to answer any questions which the parties may have about the final accounting of transaction costs.

E. Provisions For A Refund Or Recovery Mechanism May Still Be Necessary To Effect A Final True-Up For Over Or Under-Recoveries Of The CTC.

The Company has proposed to employ an ongoing reconciliation of CTC collections to reflect changes in sales volumes which may occur during the CTC recovery period. Application at 21. The Company will monitor CTC recoveries by rate schedule on a monthly basis at first, and then on a daily basis as full amortization of the stranded costs allocated to a given rate schedule is approached. Id. This reconciliation will be reported to the Commission annually. Application at 21 n. 17. On the day that recovery of stranded costs is complete for a given rate schedule, the CTC for that rate schedule will cease. Application at 21. The Company states that this approach will eliminate the need to develop a refund or recovery mechanism to effect a final true-up for under or over-recoveries. Id.

While the OCA generally agrees with this approach, it does have some concerns that the data utilized for the monthly, and then daily, reconciliations, and the time lag in receipt of this data, may mean that the data is not accurate enough to ensure that there will be no over-recoveries

from customers. The OCA submits that in the event that such monthly and daily reconciliations still result in an over-collection of stranded costs for any customers, that a refund mechanism should be used to effect a final true-up for those customers.

III. CONCLUSION

Subject to the above Comments and clarifications, the OCA does not oppose the relief requested by Duquesne in this Application. As set forth above, however, the OCA urges the Commission to direct Duquesne to immediately initiate an informational campaign for its Rate RH customers and any other customer classes whose shopping credit levels will be reduced at the conclusion of the Auction.

Respectfully submitted,



Stephen J. Keene
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Tanya J. McCloskey
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
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Dated: February 7, 2000

*56703

CERTIFICATE OF SERVICE

Re: Application of Duquesne Light Company or Certificate
of Public Convenience and for Commission Approval of
the Transfer of Property Used or Useful in the Public Service
Docket Nos. R-00974104 and A-110150F0023

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

Dated this 7th day of February, 2000

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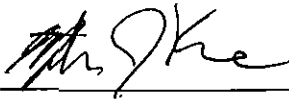
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Small Business Advocate

February 7, 2000

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HAND_DELIVERED

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

Joint Application of DQE Inc. (DQE), Allegheny Power
System, Inc. (APS), and AYP Sub, Inc. (AYP) for approval
of the transfer by merger of the property and rights
of Duquesne Light Company to APS
Docket No. A-110150 *F0023*

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

00FEB-7 PM 3:43

RECEIVED

Dear Mr. McNulty:

I am delivering for filing today the original plus three copies of the
Comments on behalf of the Office of Small Business Advocate in the above-
captioned matter.

A copy of the Comments are being 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: Parties of Record
Mr. Brian Kalcic

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

Docket No. R-00974104

v.

and A-110150 *F0023*

Duquesne Light Company

Application of Duquesne Light Company
for Certificate of Public Convenience and for
Commission Approval of the Transfer of
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COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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SECRETARY'S BUREAU

The Office of Small Business Advocate ("OSBA") submits these comments on the transfer of Duquesne Light Company's ("DLC" or "Duquesne") generation assets to the winning bidder and generation property transferee, Orion Power Holdings, Inc. ("Orion") and the effects of the transfer on the restructured electric service of Duquesne's small business customers.

General Comments

The OSBA believes that the competitive market will offer substantial savings opportunities for small business customers in Duquesne's service territory. Consequently, the OSBA is pleased that the CTC for small business customers is now forecasted to retire within an eighteen month period from the conclusion of the transfer of DLC's generation assets to Orion (whereupon the transition to competition will be complete).

At this time, the OSBA finds the proposed post-auction tariff rate for the GS/GM class to be reasonable and in compliance with the Commission's Third Compliance Order entered,

DOCKETED

FEB 09 2000

December 17, 1998. Upon submission of Duquesne's post-auction CTC reconciliation filing,¹ the OSBA will carefully review the actual tariffed CTC recovery to date (by rate class) and provide the Commission with further comments as may be appropriate.

Special Concerns

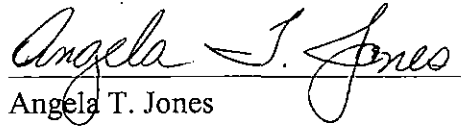
As stated in the Petition, "Duquesne proposes to employ an ongoing reconciliation for changes in sales volumes whereby CTC recoveries by rate schedule are monitored on a monthly and then daily basis as full amortization of the stranded costs allocated to a given rate schedule is approached." Application of Duquesne Light Co. For Certificate of Public Convenience and for Commission Approval of the Transfer of Property Used or Useful in the Public Service, Docket No. A-110150, dated December 22, 1999, at 21 (footnote deleted). The OSBA is concerned about the frequency with which DLC intends to submit CTC reconciliation updates, as it affects the OSBA's ability to assess when the actual CTC retirement will occur for the small business customer class. The OSBA understands that DLC may provide a formal proposal on the frequency and the vehicle of reporting said data once the auction closes in the post-closing filing. The OSBA will revisit this issue within the context of Duquesne's post-closing filing.

The OSBA is also concerned about the timing and content of communications by Duquesne to its customers as the CTC retirement date approaches. The retirement of the CTC has consequences with respect to the choosing of an alternate supplier. Therefore, the OSBA recognizes that provider of last resort issues need to be resolved before Duquesne can formally propose what it should be informing customers, and the frequency of that communication. The OSBA looks

¹ Duquesne has proposed to submit this filing within sixty days of the auction closing.

forward to actively participating in any proceedings or forums on such topics and reserves its rights to comment within the context of such forums or proceedings.

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: February 7, 2000

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 :

Joint Application of DQE Inc. (DQE), :
Allegheny Power System, Inc. (APS), :
and AYP Sub, Inc. (AYP) for approval :
of the transfer by merger of the : Docket No. A-110150
property and rights of :
Duquesne Light Company to APS :

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SECRETARY'S BUREAU

CERTIFICATE_OF_SERVICE

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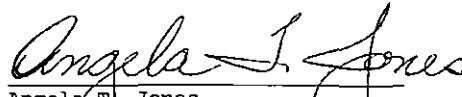
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FILE NO.

17182/02

*ALSO ADMITTED TO THE FLORIDA BAR

**Application of Duquesne Light Company
for A Certificate of Public Convenience and
for Commission Approval of the Transfer
of Its Interest in Seven Electric Generation
Stations and Related Transmission Assets
to Orion Power Holdings, Inc.**

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:
:

**Docket Nos. R-00974104 &
A-1110150F0023**

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James J. McNulty, Secretary
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Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

FEB 07 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed for filing are an original and three copies of the Petition to Intervene of Strategic Energy, L.L.C., together with a certificate of service.

Please call me if you have any questions about this filing.

Very truly yours,

RHOADS & SINON LLP

James H. Cawley
By: James H. Cawley

84

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company :
for A Certificate of Public Convenience and : Docket Nos. R-00974104 &
for Commission Approval of the Transfer : A-110150F0023
of Its Interest in Seven Electric Generation :
Stations and Related Transmission Assets :
to Orion Power Holdings, Inc. :

**Petition to Intervene
of Strategic Energy, L.L.C.**

DOCKETED
FEB 09 2000

Pursuant to 52 Pa. Code § 5.71 *et seq.*, Strategic Energy, L.L.C. ("SEL")
hereby petitions to intervene in the above-captioned proceeding and in support thereof
states as follows:

1. SEL, an Electric Generation Supplier holding license number A-
110025, is an energy management and consulting firm with clients in 48 states and 5
Canadian provinces for whom it procures and manages approximately \$1 billion of
natural gas and electricity.

2. Communications concerning this petition should be addressed to the
following persons, and the following should be included on the Commission's official
service list in the above-captioned proceeding:

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SECRETARY'S BUREAU

and

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3. Several SEL electric generation customers receive transmission and distribution services from Duquesne Light Company ("DLC"), and, therefore, SEL has a direct interest in this proceeding that cannot be adequately represented by any other party.

4. SEL has many concerns and questions regarding matters contained within the DLC's Application. These matters include, but are not limited to:

(a) At Tab 3 of the POLR Agreement, "Schedule 2, Retail Tariff for 2000," Rule 4 ("Contracts") at Original Page No. 9 appears to allow DLC to enter into special contracts with industrial and commercial customers with loads of at least 100 kW. DLC as the Provider of Last Resort should not be permitted to market POLR service or to establish new (or to renew) electric generation service contracts.

(b) At Tab 3 of the POLR Agreement, "Schedule 2, Retail Tariff for 2000," DLC seeks to combine the Commercial and Industrial customer groups within the GMH – General Service Medium Heating, GLH – General Service Large Heating, and L – Large Power Service rate classes. For example, under proposed Rate L – Large Power Service, Original Page No. 52, the CTC charges assigned to 60% load factor commercial customers are raised 36%, while the CTC charges to 60% load factor industrial customers are lowered 12% when compared to the tariffs in effect during 1999. Similarly, the generation credits of 60% load factor commercial customers are lowered 12%, while the generation credits of 60% load factor industrial

customers are raised 8% when compared to the tariffs in effect during 1999 (see Attachment 1 hereto). The Commission should deny these proposed changes. Instead, rate classes L, GMH, and GLH should remain separated into commercial and industrial categories. Commercial customers should see an increase in shopping credits which is in line with the increases in other rate classes to assure the continuation of competitive market access opportunities for commercial customers. To do otherwise will preclude access to competitive supply for commercial customers.

(c) At Tab 3 of the POLR Agreement, "Schedule 2, Retail Tariff for 2000," Original Page No. 69, DLC seeks to substantially increase the CTC charged rate class SM - Street Light Municipal customers (148% to 3650%) and to decrease the generation credits from 59% to 71%. The proposed CTC for this class is unjustifiably high (ranging in value from 3.6¢/kWh to 9.4¢/kWh). See Attachment 2 hereto. The CTC for this rate class is unjustifiably high, particularly in light of the fact that the power used for street lighting is during off-peak hours. The allocation of stranded costs for rate class SM should be consistent with that in other rate classes.

(d) DLC's Application, page 8, states that the Must-Run Agreement provides that, during times when a must-run unit is needed for reliability purposes, Orion will run plants and only recover its incremental costs of operations and no more. The Commission needs to examine these situations and establish operational criteria to maintain alternative supplier and retail customer access to competitive market generation during such periods.

(e) DLC Application, pages 9 and 10, states that Orion shall be compensated for the reasonable costs of maintaining control area black start capability. The Commission should determine whether these costs should be assigned to distribution or transmission. If assigned to transmission rates, DLC should be directed to file a transmission rate case with FERC.

(f) DLC Application, page 11, ambiguously describes how DLC will determine Orion's "actual hourly energy requirements" for the DLC control area. The description appears to allow DLC to determine the sum total of the "hourly energy requirements of customers served by an EGS". Under this language, it appears DLC may determine Orion's hourly energy requirement by deducting the total of all EGSs' hourly energy requirements from the net energy requirement of the DLC control area. This "residual method" approach exposes EGSs to potentially inflated energy requirements. A more preferable alternative is to require DLC to determine the hourly energy requirement of each EGS and Orion, then to sum-up the total energy provided to the DLC control area. DLC may then compare this "sum total" to the control area's "net hourly energy requirement" and determine appropriate correction factors. All other instances using a "residual method" to determine the POLR requirements should be changed in accordance with much preferable alternative.

(g) POLR Agreement, ¶ 4.2(e), page 17, indicates that DLC will provide a marketing statement on DLC's retail customers' bills to the extent permitted by law, including the name and logo of the POLR supplier. Similarly, ¶ 4.2(h) indicates that upon "notice from the POLR Supplier" DLC shall provide the POLR

supplier such customer information as "names, addresses, account numbers, phone numbers, rate classes, and historical usage information." As a wholesale (only) supplier, there is no basis for providing Orion advertising that promotes name recognition by retail customers. Nor should the wholesale provider of POLR generation be allowed access to customer information.

(h) The EGS Coordination Tariff needs to be reviewed and amended to address lessons learned during the early stages of retail access. Issues that should be addressed include the following:

- Load forecasting, scheduling, determination of and settlement for retail market energy imbalances and charges for same.
- Customer information access to the most recent 12 consecutive months of individual energy consumption readings and demand readings for all commercial and industrial accounts.
- Recognition of EDI process changes that have evolved since January 1999.
- Competitive metering services.
- Supplier consolidated billing.

5. This Application should recognize that, pending completion of POLR I, POLR II will be rolled-out. At a minimum, the DLC filing should indicate that POLR II requirements will be undertaken within a collaborative process that recognizes the vital interests of all parties to this filing. Consequently, until its questions are resolved, it is unclear to SEL whether approving Duquesne's application is in the public interest pursuant to the statutory standard set forth at 66 Pa. C.S. § 1103(a) and

the case law standard set forth in *City of York v. Pennsylvania Pub. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972).

6. SEL intends to participate actively in this proceeding on matters that affect its interests. Such participation may include the presentation of direct or rebuttal testimony and the cross-examination of witnesses presented by DLC and other parties to this proceeding.

WHEREFORE, for the foregoing reasons, SEL respectfully requests the right to intervene as an active party in this proceeding.

Respectfully submitted,



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Dated: February 7, 2000

Attachment 1

Impact of Combining Rate L Commercial and Rate L Industrial into One Rate Class

The majority of the L rate class is comprised of industrial customers having special contracts with the utility, DLC. The new tariff to be in effect at closing combines the previously separate Commercial and Industrial Rate Class L into one rate class. This penalizes the commercial customers because the CTC was unfairly raised because of what appears to be commercial customers paying off a portion of industrial customers' stranded costs. When the 1999 tariffs are compared (prior to when the rate class was separated), the shopping credits for the commercial customers decreased by 12%, penalizing the commercial customers while the shopping credits for the industrial customers increased by 8%.

Opportunities for cost savings in the L rate class will not be available until the stranded costs are completely paid off. This unfairly penalizes the commercial customers who should see an increase in shopping credits like all other commercial customers are experiencing under the proposed tariff.

Example:

Demand: 15,000KW

Load Factor: .60

Rate Class L Commercial

Category	1999	2000	% Increase (Decrease)
Generation	0.0396813	0.0350558	(12%)
CTC	0.0128209	0.0174464	36%
Total Cost/KWH	0.0623656	0.0626504	0.46%

Rate Class L Industrial

Category	1999	2000	% Increase (Decrease)
Generation	0.0324908	0.0350558	8%
CTC	0.0197727	0.0174464	(12%)
Total Cost/KWH	0.0623656	0.0626504	(0.45%)

Recommendation

SEL recommends that the L, GMH, GLH classes remain separated into commercial and industrial categories. Commercial customers should see an increase in shopping credits which is in line with the increases in other rate classes to assure the continuation of competitive market access opportunities for commercial customers. To do otherwise will preclude access to competitive supply for commercial customers.

Attachment 2

Impact of CTC Costs for SM Rate Class (Municipal Street Lighting)

For all of the DLC rate classes, the CTC cost per kWh is between 1¢ and 2¢ per kWh, yet the recovery of the stranded costs for Municipal Street Lights ranges from 3.6¢ to 9.4¢ with an average of 5.3¢ which is not an appropriate allocation of stranded costs. The CTC for this rate class is unjustifiably high, particularly in light of the fact that the power used for street lighting is during off-peak hours. The percentage increase in the CTC from 1999 to 2000 ranged from 148% to 3,650% with an average increase of 1,198%. The table below shows the percentage increases in the generation portion, the CTC as well as the net generation and CTC increase or decrease per kWh.

	1999 Gen	2000 Gen	%Gen Decr	1999 CTC	2000 CTC	%CTC Incr	Net Gen Decr	Net CTC Incr
Mercury Vapor								
100W	0.07136	0.02500	-65%	0.01477	0.06113	314%	-0.046	0.046
175W	0.06162	0.01918	-69%	0.00486	0.04729	872%	-0.042	0.042
250W	0.05833	0.01735	-70%	0.00176	0.04274	2322%	-0.041	0.041
400W	0.04888	0.01478	-70%	0.00254	0.03664	1339%	-0.034	0.034
1,000W	0.04538	0.01326	-71%	0.00088	0.03303	3650%	-0.032	0.032
Sodium Vapor								
70W	0.09517	0.03897	-59%	0.03793	0.09414	148%	-0.056	0.056
100W	0.07760	0.02860	-63%	0.02080	0.06980	236%	-0.049	0.049
150W	0.06944	0.02380	-66%	0.01268	0.05817	359%	-0.046	0.045
250W	0.06709	0.02245	-67%	0.01027	0.05491	435%	-0.045	0.045
400W	0.06094	0.01888	-69%	0.00429	0.04641	981%	-0.042	0.042
1,000W	0.05824	0.01726	-70%	0.00163	0.04261	2517%	-0.041	0.041

Recommendation

The allocation of stranded costs for the SM rate class should be consistent with those in other rate classes.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving by U.S. Mail, First Class, a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54.

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1782/02

February 7, 2000

DOCUMENT
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*ALSO ADMITTED TO THE FLORIDA BAR

Application of Duquesne Light Company
for A Certificate of Public Convenience and
for Commission Approval of the Transfer
of Its Interest in Seven Electric Generation
Stations and Related Transmission Assets
to Orion Power Holdings, Inc.

Docket Nos. R-00974104 &
A-00110150F0023

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FEB 07 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Enclosed for filing are an original and three copies of the Petition to Intervene of the Mid-Atlantic Power Supply Association, together with a certificate of service.

Please call me if you have any questions about this filing.

Very truly yours,

RHOADS & SINON LLP

James H. Cawley
By: James H. Cawley

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company :
for A Certificate of Public Convenience and : Docket Nos. R-00974104 &
for Commission Approval of the Transfer : A-00110150E0023
of Its Interest in Seven Electric Generation :
Stations and Related Transmission Assets :
to Orion Power Holdings, Inc. :

DOCUMENT
FOLDER

PETITION TO INTERVENE

Pursuant to 52 Pa. Code § 5.71 *et seq.*, the Mid-Atlantic Power Supply Association ("MAPSA") hereby petitions to intervene in the above-captioned proceeding and in support thereof states as follows:

1. 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.¹ Several of MAPSA's members are licensed Electric Generation Suppliers ("EGSs") pursuant to 66 Pa. C.S. Chapter 28 and serve customers in the certificated territory of Duquesne Light Company ("DLC").

2. The name and address of Petitioner's attorney are:

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FEB 07 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

¹ MAPSA's Board of Directors includes representatives of CNG Corporation; Calpine Eastern; Columbia Electric; Conectiv Energy; DTE Edison America; Dynegy Inc.; GreenMountain.com Company; Odyssey Strategies, Inc.; PG&E Energy Services; Shell Energy Services; Statoil Energy, Inc.; and Strategic Energy L.L.C. This filing represents the position of MAPSA as an organization, *but not necessarily* the view of any particular member with respect to any specific issue.

3. On December 22, 1999, DLC filed with the Commission the "Application of Duquesne Light Company for Certificate of Public Convenience and for Commission Approval of the Transfer of Property Used or Useful in the Public Service." The application has been assigned to Docket No. A-110150F0023.

4. MAPSA has many concerns and questions regarding matters contained within the DLC's Application. These matters include, but are not limited to:

(a) Why does DLC receive free electricity? On page 3 of the POLR Agreement, defining "Company Use Energy," it appears that DLC's consumption will be included in the POLR load, but will not be billed. That revenue shortfall for the POLR service must be made up by every other customer. Additionally, it removes a customer (DLC) from the market that EGSs are pursuing.

(b) On page 7 of the POLR Agreement, the "POLR Supply Amount" is defined as the residual between the DLC control area load and (among other things) EGS-served load. In Section 5.1 on page 23 of the POLR Agreement, however, DLC states that it will forecast the POLR hourly load using the Supplier Tariff methodology. Provided that Orion uses DLC's supply forecast, then their imbalances will be cashed out according to the OATT (see Section 4.3(b), page 20). Clarifications are needed.

First, will DLC use the same model load profiles and forecasting algorithms for POLR customers as it does for EGS customers? (The answer should be yes.)

Second, will Orion be charged the same fees for DLC services as EGSs are? (The answer should be yes.)

Third, DLC no longer has an incentive to improve the model load profiles to make them more accurate. Any difference between the actual control area load and the

sum of the EGS and POLR scheduled supply is a residual that the POLR pays for or gets paid for. A mechanism should be devised to give DLC a continuing incentive to improve the model load profiles.

(c) Orion has the potential to be the dominant factor in the energy imbalance market in DLC's distribution territory. Potentially, Orion may use this market power to influence the price for imbalance energy that is charged EGSs who are short. It may even be worthwhile for Orion to shift to self-scheduling during hot weather, reduce the POLR supply, create a large imbalance on the DLC system, and squeeze EGSs. Even though Orion will pay up to a 25% penalty to DLC if its schedule is < 75% of DLC's requirement, Orion can more than make up for it by collecting 100% of the inflated price from EGSs who are short. There are several possible remedies ranging from permitting EGSs to trade imbalances among themselves, to more stringent penalties for self-scheduling, to more intensive PUC monitoring of transactions, to affirmative commitments on DLC's part regarding importation of energy for imbalance service.

(d) On page 17 of the POLR Agreement, Section 4.2(e), it is inappropriate for Orion's name and logo (and "such other information upon which the Parties mutually agree") to appear on DLC's bill. There is no direct contractual connection between the customer and Orion; Orion's contract is with Duquesne. Such "name branding" is inconsistent with Orion's proposed EWG status. In any event, whatever privileges DLC extends to Orion should be extended to EGSs who choose to single-bill through DLC.

(e) On page 18 of the POLR Agreement, Section 4.2(h)(i), the information transferred to Orion cannot include EGS names or prices. In addition, any data that DLC makes available to Orion must also be made simultaneously available to

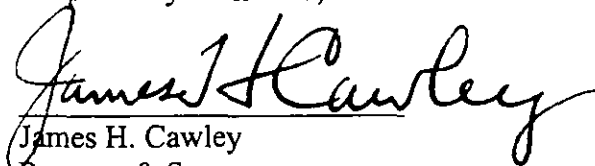
any EGS that wants it under the same terms and conditions. Section 14.2 on page 41 of the POLR Agreement makes clear that this confidentiality language applies only to customer information.

5. Pursuant to the Commission's order in Duquesne's restructuring proceeding (Docket No. R-00974104), shopping credits were to be adjusted for year 2000, having the effect of increasing shopping credits for most classes. DLC has filed the revised tariff implementing the ordered year 2000 shopping credits in the instant proceeding. Examination of any issues related to the generating asset auction or the structure of the POLR Agreement with Orion, also filed in the instant proceeding, will have no effect on the level of year 2000 shopping credits. Therefore, MAPSA requests that the Commission allow the proposed tariff implementing year 2000 shopping credits to become effective immediately. Any concerns that may be raised by other Petitioners to Intervene regarding the rate design employed to accomplish the class average shopping credits should be addressed on an expedited basis.

6. MAPSA wishes to ensure that "POLR II" formulation is undertaken in this or a separate proceeding promptly.

WHEREFORE, for the foregoing reasons, MAPSA respectfully requests the right to intervene as an active party in this proceeding.

Respectfully submitted,



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Dated: February 7, 2000

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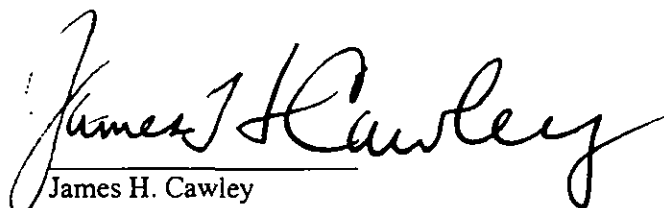
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February 7, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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APPLICATION OF DUQUESNE LIGHT
COMPANY FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND FOR
COMMISSION APPROVAL OF THE
TRANSFER OF ITS INTERESTS IN
SEVEN ELECTRIC GENERATION
STATIONS AND RELATED TRANSMISSION
ASSETS TO ORION POWER HOLDINGS, INC.

DOCKET NO. A-110150F.0023

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, ET. AL.

v.

DOCKET NO. R-00974104

DUQUESNE LIGHT COMPANY

COMMENTS OF THE
DUQUESNE INDUSTRIAL INTERVENORS
ON ORION ASSET TRANSFER APPLICATION

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

Nova Chemicals, Inc.
USX Corporation - US Steel Group

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Dated: February 7, 2000

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I. INTRODUCTION

On December 22, 1999, Duquesne Light Company ("Duquesne" or "Company") submitted an Application for the Commission to approve the transfer of Duquesne's interest in seven electric generation stations and related transmission assets to Orion Power Holdings, Inc. ("Orion"). Duquesne's filing is part of the continuing implementation of the Company's decision in its Restructuring Proceeding filed under the Electricity Generation Customer Choice and Competition Act ("Competition Act") to divest its generation assets in order to determine the amount of generation-related stranded costs that the Company will be permitted to recover from ratepayers. The Duquesne Industrial Intervenors ("DII") is an ad hoc association of some of Duquesne's largest industrial and institutional customers. DII was an active participant in Duquesne's Restructuring Proceeding. In addition, on January 26, 2000, DII filed a Petition to Intervene in the Commission Docket assigned to the instant Application for asset transfer (i.e., Docket No. A-110150F0023).

Pursuant to the schedule agreed upon by the parties, DII hereby submits these Comments regarding Duquesne's Application and the various agreements filed with the Application. For the most part, DII's comments discuss issues upon which DII and the Company appear to agree regarding the appropriate implementation of the Agreements with Orion and the Competition Act. DII includes these topics in its Comments to memorialize and confirm this apparent agreement.

DII also addresses issues where agreement may not exist between DII and the Company. Specifically, DII requests that the Company provide additional information and documentation regarding the reconciliation of stranded cost recovery, and accounting for revenues received from

special contract customers in that reconciliation. In addition, DII is concerned that the Company's request that certain of the transferred facilities be designated as "eligible facilities" and similar requests by other Pennsylvania Electric Distribution Companies ("EDCs") may detrimentally impact the development of robust retail electricity supply competition in the Commonwealth of Pennsylvania. DII urges the Commission to be cognizant of the potential negative impact that designation of generating facilities as "eligible facilities" may have on retail competition as it reviews Duquesne's request findings and the requests by other Pennsylvania utilities.

II. COMMENTS

The parties to Duquesne's Restructuring Proceeding have had prior opportunities to discuss and comment on many aspects of the Orion transfer agreements, the accounting protocols for reconciling the auction proceeds to the administrative determination of stranded costs, and the Company's continuing obligation to treat ratepayers in accordance with the requirements of the Competition Act. DII discusses in these Comments several important issues where the Company is in agreement with DII regarding the correct implementation of the auction and the Competition Act. In addition, DII comments on two issues related to the reconciliation of auction proceeds where further information is necessary prior to the Commission's approval of the final accounting. Finally, DII provides comments on Duquesne's request that the Commission issue findings that allowing the Cheswick, Elrama, Brunot Island and Phillips plants to be "eligible facilities" under the Public Utility Holding Company Act ("PUHCA") will benefit consumers, is in the public interest and does not violate Pennsylvania law.

A. Duquesne Appropriately Recognizes that Special Contracts Entered into Under Rule 4 of its Tariff Must Be Unbundled and that Stranded Cost Recovery for Customers on those Special Contracts Terminates Concurrent with the Termination of Recovery for the Rate Schedule Upon Which the Customer Would Otherwise Receive Service.

Under Rule 4 of the Company's Tariff and the Commission's Orders in the Restructuring Proceeding, Duquesne is required to unbundle all special contracts and to allocate any discount in the special contract equally between the generation charges and the Competitive Transition Charges ("CTC").¹ See Tariff Electric-Pa. P.U.C. No. 18, p. 10 (hereinafter "Duquesne Tariff").

¹Contracts that contain provisions governing the customer's rights under retail competition will be unbundled and the customers will be eligible to obtain electricity from an

The Provider of Last Resort ("POLR") Supply Agreement submitted with the Application specifies that Orion will provide Duquesne with electricity supply to serve special contract customers and that the term of the POLR Supply Agreement will continue through the last termination date for the special contracts listed on Schedule 6 to the POLR Supply Agreement. See POLR Supply Agreement, Section 2.1. It is unclear from the Tariff and Duquesne's Application, however, when stranded cost recovery for special contract customers will terminate and the charges applicable to special contract customers after stranded cost recovery terminates.

In response to informal discovery, Duquesne confirmed that it has unbundled each of the special contracts listed on Schedule 6 of the POLR Supply Agreement² and has assigned each of the contracts to an underlying rate schedule for stranded cost recovery and reconciliation purposes.³ In addition, Duquesne confirmed that it agrees with DII's interpretation of the Competition Act regarding termination of stranded cost recovery for special contract customers and that the stranded cost recovery period for each special contract will terminate when the stranded cost recovery period for the underlying rate schedule terminates.

Importantly, DII and the Company also agree regarding the appropriate rate treatment for special contract customers during the period after stranded cost recovery for the underlying class terminates and until the end of the particular contract. Specifically, the component of the

EGS in accordance with the terms of the contract. See Duquesne Tariff, p. 10.

²DII has not reviewed the unbundling analysis for each contract and would reserve the opportunity to comment, if necessary, on any unbundling analysis provided by the Company to individual DII Members.

³Duquesne provided to DII the applicable rate schedule for each of the special contracts listed on Schedule 6.

unbundled special contract rate designated as the customer's CTC will no longer be charged after stranded cost recovery for the underlying rate schedule terminates. As a very simplistic example, Customer X has a special contract with Duquesne under which Customer X is charged 7¢/kWh for electricity. Duquesne provides to Customer X a contract unbundling analysis that results in the following unbundled charges: 2¢/kWh Distribution Charge, 3¢/kWh Generation Charge and 2¢/kWh CTC. After stranded cost recovery for Customer X's underlying rate schedule terminates, Duquesne will charge Customer X only the 2¢/kWh Distribution Charge and the 3¢/kWh Generation Charge.⁴ The CTC component of Customer X's rate drops out and the overall contract price is reduced by the amount assigned to the CTC in the unbundling analysis for the remainder of the term of the contract.

B. The POLR Supply Agreement Appropriately Acknowledges that the Historic Practices Applicable to Interruptible Service Customers Will Not Be Modified.

A fundamental aspect of implementation of the auction is that service to retail customers will not be materially impacted by Duquesne's generation asset divestiture. An important part of this continuity of service terms and conditions for some DII Members is the assurance that the implementation of tariff provisions such as the Interruptible service offering under Rate Schedule HVPS and Rider No. 7 (Interruptible service to Rates GL, GLH and L) will not change. See Duquesne Tariff, pp. 65-66 & 94-96.

Several portions of the POLR Supply Agreement specifically address Interruptible Service. See POLR Supply Agreement, Sections 4.1(a) & 4.2(d) and Schedule 1. Based on

⁴Unless Customer X's contract contains provisions governing direct access rights, Customer X will also have the opportunity to pay Duquesne the 2¢/kWh Distribution Charge and to obtain generation supply from an EGS. Duquesne Tariff, p. 10.

DII's review of those provisions, it appears that the Company and Orion appropriately acknowledge that the historical practices related to Interruptible Service customers will continue, including when interruptions can be called, how interruptions will be conveyed to customers, and the ability of customers to purchase Passthrough Power to avoid interruption. DII believes that this is an appropriate application of the Competition Act and implementation of Duquesne's generation asset divestiture.⁵

C. Duquesne Must Provide Additional Information in the Final Auction Accounting and Competitive Transition Charge Reconciliation Filings to Ensure that Stranded Cost Revenue from Special Contract Customers is Properly Attributed to the Underlying Rate Schedules.

As aforementioned, Duquesne and DII agree that the stranded cost revenues collected in special contracts will be attributed to the rate schedule on which the customer would otherwise receive service. In addition, the Company confirmed that it has credited stranded cost revenues collected from special contract customers since January 1, 1999, to the underlying rate classes and will continue to account for this revenue in CTC reconciliation filings after the transaction closing. DII concurs with the Company's conclusion that this crediting is necessary under the Competition Act and the Commission's Orders in the Restructuring Proceeding.

The Company must, however, provide additional information to ensure that interested parties can verify that the proper crediting of stranded cost revenues collected from special

⁵In addition, at the Technical Conference, the Company confirmed that it will continue its current practice regarding customer switches between POLR service and an EGS. Although the POLR Supply Agreement obligates Duquesne to seek redress from the Commission in the event evidence demonstrates that customers or EGSs are abusing this switching opportunity, the Company and DII agree that a change would necessitate Duquesne submitting a formal request to the Commission, with interested parties (potentially including DII) having the ability to comment on any change at that time.

contract customers has occurred and will continue to occur. Duquesne provided the underlying rate schedules for each of the special contracts listed on Schedule 6 to the POLR Supply Agreement. DII believes that the Company must also provide the following additional information:

1. The aggregate yearly stranded cost revenues for special contract customers on each of the applicable underlying rate schedules assuming that the customers' usages are equal to the historic annual usage shown on Schedule 6.
2. In each reconciliation provided in the final auction accounting and in any CTC reconciliation filings, a separate accounting of the actual stranded cost revenue recovery from special contract customers on the applicable underlying rate schedules, depicting the aggregate actual annual usage of those customers and the aggregate actual stranded cost revenues collected from those special contract customers.⁶

With this information, DII and the Commission can ensure that the Company is appropriately implementing the requirements of the Competition Act and the Commission's Orders by crediting the underlying rate schedules with stranded cost revenues collected from special contract customers.

D. The Parties Agree that Issues Related to Duquesne's Claimed Transaction Costs Can Continue to be Discussed and Await Definitive Resolution by the Commission in the Final Auction Accounting Filing.

As part of the filing, the Company includes various claims for specific transaction costs related to the generation divestiture. See Application, Appendix B, pp. 3-8. DII and other parties have requested information from the Company regarding the basis and justification for those costs. DII continues to review the Company's responses and will engage in further

⁶This separate accounting could simply be an additional line separating special contract customers' usage and stranded cost revenues from the total rate schedule usage and revenues.

discussions with the Company regarding the claims. At the Technical Conference, the parties reached a consensus that discussions on issues related to the transaction costs and other accounting protocol issues can continue beyond the deadline for filing these Comments and that all interested parties will have the opportunity to comment (and oppose, if necessary) the Company's claims as part of the final auction accounting filing. Consequently, DII reserves the right to comment further in response to the final auction accounting filing.

E. The Commission Must Carefully Consider the Potential Impact on the Development of Retail Competition in Pennsylvania When Adjudicating Requests by Duquesne and Other Utilities for a Determination that Classifying Generating Assets as "Eligible Facilities" Under the Public Utility Holding Company Act is Appropriate.

As part of the Application, Duquesne requests on behalf of Orion that the Commission issue determinations that will enable Orion to request from the Federal Energy Regulatory Commission ("FERC") to be classified as an Exempt Wholesale Generator ("EWG") under Section 32 of PUHCA, 15 U.S.C. § 79z-5a(a). Specifically, Duquesne requests a determination from the Commission that allowing the Cheswick, Elrama, Brunot Island and Phillips plants to be designated as "eligible facilities" will benefit consumers, is in the public interest and does not violate Pennsylvania law. See Application, pp. 23-25.

DII urges the Commission to proceed cautiously in considering Duquesne's requests, as well as similar requests for "eligible facilities" determinations that have been submitted to the Commission by PP&L, Inc., and PECO Energy. Retail electricity competition is in its infancy in Pennsylvania and throughout the Nation. Both the Commission and the other market participants are confronting new issues such as the EWG requests that impact the market structure for electricity supply and may impact whether retail competition will fully develop and flourish.

Although no regulatory body or party is omniscient regarding the appropriate structure for this market, the Commission must ensure, to the extent possible, that actions taken with the purported justification of furthering the development of retail competition do not harm the long-term prospects for the development of robust electricity supply markets.

Designating facilities as “eligible facilities” limits the potential uses of the facility to either: (1) the generation of electricity exclusively for sale at wholesale; or, (2) lease to one or more public utility companies. 15 U.S.C. § 79z-5a(2). This designation limits the ability of a customer to contract directly with the owner of the “eligible facility” to purchase electricity at retail. Thus, as a preliminary matter, granting Duquesne’s requests (and those of other EDCs) for “eligible facilities” determinations limits the potential supply options for consumers (especially larger customers) and may consequently be contrary to the public interest and detrimental to consumers.

Orion intends to sell the electricity generated at the facilities at wholesale rates to Duquesne and other suppliers serving customers in the region. These suppliers will then market to retail customers, thus placing an additional entity, with additional costs and additional profits to recover in the rates, between the customer and the electricity generated at the plants. Orion has indicated that it presently does not intend to market electricity to retail customers in Duquesne’s service territory.

Both Duquesne and Orion have indicated that they believe this structure will enhance retail competition. Thus, it appears that Duquesne and Orion have made the assessment that imposing a facial restraint on one type of competitive supply alternative (i.e., direct customer purchases from the facilities) will ultimately enhance the availability of other supply alternatives.

In response to discovery, Duquesne and Orion indicated that neither company has conducted a formal study to support this conclusion.

DII urges the Commission to carefully consider the impact on retail competition in adjudicating Duquesne and other EDCs' requests for findings that designating plants as "eligible facilities" will benefit consumers and is in the public interest. Each request should be thoroughly reviewed on its own merits. This review potentially should assess the impact of the eligible facilities designation on a facility-by-facility basis. In addition, the burden to prove that the designation will benefit consumers and is in the public interest must be on the requesting party.

DII acknowledges that certain unique aspects of the instant request may militate in favor of granting the requested findings. These unique aspects include the willingness of Duquesne to divest the assets, the status of Orion (the potential EWG) as Duquesne's POLR Supplier and the apparent ability of Orion to terminate the transaction if it does not obtain EWG status. In addition, DII submits that the fact that neither Orion nor an Orion affiliate will be marketing to retail customers in the service territory is important and reduces the potential for the EWG to inappropriately interfere with the market. The Commission must, however, be cognizant that granting multiple EWG requests in Pennsylvania may irreparably harm the development of retail competition.

The Commission must fully consider these critical market-influencing issues in ruling on requests for "eligible facilities" determinations. DII urges the Commission to conduct a study and investigation of the impact of multiple EWG requests and of requests that do not contain the unique aspects present in Duquesne's request. Although every potential impediment to the development of robust retail competition can not be contemplated, DII and the Industrial Energy

Consumers of Pennsylvania ("IECPA") believe that this is a critical issue of state-wide importance that must be thoroughly evaluated due to the inherent potential negative impact on the supply alternatives available to consumers.⁷

⁷IECPA is participating in the proceedings related to PP&L and PECO's EWG findings requests in order to address similar issues.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Commission issue an Order requiring Duquesne to provide the additional information requested herein and take such other actions on Duquesne's Application consistent with these Comments.

Respectfully submitted,

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