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December 21, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of Duquesne Light Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan; Docket No. M-2012-2334399

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Duquesne Industrial Intervenors ("DII") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Teresa K. Schmittberger', is written over a horizontal line. The signature is fluid and cursive.

Teresa K. Schmittberger

Counsel to the Duquesne Industrial Intervenors

TKS/sar

Enclosures

c: Administrative Law Judge Dennis J. Buckley (via First Class Mail and E-Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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Dated this 21st day of December, 2012, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
for Approval of its Act 129 Phase II : Docket No. M-2012-2334399
Energy Efficiency and Conservation Plan :

**ANSWER AND COMMENTS OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

I. INTRODUCTION

A. Act 129 History

On October 15, 2008, Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements on electric distribution companies ("EDCs")¹ for energy conservation, default service procurements, and the expansion of alternative energy sources.

Specifically, with regard to energy efficiency and conservation ("EE&C"), Act 129 required EDCs to adopt a plan, approved by the Commission, to reduce electric consumption by at least 1% by May 1, 2011, and by at least 3% by May 31, 2013, adjusted for weather and extraordinary loads. 66 Pa. C.S. § 2806.1(c). In addition, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% of the EDC's annual system peak demand in the 100 hours of highest demand, measured against the EDC's peak demand during the period of June 1, 2007, through May 31, 2008. *See id.* § 2806.1(d). By November 30, 2013, Act 129 further required the Commission to evaluate the cost-effectiveness of EE&C programs. *See id.* § 2806.1(c)(3). If

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. *See* 66 Pa. C.S. § 2806.1, *et seq.*

the benefits of the programs exceeded the costs, then the Commission would impose additional reductions on the eligible EDCs. *See id.*

Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs, including Duquesne Light Company ("Duquesne" or "Company") filed with the Commission proposed EE&C plans (*i.e.*, "Phase I EE&C Plans"), which sought to meet the Act's EE&C requirements. Duquesne's Phase I EE&C Plan was adopted on October 27, 2009.²

B. PUC Phase II Implementation Order

On August 2, 2012, the Commission issued an Implementation Order establishing the procedural and substantive requirements for EDCs' Phase II EE&C Plans. Importantly, the Commission held that energy efficiency programs should be continued during Phase II based on the Statewide Evaluator's ("SWE") Market Potential Study that indicated energy efficiency programs were cost-effective for consumers during Phase I. Implementation Order, p. 12. Mandatory demand reduction programs, however, should not be included in Phase II Plans, because the cost-effectiveness of Phase I demand reduction programs could not be evaluated before Phase II implementation. Implementation Order, p. 40. In addition, the Commission stressed the importance of developing balanced Phase II EE&C Plans, *i.e.*, plans that do not disproportionately impact specific customer classes. Implementation Order, p. 87. Finally, the Commission outlined the following procedural process in its Implementation Order:

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer *along with comments* and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania*

² On January 14, 2010, Commissioner Powelson issued a Motion to amend Large C&I cost recovery under Duquesne's Phase I EE&C Plan. *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan*, Motion of Commissioner Robert F. Powelson (Jan. 14, 2010). Consistent with this Motion, a blended peak load contribution ("PLC") and flat customer charge was ultimately adopted by the Commission.

Bulletin. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC's service territory upon request of any party, as well as an evidentiary hearing(s) on issues related to the EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

Id. at 62 (emphasis added).

C. Brief Summary of Duquesne's Phase II EE&C Plan

On November 15, 2012, Duquesne petitioned the Commission for approval of its Phase II EE&C Plan ("Petition"). Duquesne's Phase II EE&C Plan proposes to fulfill the requirements of Act 129 through the implementation of 22 energy efficiency programs for four of the Company's customer sectors – Residential, Small Commercial and Industrial ("C&I"), Large C&I,³ and Governmental/Non-Profit. *See* Phase II EE&C Plan, pp. 150-53. Specifically, the Company has targeted six programs for the residential sector, four programs for the Small C&I sector, nine programs for the Large C&I sector, and three programs for Government/Non-Profit customers. *See id.* Duquesne anticipates meeting the Act 129 energy savings requirements at a total overall cost to the Company's ratepayers of approximately \$58.5 million over the life of the Phase II EE&C Plan, which represents approximately two percent of the Company's combined revenues as of December 31, 2006 multiplied by three to reflect the three-year duration of the Plan. *See* Petition at 11; *see also* Phase II EE&C Plan, p. 145.

On December 7, 2012, the Duquesne Industrial Intervenors ("DII") filed a Petition to Intervene in this proceeding in order to protect members' interests. DII's Petition to Intervene was granted by ALJ Dennis J. Buckley at the December 10, 2012, Prehearing Conference.

³ Large C&I customers are defined by Duquesne as "those customers with monthly metered billing demand greater than 300 kW." Petition, p. 13.

DII is an *ad hoc* association of energy-intensive Large C&I customers receiving electric service in Duquesne's service territory. DII members purchase electric distribution service from Duquesne under Rate Schedules L and HVPS,⁴ as well as under associated special contracts or service riders. DII members have the option to purchase electric generation supply service from Duquesne (as the default service provider) or from an Electric Generation Supplier ("EGS"). Electricity costs comprise a significant portion of operational costs for all DII members. The members of DII are therefore concerned with issues regarding the rates, terms, and quality of their electricity service and, as a result, have been actively involved in numerous Duquesne proceedings, including Duquesne's Phase I EE&C Plan.

Consistent with the process outlined in the Implementation Order and approved at the Prehearing Conference, DII is submitting this Answer and Comments in order to address its preliminary positions and concerns regarding Duquesne's proposed Phase II EE&C Plan. DII will supplement these positions in its post-hearing briefs, and DII reserves the opportunity to modify its positions and submit recommendations regarding additional issues based on the arguments raised by other parties, the factual evidence adduced during the evidentiary hearings, and any further clarifications regarding the Phase II EE&C Plan provided by Duquesne during the course of discovery or adjudication of the Plan.

⁴ Rate Schedules identified in Duquesne's Large Commercial and Large Industrial classes under the Phase II EE&C Plan. Exhibit WVP-1.

II. COMMENTS

A. **Duquesne's Phase II EE&C Plan Fails To Comply with the Act 129 Requirements to Offer Energy Efficiency Programs to Customer Classes in an Equitable Manner.**

Act 129 requires the Commission to establish "[s]tandards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers." 66 Pa. C.S. § 2806.1(a)(5). In the Implementation Order, the Commission interpreted this mandate as requiring that "EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class." Implementation Order, p. 87. Fundamentally, it is important that one class neither receives a disproportionate share of the benefits of an EE&C Plan nor bears a disproportionate burden in contributing the costs of the overall plan.

Duquesne's proposed Phase II EE&C Plan presents a total of 22 programs. *See* Phase II EE&C Plan, pp. 150-53. Of these, nine of the programs are assigned to Large C&I customers. *Id.* at 152. The cost associated with these nine programs, which will be charged to Large C&I customers, equals \$21,250,879, or approximately 36.2% of the Companies' Phase II budget. *Id.* at 154. By way of direct comparison, Small C&I customers are responsible for remitting only \$4,989,831, or approximately 8.5% of the total Phase II budget, associated with four Small C&I programs. *Id.*

This disparity between budgets is particularly egregious considering the comparison to revenues received by Duquesne from each of the customer classes. Although Large C&I customers are shouldered with 36.2% of the Phase II EE&C budget, Large C&I customer revenue only represents 14.4% of Duquesne's total customer revenue. *Id.* Small C&I customers, however, who would remit 8.5% of Phase II costs, provide 16.7% of Duquesne's total customer revenue. *Id.* Residential customers have the most disparate Phase II budget/total customer

revenue comparison with 45.4% of Phase II costs and 59.0% total customer revenue (difference of -13.4%). Finally, it is unclear based on the initial data provided by Duquesne the customer classes from which the Government/Nonprofit Phase II cost recovery would be assigned. The following chart summarizes the Phase II EE&C budget/total customer revenue disparity:

Customer Class	% Total Phase II EE&C Plan Budget	% of Total Customer Revenue	Difference
Residential	45.4%	59.0%	-13.6%
Small C&I	8.5%	16.7%	-8.2%
Large C&I	36.2%	14.4%	21.8%
Government/Nonprofit	9.6%	10.0%	-0.4%

This significant 22% disparity between Large C&I Phase II costs and customer revenue, which does not similarly exist for Duquesne's other customer classes, is inconsistent with the Act 129 and Implementation Order requirements that programs be applied to customer classes in an equitable manner. Moreover, to ensure consistency with cost causation principles, the costs charged to Large C&I customers pursuant to Phase II plans must reasonably correspond to the their costs incurred as customers of Duquesne in general. Accordingly, as discussed further in Section II.B., *infra*, DII requests that Duquesne amend its proposal to unjustly and unreasonably rely on the Large C&I class to achieve its reduction targets during Phase II.

B. Consistent with Determinations by the Statewide Evaluator, Duquesne Could Adjust its Phase II Programming and Costs To Reflect a More Equitable Allocation Among Customer Classes.

In its Implementation Order, the Commission found that "the SWE's Market Potential Study methodology is generally sound, credible and reliable for setting compliance targets for Act 129 programs." Implementation Order, p. 14. From these compliance targets, the SWE also calculated the acquisition costs for each EDC, which represent the level of costs required for each EDC to attain per MWh savings while considering the market potential within each EDC's

service territory for additional reductions. *See id.* at 18. The Commission similarly endorsed the SWE-approved acquisition cost levels in its Implementation Order: "The methodology used by the SWE to estimate future Act 129 acquisition costs is one based on current 2012 data and likely future trends over the next several years." *Id.* at 17.

The SWE found that Duquesne's acquisition costs should equal \$211.90. Implementation Order, p. 24. Despite this SWE-derived and Commission-approved acquisition cost level, however, Duquesne's Phase II plan has an average acquisition cost of \$176.15. *See* Phase II EE&C Plan, p. 145. For Large C&I measures in particular, the average acquisition cost is only \$163.84. *See id.*

The low level of overall acquisition costs proposed by Duquesne once again represents an overreliance by the Company on Large C&I customers during Phase II. The SWE used a "sound, credible and reliable" methodology, endorsed by the Commission, that considered the areas of potential for continued energy efficiency during Phase II to calculate Duquesne's appropriate acquisition cost level. Duquesne's significant departure from the SWE's acquisition cost level indicates that Duquesne has not pursued the opportunities for energy efficiency reductions identified by the SWE within other customer classes.

Although lower acquisition costs by themselves are not inherently concerning as long as the Plan meets its goals and is reasonably balanced, as stated in Section II.A., *supra*, Duquesne has also imposed a disproportionate level of the total Phase II plan costs on Large C&I customers. As a result, DII recommends that Duquesne explore other energy efficiency programs or rebalance its proposed Plan, with potentially more reliance on programs for the Residential and Small C&I customers that may have higher acquisition costs, in order to comply with the SWE's, and thus the Commission's, recommended acquisition cost level. Such an effort

is necessary to ensure that energy efficiency programs are assigned to customer classes in an equitable manner, consistent with Act 129 and the Commission's Implementation Order.

C. Duquesne's Cost Recovery Mechanism for Large C&I Customers Remains Appropriate.

Duquesne proposes to continue the Phase I cost recovery methodology during Phase II for Large C&I customers: "[L]arge Commercial and Industrial surcharges are designed to recover costs through a combination of a fixed monthly surcharge and a demand-based surcharge with an annual reconciliation." Petition, p. 12. Specifically, "Duquesne Light will implement a rate design using a fixed customer charge to recover the administrative costs and a demand charge, using Peak Load Contribution, to recover the incentive costs for Large Commercial and Large Industrial customers." *Id.* at 13.

DII supports Duquesne's proposed cost recovery mechanism and is satisfied that the demand charge approach with an additional fixed price component for application to Large Commercial and Large Industrial customers is an appropriate, non-discriminatory mechanism for these large, energy-intensive customers. Furthermore, because the costs of the Phase II EE&C Plan are allocated based on customer class through Rate Schedule designations, the implementation of a mixed fixed-charge and per kW demand charge for the Large Commercial and Large Industrial class will not impact the cost allocation to other customer classes.

With respect to the calculation of Large Commercial and Large Industrial customer demand, DII also endorses Duquesne's utilization of the PLC in order to provide consistent charges to customers, as well as further encourage peak load reduction by both EE&C Plan participants and non-participants. Finally, because PLCs are determined once annually, a demand charge based on the PLC provides a consistent charge to customers and constant, reliable recovery to EDCs.

D. DII Encourages Duquesne To Facilitate a Smooth Transition Between Phase I and Phase II EE&C Plans.

The Commission's Implementation Order recognizes the importance of a "smooth transition" between Phase I and Phase II. Implementation Order, p. 114. The Commission further finds that programs installed by customers after Phase II has begun (*i.e.*, June 1, 2013) will no longer be eligible for Phase I funds. *Id.*

Initially, DII welcomes the Commission's efforts to remain consistent with cost causation principles, *i.e.*, that costs are only received based on when the customer incurs them. Nevertheless, DII also supports a smooth transition between Phase I and Phase II, which could be a challenge for those customers installing program measures at the end of Phase I. As a result, at a minimum, DII recommends that Duquesne endeavor to inform all customers participating in Phase I programs of the impending deadline for receiving Phase I funds. In addition, Duquesne should provide a streamlined application process for those customers who fail to install measures before the expiration of Phase I, but would continue to be eligible for incentives under the Company's Phase II Plan.

E. DII Reserves the Right To Challenge Duquesne's Proposed Phase II Programs After Completion of the SWE's Final Audit.

As a final note, beginning June 1, 2013, the SWE will review Phase I energy efficiency programs, including those within Duquesne's Phase II Plan that may be carried forward from Phase I. *See* Implementation Order, p. 70. Importantly, these programs have yet to be evaluated in their entirety by the SWE. As a result, it is possible that the SWE's analysis will provide crucial, unbiased information regarding the cost-effectiveness of these programs or potential changes to the programs that has yet to be available to stakeholders.

The SWE's audit is expected to be complete by December 2013. *See id.* At that time, DII expects to review the SWE's analysis related to Large C&I programs. DII will evaluate the

cost-benefit analyses of the Large C&I programs based on actual results, and may, in the future, argue that the program design is inappropriate and contrary to the Act 129 requirements and goals.⁵ Accordingly, DII reserves the right to challenge any such DII programs based on the results of the SWE's audit.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: December 21, 2012

⁵ In addition, DII is in the process of reviewing Duquesne's 2011-2012 Phase I Annual Report, filed on November 15, 2012.