



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 16, 1998

IN REPLY PLEASE  
REFER TO OUR FILE

R-00974104, R-00974104C0001-C0004

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DUQUESNE LIGHT COMPANY  
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**CKETE**  
JUL 29 1998

KJR

Application of Duquesne Light Company for Approval of Restructuring Plan Pursuant to 66 Pa. C.S. §2806(d)

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on June 26, 1998 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

Enclosure  
Certified Mail  
JEP

**DOCUMENT  
FOLDER**

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PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held June 26, 1998

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
David W. Rolka  
Nora Mead Brownell  
Aaron Wilson, Jr.

**DOCKETED**  
JUL 29 1998

Application of Duquesne Light Company for Approval of  
Restructuring Plan Pursuant to 66 Pa. C.S. §2806(d)

R-00974104  
R-00974104, C0001  
R-00974104, C0002  
R-00974104, C0003  
R-00974104, C0004

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before us for consideration are three Petitions for Reconsideration relative to our Opinion and Order entered on May 29, 1998, in the above-captioned proceeding. These Petitions shall be denied.

**DOCUMENT  
FOLDER**

History of the Proceedings

On May 29, 1998, in Docket No. R-00974104, *et al.*, we approved Duquesne Light Company's (Duquesne) Restructuring Plan pursuant to Section 2806 of the Public Utility Code, the Electric Generation Customer Choice and Competition Act of 1996 (Act), 66 Pa. C.S. §§2801, *et seq.* (Restructuring Order.) Also on May 29, 1998, we approved the merger of Duquesne and Allegheny Power System, Inc., (APS)<sup>1</sup> at Docket No. A-110150, F0015.

<sup>1</sup> APS has changed its name to Allegheny Energy, Inc. For the sake of consistency we shall use APS throughout this Opinion and Order.

(Merger Order.) We note that the restructuring and the merger proceedings are not consolidated.

On June 12, 1998, Hospital Shared Services (HSS) and Administrative Resources, Inc. (ARI) jointly filed a Petition for Reconsideration of the Restructuring Order. On June 16, 1998, Duquesne individually filed a Petition for Clarification or Reconsideration of the Restructuring Order. Also on June 16, 1998, Duquesne and DQE, Inc., (DQE) jointly filed a Petition for Expedited Reconsideration relative to both the Restructuring Order and the Merger Order. On June 17, 1998, HSS/ARI filed notice of its petition for review of the Restructuring Order in the Commonwealth Court.

On June 29, 1998, reconsideration pending further review on the merits was granted with respect to the Duquesne/DQE Petition relative to the Merger Order.

The Office of Consumer Advocate (OCA), Duquesne, the Duquesne Industrial Intervenors, the Mid-Atlantic Power Supply Association (MAPSA), and the Environmentalists filed Answers or letters in lieu of Answers to the various Petitions.

### Discussion

#### Legal Standards

##### Petitions to Commonwealth Court for Review

Rule 1701(b)(3) of the Pennsylvania Rules of Appellate Procedure (Pa. RAP) provides that a "timely order granting reconsideration under [Rule 1701] shall render inoperative any . . . notice of . . . petition for review of [the administrative decision. . . .]" It should be noted that this Commission acted upon the instant Petitions on June 26, 1998, with the final Opinion and Order being entered as noted below.

### Petitions to this Commission for Relief Following Final Decisions

Petitions for reconsideration are brought before this Commission under Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), relating to rescission or amendment of Orders, and pursuant to Section 5.572 of our Regulations, 52 Pa. Code §5.572, relating to relief following a final decision. It has been held that because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. (*West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth Ct. 1995), petition for allowance of appeal denied, No. 576 W.D. Allocatur Docket (April 9, 1996) (*West Penn Power*); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).)

We have held that such petitions must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the order under consideration. (*Duick v. PG & W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982) (*Duick*), (citing *Pa. Railroad Co. v. Pa. PSC*, 118 Pa. Superior Ct. 380, 179 A. 850 (1935).) Our decisions in these types of cases are left to our sound discretion and will not be disturbed on appeal absent bad faith, fraud, capricious action, or abuse of power. (*West Penn Power*.)

### HSS/ARI Petition

HSS/ARI suggest that, regardless of whether Duquesne elects to divest its generation assets or opts for an administrative determination of stranded costs the disallowance of only \$65.58 million of Duquesne's remaining net book investment in the Phillips Power and Brunot Island Plants is inadequate. They further assert that Duquesne's net book investment in generation plant should be reduced because Duquesne failed to show that its capital expenditures over a ten-year period were reasonable. They challenge the rulings relative to the recovery, as regulatory assets, of amounts for (1) Statement of Financial Accounting Standard (SFAS) 109 deferred taxes, (2) deferred rate synchronization costs, and (3) Warwick Mine.

They urge the reduction of the distribution component of Duquesne's unbundled rate. HSS/ARI additionally suggest that, if Duquesne does not elect to divest its generation assets, (1) HSS/ARI's market valuation should be adopted in an administrative determination of stranded costs, (2) there should be an adjustment for life extension, and (3) Duquesne's stranded costs should be reduced to adjust for excessive projections of capital additions.

### **Duquesne Petition**

In its Petition, Duquesne proposes corrections to alleged computational errors relative to a total bundled rate and to transmission and distribution rates appearing in the attachments to the Restructuring Order. Duquesne notes that the Restructuring Order only applies if the pending merger is not consummated. Duquesne notes that it is also filing a separate petition for reconsideration of stranded cost and market power mitigation determinations that will arise only if the merger is consummated.

### **Duquesne and DQE Joint Petition**

In their joint Petition, relative to both Docket No. A-110150, F0015, and Docket No. R-00974104, Duquesne and DQE request expedited reconsideration and reversal of the determinations (1) that the merger cannot be consummated until Duquesne and APS join an independent system operator (ISO) and (2) that stranded cost in the context of the merger should be based upon an administrative forecast of market value. Duquesne believes that, if both determinations are not reversed, the merger may be in jeopardy. As noted above the issues relative to the Merger Order have been addressed in an Opinion and Order entered on June 29, 1998, at that docket.

### **Resolution**

While we have separately granted reconsideration, pending further review on the merits, relative to the Merger Order, we believe that Duquesne and DQE have not

raised any issues relative to the Restructuring Order which have not been previously addressed or which cannot be resolved in the compliance filing. As to the computational errors alleged by Duquesne, we note that the OCA and DII suggest that resolution can be deferred to the compliance filing and review. We agree that the validity of Duquesne's averments would be more appropriately considered in the context of the compliance filing. At that time and in that context, all the parties will have the benefit of understanding the full impact of Duquesne's requested corrections.

Otherwise, the Petitions for Reconsideration of the Restructuring Order merely reiterate arguments which have been previously raised, exhaustively litigated, and decided in the course of the restructuring proceeding. Repetition here serves no purpose and does not rise to the level necessary for a grant of reconsideration. The Duquesne Petition and the Duquesne/DQE Petition fail to meet our standards for reconsideration and must, accordingly, be denied.

Similarly, HSS/ARI merely recite arguments previously considered and denied. They do not present any new or novel arguments, nor do they present anything which convinces us that our prior decision is in error. The HSS/ARI Petition fails to meet our standards for reconsideration and must, accordingly, also be denied.

### Conclusion

Upon consideration, we shall deny the instant Petitions for Reconsideration of the Restructuring Order; **THEREFORE,**

#### **IT IS ORDERED:**

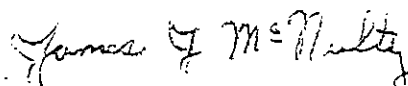
1. That the Petition for Reconsideration filed jointly by Hospital Shared Services and Administrative Resources, Inc., on June 12, 1998, relative to the May 29, 1998

Opinion and Order in the above-captioned proceedings is denied, consistent with this Opinion and Order.

2. That the Petition for Reconsideration or Clarification filed by Duquesne Light Company on June 16, 1998, relative to the May 29, 1998 Opinion and Order in the proceedings at Docket Nos. R-00974104, *et al.*, is denied, consistent with this Opinion and Order.

3. That the Petition for Expedited Reconsideration filed by Duquesne Light Company and DQE, Inc., on June 16, 1998, relative to the May 29, 1998 Opinion and Order in the proceedings at Docket Nos. R-00974104, *et al.*, is denied, consistent with this Opinion and Order.

**BY THE COMMISSION,**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: June 26, 1998

ORDER ENTERED: JUL 16 1998

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