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January 28, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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:

Enclosed for electronic filing is the Main Brief of Duquesne Light Company for the above-referenced proceeding. Copies have been provided as indicated on the Certificate of Service.

Respectfully submitted,

Andrew S. Tubbs

AST/jl
Enclosures

cc: Honorable Dennis J. Buckley
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: January 28, 2013

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Main Brief of Duquesne Light Company**

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Date: January 28, 2013

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# I. INTRODUCTION

On November 15, 2012, Duquesne Light Company ('Duquesne Light" or Company") filed its Energy Efficiency and Conservation Phase II Plan ("EE&C Phase II Plan") with the Pennsylvania Public Utility Commission ("Commission"). The Company's EE&C Phase II Plan is a comprehensive plan designed to achieve the required energy savings within the allotted budget. By way of background, Act 129 of 2008 ("Act 129"), P.L. 1592, 66 Pa. C.S. §§ 2806.1 and 2806.2 was passed into law on October 15, 2008. Among other things, Act 129 amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq.*, to require the Commission to develop an Energy Efficiency and Conservation Program (EE&C Program) by January 15, 2009. Electric distribution companies ("EDCs") with at least 100,000 customers are required to adopt and implement a Commission-approved EE&C Plan. Likewise, the Commission is required to develop:

(1) Procedures for the approval of plans submitted by EDCs;

(2) An evaluation process, including a process to monitor and verify data collection, quality assurance and results of each plan and the program;

(3) An analysis of the cost and benefit of each plan in accordance with a total resource cost test approved by the commission;

(4) An analysis of how the program and individual plans will enable each electric distribution company to achieve or exceed the requirements for reduction in consumption;

(5) Standards 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;

(6) Procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption;

(7) Procedures to require that electric distribution companies competitively bid all contracts with conservation service providers;

(8) Procedures to review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan. The commission may order the modification of a proposed contract to ensure that the plan meets the requirements for reduction in demand and consumption;

(9) Procedures to ensure compliance with requirements for reduction in consumption;

(10) A requirement for the participation of conservation service providers in the implementation of all or part of a plan;

(11) Cost recovery to ensure that measures approved are financed by the same customer class that will receive the direct energy and conservation benefits.

66 Pa.C.S. § 2806.1(a)(1)-(11).

During the Phase I, EDCs were required to achieve consumption reductions of at least one percent (1%) by May 31, 2011, and at least three percent (3%) by May 31, 2013. Additionally, EDCs were required to achieve a four and one-half (4.5%) percent peak demand reduction of the one hundred (100) highest hours by May 31, 2013. 66 Pa.C.S. § 2806.1(c) - (d).

On June 30, 2009, Duquesne Light filed its Energy Efficiency Conservation and Demand Response Phase I plan ("EE&C Phase I Plan"). Duquesne Light's EE&C Phase I plan was approved by the Commission on October 27, 2009, with certain modifications. *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan*, Docket No. M-2009-2093217 (Order Entered October 27, 2009). The EE&C Phase I Plan was further revised by *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093217 (Order entered January 28, 2011).

By Order entered on August 3, 2012, the Commission adopted its Energy Efficiency and Conservation Phase II Implementation Order ("*2012 Implementation Order*"). *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411, M-2008-2069887, 2012 Pa. PUC LEXIS 1259 (Implementation Order entered on August 3, 2012).

Duquesne Light's Phase II Plan builds upon the Company's experiences and successes of its Phase I Plan while meeting the requirements of the *2012 Implementation Order*. Pursuant to the *2012 Implementation Order*, Duquesne Light is required to achieve a 2.0% energy consumption target, or 276,722 MWhs, over a three year period spanning June 1, 2013 through May 31, 2016. *2012 Implementation Order* at 24. Pursuant to Act 129, the cost for achieving the consumption savings may not exceed 2% of the Company's 2006 annual revenues, 66 Pa.C.S. § 2806.1(g), which is approximately $19.545 million per year for three years or approximately $58.65 million for Phase II. The three-year Plan will start on June 1, 2013 and conclude on May 31, 2016. The Commission further established June 1, 2009 through May 31, 2010 as the baseline from which to measure savings. *Phase II* Order at 23.

Consistent with the requirements set forth in the Act 129 and the Commission's *2012 Implementation Order*, Duquesne's Phase II Plan: (a) includes measures to achieve or exceed the required reductions and states the manner in which the consumption reductions will be achieved or exceeded; (b) complies with the designated expenditure cap of 2% of 2006 Annual Revenues for each year of the three-year plan; (c) achieves a total cumulative energy reduction of at least 276,722 MWh by May 31, 2016, with at least 25% of the savings compliance target being achieved in each of the three program years; (d) achieves a minimum of ten percent (10%) of all consumption reduction requirements will come from units of federal, state and local governments, including municipalities, school districts, institutions of higher education and non-profit entities ("GNI"); (e) achieves a minimum of 4.5% of the total required reductions from the low-income customer sector by May 31, 2016; (f) includes a proportionate number of energy efficiency measures for low income households as compared to those households' share of the total energy usage in the service territory; (g) offers at least one energy efficiency program for each customer sector and at least one comprehensive measure for residential and small commercial rate classes ; (h) includes an approved contract(s) with one or more conservation service providers ("CSPs"); (i) includes a Phase II reconcilable adjustment clause tariff mechanism in accordance with 66 Pa.C.S. § 1307 cost recovery mechanism; and (j) demonstrates that the Phase II Plan is cost-effective based on the Commission's Total Resource Cost Test (TRC).

## II. PROCEDURAL HISTORY

On November 15, 2012, Duquesne Light Company ("Duquesne Light" or "Company") timely filed its petition for approval of its EE&C Phase II Plan with the Commission. On December 1, 2012, a notice of Duquesne Light's November 15, 2012 filing was published in the *Pennsylvania Bulletin* establishing that comments on the Phase II EE&C Plan were due December 21, 2012.

On December 5, 2012, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement. On December 6, 2012, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement. The Coalition for Affordable Utility Service and Energy Efficiency ("CAUSE-PA") and Citizens Action Alliance of Pennsylvania ("CAAP") filed Petitions to Intervene on December 6, 2012. Petitions to Intervene were filed on December 7, 2012 by Duquesne Industrial Intervenors ("DII") and Citizen Power, Inc ("Citizen Power").

A prehearing conference was held on December 6, 2012 by Administrative Law Judge Dennis J. Buckley (the "ALJ"). Counsel for Duquesne Light, OCA, OSBA, CAUSE-PA, DII, CAAP and Citizen Power appeared. On December 12, 2012, the ALJ issued the Second Prehearing Order granting the Petitions to Intervene that were filed prior to the prehearing conference. On December 13, 2012, Duquesne Light filed Motion for Protective Order. Duquesne Light's Motion was granted by order entered on December 13, 2012.

On December 21, 2012, comments were filed with the Commission by OCA, DII, ACTION-Housing Pittsburgh, ReEnergize Pittsburgh Coalition and Comverge, Inc. ("Comverge"). In addition, Comverge filed a Petition to Intervene on December 21, 2012. In accordance with the procedural schedule, on January 3, 2013, direct testimony was distributed to all active parties by OCA, CAUSE-PA, and CAAP. On January 9, 2013, the ALJ issued the Fourth Prehearing Order, formally informing the parties that a party's comments would not be included in the certified record of this proceeding.

On January 14, 2013, the ALJ issued the Fifth Prehearing Order, granting Comverge's Petition to Intervene. Also, on January 14, 2013, Comverge filed a Petition for Admission *Nunc Pro Tunc* of Direct Testimony. On January 15, 2013, Duquesne Light served rebuttal testimony on the active parties to the proceeding.

Pursuant to 52 Pa. Code § 5.231, it is the Commission's policy to encourage settlements. Accordingly, the parties were involved settlement discussions over the course of this proceeding. As a result of the efforts of the parties to examine the issues in the proceeding, a full settlement in principle was achieved by Duquesne Light, OCA, Comverge, CAAP, Citizen Power, and CAUSE-PA thereby eliminating the need for the scheduled evidentiary hearings on most issues.[1] Therefore, a hearing was held for the limited purpose of allowing for cross-examination on the limited issues raised by DII and for the introduction and admission into evidence of Duquesne Light's Phase II EE&C Plan, testimony and exhibits and the testimony and exhibits filed by

[1] OSBA and DII have indicated that they do not oppose the Settlement. Based upon the Settlement, Comverge requested that its Petition for Admission *Nunc Pro Tunc* of Direct Testimony be withdrawn.

CAUSE-PA, CAAP and OCA[2] during the course of the proceeding. The hearing was held on January 18, 2013.

This brief addresses only those limited issues reserved for litigation by DII.[3] The issues include: 1) whether Duquesne Light's EE&C Phase II Plan includes a variety of energy efficiency and conservation measures and will provide the measures equitably to all classes of customers and 2) whether the Company's acquisition costs are appropriate.

## III. DESCRIPTION OF THE PLAN

Duquesne Light's EE&C Phase II Plan includes a range of energy efficiency programs that include every customer segment in Duquesne Light's service territory. However, prior to discussing the details of the EE&C Phase II Plan, it is important to understand the plan development process employed by Duquesne Light which serves as important background information relevant to legal arguments discussed later in this brief.

Essentially, the Company's EE&C Phase II Plan was developed upon the basic premise that energy is saved where it is used. Accordingly, the Company undertook four steps to develop its EE&C Phase II Plan. First, the Company reviewed the energy efficiency and conservation potential in the Duquesne Light service territory for each of its major rate classes. (Plan at p. 4) Second, based on the Phase I market segmentation and program underperformance, the Phase II program design was revised. (Plan at p. 5) The program design was revised based on customer participation levels and program performance during Phase I Program Year (PY) 2 &3. (Plan at p. 4) The initial measure mix was established based on the previous two years of measure activity and reconciled with the content of the Commission's proposed 2013 Technical

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[2] Other than Duquesne Light, CAUSE-PA, CAAP and OCA were the only parties to file testimony in this proceeding.

[3] DII did not serve testimony in this proceeding; therefore Duquesne Light is addressing the issues as they are understood by the Company based on the limited record information available.

Reference Manual (TRM)[4] and information provided in the Commission's statewide evaluator's ("SWE") saturation studies and potential forecast. (Plan at p. 5),

Third, in determining the measure savings, cost and benefits, the Company used measure deemed savings consistent with the proposed 2013 TRM and measure costs were documented, referenced to California Public Utilities Commission Database of Energy Efficient Resources (DEER), invoice data and specific measure cost research. Avoided cost assumptions were updated consistent with the Commission's Total Resource Cost Test (TRC) Order. (Plan at p.5)

Finally, portfolio/program goals and funding were adjusted to accommodate additional mandates contained in the Commission's Phase II Order, such as the low income and government/nonprofit carve out. Goal allocation for the remaining customer segments was based on customer segment energy use, previous delivery channel strengths and weaknesses, as well as requirements to achieve mandated reductions at authorized budgets. (Plan at p. 5)

The outcome of the Company's plan development process resulted in an EE&C Phase II Plan consisting of nineteen programs: six residential sector programs; nine commercial sector programs; and four industrial sector programs. Three of the commercial sector programs were targeted to the Government/Non-Profit sector to help the Company achieve its Government/Non-Profit carve-out. Of the nineteen programs, four are newly created programs that were added based on the Company's analysis and experiences in Phase I of the EE&C program. For example, the Company developed a small commercial direct install program to overcome barriers to participation demonstrated in the program year ("PY") 2-3 small office and small retail segment targeted programs (Plan at p. 111). The chart below details the Company's

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[4] *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual 2013 Update*, Docket Nos. M-2012-2313373, M-00051865, 2012 Pa. PUC LEXIS 1511 (September 13, 2012).

proposed programs and expected consumption reductions; however a complete description of each program can be reviewed at pages 13-82 of the Company's plan:

**Energy (kWh) and Demand (kW) Savings**

| Sector | Program Name | May 31, 2016 kWh | May 31, 2016 kW |
|---|---|---|---|
| **Residential** | Residential Energy Efficiency Program | 100,874,929 | 5,546 |
| | REEP Whole House Audit/Retrofit | 997,648 | 72 |
| | Residential Appliance Recycling | 4,774,947 | 591 |
| | Residential Behavioral Savings | 28,036,928 | 0 |
| | School Energy Pledge Program | 4,269,288 | 139 |
| | Low Income Energy Efficiency | 14,942,988 | 751 |
| **Commercial** | Commercial Sector Umbrella Program | 15,577,880 | 2,610 |
| | Office Building Energy Efficiency | 21,750,658 | 3,644 |
| | Healthcare Segment Energy Efficiency | 12,325,373 | 2,065 |
| | Retail Segment Energy Efficiency | 9,992,864 | 1,674 |
| | Commercial Upstream Lighting | 10,050,411 | 2,361 |
| | Small Commercial Direct Install | 6,126,074 | 1,029 |
| **Industrial** | Industrial Sector Umbrella Program | 5,531,182 | 929 |
| | Chemical Products Energy Efficiency | 13,689,675 | 2,300 |
| | Mixed Industrial Energy Efficiency | 12,237,740 | 2,056 |
| | Primary Metals Energy Efficiency | 37,681,176 | 6,331 |
| **Governmental** | Education Segment Energy Efficiency | 11,448,139 | 1,918 |
| | Multifamily Housing Retrofit | 5,173,551 | 239 |
| | Public Agency Partnership Program | 16,584,950 | 2,779 |
| **Total EE&C Plan Savings** | | 332,066,400 | 37,032 |
| **Mandated Reductions** | | 276,722,000 | N/A |

*Note: Portfolio savings objective is 20% above the mandated reduction to provide for 80% measurement realization.*

In developing its EE&C Phase II Plan, the Company sought to attain cost effective savings to assure compliance and avoid the substantial penalties provided for in Act 129. Duquesne Light is required to achieve 276,722 MWhs of energy savings over the Phase II period. The Company's costs to achieve the required savings may not exceed 2% of the Company's 2006 annual revenues which equals approximately $19.545 million per year or approximately $58.65 million for the entire Phase II three year period. In other words, the Company may spend up to $211.90 per MWh to acquire its savings.

## IV. SUMMARY OF ARGUMENT

Notably, no party in this proceeding, including DII asserts that the Company's proposed Phase II EE&C Plan would not achieve the mandated levels of conservation required by Act 129 and the Commission's *2012 Implementation Order* as filed. Instead, several parties proposed selective changes to Duquesne Light's Plan and, it is these proposals that are addressed by the proposed Settlement. Despite not opposing the Settlement, DII has indicated the need to litigate a couple of discrete issues in this proceeding. DII did not serve direct or rebuttal testimony in this proceeding. In fact, DII's participation in the proceeding before the ALJ has consisted of limited cross-examination of a single Duquesne Light witness. Due to the limited identification of issues by DII in this proceeding, it is difficult for Duquesne Light to address issues that have not been articulated on the record.

Duquesne Light is not required to develop a plan with a proportionate distribution of programs based on customer revenue, or any other single factor. The Company is required to meet the requirements of Act 129 and the Commission's *2012 Implementation Order*, including demonstrating that it's Plan is cost effective using the TRC Test, and that the Plan provides a diverse cross section of alternatives for customers of all rate classes. The Commission has been clear, consistent and unambiguous regarding the requirement for electric distribution companies ("EDCs") to include equitable measures for each customer class. Duquesne Light's EE&C Phase II Plan complies with Act 129 and the Commission's Implementation Order(s) by providing a reasonable plan tailored to maximize savings based on customer usage, participation and attainable savings potential. The Company's Phase II EE&C Plan includes 19 programs: six residential sector programs; nine commercial sector programs; and four industrial sector programs. Three of the commercial sector programs are targeted to the Government/Non-Profit sector to help the Company achieve its Government/Non-Profit carve-out. Four new programs were created based on the Company's analysis and experiences in Phase I of the EE&C program. Based upon the Company's experience in operating its current plan and its analysis in preparing its proposed Phase II EE&C Plan, the Company has determined that this mix of programs will enable it to achieve its Phase II consumption reduction target and Commission-set carve-outs, in a cost-effective manner.

Indeed, Duquesne Light's EE&C Phase II Plan was developed to obtain the most cost effective savings, to achieve its overall energy savings target, and achieve its government/non-profit and low income sector carve outs. Neither Act 129, nor any related Commission order requires Duquesne Light to develop its Plan with a set acquisition cost. Although the Commission, through its *2012 Implementation Order*, has projected an acquisition cost for the Company's Phase II EE&C Plan, this projection does not equate to a program requirement. Clearly, it would not be prudent for an EDC to design its EE&C plan with the goal of achieving its savings with an acquisition cost that exceeds what the market provides. That is, Duquesne Light did not, and should not use an acquisition cost for planning its Phase II EE&C Plan when more cost effective savings are available.

As set forth below, the Company's EE&C Phase II Plan was developed with an appropriate mix of programs that are equitably distributed among the Company's customer sectors to achieve its Phase II requirements. Further, Duquesne Light's has properly developed a plan to maximize energy efficiency savings, while doing so in the most cost-effective manner.

No party has presented any evidence in this proceeding to suggest otherwise or presented any solutions to correct any perceived short-comings to the Company's Phase II EE&C Plan. For these reasons, the Commission should approve Duquesne Light's Phase II EE&C Plan, as modified by the Settlement, without further revision and do so promptly so that the Company may begin to implement its Plan in time for it to start on June 1, 2013.

## V. LEGAL STANDARDS

As the petitioner or moving party, Duquesne Light has the burden of proof in this matter. Section 332(a) of the Public Utility Code ("Code") requires the proponent of a rule or order "to bear the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances."[5] A "preponderance of the evidence" means that one party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party.[6] Substantial evidence is "relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established."[7]

If a petitioner has met its burden by a preponderance of substantial evidence and met its *prima facie* case, the fact finder must then determine whether a respondent has submitted evidence of co-equal value or weight in order to counter or refute the applicant's case. If a respondent has provided co-equal evidence in response to the applicant's case, the burden of proof cannot be deemed to have been satisfied unless the party bearing the burden presents additional evidence causing its position to be supported by a preponderance of the evidence.

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[5] 66 Pa.C.S. § 332(a); Motheral, Inc. v. Duquesne Light Co., 2001 Pa. PUC LEXIS 4 at 9; *citing*, Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1954).
[6] *See*, Se-Ling Hosiery.
[7] Murphy v. Pa Department of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

Thus, with competing evidence, a petitioner must meet its burden of proof by a preponderance of substantial evidence, based on the overall weight of the evidence.

## VI. ARGUMENT

### A. DUQUESNE LIGHT'S EE&C PHASE II PLAN INCLUDES A VARIETY OF MEASURES EQUITABLY DISTRIBUTED AMONG EACH CUSTOMER CLASS AS REQUIRED BY ACT 129 AND COMMISSION PRECEDENT.

Pursuant to 66 Pa.C.S.§2806.1(a)(5), the Commission is required to develop standards 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. EDCs are required to demonstrate that its plan is cost effective using the TRC Test, and that the plan provides a diverse cross section of alternatives for customers of all rate classes. 66 Ps.C.S.§2806.1(b)(1)(i)(I). However, there is no requirement that Duquesne Light provide a proportionate distribution of programs based on customer revenue, or any other single factor. In its *Phase I Implementation Order*, the Commission's stated the following with regard to equitable distribution or program measures:

> "We will not require a proportionate distribution of measures among customer classes. However we direct that each customer class be offered at least one energy efficiency and one DR program. While we will leave the initial mix and proportion of EE and DR programs to the EDCs, we expect the EDCs to provide a reasonable mix of EE and DR program for all customers. The burden is one the EDC to explain and justify its distribution of measures among its customers if such distribution is challenged."

The relevant provisions of the Commission's *2012 Implementation Order*, found at pages 87-89, include the following:

> In Section A of this Implementation Order, the Commission establishes specific carve-outs for the low-income and government/educational/nonprofit sectors. ***Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure.*** [*Emphasis Added*]

> The Commission believes the ***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.*** We believe that the overall limitation on cost recovery and the specific limitation tying costs to a benefited class (discussed in Section K of this Implementation Order) will ensure that offerings are not skewed toward or away from any particular class. There is no single set of measures that will fit all EDCs and the myriad mix of customer classes. ***It is entirely possible that the most cost-effective energy efficiency programs may not come proportionally from each customer class. [Emphasis Added]***
>
> ... ***The Commission will not require a proportionate distribution of measures among customer classes. However, the Commission directs that each customer class be offered at least one energy efficiency program. The Commission believes that, as with Phase I, the initial mix and proportion of energy efficiency programs should be determined by the EDCs, subject to Commission approval."[Emphasis Added]***

Duquesne Light's EE&C Phase II Plan includes a range of energy efficiency programs with at least one program for every customer segment. Indeed, the Company's plan includes 19 programs: six residential sector programs; nine commercial sector programs; and four industrial sector programs. Three of the commercial sector programs are targeted to the Government/Non-Profit sector to help the Company achieve its Government/Non-Profit carve-out. Four programs are newly created programs added based on the Company's analysis and experiences in Phase I of the EE&C program. Notably, the Company developed a small commercial direct install program to overcome barriers to participation demonstrated in the PY 2-3 small office and small retail segment targeted programs.

To determine the appropriate programs budgets, the Company reviewed customer energy use, previous delivery channel strengths and weaknesses, as well as its 2% spending cap. (Plan at p. 6.) As indicated in Figure 3 of the Plan, the residential programs account for 30.4% of the energy use. Commercial programs account for 48.8% of the energy use. (Plan at p. 15.) Finally, industrial programs account for 20.8% of energy used. Accordingly, the Company's Phase II Plan seeks to achieve 46.3% of its savings from residential customers, and 53.7% from commercial and industrial customers. While 46.0% of savings will be achieved from the large C&I segments, large C&I customers consumed 44.8% of energy distributed by the Company.[8] The Company also introduced a new small commercial direct install program to overcome barriers in the small C&I segments.

The Commission has been clear, consistent and unambiguous regarding the requirement for EDCs to include equitable measures for each customer class. By all accounts, Duquesne Light's EE&C Phase II Plan complies with Act 129 and the Commission's Implementation Order(s) by providing a reasonable plan tailored to maximize savings based on customer usage, participation and attainable savings potential.

## B. DUQUESNE LIGHT'S EE&C PHASE II PLAN STATED ACQUISITION COST REFLECT A REASONABLE ESTIMATE OF THE COMPANY'S COST TO ACHIEVE THE PROJECTED SAVINGS AND FALL SQUARELY WITHIN THE ALLOTTED BUDGET.

Duquesne Light's EE&C Phase II Plan is properly developed to obtain the most cost effective savings, exceed its overall energy savings target, and achieve its government/non-profit and low income sector carve outs. Neither Act 129, nor any related Commission order requires Duquesne Light to develop its plan with acquisition cost at, or as close to the acquisition cost provided in the Commission's TRC and Phase II Implementation Orders.

By way of background, Duquesne Light's allowable acquisition costs were determined by the Statewide Evaluator ("SWE") as required by the Commission. The *2012 Implementation Order* explains the process used by the SWE to determine EDC acquisition cost as follows:

> "The methodology used by the SWE to estimate future Act 129 acquisition costs was based on 2012 data and likely future trends over the next several years. The SWE examined the projected acquisition costs for first year MWh saved from approximately two dozen other utilities and public benefit organizations across

[8] Large C&I customers consumed 44.8% of energy distributed in base year 2009 per EE&C Plan Appendix A page 120 of 166.

> the country that have major energy efficiency programs. The mean acquisition costs obtained from these plans were $220 per first year MWh saved. ***This data indicated that future acquisition costs will be considerably higher than the $140 per MWh of weighted cost average acquisition costs experienced in the first two years of the Act 129 EE&C Program.*** [***Emphasis Added***] The SWE also looked at the mix of measures used to date in the Pennsylvania programs and how that mix of measures is likely to change in the future along with likely changes in associated costs. The SWE looked at both administrative costs for implementing programs as well as measure costs and incentive costs on a forward-looking basis. The Commission believes that this forward-looking, more refined market potential assessments approach that specifically considers the Pennsylvania-specific circumstances is most appropriate for setting Act 129 compliance targets. As such, the Commission tentatively finds the SWE's determination of an acquisition cost of $221.39 per MWh as a statewide average for Phase II as credible. From the statewide average baseline, the SWE determined individual EDC acquisition costs."

Duquesne Light's individual acquisition cost was stated by the SWE as being $211.90. However, this number is the product of simple division, and is not based on Duquesne Light's measure mix, service territory savings potential, customer segment usage or other Company specific relevant factors. Rather, this figure reflects the Company's Phase II budget of approximately $58.6 million divided by its consumption reduction target of 276,722 MWhs. In other words, it is the Company's maximum cost per MWh within its statutory budget. It is not a goal. It would not be prudent to design a plan with the goal of achieving its savings at $211.91 when more cost effective savings are available. The Company's EE&C Phase II Plan was developed with an 80% realization rate to account for unknown variables. Moreover, the Company has not been presented with a persuasive or well-reasoned argument that increasing its acquisition costs would "enable [Duquesne Light] to improve its plan and exceed the required reductions in consumption" as required by Act 129. Instead, increased acquisition cost will likely result in the exact opposite.

## VII. <u>CONCLUSION</u>

For the foregoing reasons, Duquesne Light respectfully requests that its EE&C Phase II Plan be approved as modified by the settlement reached with all parties except DII and OSBA.[9]

## VIII. ORDERING PARAGRAPHS

1. That the Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase II Plan is granted as modified by the terms and conditions contained in the Joint Petition for Partial Settlement filed in this docket.

2. That the Duquesne Industrial Intervenors proposal to require Duquesne Light Company to modify its Energy Efficiency and Conservation Phase II Plan is denied in its entirety.

3. That Duquesne Light Company shall file with this Commission and serve on all parties of record in this proceeding a revised Energy Efficiency and Conservation Plan consistent with the modifications directed in this Opinion and Order, within sixty (60) days of the entry of this Opinion and Order. Interested parties will have ten days to file comments on the revised portions of the Energy Efficiency and Conservation Plan, with reply comments due ten days thereafter. The Commission will approve or reject the revised portions of the Energy Efficiency and Conservation Plan at a public meeting within 60 days of the Company's filing of its revisions to the Plan.

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[9] DII and OBSA maintain a position of non-opposition to the settlement. Only DII has reserved issues for litigation in this proceeding.

4. That Duquesne Light Company is permitted to implement any portion of its Energy Efficiency and Conservation Plan that was approved without modification by this Opinion and Order.

Respectfully submitted,

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