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February 7, 2013

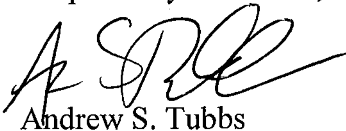
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Reply Brief of Duquesne Light Company for the above-referenced proceeding. Copies have been provided as indicated on the Certificate of Service.

Respectfully submitted,



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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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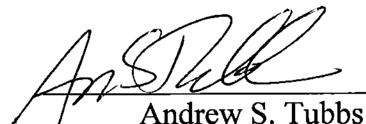

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF DUQUESNE LIGHT COMPANY

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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, 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.

II. SUMMARY OF ARGUMENT

No party in this proceeding asserts that the Duquesne Light's proposed Phase II EE&C Plan will not achieve the mandated levels of conservation required by Act 129 and the Commission's *2012 Implementation Order* as filed. Further, no party has asserted that the Company's Phase II EE&C Plan is not cost-effective. Instead, several parties proposed selective minor changes to Duquesne Light's Plan. These proposals are addressed and resolved by the proposed Settlement in this proceeding. DII has indicated that it does not oppose the Settlement in this proceeding. Therefore, the Company's Phase II EE&C Plan should be approved, as modified by the Settlement.

In its Main Brief, DII requests that the Commission direct Duquesne Light to make a number of changes to its Phase II EE&C Plan. However, prior to the filing of its Main Brief, DII did not request the proposed modifications set forth in its Main Brief. Indeed, DII did not serve

any testimony in this proceeding and conducted only limited cross-examination of a single Duquesne Light witness. DII's requests should be rejected for the following reasons.

First, as noted above, DII did not identify its issues or requested relief until it filed its Main Brief in this proceeding. DII's failure to do so deprived Duquesne Light and the other parties to this proceeding with the opportunity to review and evaluate DII's issues and proposals. Therefore, DII's proposals are untimely and should be summarily rejected.

Second, to the extent the Commission opts to consider DII's proposals, DII's proposals ignore Commission precedent and are not supported by the record in this proceeding. DII requests that the Commission direct Duquesne Light to shift a portion of its Phase II EE&C Plan costs away from the large commercial and industrial ("C&I") customer class. DII requests that the Company's EE&C Plan costs be reallocated based solely upon the percentage of Duquesne Light's distribution revenues generated by the Large C&I customer class. However, the Commission has specifically determined that it will not require a proportionate allocation of programs based on a single factor, such as customer class revenue. Duquesne Light's Plan includes at least one program for each customer class. Moreover, Duquesne Light's Large C&I customer class uses 44.8% of the electricity distributed by the Company. In order to achieve its mandated consumption reduction target, Duquesne Light has proposed to achieve 46% of its Phase II EE&C Plan savings from the Large C&I class. To allocate EE&C Plan costs, and associated savings impacts, solely based on customer class revenue, would ignore the individual customer class usage and jeopardize the Company's ability to achieve its Act 129 consumption reduction target.

DII also requests that the Commission direct Duquesne Light to modify its Phase II EE&C Plan to adopt acquisition cost levels that correspond to the Commission's *2012*

Implementation Order. However, DII fails to understand that the Company's Phase II based acquisition cost was set forth in the Commission's *2012 Implementation Order* and reflects the Company's Phase II budget of approximately $58.6 million divided by its consumption reduction target of 276,722 MWhs. It does not represent the appropriate acquisition cost level for the Company's Phase II EE&C Plan. Indeed, to adopt and implement DII's proposal would result in directing Duquesne Light to develop a plan based upon an acquisition cost rather than designing a plan to achieve the Company's Phase II Act 129 consumption target in the most cost-effective manner. This would not be an efficient or cost-effective use of customer-supplied funds.

For the first time in its Main Brief, DII also requests that the Commission consider reducing Duquesne Light's non-incentive costs. DII has not requested that the Commission make any specific modification to the Company's Phase II EE&C Plan. DII has not presented any evidence that the ratio of incentive to non-incentive costs set forth in the Company's Phase II EE&C Plan is improper. Indeed, as addressed below, DII's assertion is incorrect. In addition, DII has not offered an alternative to the ratios presented in the Phase II EE&C Plan. For all of these reasons, this request should be rejected.

Finally, DII requests that the Commission authorize Large C&I customers to bid energy efficiency savings into the wholesale market of the PJM Interconnection, L.L.C. ("PJM"). In its *2012 Implementation Order*, the Commission determined that EDCs could elect, but are not required to bid savings from energy efficiency measures into PJM. It is unclear what DII seeks the Commission to do in this proceeding relative to this issue. It is not proper for DII to reargue the Commission's decision not to mandate that EDCs bid energy efficiency savings into PJM. Further, to the extent that DII seeks to have Duquesne Light assist its members in bidding in their individual savings, DII has presented no evidence relative to the impact such assistance will have

on Duquesne Light or its Phase II EE&C Plan. Finally, as PJM is not under the jurisdiction of the Commission, there is no basis to request that the Commission explicitly authorize the bidding of their individual energy efficiency savings into PJM's capacity markets.

For these reasons and as more fully set forth below, Duquesne Light's Phase II EE&C Plan as modified by the full settlement, should be approved.

III. ARGUMENT

A. DII'S RECOMMENDED MODIFICATIONS TO DUQUESNE LIGHT'S EE&C PLAN ARE UNTIMELY

For the first time in this proceeding, DII in its Main Brief, recommends that the Commission direct Duquesne Light to: (1) shift a portion of its Phase II EE&C Plan costs away from the Large C&I customer class; (2) modify its Phase II EE&C Plan to adopt acquisition cost levels that correspond to the Commission's *Implementation Order*; (3) consider reducing Duquesne Light's non-incentive costs to allow for greater benefits to flow directly to customers; and (4) authorize large C&I customers to bid energy efficiency savings into the wholesale market of PJM. DII's proposals should be rejected as they are untimely and deprived Duquesne Light of a meaningful opportunity to respond.

Preliminarily, it must be noted that DII did not present any testimony in this proceeding, and that the first time it raised these issues was in its Main Brief. As DII concedes, Duquesne Light through its Phase II EE&C Plan, discovery responses and testimony clearly identified its proposed cost allocation, acquisition costs, non-incentive expenditures and its decision not to bid savings into PJM. (*See*, DII Main Brief, pp. 8, 9, 12, and 14). To the extent that DII believes that Duquesne Light's Phase II EE&C Plan should be modified to address these issues, DII should have raised these issues at the earliest opportunity rather than waiting to raise these issues

in its Main Brief, thereby depriving Duquesne Light of any meaningful opportunity to respond. Raising arguments for the first time in a post-hearing brief is a violation of due process in a contested proceeding. *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, et al.*, Docket No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 (August 24, 1998); *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service Petition for Reconsideration of Duquesne Light Company Petition for Reconsideration of Constellation NewEnergy, Inc. and Constellation Power Source, Inc.*, Docket No. P-00032071, 2004 Pa. PUC LEXIS 42 (October 5, 2004); *Dee-Dee Cab, Inc. v. Pa. PUC,* 817 A.2d 593, 598 (Pa. Cmwlth. 2003), *appeal denied*, 575 Pa. 698, 836 A.2d 123 (2003).

It is improper for DII to hold its cards until filing its Main Brief to identify the relief it seeks in this proceeding. Beyond a general statement of issues in its prehearing memorandum, DII failed to identify its requested relief during the litigated portion of this proceeding. Indeed, in its pre-hearing memorandum DII stated the following relative to its issues in this proceeding:

> DII is still in the process of evaluating the Company's Petition, however, after a preliminary review, DII members are concerned with the proposed Phase II EE&C costs and programs that would impact the terms and conditions of members' electricity service. Specifically, DII members are concerned with respect to any rate increases imposed as a result of the Company's EE&C Phase II Plan.

DII Prehearing Memorandum, p. 2. DII's failure to state with any specificity its issues or identify its requested relief until the filing of its Main Brief in this proceeding has deprived Duquesne Light and the other parties in this proceeding of the opportunity to respond to DII, thereby violating Duquesne Light's and the other parties' due process rights.

Although Duquesne Light, as the petitioner, bears the burden to prove that the proposed Phase II EE&C Plan is in the public interest, a party that proposes an issue that is not included in a public utility's proposal bears the burden of proof. For example, in *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007), a party offered proposals that were not included in the public utilities' filings. The ALJ held that, as the proponent of a Commission order with respect to the newly offered proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at *184-87. *See also Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Co.*, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at *2, 19-20 (February 25, 2010) (the companies had the burden of proof as to the proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals). By failing to produce any evidence to support its position and provided no specific information as to the impacts of its proposals on Duquesne Light's Phase II EE&C Plan. DII has failed to carry its burden. Moreover, Duquesne Light has fully supported its Phase II EE&C Plan with record evidence. Therefore, DII's arguments and requested relief should be denied.

B. DII'S CONTENTIONS CONCERNING THE COST ALLOCATION AMONG CUSTOMER CLASSES ARE WITHOUT MERIT AND SHOULD BE DISREGARDED

Although DII presented no evidence or testimony analyzing the cost allocation contained in Duquesne Light's Phase II EE&C Plan, it nevertheless addresses cost allocation in its Main Brief. Its contentions are meritless and should be rejected.

DII correctly observes that Act 129 requires that the Commission 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). However, DII avers that in order to ensure that this requirement is met, Duquesne Light must allocate its Phase II EE&C Plan costs based upon a customer classes' revenue contribution. DII Main Brief, p. 7. DII's argument is without merit.

As addressed in Duquesne Light's Main Brief, in implementing Act 129 the Commission determined 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." *2012 Implementation Order*, pp. 87-89. The Commission has not dictated that an EDC allocate its EE&C Plan costs based upon the revenues of a particular customer class. Indeed, the Commission has explicitly stated that,

> 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.
>
> * * *
>
> 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.

2012 Implementation Order, pp. 87-89. Duquesne Light's EE&C Phase II Plan comports with Act 129 and the Commission's *2012 Implementation Order*. 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.

DII suggests that the overall revenue received by an EDC from a customer class provides "a useful metric" for allocating EE&C Plan costs. DII Main Brief, p. 8. While customer class revenue may be a "useful metric," it is not the only useful metric. Indeed, customer class revenue is not, and cannot be the sole metric used by an EDC in allocating EE&C Plan costs. To allocate Duquesne Light's Phase II EE&C Plan costs solely based upon customer class revenues, would ignore the individual customer class usage and thereby significantly jeopardize the Company's ability to achieve its Act 129 consumption reduction target.

Act 129 is an energy efficiency bill. That is, the intent of Act 129 is to encourage and assist customers in reducing their energy usage. Indeed, an EDC's compliance with Act 129 is determined by its ability to achieve a set consumption reduction target under a statutorily set spending cap. Further, if an EDC fails to achieve its consumption reduction target, the EDC will be subject to significant civil penalties. 66 Pa.C.S. § 2806.1(f)(2)(i). Therefore, a significant metric considered by Duquesne Light was the level of customer usage for each of its customer classes.

DII correctly observes that Duquesne Light's Large C&I customer class generates 14.4% of the Company's revenues. However, as explained in the Company's Main Brief, Duquesne Light did not rely on a single metric to allocate its Phase II EE&C Plan costs. Instead, the Company considered customer energy use, previous delivery channel strengths and weaknesses, as well as its 2% spending cap. Specifically, DII's analysis fails to acknowledge that Duquesne Light's Large C&I customer class represents 44.8% of the Company's distribution load.

The Company's Phase II EE&C Plan seeks to achieve 46.3% of its savings from residential customers, and 53.7% from commercial and industrial customers. The projected 46.0% of savings to be achieved from the Large C&I segments is consistent with the Large C&I customers' consumption of 44.8% of energy distributed by the Company on its system. Moreover, as noted by DII, Duquesne Light projects that it will be able to achieve the savings from the Large C&I customers in a cost-effective manner, as demonstrated by the fact that Duquesne Light has allocated only 36.2% of its Phase II EE&C Plan budget to the Large C&I customer class. Duquesne Light Phase II EE&C Plan, p. 154.

In addition, DII has not made a specific recommendation for how the Company should allocate its Phase II EE&C Plan costs or how such a revised allocation would impact Duquesne Light's other customers or the Company's ability to achieve its Phase II Act 129 consumption reduction target. Indeed, DII has failed to demonstrate that the Company's cost allocation of its Phase II EE&C Plan costs is not appropriate. Further, DII has not presented any evidence to support a reallocation of EE&C Plan costs or to demonstrate what impact such a proposal would have on the Company's ability to comply with Act 129. As noted by the Company in its Main Brief, 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. For the reasons provided above, Duquesne Light's proposed allocation of its Phase II EE&C Plan costs are reasonable and should be approved without modification and DII's proposal should be rejected.

C. DUQUESNE LIGHT'S ACQUISITION COSTS ARE APPROPRIATE

DII avers that Duquesne Light's proposed acquisition costs are inconsistent with the Commission's Implementation Order. DII Main Brief, p. 9. DII notes that, as proposed, Duquesne Light's acquisition costs are lower than the level approved by the Commission and

asserts that, "[t]his disparity between acquisition cost levels **may be** an indication that Duquesne [Light] has over-relied on certain low-cost measures in contravention of the Commission's Implementation Order that requires a balanced approach among customer classes." DII Main Brief, p. 6. (Emphasis added.) Based upon this observation and DII's unsupported assertion, DII states that the Commission "should recommend" that Duquesne Light modify its Phase II EE&C Plan to promote a more equitable distribution of EE&C measures and costs and adopt acquisition cost levels that correspond to the Commission's *2012 Implementation Order*. *Id.* For the reasons addressed in the Company's Main Brief on pp. 14-15, and those set forth below, DII's recommendation should be rejected.

First, Duquesne Light notes that DII presented no evidence or testimony analyzing Duquesne Light's projected acquisition costs in the Company's Phase II EE&C Plan. Instead, DII completed limited cross-examination of a single Duquesne Light witness on this issue. Nevertheless, DII presents, for the first time in its Main Brief, a recommendation to modify the Company's Phase II EE&C Plan.

Second, DII correctly observes that the Commission's statewide evaluator ("SWE") determined that Duquesne Light's projected Phase II acquisition costs are $211.90. DII Main Brief, p. 9. In addition, DII is correct that Duquesne Light's proposed Phase II EE&C Plan includes an average acquisition cost level of $176.10. *Id.* However, as explained by the Company in its Main Brief, the SWE set Duquesne Light's Phase II acquisition cost number reflects the Company's Phase II budget of approximately $58.6 million divided by its consumption reduction target of 276,722 MWhs. It does not represent the appropriate acquisition cost level for the Company's Phase II EE&C Plan. Indeed, the SWE's projection could not and does not consider the measure mix or other Company-specific relevant factors.

The SWE's energy efficiency potential analysis was performed at a high level to establish achievable potential and cost limits. It could not address other important planning considerations including:

- The efficacy of programmatic customer engagement channels
- Contracting practices
- Experience based expectations of contractor performance, and importantly,
- A "rearview" view of what could be accomplished based on Phase I PY 2-3 measure mix and other performance bases.

Instead, the Company's Phase II acquisition cost approved by the Commission represents the Company's maximum cost per MWh within its statutory budget. It is not a goal. Indeed, in its *2012 Implementation Order* the Commission stated that, "EDCs should develop plans to achieve the most energy savings per expenditure." *2012 Implementation Order*, p. 87. To adopt and implement DII's proposal would result in directing Duquesne Light to develop a plan based upon an acquisition cost rather than designing a plan to achieve the Company's Phase II Act 129 consumption target in the most cost effective manner. DII's proposal is contrary to prior Commission determinations recognizing that it is the EDCs that have the obligation to meet the requirements of Act 129. Therefore, the Commission has properly determined that EDCs should have discretion over the method by which to comply with the requirements.[1]

[1] *See, e.g., Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, 2009 Pa. PUC LEXIS 2009 (Order Entered December 28, 2009), p. *8 ("Act 129 establishes certain requirements that must be met by electric distribution companies (EDCs), but gives the EDCs discretion (subject to Commission review) over the method by which the EDC will comply with those requirements."); *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order Entered October 28, 2009) p. *88 ("Act 129 does not dictate how EDCs must meet these goals, only that they must meet them."); *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216, 2009 Pa. PUC LEXIS 2242 (Order Entered October 26, 2009), p. *131 ("We are mindful, however, that PPL is the Party that bears the risk of penalties in the event of non-compliance with the mandates of Act 129. We will not micro-manage the Company's compliance efforts.").

Third, DII has not made a specific recommendation how the Company should rebalance its Phase II EE&C Plan to achieve an increase in the Company's Phase II acquisition cost level. Again, DII has presented no evidence or testimony to support a means to achieve its stated goal. Absent such evidence, it is not possible to determine the potential impact DII's proposal would have on Duquesne Light's other customers or the Company's ability to achieve its Phase II Act 129 consumption reduction target.

For the reasons set forth in the Company's Main Brief and those provided above, DII's proposal to rebalance the Company's Phase II EE&C Plan should be rejected.

D. DUQUESNE LIGHT'S PHASE II EE&C PLAN COSTS ARE REASONABLE

DII avers in its Main Brief that the Commission should consider whether Duquesne Light's proposed Phase II EE&C Plan costs are reasonable and directly related to Duquesne Light's proposed Phase II measures. DII Main Brief, p. 11. Specifically, DII states its concern that the Company's Phase II administrative costs are greater than the "direct costs" of programs being paid out to consumers via incentives. DII Main Brief, p. 12. For the reasons set forth below, DII's arguments are without merit and should be rejected.

First, DII has not requested that the Commission make any specific modification to the Company's Phase II EE&C Plan. Instead, DII has asked that the Commission "consider" whether the Company's proposed Phase II costs are reasonable. It is not clear why DII has not made a specific recommendation. Again, DII has not presented any evidence that the ratio of incentive to non-incentive costs set forth in the Company's Phase II EE&C Plan is impermissible. Nor has DII offered an alternative to the ratios presented in the Phase II EE&C Plan. Indeed, DII has not done this, because it cannot.

As addressed in Section 4 of the Company's Phase II EE&C Plan, the administrative budget includes planning, market research, sales and marketing communications, engineering, data management, contracting, and evaluation. *See*, EE&C Plan, Section 4.2.3. Further, the Company's Phase II EE&C Plan administrative budgets are tabulated based off non-customer incentive costs including portfolio (common) costs and direct implementation costs. *Id.* To set its Phase II administrative costs, Duquesne Light estimated its common costs at 10% of total administrative costs based on its Phase I EE&C Plan PY2-3 records. In addition, the Company's proposed direct costs include implementation costs such as labor, material, travel, insurance, etc., and are paid to implementation contractors.

Further, as set forth in Appendix D of the Company's EE&C Plan, the Company anticipates Plan administrative costs at $30.3 million, approximately 52% of the authorized budget. Review of these "administrative" costs shows nearly $7.8 million are material and labor costs to provide energy efficient measures at no cost to hard-to-reach residential and small commercial markets through the implementation of "comprehensive" programs, such as whole house audits/retrofit and small commercial direct install programs. Further review of projected administrative budgets shows that Duquesne Light's "portfolio" or common management cost to implement the Plan are approximately $3 million, or approximately 5.2% of the Plan budget. See Table 6A. The remaining $19.5 million administrative costs, approximately 33% of the authorized budget, are for CSP performance payment fees and other direct program implementation costs. Duquesne Light EE&C Plan, p. 144.

Therefore, DII's stated concern about the level of EE&C Plan costs being paid to the Company's CSPs is unjustified. Indeed, the Company's CSPs are projected to receive approximately $19.5 million of the Company's Phase II EE&C Plan budget as compared to the

projected $28 million in customer incentives. *Id.* For these reasons, DII's unsupported recommendation should be rejected.

E. DII'S REQUEST FOR AUTHORITY FOR LARGE C&I CUSTOMERS TO BID ENERGY EFFICIENCY SAVINGS INTO PJM SHOULD BE REJECTED

In its Main Brief, DII, for the first time in this proceeding, requests that the Commission explicitly authorize Duquesne Light's Large C&I customers to bid their own energy efficiency savings into PJM markets. DII Main Brief, p. 14. As DII failed to raise this issue prior to filing its Main Brief, its request should be summarily rejected. Further, based upon the lack of clarity of DII's request, and the Commission's prior determination in this regard, DII's request should be denied because it is contrary to the Commission's *2012 Implementation Order*, unsupported by record evidence and is moot.

First, in its Main Brief, DII avers that the Commission should explicitly authorize Duquesne Light's Large C&I customers to bid their own energy efficiency savings into PJM markets. DII Main Brief, p. 14. While DII acknowledges that the Commission determined in its *2012 Implementation Order* that EDCs may elect to bid Phase II EE&C Plan energy efficiency savings into PJM's capacity markets, DII Main Brief, p. 13, it appears that DII seeks an order precluding Duquesne Light from bidding savings from large C&I customers into the PJM markets. Obviously, the Company and large C&I customers cannot bid the same savings into the capacity markets. Inasmuch as the Commission has already determined that the Company may bid savings into the PJM markets at its discretion, this request is improper because the issue has been decided. In deciding this matter, the Commission stated:

> The Commission will not require the EDCs to bid energy efficiency into PJM's capacity markets. However, an EDC may choose to do so. **The Commission will not convene a working group at this time to discuss the bidding of energy efficiency resources into PJM, but suggests that interested stakeholders raise the possibility of a working group during the EDC's stakeholder meetings.**

> As the bidding of energy efficiency resources into PJM's capacity markets will not be a requirement imposed upon EDCs, the Commission will not provide specific guidelines on the EDCs on how to do such bidding.

2012 Implementation Order, p. 110 (emphasis added). Therefore, it is clear that Duquesne Light is not required to bid energy efficiency savings into PJM's capacity markets. Indeed, Duquesne Light witness, Mr. Defide, explained that: "Duquesne Light has determined that the administrative effort and costs associated with bidding energy efficiency measures into PJM does not justify undertaking this effort. However, the Company will continue to evaluate this issue during the course of its Phase II EE&C Plan." Duquesne Light St. 1-R, pp. 20-21. Moreover, the Commission's *2012 Implementation Order* encouraged interested stakeholders to raise this issue in the context of an EDC's stakeholder meetings. Should DII wish to pursue this matter, DII should adhere to the Commission's directive and raise this issue directly with Duquesne Light or in the context of a Phase II stakeholder meeting.

Alternatively, DII may be seeking Duquesne Light's assistance to support large C&I customers in bidding in the PJM markets, however, this proceeding is not the proper forum for such a request. And, more importantly, to the extent DII does require some action from the Company, it is unclear what is required from Duquesne Light. DII failed to present any evidence or testimony to support its recommendation in this proceeding. For the first time in this proceeding DII states, in its Main Brief, that Large C&I customers "may have the resources" to bid in their energy savings and that such customers "may be more likely to participate in Phase II measures." These statements by DII do not constitute facts. DII has failed to provide any evidence relative to: (1) the number of Large C&I customers that want to bid in their energy savings into PJM; (2) the ability of Large C&I customers to bid their own savings into PJM; and (3) the potential impact on Duquesne Light's EE&C Plan to accommodate customer bidding of

energy savings into PJM. Duquesne Light is not able to discern from DII's request what, if anything, is required from the Company.

Finally, to the extent that DII requests authority from the Commission for Large C&I customers to bid their energy savings into PJM, and DII is not requesting Duquesne Light's assistance to do so, the issue is unrelated to Duquesne Light's Phase II EE&C Plan. The issue of whether Large C&I customers may bid their energy savings into the PJM capacity markets is between those customers and PJM. The Commission is a creature of the legislature and only has those duties, powers, responsibilities and jurisdictions given to it by the legislature. *Western Pa. Water Co. v. Can., Public Utility Commission*, 311 A.2d 370, 10 Pa. Cmwlth. 533 (1973). In *PECO Energy Co. v Pa. PUC*, 568 Pa. 39, 791 A.2d 1155 (2002), the Supreme Court of Pennsylvania stated as follows:

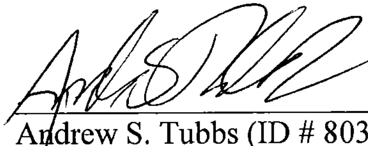
> The power of the Commission is statutory, arising either from words contained in the enabling statutes or by a strong and necessary implication from those words, *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977), and the legislative grant of power in any particular case must be clear. *Delaware River Port Authority v. Pennsylvania Public Utility Commission*, 393 Pa. 639, 145 A.2d 172 (1958).

The Commission's jurisdiction does not extend to whether Large C&I customers may participate in PJM auctions. Indeed, customer participation and eligibility for participation in PJM's capacity markets is governed by an extensive set of rules promulgated by PJM. Therefore, if nothing is required from the Company, then DII's request is irrelevant to the approval of Duquesne Light's Phase II EE&C Plan. At best, this is a matter between those customers seeking to participate in capacity auctions and PJM and this is not within the Commission's jurisdiction or the subject of this proceeding.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons discussed in this Reply Brief and the Company's Main Brief, the Energy Efficiency and Conservation Plan of Duquesne Light Company should be approved, and the proposals of DII contained in its Main Brief should be rejected..

Respectfully submitted,



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