



December 5, 2013

VIA E-FILE AND FIRST CLASS MAIL

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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: Pennsylvania Public Utility Commission et al. v. Duquesne Light Company;
Docket Nos. R-2013-2372129 and C-2013-2390562, et al.; MOTION TO COMPEL
RESPONSES TO NRG SET II DISCOVERY AND FOR LEAVE TO SERVE
SUPPLEMENTAL SURREBUTTAL TESTIMONY**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original Motion to Compel Responses to NRG Set II Discovery and for Leave to Serve Supplemental Surrebuttal Testimony in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Please date-stamp the extra copy and return it with our courier. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By David P. Zambito
Counsel for *NRG Power Midwest LP, NRG Energy
Center Pittsburgh LLC and Reliant Energy
Northeast LLC*

DPZ:JLB/kmg
Enclosures

cc: Honorable Conrad A. Johnson
Per Certificate of Service

17770557.1

CERTIFICATE OF SERVICE
Docket Nos. R-2013-2372129 and C-2013-2390562, et al.

I hereby certify that I have this day served a true copy of the foregoing Motion to Compel Responses to NRG Set II Discovery and for Leave to Serve Supplemental Surrebuttal Testimony of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: December 5, 2013



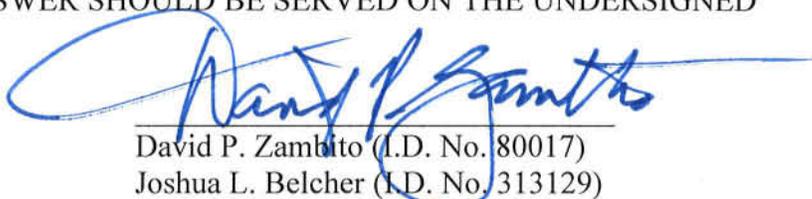
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*Counsel for NRG Power Midwest LP,
NRG Energy Center Pittsburgh LLC, and
Reliant Energy Northeast LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2013-2372129
Office of Consumer Advocate	:		C-2013-2379084
Office of Small Business Advocate	:		C-2013-2380474
Jacqueline and Robert Miller	:		C-2013-2383835
Gwendolyn L. LeVert	:		C-2013-2383980
Duquesne Industrial Intervenors	:		C-2013-2385292
Aimee-Marie Dorsten	:		C-2013-2386037
Connie Schiavo	:		C-2013-2386284
NRG Power Midwest LP, NRG Energy Center	:		C-2013-2390562
Pittsburgh LLC, and Reliant Energy Northeast	:		
LLC	:		
	:		
	:		
v.	:		
	:		
Duquesne Light Company	:		

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO THE PREHEARING ORDER ISSUED OCTOBER 22, 2013, IN THE ABOVE-CAPTIONED PROCEEDING, YOU MAY ANSWER THE ENCLOSED MOTION WITHIN THREE (3) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF ANY ANSWER SHOULD BE SERVED ON THE UNDERSIGNED COUNSEL.



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge
Conrad A. Johnson

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2013-2372129
Office of Consumer Advocate	:		C-2013-2379084
Office of Small Business Advocate	:		C-2013-2380474
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NRG Power Midwest LP, NRG Energy Center	:		C-2013-2390562
Pittsburgh LLC, and Reliant Energy Northeast	:		
LLC	:		
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	:		
v.	:		
	:		
Duquesne Light Company	:		

**MOTION TO COMPEL RESPONSES
TO NRG SET II DISCOVERY AND FOR LEAVE TO SERVE
SUPPLEMENTAL SURREBUTTAL TESTIMONY**

AND NOW, come NRG Power Midwest LP (“NRG Midwest”), NRG Energy Center Pittsburgh LLC (“NRGP”), and Reliant Energy Northeast LLC (“REN”) (together, the “NRG Companies”), by and through counsel, Cozen O’Connor, pursuant to 52 Pa. Code § 5.342(g) and the Prehearing Order issued October 22, 2013, and hereby file this motion to compel responses to NRG Set II discovery as propounded on Duquesne Light Company (“Duquesne Light”) and for leave to serve supplemental surrebuttal testimony in the above-captioned proceeding. In support thereof, the NRG Companies state as follows:

BACKGROUND

1. On November 26, 2013, the NRG Companies served “Interrogatories and Requests for Production of Documents Propounded by the NRG Companies on Duquesne Light Company (Set II)” (“NRG Set II”). In accordance with the discovery schedule established in this proceeding, responses would have been due on Thursday, December 5, 2013.¹

2. On December 2, 2013, Duquesne Light served its formal “Objections of Duquesne Light Company to the Interrogatories and Requests for Production of Documents Propounded by NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast (Set II)” (the “Objections”).

3. On December 3, 2013, Duquesne Light served “Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company on NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC – Set II.”

4. On December 5, 2013, counsel for the NRG Companies contacted counsel for Duquesne Light in an attempt to resolve the discovery dispute informally. No resolution could be achieved.

MOTION TO COMPEL

5. Duquesne Light’s Objections generally assert that all of the interrogatories posed in NRG Set II are irrelevant, unduly burdensome and untimely. The Objections also specifically assert that certain of the interrogatories posed in NRG Set II are not relevant, are not likely to lead to the discovery of relevant information, represent an improper use of discovery, are unduly

¹ Duquesne Light served answers to the NRG Companies’ first set of discovery questions on November 18, 2013. NRG Set II were propounded largely in response to those answers which were not fully responsive.

burdensome, and seek privileged information. For the reasons discussed below, Duquesne Light's Objections should be dismissed and Duquesne Light should be compelled to provide prompt and full responses to NRG Set II.

6. Under the regulations of the Pennsylvania Public Utility Commission ("Commission"), a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. 52 Pa. Code § 5.321(c). It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* The Commission applies the relevancy test liberally. *See Pa. Pub. Util. Comm'n v. The Peoples Natural Gas Co.*, 62 Pa. PUC 56 (Aug. 26, 1986). Not only is the relevancy test liberally applied, but any doubts regarding the relevancy of subject matter should be resolved in favor of relevancy. *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Cmwlth. 2006). The burden of proof lies with the party challenging the relevance of discovery. *Id.*

7. As an initial matter, Your Honor should note that Duquesne Light is actively attempting to mischaracterize an issue raised by the NRG Companies in their formal complaint. The NRG Companies are not attempting to challenge any wholesale power purchase agreements in this proceeding. The NRG Companies are instead challenging a Commission-approved tariff provision (Rider No. 18) that, by Duquesne Light's own admission, is a remnant of the regulatory scheme that existed prior to the enactment of the Pennsylvania Electricity Generation Customer Choice and Competition Act. The NRG Companies have presented a simple and straight forward issue for consideration by Your Honor and the Commission: Should a Pennsylvania electric public utility be permitted to continue to have a Commission-approved tariff provision, with the force and effect of law, that has been preempted by an act of the

Pennsylvania Legislature? The NRG Companies contend that such a tariff provision is *per se* unjust, unreasonable, and unduly discriminatory. The Commission should simply extract itself from the controversy between Duquesne Light and NRG Midwest by requiring Duquesne Light to remove Rider No. 18 from its Tariff.

8. Duquesne Light's general objections to NRG Set II are rooted in relevancy and, as noted above, the burden of proof thus lies with Duquesne Light. Duquesne Light argues that NRG Set II does not pertain to the narrow scope of issues it has raised in its base rate case. In support of its argument, Duquesne Light fails to do more than rehash the jurisdictional arguments forwarded in its preliminary objections. However, as the NRG Companies have previously argued in their answer to Duquesne Light's preliminary objections, the Commission specifically ordered an investigation of Duquesne Light's *entire tariff*. All of the NRG Companies' interrogatories are relevant to the issues raised in its filings in this proceeding or to the issues raised in the filings of Duquesne Light in this proceeding, or are otherwise calculated to elicit information relevant to Duquesne Light's tariff and relevant to the quality of service it provides to its customers. As such, Duquesne Light fails to demonstrate that NRG Set II is not relevant and its objections on this ground must be dismissed.

9. Duquesne Light also alleges that the NRG Companies may be seeking to use discovery to improperly raise new issues in this proceeding, which it contends would thus create an undue burden and prejudice the other parties. Notably, these objections are premised entirely on Duquesne Light's own assumptions and are without basis in fact. All interrogatories propounded in NRG Set II are related to the legitimate issues raised by the NRG Companies in their formal complaint – namely whether Rider No. 18 to Duquesne Light's Tariff is unjust, unreasonable, or unduly discriminatory in favor of certain customer generators and whether

Duquesne Light's quality of service requires improvement. Duquesne Light's objections on these grounds must be dismissed.

10. Duquesne Light asserts that NRG Set II is untimely and therefore causes unreasonable annoyance to the utility. There is of course no restriction as to when a party may propound discovery, as Duquesne Light admits. The NRG Companies have adhered to the established procedural schedule, timely submitting both its complaint and its prepared direct testimony. To the extent that the litigation schedule may be disrupted in this proceeding, it is a direct result of Duquesne Light's own actions. Between its preliminary objections, its failure to provide full responses to the NRG Companies' initial discovery requests and its refusal now to respond to the present discovery requests, Duquesne Light has tried in every way possible to handicap the ability of the NRG Companies to participate in the case. Duquesne Light's objections alleging that NRG Set II is untimely and causes unreasonable annoyance should therefore be dismissed.

11. The balance of Duquesne Light's specific objections to the interrogatories in NRG Set II are derivative of its general objections and are similarly rooted in relevancy. The NRG Companies reiterate the arguments stated above with respect to each and every one of the specific objections.

MOTION FOR LEAVE TO SERVE SUPPLEMENTAL SURREBUTTAL TESTIMONY

12. Duquesne Light's objections to every interrogatory in NRG Set II will clearly prejudice the NRG Companies in their ability to serve meaningful surrebuttal testimony, currently due on December 9, 2013. Accordingly, the NRG Companies respectfully request that Your Honor promptly compel responses and permit the NRG Companies to serve supplemental

surrebuttal testimony. To the extent appropriate based upon resolution of this discovery dispute and upon the timing of the NRG Companies' supplemental surrebuttal testimony, additional evidentiary hearings should be scheduled.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, the NRG Companies respectfully request that the Presiding Officer (1) dismiss Duquesne Light's Objections to NRG Set II, (2) order Duquesne Light to respond in writing to the questions propounded in NRG Set II in a timely manner, (3) allow the NRG Companies to file supplemental surrebuttal testimony after receiving the responses of Duquesne Light, and (4) to the extent appropriate, schedule additional hearing dates in this proceeding to ensure that all parties are provided with an adequate opportunity to be heard.

Respectfully submitted,

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DATED: December 5, 2013