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January 6, 2014

*VIA ELECTRONIC FILING*

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 No. R-2013-2372129, et al.**

Dear Secretary Chiavetta:

Enclosed please find the Initial Brief of Duquesne Light Company in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Gang

MWG/skr
Enclosure

cc: Certificate of Service
Honorable Conrad A. Johnson

## CERTIFICATE OF SERVICE

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

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Date: January 6, 2014

Anthony D. Kanagy

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

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

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# INITIAL BRIEF OF DUQUESNE LIGHT COMPANY

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Date: January 6, 2014

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## I. INTRODUCTION

Duquesne Light Company ("Duquesne Light" or the "Company") provides electric distribution service to approximately 588,000 customers throughout its certificated service territory, which includes portions of Allegheny and Beaver Counties and encompasses approximately 817 square miles in western Pennsylvania. Duquesne Light is a "public utility" and an "electric distribution company" ("EDC") as those terms are defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

On August 2, 2013, Duquesne Light filed with the Pennsylvania Public Utility Commission ("Commission") Supplement No. 81 to Duquesne Light's Tariff – Electric Pa. P.U.C. No. 24 ("Supplement No. 81"). Supplement 81, issued to be effective October 1, 2013, proposes changes to Duquesne Light's base retail distribution rates designed to produce an increase in revenues based upon data for a fully projected future test year ("FPFTY") ending April 30, 2015. The distribution rate increase reflects Duquesne Light's status as a distribution electric utility and is based on financial and operating data for that single business line. The requested rate increase reflects the business environment the Company currently faces, particularly its need to make significant capital investments to continue to provide safe and reliable service to its customers.

As explained herein, Duquesne Light, the Bureau of Investigation and Enforcement ("I&E") of the Commission, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Duquesne Industrial Intervenors ("DII"), United States Steel Corporation ("U.S. Steel"), Citizens for Pennsylvania's Future ("PennFuture"), Community Action Association of Pennsylvania ("CAAP"), Citizen Power, Inc. ("Citizen Power"), Interstate Gas Supply, Inc. ("IGS"), International Brotherhood of Electrical Workers,

Local 129 ("IBEW"), and Beaver Falls Municipal Authority ("Beaver Falls"), all of the parties to this proceeding except NRG Power Midwest, LP ("NRG Midwest"), NRG Energy Center Pittsburgh LLC ("NRGP"), and Reliant Energy Northeast LLC ("REN") (collectively the "NRG Companies") have achieved settlement or agreed not to oppose the Settlement on all issues raised in this base rate proceeding, except those raised by the NRG Companies, including revenue requirement, revenue allocation, rate design, universal service and other related rate and service issues (the "Settlement"). A Joint Petition for Approval of Non-Unanimous Settlement will be filed on or before January 17, 2014. The NRG Companies have advised the parties and Administrative Law Judge Conrad A. Johnson (the "ALJ") that they intend to oppose the settlement. The NRG Companies' issues have been litigated before the ALJ, by the NRG Companies and Duquesne Light with limited participation by one qualifying facility, Beaver Falls. Duquesne Light will support herein the proposed revenue increase under the Settlement as well as address each of the unsettled issues raised by the NRG Companies.

## A. STATEMENT OF THE CASE

On August 2, 2013, Duquesne Light filed with the Commission Supplement No. 81 to become effective on October 1, 2013, together with supporting data, written testimony, and exhibits. In Supplement No. 81, Duquesne Light proposed a general increase in distribution base rates designed to produce approximately $76.3 million in additional annual base rate operating revenues based upon data for a FPFTY ending April 30, 2015.

On September 26, 2013, the Commission opened an investigation of Duquesne Light's proposed rate increase and suspended the effective date of that increase by operation of law from October 1, 2013, until May 1, 2014, unless permitted by Commission Order to become effective at an earlier date. The Commission also ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of the Company's existing rates, rules, and

regulations. The matter was assigned to the Office of Administrative Law Judge, and the Honorable Administrative Law Judge Conrad A. Johnson (the "ALJ") was assigned to preside over the proceeding.

The Commission's I&E filed a Notice of Appearance. The following complaints against the proposed rate increase were filed prior to the date set for the Prehearing Conference: OCA, OSBA, Jacquelyn and Robert Miller, Gwendolyn L. LeVert, DII, Aimee-Marie Dorsten, and Connie Schiavo. OCA and OSBA also filed Public Statements and Notices of Appearance. The following Parties filed Petitions to Intervene prior to the date of the prehearing conference: IBEW, U.S. Steel, Citizen Power, CAAP, CAUSE-PA and IGS.

An initial Prehearing Conference was held as scheduled on October 4, 2013. Parties participating in the Prehearing Conference filed Prehearing Memoranda identifying potential issues and their expected witnesses. At the Prehearing Conference, the parties proposed a procedural schedule, which was adopted by the ALJ. In addition, the parties agreed to, and the ALJ approved, modified discovery rules for the above-captioned proceeding, which included shorter response times than those provided for in the Commission's regulations at 52 Pa. Code §§ 5.321 et seq.

In the Prehearing Order issued October 22, 2013, the ALJ set forth the litigation schedule for the proceeding and revised time periods for responding to discovery requests. In addition, the ALJ granted the Petitions to Intervene of IBEW, U.S. Steel, Citizen Power, CAAP, CAUSE-PA and IGS. Further, the ALJ indicated that there would be one public input hearing, which was held on October 28, 2013.

On October 31, 2013, Duquesne Light was served by the Commission with the Formal Complaint jointly filed by the NRG Companies at Docket No. C-2013-2390562 ("NRG

Complaint"). The NRG Companies challenged, among other things, Duquesne Light's Tariff Rider No. 18 – Rate for Purchase of Electric Energy from Customer-Owned Renewable Resources Generating Facilities (hereinafter "Rider No. 18").

On November 1, 2013, I&E, OCA, OSBA, DII, U.S. Steel, CAUSE-PA and certain of the NRG Companies served their direct testimony and exhibits.

Duquesne Light filed a Motion for Protective Order. By Order dated November 7, 2013, the ALJ granted the Motion for Protective Order.

On November 12, 2013, Duquesne Light filed an Answer to the NRG Complaint. Also on November 12, 2013, Duquesne Light filed Preliminary Objections raising the following three objections to the portions of the NRG Complaint pertaining to Rider No. 18: (1) it is beyond the scope of this base rate proceeding; (2) it failed to join parties indispensable to its claims regarding the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§ 824 *et seq.*, rates paid under Rider No. 18; and (3) the relief requested is beyond the scope of the Commission's jurisdiction. On November 22, 2013, the NRG Companies filed an Answer to the Duquesne Light Preliminary Objections. On November 25, 2013, the OCA filed a letter in support of the Duquesne Light Preliminary Objections. On December 12, 2013, the ALJ issued an Order denying Duquesne Light's Preliminary Objections to portions of the NRG Complaint.

On November 26, 2013, Duquesne Light, I&E, OCA, OSBA, DII and U.S. Steel served rebuttal testimony and exhibits. On December 3, 2013, PennFuture filed a Petition to Intervene Out of Time and also served direct testimony. On December 9, 2013, I&E, OCA, OSBA, DII, CAUSE-PA and NRG Midwest served surrebuttal testimony and exhibits. On December 12, 2013, Duquesne Light served supplemental rebuttal testimony in response to the direct testimony

served by PennFuture. On December 13, 2013, Duquesne Light served rejoinder testimony and exhibits. DII also filed supplemental surrebuttal testimony.

On December 13, 2013, Duquesne Light filed a Petition for Interlocutory Review and Answer to Material Questions with the Commission, pursuant to 52 Pa. Code § 5.302, raising the following material questions:

> (1) Whether the NRG Complaint must be dismissed for failure to join the affected qualifying facilities as necessary and indispensable parties?
>
> (2) Whether the Commission lacks authority to change the wholesale PURPA rate set forth in Rider No. 18?

Also on December 13, 2013, Duquesne Light filed a Motion to Sever From This Base Rate Proceeding The Rider No. 18 Portion of the NRG Complaint.[1]

The parties engaged in substantial formal and informal discovery in support of their respective positions, and Duquesne Light responded to approximately 500 discovery requests. Prior to the date set for hearings, all parties, except for the NRG Companies, were able to resolve all issues, except for the issues raised by the NRG Companies.

On December 16, 2013, Beaver Falls Municipal Authority ("Beaver Falls") filed a Petition to Intervene. Beaver Valley Power Company ("Beaver Valley"), the other qualifying facility subject to Rider No. 18, has not filed a Petition to Intervene in this proceeding.

Evidentiary hearings were held before the ALJ on December 16, 17, and 20, 2013. At the hearings, the parties advised the ALJ that ALL parties other than the NRG Companies had achieved a settlement of all base rate issues, and that the only issues remaining to be decided are those raised by the NRG Companies. At the hearing, the ALJ granted the unopposed Petitions to

[1] When Duquesne Light sold its generating assets, the NRG Companies' predecessors in interest assumed the obligation to purchase power from the two qualifying facilities under Rider No. 18 at a price of six cents per kilowatt hour. Duquesne Light did not propose any changes to Rider No. 18 in this proceeding.

Intervene filed by PennFuture and Beaver Falls. The ALJ also resolved outstanding discovery disputes between the NRG Companies and Duquesne Light. In addition, the ALJ did not grant Duquesne Light's Motion to Sever the Rider No. 18 issues from the base rate proceeding, indicating that he was reluctant to sever portions of the NRG Complaint because he wanted to make sure that everyone was given due process. (Tr. 191.) At the hearing, the parties' respective testimony and exhibits were admitted into the evidentiary record. Certain parties' witnesses were cross-examined on the issues raised by the NRG Companies. The evidentiary record was closed on December 20, 2013.

Pursuant to the Scheduling Order and Sections 5.501 and 5.502 of the Commission's regulations, 52 Pa. Code §§ 5.501, 5.205, Duquesne Light herein submits this Initial Brief. This Initial Brief addresses NRG's opposition to the proposed revenue increase under the Non-Unanimous Settlement as well as the issues raised in the NRG Complaint, including Rider No. 18 of the Company's tariff. Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs are provided in Attachment A to this Brief. In the ALJ's Prehearing Order, the ALJ advised parties to follow a Common Brief Outline. Duquesne Light provided a Common Brief Outline to the parties and is following this outline, with additional sub-headings provided for added clarification and ease of reference.

At the evidentiary hearing, the ALJ asked the parties to address the following three questions: (1) which party has the burden of proof with respect to the Rider No. 18 issues raised by NRG, which is explained in Section I.B.2; (2) what is the impact on the settled revenue requirement if the Commission were to grant NRG relief and either modify the wholesale PURPA rate set forth in Rider No. 18 or eliminate Rider No. 18 entirely, which is explained in Sections III.B.1 and III.B.5; and (3) what is the remedy or next step if the Commission were to

grant relief to NRG and either modify the wholesale PURPA rate set forth in Rider No. 18 or eliminate Rider No. 18 entirely, which question was directed to NRG but is briefly addressed by Duquesne Light in Section III.B.2.c.

## B. LEGAL STANDARDS AND BURDEN OF PROOF

### 1. Base Rate Case Issues

Under the Public Utility Code, a public utility's rates must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. §§ 1301 and 1304. A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa.C.S. § 315(a); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004). However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims made in its filing that no other party has questioned. As the Commonwealth Court has explained:

> While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. P.U.C.*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

Although the ultimate burden of proof does not shift from the utility seeking a rate increase, a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. While the burden of going forward may shift, the burden of proof remains on the utility with respect to its request for a rate increase. The burden of proof means a duty to establish a fact by a preponderance of the evidence. *See, e.g., Pa. P.U.C. v. PECO*, Docket No.

R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. P.U.C. v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991).

**2. Rider No. 18 Issues**

In this proceeding, the NRG Companies filed a complaint and, among other things, generally alleged that "Rider No. 18 of Duquesne Light's Tariff should be examined to ensure that the terms, conditions and electric energy purchase price continue to be just, reasonable, and non-discriminatory." (NRG Complaint ¶ 11.) The NRG Companies request that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.) For the reasons explained below, the NRG Companies bear the burden to demonstrate that Rider No. 18 is no longer just and reasonable, and that its proposals to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely are just, reasonable, and in the public interest.

Duquesne Light's Rider No. 18 has been approved by the Commission. Tariff provisions previously approved by the Commission are deemed just and reasonable; a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof in a general base rate case proceeding).

For example, in *Brockway Glass Co. v. Pa. P.U.C.*, 437 A.2d 1067 (Pa. Cmwlth. 1981), an industrial customer filed a complaint challenging a cancellation notice provision in an existing rate schedule previously approved by the Commission. The Commonwealth Court explained that "where a customer is heard to complain concerning a *proposed* change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable[;]" however,

"[w]here the complaint involves an *existing* rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable." *Id.* at 1070 (emphasis in original). The Commonwealth Court therefore concluded that the industrial customer challenging cancellation notice provision in an existing rate schedule had the burden of proof. The Court went on to find that the industrial customer failed to meet its burden:

> Brockway submitted virtually no evidence at the hearing as to the unreasonableness of the cancellation provision per se, but addressed itself, from the position of hindsight, primarily to the unreasonableness of the provision as *now* applied to Brockway. Indeed, Brockway did not complain of any unreasonableness until such time as Rate Schedule 47 became financially disadvantageous to it.

*Id.* at 1070-71 (emphasis in original).

Consistent with the Commonwealth Court's holding in *Brockway*, the Superior Court held in *Johnstown v. Pa. P.U.C.*, 133 A.2d 246, 250 (Pa. Super. 1957), that where a proceeding is the result of a voluntary change in rates to which a complaint is filed, the utility bears the burden of proof with respect to the proposed change in rates. In Johnstown, a municipality filed a complaint protesting a proposed base rate increase. Unlike the industrial customer in Brockway that challenged an existing tariff provision, the municipality challenged the requested rate increase, arguing that there were infirmities and limitations in the utility's original cost estimates, reproduction cost estimates, and accrued depreciation. Moreover, unlike Brockway, these were changes proposed by the utility in support of its proposed rate increase. Therefore, the Superior Court held that the utility had the burden to submit sufficient evidence of quantity and quality to enable the Commission to properly make its findings and reach its conclusions based thereon.

Duquesne Light has neither proposed nor is it seeking any changes, amendments, or modifications to Rider No. 18 in this base rate proceeding. A party that raises an issue that is not

included in a public utility's general rate case filing bears the burden of proof. For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Jan. 11, 2007), a party protesting a general rate increase proposed a variety of renewable energy initiatives to be implemented by the utility that were not included within the utility's case-in-chief. The ALJ held that, as the proponent of a Commission order with respect to its proposals, the protesting party bears the burden of proof with respect to proposals that are not included in a public utility's general rate case filing. The Commission agreed and adopted the ALJ's conclusion that Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), 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 general rate case filing and which, frequently, the utility would oppose. *Id.* at *184-87.

In addition, any finding in this case must be supported by and based upon substantial evidence of record. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted). Accordingly, in order to meet their burden and in order for relief to be granted, the NRG Companies must introduce substantial evidence of record and that evidence must be more convincing than the evidence presented by another party. *Samuel J. Lansberry, Inc. v Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

## II. SUMMARY OF ARGUMENT

### A. BASE RATE CASE ISSUES

Duquesne Light has achieved a Settlement in Principle that has been agreed to or not opposed by ALL active parties in this proceeding, except for the NRG Companies, on all issues except for the issues raised by the NRG Companies. The Non-Unanimous Settlement provides for a distribution revenue increase of $48 million annually. The Settlement also provides for allocation of the revenue increase to the rate classes. The Settlement further addresses Universal Service Issues, Storm/Outage Communication Issues, Customer Service Issues and LED Street Lights.

The Company has clearly demonstrated its need for a revenue increase in this proceeding. The Company continues to make substantial investments in its infrastructure to provide safe and reliable service to customers. The Company is also expanding its distribution vegetation management program to attempt to mitigate the effects that falling trees and limbs have in creating service outages. In addition, the Company is expanding its Information Technology and Cyber Security initiatives in response to evolving business conditions and technology advancements. The proposed revenue increase under the Settlement will allow the Company to recover its costs to provide safe and reliable service to customers and provide the Company with an opportunity to earn a reasonable return on its investment.

The Commission's standard for reviewing a non-unanimous settlement is whether the Settlement is supported by substantial evidence consistent with statutory requirements. As explained in detail below, Duquesne Light has presented substantial evidence in this proceeding supporting a revenue increase equal to or higher than $48 million. Duquesne Light's rebuttal testimony supported a revenue increase of $72.3 million.

Despite having presented no testimony supporting rate base, revenue and expense adjustments, no competent testimony on rate of return on equity capital ("return on equity" or "ROE") and having presented no specific revenue requirement recommendation, the NRG Companies oppose the Settlement. At the hearing, the NRG Companies attempted to determine a specific return on equity for the black-box settlement, in an apparent attempt to argue that the return on equity implicit in the Settlement is too high. As explained below, the Commission has held that it is not appropriate to determine a specific return on equity for a black-box settlement, even when the settlement is non-unanimous. Thus, the NRG Companies' attempts to determine a specific return on equity for the black-box settlement should be rejected.

The primary basis for the NRG Companies' claim that the Settlement should not be approved is that the NRG Companies' assumed return on equity under the Settlement would be 11.02% if all of the OCA's revenue, expense and rate base adjustments were approved. It is unreasonable to assume that all of OCA's adjustments would be accepted. Duquesne Light provided substantial evidence in rebuttal testimony supporting its position and explaining why OCA's proposed adjustments and I&E's proposed adjustments should not be accepted.

In this proceeding, the NRG Companies also have made vague allegations that Duquesne Light's communications with NRGP concerning outages and net metering are unsatisfactory. However, the NRG Companies have not identified a single instance of an unsatisfactory communication either in testimony or in discovery, other than vague, non-specific, unsubstantiated recollections that their witness referred to at the hearing. In contrast, Duquesne Light showed that it has participated in many meetings or telephone conferences with the NRGP, maintains detailed information on cogeneration and net metering on its website and has provided substantive and reasonable communication and service to NRGP.

Duquesne Light has worked diligently with all parties to attempt to resolve their issues in this proceeding. The Settlement achieved by Duquesne Light with ALL parties, except the NRG Companies, is in the public interest, is supported by substantial evidence and should be approved without modification.

**B. RIDER NO. 18 ISSUES**

The NRG Complaint should be denied for three independent reasons: (1) the NRG Companies have failed to meet their burden of proving that Rider No. 18 should be eliminated or that the Commission-approved six cent rate is an unreasonable long-term avoided cost rate; (2) the Commission is without authority to modify the existing PURPA rate by either modifying the wholesale PURPA rates set forth in Rider No. 18 or eliminating Rider No. 18 entirely as requested by the NRG Complaint; and (3) the NRG Companies have failed to join as indispensable parties, the two qualifying facilities who would be directly and adversely affected if the NRG Complaint were sustained. As a result, the NRG Complaint must be denied.

With respect to issue number one, the NRG Companies have failed to meet their burden of proving by a preponderance of the evidence that Rider No. 18 should be eliminated or that the six cent rate should be reduced. The NRG Companies present four arguments in support of their position on this issue: (1) Rider No. 18 and its six cent rate were preempted by the Pennsylvania Customer Choice and Competition Act; (2) Rider No. 18 has been in effect for many years and has not been updated in a timely manner: (3) the six cent long-term avoided cost rate in Rider No. 18 is higher than the current PJM spot market price; and (4) NRG Midwest is suffering financial harm because it is required by contract to purchase qualifying facility power at 6 cents and resell it at a loss into the spot market. For the reasons described herein, each of these arguments must be rejected.

Regarding "preemption", the NRG Companies assert that Rider No. 18 has been effectively preempted by the Pennsylvania Competition Act. This is a curious argument given that the rate in Rider No. 18 was established pursuant to federal law, *i.e.*, PURPA. The NRG Companies appear to be arguing that a state statute can somehow preempt federal law. In fact, the reverse is true. PURPA, a federal statute, preempts any inconsistent state law. PURPA is still the law of the land, and Duquesne Light continues to have an obligation to purchase power from qualifying facilities at avoided cost. No Pennsylvania statute or regulation, including the Competition Act, can change that fact.

Regarding updating of Rider No. 18, it is true that Rider No. 18 has been in effect for over 30 years. This should not be surprising, however, since one of the primary purposes of PURPA was to establish long-term rates upon which qualifying facilities could rely to finance their power projects. The fact that a long-term rate has been in effect for a "long time" proves nothing. While the burden rests on the NRG Companies, Duquesne Light has demonstrated that the six cent rate in Rider No. 18 continues to be reasonable. The standard for judging the reasonableness of the Rider No. 18 is whether it reflects Duquesne Light's long-term avoided costs. The NRG Companies, however, never presented any credible evidence which demonstrated that Duquesne Light's long term avoided costs was something other than six cents. Duquesne Light, on the other hand, presented evidence on this issue. For Duquesne Light, one measure of its "avoided cost" is the price it pays to acquire power to serve its default service customers. This is the "cost" that Duquesne Light would avoid if it purchased power from a qualifying facility. In other words, the more power Duquesne Light buys from a qualifying facility, the less it buys from the wholesale market to serve its default service customers. Duquesne Light's default service rate has ranged from over seven cents per kwh to over five

cents per kwh over the last ten years. This clearly indicates that the six cent rate in Rider No. 18 continues to be reasonable.

To meet its burden, the only "alternative" to the six cents per kilowatt-hour rate presented by the NRG Companies is a citation to current spot market prices, *i.e.*, the PJM Day Ahead Locational Marginal Price ("DALMP"). This rate is a very short term, *i.e.*, a daily, spot market price. The avoided cost rate under PURPA by contrast is a long-term rate. It is simply not credible to judge the reasonableness of a long-term rate by comparing it to a spot market rate. For example, it would be completely inappropriate to say that the interest rate for a 30-year fixed rate mortgage is unreasonable because it is higher or lower than the interest rate paid on a short-term savings account or certificate of deposit. They are two completely different measurements. The fact that DALMP, a current spot price, has averaged 3 cents over the last three years, as alleged by the NRG Companies, provides no credible evidence that the six cent long-term rate in Rider No. 18 is unreasonable or does not reflect Duquesne Light's long-term avoided cost. At the hearings, the NRG Companies' own witness appeared to acknowledge this fact when she admitted that the NRG Companies were not actually proposing DALMP as the new avoided cost rate, but that it should only be used as a "benchmark." (Tr. 322-325, 403.) As a result, the NRG Companies have failed to offer any specific alternative avoided cost rate, and there is no support on this record for any alternative to the existing Commission-approved six cent rate.

The NRG Companies' final argument that they are suffering harm when they honor their contractual obligation, which they voluntarily assumed, should also be rejected. The NRG Companies' obligation to pay six cents for the qualifying facility power results from a voluntary contractual obligation assumed by the NRG Companies when they purchased the owner/operator of Duquesne Light's former generating plants. The fact that the assumed QF agreements

produce an alleged loss to the NRG Companies is completely irrelevant to this proceeding. Second, the NRG Companies' assertion of loss is simply wrong. The NRG Companies' entire analysis is based on a simplistic comparison of the six cent rate it pays with the 3 cent DALMP discussed above. The assumption that the NRG Companies must sell this power into the day ahead spot market is simply not true. The NRG Companies' witness admitted that the NRG Companies own a large number of generating facilities in addition to the qualifying facility contracts, and that there are many options for reselling this power. There is no reason that the NRG Companies must sell the qualifying facility power into the spot market, and no basis to conclude that the NRG Companies are suffering any loss from honoring its voluntarily assumed contractual obligations. Finally, the Commission would be setting an unparalleled precedent if it picked the winners and losers of existing commercial agreements between utilities, QFs and other sophisticated parties. Also, if the Commission were to adopt the NRG Companies' position, every time market price moved against it, that price paid by the NRG Companies would be unjust. Such an approach does not comport with the long term avoided cost under PURPA.

The NRG Companies have clearly failed to meet their burden of proving by a preponderance of the evidence that Rider No. 18 is unreasonable. Indeed, they have not even presented a firm recommendation on what the new Rider No. 18 rate should be. The issue of PURPA rates has not been addressed post-restructuring and post Act-129, and the NRG Companies have not met their burden to demonstrate that Duquesne Light's "avoided costs" are different today in light of de-regulation, the general lack of utility-owned generating units, or Duquesne Light's default service obligation. Clearly, the determination of "avoided costs" in today's electric market is a novel, complex issue that the NRG Companies have not addressed in this proceeding. Moreover, such a radical decision would set precedent for all EDCs and

qualifying facilities operating in the Commonwealth and, therefore, should not be determined in an individual utility's base rate proceeding, particularly where the complaining party has failed to present any clear proposal as to what the avoided cost rate should be.

With respect to issue number 2, the NRG Companies' Complaint also must be denied because the Commission lacks the power to grant the relief requested by the NRG Companies. It is undisputed that the Duquesne Light's existing PURPA contracts subject to Rider No. 18 and the Revised QF Agency Agreement assumed by NRG Midwest are wholesale power agreements. Since 1927, the United States Supreme Court has held that the states have no jurisdiction of any kind over wholesale power agreements. The one, and only, exception to this rule is PURPA, which delegated federal authority to state regulatory commissions to initially set the avoided cost rates in PURPA wholesale power agreements. However, the federal and state case law is clear that this authority is "once and done" and that state commissions have no authority to modify, change or cancel avoided cost rates for PURPA facilities once they are established. Indeed, the Commission has clearly explained in prior orders that the risk that it will reconsider existing avoided costs rates or qualifying facility contracts is "nonexistent."

The NRG Companies contend that the Commission can amend the six cent rate because it appears in Duquesne Light's tariff instead of directly in the qualifying facility contracts. This makes no difference. The avoided cost rate can be in a contract, in a tariff, or publicly posted, but this does not and cannot give the Commission jurisdiction it does not have. To the extent that the NRG Companies are entitled to any relief from its voluntary contract obligation, that relief must be sought and received at FERC and not before the Commission.

With respect to issue number three, the NRG Companies' Complaint also should be dismissed for failure to join the two qualifying facilities that remain subject to Rider No. 18 as

indispensable parties.[2] The NRG Companies attempt to avoid the indispensable party problem by asserting that their Complaint deals only with Duquesne Light's tariff Rider No. 18, which the NRG Companies allege is properly subject to review in a base rate proceeding. This is simply not the case. Rider No. 18 does not exist in the abstract. Its entire purpose was to establish an avoided cost rate for PURPA contracts between Duquesne Light and certain qualifying facilities. Rider No. 18 has no meaning absent the existence of underlying contracts. Rider No. 18 and its underlying contracts are inextricably linked and cannot be severed. The NRG Companies acknowledge this point in their own testimony where they cite to and discuss at length the contracts to explain their interest and standing in this proceeding. Without the qualifying facility contracts and the Revised QF Agency Agreement, NRG Midwest would have no interest in this case. The NRG Companies use the contracts to establish their own standing, but then take the opposite position and argue that the counter-parties to the contracts, i.e., the qualifying facilities, need not be considered in ruling in Rider No. 18. The NRG Companies cannot have it both ways. The NRG Companies' argument is internally inconsistent and must be rejected.

## III. ARGUMENT

### A. NON-UNANIMOUS SETTLEMENT ISSUES

In this proceeding, Duquesne Light, I&E, OCA, OSBA, CAUSE-PA, DII, U.S. Steel and PennFuture have entered into a Settlement that resolves all issues among these parties (the "Settling Parties"). The Settlement is also not opposed by CAAP, Citizen Power, IGS, IBEW

[2] Beaver Falls filed a Petition to Intervene, which was granted on December 17, 2013, i.e., the second day of hearings in the base rate case proceeding. Although Beaver Falls was granted intervention status, this does not resolve the indispensable party issue for three reasons. First, the fact remains that Beaver Falls has had no meaningful opportunity to file dispositive motions, participate in discovery, develop a position, or prepare testimony in support of its position. Second, it is well-settled that an intervenor does not have the same rights as a party. See 52 Pa. Code § 5.75(c). Finally, and most importantly, Beaver Valley still has not intervened or otherwise been joined as a party to this proceeding. This is to be expected, considering Duquesne Light did not raise Rider No. 18 as part of its rate case.

and Beaver Falls. The only active parties in this proceeding that oppose the Settlement are the NRG Companies. The Settling Parties are currently finalizing the formal Settlement Petition and their respective Statements in Support. Duquesne Light will file the final Settlement Petition and Statements in Support with the Commission and the ALJ on or before January 17, 2013, pursuant to the ALJ's direction at the hearing. (Tr. 458.) The Settlement provides for a resolution of all issues, except for the issues raised by the NRG Companies, who have challenged the Settlement.

### 1. Standard of Review

The Commission's long-standing policy is to encourage settlements, partial settlements and/or stipulations among interested parties in base rate proceedings. The Commission has adopted a specific Policy Statement setting forth settlement guidelines and procedures for major rate cases. This policy statement is set forth in 52 Pa. Code §§ 69.401 *et seq.* Section 69.401 provides as follows:

> **§ 69.401. General.**
>
> In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402 – 69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases. A partial settlement is a comprehensive resolution of all issues in which less than all interested parties have joined. A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

The Commission's regulations also encourage parties to amicably resolve their disputes through settlements. Section 5.231(a) of the Commission's regulations, 52 Pa. Code § 5.231(a), states that "It is the policy of the Commission to encourage settlements."

The Commission's standards for reviewing a non-unanimous or partial settlement are the same as those for deciding a fully contested case. The relevant standard is whether the proposed non-unanimous settlement is supported by substantial evidence that is consistent with statutory requirements. *Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline,* Docket Nos. A-2010-2213893 et al., 2011 Pa. P.U.C. LEXIS 1521, Order entered July 25, 2011, *citing Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket Nos. R-00973953 and P-00971265, 1997 Pa. P.U.C. LEXIS 51, Order entered December 23, 1997; *Popowsky [ARIPPA] v. Pa. P.U.C.*, 792 A.2d 636 (Pa. Cmwlth 2002).

As explained in more detail below, the proposed revenue increase under the Settlement is reasonable, in the public interest, and is supported by substantial evidence. Because the formal Settlement Petition has not been filed to date, Duquesne Light is only addressing the public aspects of the Settlement at this time, which is the proposed revenue increase. Duquesne Light will support the other aspects of the Settlement in its Statement in Support, and its Reply Brief to the extent necessary. Duquesne Light also explains in Section III.A.5. below why the allegations made in the NRG Complaint which relate to Duquesne Light's service should be rejected.

**2. Revenue Requirement.**

**a. Duquesne Light Demonstrated That A Rate Increase Was Necessary In Order To Provide Recovery of Increased Expenses And Provide The Company With A Reasonable Return On Its Investment**

The Settlement provides for a distribution revenue increase of $48 million annually. The distribution revenue increase of $48 million is approximately 66% of the proposed revenue

increase of $72.732 million set forth in the Company's rebuttal testimony. (Duquesne Light St. No. 5-R, p. 3.)

As explained by the Company's Vice President of Strategy and External Affairs, Mr. David Bordo, the Company has undertaken considerable efforts to control costs, improve customer service and continue to provide highly reliable service to customers since the Company's last base rate proceeding in 2010. (Duquesne Light St. No. 1, p. 4.) Despite its best efforts, the cost of providing elective distribution service has increased in many areas, including increased investment in facilities to maintain high levels of service and reliability, increased operation and maintenance ("O&M") expenses related to vegetation management and increased costs for the Company's Information Technology ("IT") and cyber security initiatives. (Duquesne Light St. No. 2, pp. 4-5.)

As explained by Mr. Bordo, the Company is in the process of developing a major IT project, referred to as the FOCUS project, to implement a new customer information and billing system, a Meter Data Management System and several other systems that will provide back office IT systems and support the use of smart meters. (Duquesne Light St. No. 1, p. 9.) The capital costs for the FOCUS project are $95.5 million, which will be in service during the FPFTY. (Duquesne Light St. No. 1, p. 10.) In addition, the Company has incurred and continues to incur significant O&M expenses for its IT projects, an average of approximately $4.66 million per year for the HTY, FTY and FPFTY, that must be recovered from customers. (Duquesne Light Ex. No. 2, Schedule D-11.)

Another significantly increasing cost item is vegetation management expense. As explained by the Company's Director of Operations, Mr. Scott Ward, the Company is enhancing its vegetation management program to meet increasing challenges in maintaining highly reliable

and continuous service to customers and to reduce outages from storms. (Duquesne Light St. No. 4, p. 2.) The Company is projecting an increase in vegetation management spending from $8.1 million in the HTY, to $12.3 million for the FTY and $15.0 million for the FPFTY. The increase in spending is primarily due to three factors, increased contractor costs, increased work to eliminate Ash trees that have been infected by the Emerald Ash Borer that pose a safety threat to the Company's distribution system, and an expansion of the Company's vegetation management specifications to include pruning or removal of targeted trees that have a higher potential of causing outages due to falling trees and limbs. (Duquesne Light St. No. 4-R, pp. 3-4.) The Company is confident that its increased vegetation management efforts will be necessary, and as a result, has committed to spend $15 million for distribution system vegetation management on an annual basis for three years commencing with the effective date of new rates in this proceeding. (Duquesne Light St. No. 4-R, p. 9.)

Another significant cost increase for the Company is related to its need to expand its IT team to meet expanding needs for IT services and to improve levels of cyber security. The Company has recently hired a Chief Information Officer who will build a team to provide increased oversight of the Company's IT initiatives. (Duquesne Light St. No. 1, p. 13; Duquesne Light St. No. 2-R, p. 9.)

Absent rate relief, Duquesne Light projected an overall return on rate base of approximately 5.67% for the FPFTY. See (Duquesne Light Exh. No. 2, Schedule C-1, Column 2, line 3.) This would translate into a return on equity for the FPFTY of 6.06% (5.67% ROR – 2.22% Interest – 0.30% Preferred = 3.15% to Equity/51.94 Equity Ratio = 6.06% ROE). This is not significantly higher than Duquesne Light's weighted cost rate of 5.89% for preferred stock, see Duquesne Light Exh. No. 2, Schedule B-9, Column 4, line 7, and less than 100 basis points

higher than the Company's average weighted cost rate of 5.18% for long-term debt. (See Duquesne Light Exh. No. 2, Schedule B-8, Column 4, line 16.) Moreover, this return on equity for the FPFTY, absent rate relief, also would be significantly lower than the return on equity of 11.25% proposed by Mr. Moul in his testimony, see Duquesne Light St. No. 9, or the recent return on equity of 10.4% that was awarded to PPL Electric Utilities Corporation in its 2012 base rate proceeding. *Pa. P.U.C. v. PPL Electric Utilities Corporation,* Docket No. R-2012-2290597, Order entered December 28, 2012, p. 101 ("*PPL Electric*").

**b. The Proposed Distribution Revenue Increase Under The Settlement Is Within The Range of The Parties' Litigation Positions.**

As explained above, the Settlement provides for a distribution revenue increase of $48 million. The proposed revenue increase of $48 million is within the range of litigation positions of the parties that presented evidence regarding rate base, revenues and expenses and return in this proceeding. I&E proposed a revenue increase of $41.47 million as its final litigation position in its surrebuttal testimony. (I&E St. No. 2-SR, p. 22.) I&E's proposed revenue increase included a proposed return on equity of 9.54%, which is considerably lower than the 10.4% return on equity that the Commission awarded PPL Electric in its 2012 base rate proceeding at Docket No. R-2012-2290597. OCA proposed a revenue increase of $18.378 million as its final litigation position in surrebuttal testimony. (OCA St. No. 1-SR, p. 2.) OCA's proposed revenue increase included a proposed return on equity of 9.0%,[3] which is also considerably lower than the 11.25% recommended by the Company's witness Mr. Moul and also well below the 10.4% return on equity that the Commission granted PPL Electric. *PPL Electric,* p. 101.

[3] See OCA St. No. 1-SR, Schedule D.

The proposed Settlement revenue increase of $48 million is very close to the I&E's litigation position. A minor adjustment to I&E's proposed return on equity would bridge the gap between I&E's proposed revenue requirement and the revenue requirement under the Settlement, without any other adjustments. In addition, the proposed revenue increase of $48 million under the Settlement is near the mid-point of the Company's and OCA's litigation positions ($72.732 million + $18.378 million = $91.11 million ÷ 2 = $45.6 million). The $48 million proposed revenue increase under the Settlement is comfortably within the range of positions set forth by Duquesne Light, I&E and OCA and is clearly reasonable. In addition, no other party offered testimony regarding the Company's revenue requirement (including the NRG Companies) and no other party in the proceeding is opposing the $48 million revenue requirement increase other than the NRG Companies.

### c. Duquesne Light Provided Substantial Evidence Supporting A Revenue Increase Higher Than The Increase Proposed Under The Settlement.

#### i. Introduction

In the its Rebuttal Testimony, the Company supported a revenue increase of $72.732 million. (Duquesne Light St. No. 5-R, p. 3.)[4] Duquesne Light provided substantial evidence supporting its position. Below, Duquesne Light describes the other parties' major adjustments affecting revenue requirement and describes the substantial evidence that supports the $48 million settlement revenue increase. Duquesne Light also will illustrate that there is a range of resolutions of OCA's and I&E's proposed rate base, revenue and expense adjustments that would produce a return on equity in the range recently adopted by the Commission in PPL Electric at the $48 million settlement rate increase. Through the analysis below, Duquesne Light is not

[4] Pursuant to the ALJ's Prehearing Order dated October 22, 2013, the Company provided a table to the parties on December 27, 2013 showing updated rate filing calculations which demonstrated the Company's final litigation position. This table is provided as Attachment B to this Initial Brief.

attempting to argue that the proposed revenue increase under the Settlement results in any specific return on equity or that any specific revenue adjustments have been accepted or not accepted, but that the proposed black box revenue increase under the Settlement is supported by substantial evidence.

### ii. Rate of Return

#### (A) Rate of Return Standards

A public utility, whose facilities and assets have been dedicated to the service of the public, is entitled to an opportunity to earn a fair rate of return on its investment. The standards to be used by the Commission in determining what return rate is fair are well-established, having been set forth by the United States Supreme Court in *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 262 U.S. 679, 690 (1923), over eighty years ago:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility of its property in violation of the Fourteenth Amendment.

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. 262 U.S. at 693. These principles have been adopted and applied by the appellate courts of Pennsylvania in numerous cases. *See, e.g., Riverton Consolidated Water Co. v. Pa. P.U.C.*, 186 Pa. Super. 1, 140 A.2d 114 (1958); *City of Pittsburgh v. Pa. P.U.C.*, 182 Pa. Super. 376, 126 A.2d 777 (1956); *Lower Paxton Twp. v. Pa. P.U.C.*, 13 Pa. Cmwlth. 135, 317 A.2d 917 (1974).

The return allowed to investors must be commensurate with the risk assumed, as the Supreme Court has stated in three landmark opinions. *Bluefield, supra* at 692, requires that the rate of return reflect:

> . . . a return on the value of the [utility's] property which it employs for the convenience of the public equal to that generally being made at the same time on investments in other business undertakings which are attended by corresponding risks and uncertainties. . . .

Twenty-one years later, the Supreme Court reiterated that standard in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944), as follows:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Later, in reaffirming *Hope*, the Supreme Court, in *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 109 S. Ct. 609, 102 L. Ed. 2d 646, 661 (1989) observed that "[o]ne of the elements always relevant to setting the rate under Hope is the return investors expect given the risk of the enterprise."

The determination of a fair rate of return thus requires the review of many factors, including: (1) the earnings that are necessary to assure confidence in the financial integrity of the company and to provide a reasonable credit profile to permit access to capital markets on reasonable terms, and (2) the amount of the investment, the size and nature of the utility and, its business and financial risks, in comparison to other enterprises. *Pa. P.U.C. v. Pennsylvania Gas and Water Co. - Water Division*, 19 Pa. Cmwlth. 214, 233, 341 A.2d 239 (1975); *Lower Paxton Twp., supra.* Moreover, the Commission's findings must be based upon substantial and competent evidence on the record before it, not upon speculation or hypothesis. *Ohio Bell*

*Telephone Co. v. Pub. Util. Comm. of Ohio*, 301 U.S. 292 (1937); *United States Steel Corp. v. Pa. P.U.C.*, 37 Pa. Cmwlth. 195, 390 A.2d 849 (1978); *Octoraro Water Co. v. Pa. P.U.C.*, 38 Pa. Cmwlth. 83, 391 A.2d 1129 (1978).

**(B) The Company Provided Substantial Evidence Supporting Its Proposed Rate of Return**

In testimony, the Company's witness, Mr. Moul, recommended a return on equity of 11.25%. (Duquesne Light St. No. 9, p. 1.)[5] Mr. Moul relied on four well recognized measures of the cost of equity in reaching his recommendation, including the Discounted Cash Flow ("DCF") model, the Risk Premium ("RP") analysis, the Capital Asset Pricing Model ("CAPM") and the Comparable Earnings ("CE") approach. (Duquesne Light St. No. 9, p. 1.) Mr. Moul's DCF analysis alone supported a return on equity of 10.78%. (Duquesne Light St. No. 9, p. 24.)

In testimony, the OCA proposed a return on equity of 9.0%. (OCA St. No. 2, p. 4.) I&E proposed a return on equity of 9.54%. (I&E St. No. 1, p. 66.)

Both the OCA and I&E recommended returns on equity are substantially below the return on equity recommended by Mr. Moul of 11.25%. In addition, the OCA and I&E proposed returns on equity are substantially below the 10.4% return on equity granted by the Commission to PPL Electric in its 2012 base rate proceeding. *PPL Electric*, p. 101. Moreover, Mr. Moul provided substantial evidence that Duquesne Light requires a higher return on equity than authorized for PPL Electric. Mr. Moul explained that Duquesne Light is about one-half the size of PPL Electric, making Duquesne Light a more risky utility. Duquesne Light is also more risky due to the lack of diversity in the size and scope of its service territory. (Duquesne Light St. No. 9-R, p. 27.) In addition, interest rates and equity costs have increased since the Commission granted PPL Electric a 10.4% return on equity. (Duquesne Light St. No. 9-R, pp. 28-29.)

[5] No party disputed the Company's proposed capital structure, cost of debt or cost of preferred stock. (See OCA St. No. 2, pp. 3-4; I&E St. No. 1, pp. 11-12.)

### iii. Wages and Salaries

In this proceeding, the OCA proposed several adjustments to the company's wages and salaries expenses. In total, these adjustments were $4.784 million for the jurisdictional distribution operations ($5.572 million for total Company times 85.85% for distribution = $4.784 million). (OCA St. No. 1-SR, Schedule C-1.2.) The Company provided substantial evidence demonstrating that the OCA's wage and salary adjustments should not be accepted. (Duquesne Light St. No. 2-R, pp. 6-9.) The specific OCA adjustments are addressed below.

First, the OCA argued that the Company's annual wage increase should be limited to 3.0% per year. (OCA St. No. 1, p. 14.) In its Rebuttal Testimony, the Company explained that while employees are awarded average merit increases of 3.0% per year, deserving employees receive additional increases that bring the weighted average wage increase for the Company to approximately 3.4%. (Duquesne Light St. No. 2-R, p. 6.) Therefore, it is not reasonable to limit the wage increase to 3.0%.

In addition, the OCA proposed to limit the Company's projected increase in employees by the percentage increase in personnel from the end of the HTY, March 2013, to the midpoint of the FTY, September 2013. (OCA St. No. 1, p. 14.) The OCA proposed to reduce the Company's projected number of employees for the FPFTY from 1,363 down to 1,324 or a reduction of 39 employees. In Rebuttal Testimony, the Company explained that it was on pace to hire its projected number of employees.

> The Company had 1,264 employees as of the end of the HTY and projected 1,363 employees as of the end of the FPFTY equating to an increase of 99 employees over the 25 month period. As of September 30, 2013 the Company had 1,287 employees. Through 6 months of the 25 month period from the end of the HTY to the end of the FPFTY (or through approximately 24% of the 25 month period) we have added 24 employees (approximately 24% of the total amount of the employees to be hired over the 25 month period). We had anticipated that a greater portion of the headcount

> increases would have occurred to date, however, due to significant structural changes in the human resources department and related turnover in that department, the Company's hiring practice has lagged behind our anticipated schedule. Despite these hiring challenges, we have still hired at a pace that would allow us to achieve the projected amount of employees at the end of the FPFTY.

(Duquesne Light St. No. 2-R, p. 8, lines 13-25.)

The Company also explained that it had recently hired a Vice President of Human Resources in November 2013 who will be leading an effort to fill the open positions. The Company further explained that 11 open positions were related to the new CIO and CISO departments, and that utilizing OCA's trending analysis failed to account for these two new departments that were yet to be filled. (Duquesne Light St. No. 2-R, p. 9.) For these reasons and the reasons further explained in the Company's testimony, the wage and salary expenses proposed by the Company are supported by substantial evidence, and the Company's claim was supported by a preponderance of the evidence.

The OCA also proposed a reduction to the Company's employee benefits expense of $918,000 for the jurisdictional distribution operations that is related to the OCA's proposed reduction in Company employees ($1.069 million for total Company times 85.85% for distribution = $918,000). (OCA St. No. 1-SR, Schedule C-1.2.) The Company's employee benefits expense should not be decreased because the Company's employee levels are appropriate. In addition, the Company explained that it obtained its projected medical costs for the FPFTY from an independent actuary, Aon Hewitt Associates. (Duquesne Light St. No. 2-R, p. 11.) For the reasons explained above, the Company's benefits claim also is supported by a preponderance of the evidence.

### iv. Incentive Compensation

In testimony, OCA proposed a reduction of $1.054 million for the jurisdictional distribution operations to the Company's incentive compensation ($1.228 million for total Company times 85.85% for distribution = $1.054 million). (OCA St. No. 1-SR, Schedule C-1.1.) The basis for the OCA's adjustment is to limit the incentive compensation increase to the same percentage increase as payroll expense. (OCA St. No. 1, p. 18.)

The Company provided substantial evidence in this proceeding that the OCA's incentive compensation adjustment was unreasonable. First, the Company explained that incentive compensation is a necessary part of an employee's compensation package in order to attract and maintain highly qualified employees. (Duquesne Light St. No. 2-R, p. 13.) Duquesne Light also explained that it had recently expanded its incentive compensation programs to: (1) include supervisors in the Company's existing short-term incentive plan, and (2) institute a new long-term incentive plan. (Duquesne Light St. No. 2-R, p. 13.) OCA's proposal failed to consider the increased costs associated with expanding the Company's incentive compensation plans. In addition, Duquesne Light explained that it had recently hired an independent third party to benchmark its executive compensation plans against other utilities. The third party analysis concluded that Duquesne Light's total executive compensation plans were competitive with peer companies. (Duquesne Light St. No. 2-R, p. 14.)

### v. Uncollectible Accounts Expense

OCA proposed a reduction to the Company's uncollectible accounts distribution expense of $1.493 million. The OCA's adjustment is based on its argument that Duquesne Light should rely solely on a 5-year average write-off percentage as the basis for estimating the FPFTY uncollectible expense in this proceeding. (See OCA St. No. 1, p. 22; OCA St. No. 1-SR, Schedule C-1.3.)

The Company explained that it was unreasonable to rely solely on a historical average write-off ratio in this proceeding for several reasons. First, the Company demonstrated that it was experiencing an increase in uncollectible expense in 2013 over and above the 5-year average. (Duquesne Light St. No. 5-R, p. 19.) Second, the Company explained that it would incur additional write-offs in 2014 due to a moratorium on terminating service associated with implementing its new billing system. (Duquesne Light St. No. 5-R, p. 19.) For these reasons, the Company's uncollectible accounts expense claim is supported by the preponderance of the evidence.

I&E also proposed a reduction of $1.63 million to the Company's uncollectible expense. (I&E St. No. 2-SR, p. 22.) I&E's proposal was based on using a three-year average write-off percentage to determine the Company's uncollectible expense. (I&E St. No. 2-SR, p. 7.)

In testimony, the Company explained that a five-year average provided a better base for determining the write-off percentage and that I&E's proposal also failed to account for the significant increase in uncollectibles actually experienced in 2013 and further failed to account for the projected increase in uncollectibles in 2014 due to the moratorium on shut-offs. (Duquesne Light St. No. 5-R, pp. 21-22.)

For these reasons, the Company's uncollectible accounts expense claim is supported by the preponderance of the evidence.

**vi. Professional Service Expense**

In its testimony, the OCA proposed a reduction to the Company's professional service distribution expense account of $4.107 million. (OCA St. No. 1-SR, Schedule C-1.5.) OCA claimed that this adjustment should be adopted because the Company did not properly allocate transmission-related vegetation management expenses and other transmission maintenance costs to the transmission function. (OCA St. No. 1, p. 29.)

In Rebuttal Testimony, the Company demonstrated that it had correctly allocated distribution and transmission costs. (Duquesne Light St. No. 5-R, p. 17.) The Company provided Exhibit RLO-3, which demonstrated that the overall expense allocated to transmission for the FPFTY was consistent with the allocation for the prior 4 years. The Company further explained that the allocation from FPFTY expense by budget cost element to FERC accounts based on historic relationships can create distortions by FERC account, but does not result in an overstatement of total distribution expense. (Duquesne Light St. No. 5-R, p. 18.)

Finally, OCA's adjustment is effectively an adjustment to reduce the Company's claimed distribution vegetation management expense which is included in professional services since it is provided primarily by outside contractors. The Company's commitment to spending its full requested distribution vegetation management expense of $15 million per year provides a further basis to reject OCA's professional services adjustment. (Duquesne Light St. No. 4-R, p. 9.)

**vii. Utilities Costs**

In testimony, the OCA proposed a reduction to the Company's utilities costs for distribution operations of $598,000 ($696,000 for total Company times 85.85% for distribution = $598,000). (OCA St. No. 1-SR, Schedule C-1.5.) The basis of OCA's proposed adjustment was that the Company's utilities cost for the FPFTY should be the same as its costs for the HTY. (OCA St. No. 1, p. 31.)

In this proceeding, the Company clearly demonstrated that the HTY utilities costs were abnormally low as compared to 2009, 2010 and 2011. As explained by Mr. Mathew Ankrum:

> The Company's utilities cost element was forecasted to be $2,313,000 in the FPFTY. The HTY amount of $1,617,000 was heavily influenced by milder weather and lower energy prices which reduced the Company's utility expense by amounts lower than historical trends. Utilities expense for the Company in 2009, 2010 and 2011 was $2,500,000, $2,400,000 and $2,100,000, respectively. We believe that utilities cost should be forecasted on

> a weather normalized basis taking into account forward energy prices. See Exhibit MSA-5-R illustrating the expected increase in gas prices in the Northeast leading up to the FPFTY. Mr. Effron's adjustment to reduce the Company's utilities costs should not be accepted.

(Duquesne Light St. No. 2-R, p. 14, line 31 – p. 15, line 9.)

The Company provided substantial evidence that its HTY utilities costs were abnormally low and that its FPFTY costs were reasonable.

**viii. Mailing Costs**

In testimony, the OCA proposed a reduction to the Company's mailing costs of $998,000. (OCA St. No. 1-SR, Schedule C-1.5.) The OCA claimed that the Company did not support the requested increase in mailing costs. (OCA St. No. 1, p. 31.)

The Company disagreed with the OCA's projected adjustment. The Company listed several new letters that it anticipated sending to customers, including communications related to vegetation management, payment reminders to commercial and governmental customers, referrals to smart comfort programs and other letters. (Duquesne Light St. No. 2-R, p. 15.) The Company will clearly incur additional costs to send more and new letters to customers. The Company demonstrated that it will incur additional mailing costs. The Company's position is supported by the preponderance of the evidence.

**ix. End of Year Rate Base and Annualization Adjustments**

In testimony, the OCA proposed to rely on a mid-year rate base for the FPFTY instead of an end of year balance. The effect of this adjustment would have been to reduce the Company's rate base by $10 million. (OCA St. No. 1-SR, Schedule B-1.)

In testimony, the Company explained various reasons why it should be permitted to use an end of year rate base and to annualize expenses, including:

- Under the Test Year Concept in Pennsylvania, rate base is determined at the end of the test year;
- The Company has used the same methodology for annualizing revenues and expenses in prior cases; and
- Using an end of year rate base would allow for application of the DSIC mechanism at the end of the FPFTY.

(Duquesne Light St. No. 5-R, pp. 11-12.)

Therefore, the Company's end of year rate base and expense annualization adjustments are supported by substantial evidence.

### x. Present Rate Revenue Adjustment

In testimony, I&E proposed to increase the Company's present rate revenues by approximately $3.5 million, which would reduce the Company's revenue requirement. (I&E St. No. 4-SR, p. 5.) I&E's proposed revenue adjustment was based on using a simple three-year average gain and a loss of customers for all rate schedules. (I&E St. No. 4-SR, p. 5.)

In its Rebuttal Testimony, the Company explained that I&E's simplistic historical average methodology suffered various flaws. Mr. James Habberfield explained as follows:

> Q. Do you agree with Mr. Hubert's recommendation?
>
> A. No, I do not. The Company utilizes a sophisticated methodology of econometric modeling which takes into account historical growth trends and projected economic growth rates. Mr. Hubert is using a very simplistic approach to approach the task of forecasting customer levels. A three-year moving average is not an ideal mechanism for forecasting customer growth in most customer classes. It is not capable of favoring more recent trend results over those from three years ago. It is also ineffective at forecasting rate schedules that have a smaller sample size, such as many of the commercial and industrial classes that have a small amount of customers. The circumstances that make customer counts go up or down in these rate schedules with very few customers are more independent and less suitable for explanation by a simple longer-term trend.

(Duquesne Light St. No. 3-R, p. 3, lines 1-12.)

The Company further explained that I&E's adjustment improperly attributed excessive growth levels to commercial customer counts due to the sharp increase in customers after the Great Recession of 2008-2009. (Duquesne Light St. No. 3-R, pp. 3-4.) It is not reasonable to attribute this level of increase to customer counts to future years. Finally, the Company explained that it would have advanced knowledge of any additions of new large customers under these rate schedules and that the Company would not reach I&E's projected customer numbers for these rate schedules in the FPFTY. (Duquesne Light St. No. 3-R, p. 6.) Further, the Company provided substantial evidence indicating that its present rate revenues would decrease by approximately $606,000 (thereby increasing the Company's revenue requirement) if the Company updated its projected customer count based on the current number of customers. (Duquesne Light St. No. 3-R, p. 7.) In addition, if the Company simply used current customer counts without modeling for changes to the end of the FPFTY, the Company's present rate revenues would decrease by $1.64 million. (See Exh. JH 2-R.)

The Company provided substantial evidence in this proceeding rebutting I&E's present rate revenue adjustment and supporting its present rate revenue.

**xi. Rate Case Expense**

In testimony, I&E proposed a reduction in the Company's normalized rate case expense for distribution operations of $374,000. This adjustment was based on normalizing the Company's claimed rate case expense over 44 months as opposed to 36 months. (I&E St. No. 2-SR, p. 7.)

In its testimony, the Company explained that a 36 month period should be used because the Company's last base rate case was filed three years ago, and the Company currently expects to file its next rate case in three years. (Duquesne Light St. No. 5-R, p. 24.)

I&E also proposed to reduce the Company's default service filing expenses for distribution operations by $241,000 to reflect average expenses for the last two default service filings as opposed to allowing the Company to recover its actual expenses for the last filing. (I&E St. No. 2-SR, p. 7.) The Company explained that I&E's position was unreasonable because it was speculative, would likely not allow the Company to recover its actual costs and was inconsistent with how the Company recovered default service costs in prior cases. (Duquesne Light St. No. 5-R, pp. 26-28.)

The Company provided substantial evidence in this proceeding that its proposed rate case and default service expense claims were reasonable.

**xii. Conclusion**

As explained above, Duquesne Light has provided more than substantial evidence to support a revenue increase of more than $48 million. If the other parties' proposed adjustments set forth above in this Section III.A.2 were not accepted and the Company was granted a return on equity of 10.4% consistent with the Commission's decision in *PPL Electric*, the revenue increase would be $58.75 million. See Attachment C, page 3, column 12, line 1 for this mathematical calculation.[6] Duquesne Light notes that this hypothetical revenue increase does not include rejection of all of OCA's and I&E's adjustments, only the ones addressed in this Section III.A.2 and specifically identified in Attachment C, p. 3.

[6] At the hearing, Mr. Effron performed a simple mathematical calculation to determine that if all of the OCA's proposed adjustments were accepted, the ROE for the proposed Settlement revenue increase would be 11.02%. Mr. Effron also testified that if all of the Company's positions on rate base and operating income were adopted, the ROE for the Settlement revenue increase would be 9.57%. (Tr. 222, 227-228.) Pages 1 – 2 of Attachment C replicate this analysis. As explained in more detail herein, pages 3 – 5 of Attachment C provide a range of resolutions supporting the reasonableness of the proposed revenue increase under the Settlement. The calculations contained in Pages 1 – 5 of Attachment C are mathematical calculations that are all based on record evidence presented in this proceeding. Pages 6 – 8 of Attachment C provide the references to the record for the numbers used in the mathematical calculations.

### d. The NRG Companies' Opposition To The Proposed Revenue And Rate Increase Under The Settlement Should Be Denied.

#### i. The NRG Companies Failed To Provide Any Substantial Evidence Regarding Revenue Requirement Issues In This Proceeding

The NRG Companies oppose the proposed distribution revenue increase of $48 million under the Settlement. (Tr. 71, 221-228.) However, the NRG Companies have not at any point in this proceeding proposed a specific revenue requirement for the Company nor have the NRG Companies presented any testimony or evidence regarding rate base, revenue or expense adjustments.

The NRG Companies' sole testimony regarding revenue requirement was that they opposed an excessive rate of return and that the Company's proposed return on equity of 11.25% was higher than the return on equity of 10.2% for an EDC Distribution System Improvement Charge ("DSIC") mechanism in the most recent quarterly earnings report. (NRGP St. No. 1, pp. 6-7.)

The NRG Companies' testimony regarding return on equity should not be considered. The NRG Companies' witness, Mr. Dausman, is clearly not qualified to present testimony regarding return on equity. Mr. Dausman testified that he had never testified as an expert on return on equity for ratemaking purposes nor did he perform any analysis on return on equity. (Tr. 409.)

Mr. Dausman recommended that the Commission use the DSIC return of 10.2% as the basis for the return on equity granted in this proceeding. (Tr. 413.) However, the Commission does not set the return on equity in a base rate proceeding based off of the DSIC return set in a quarterly earnings report or upon any return on equity in a quarterly earnings report. The Commission sets the return on equity in a base rate proceeding based primarily on the DCF

method as informed by the results of other models and reasoned judgment. *Pa. P.U.C. v. PPL Electric Utilities Corp.*, Docket No. R-00049255, Order entered December 22, 2007, pp. 67 and 72; *Pa. P.U.C. v. Philadelphia Suburban Water Co.*, Docket Nos. R-870840 et al., 96 P.U.R.4th 158,207, 1988 Pa. P.U.C. LEXIS 433 at *135-*137, Order entered July 26, 1988. In PPL Electric's recent base rate proceeding in 2012, which is the most recent electric base rate proceeding, the Commission adopted a return on equity rate of 10.4%, inclusive of 12 basis points for management efficiency. *PPL Electric*, p. 101. Moreover, as explained above, Duquesne Light should be granted a higher return on equity than PPL Electric because Duquesne Light is a smaller utility than PPL Electric and therefore faces more risk. (Duquesne Light St. No. 9-R, p. 29.) In addition, interest rates and equity costs have increased since the PPL decision. (Duquesne Light St. No. 9-R, p. 29.)

**ii. The NRG Companies' Attempts To Determine A Specific Return On Equity For The Proposed Revenue Requirement Under The Settlement Should Be Summarily Dismissed.**

Given the complete lack of testimony and evidence from the NRG Companies regarding a proposed revenue requirement, it is difficult to discern what the NRG Companies' basis is for opposing the proposed revenue requirement under the Settlement. During cross-examination, the NRG Companies' counsel asked OCA's witness Mr. Effron to calculate the return on equity at the settlement revenue increase if all of the OCA's adjustments were accepted. (Tr. 222.) Mr. Effron responded that the return on equity under this scenario would be 11.02% but also noted that this was not a meaningful calculation. (Tr. 228.) Mr. Effron also testified that if all of the Company's positions on revenue and expense issues were adopted, the return on equity at the settlement increase of $48 million would be 9.57%. (Tr. 228.) Based upon this cross-examination, it appears that the NRG Companies may argue that the return on equity under the

Settlement should be assumed to be as high as 11.02%, this return on equity is too high and, as a result, the proposed revenue increase under the Settlement is unreasonable.[7]

If this is the NRG Companies' position, it should be summarily rejected. The proposed revenue increase of $48 million under the Settlement is what is commonly referred to in Pennsylvania as a "black box" settlement. Under a "black box" settlement, parties do not specifically identify all of the revenues and expenses that are allowed or disallowed. Parties also do not specifically identify a rate of return for the proposed revenue increase. The "black box" concept facilitates settlement because it allows a settlement without requiring parties to abandon or reverse their positions on any specific issues, which could impact their positions in later cases.

In Aqua Pennsylvania's 2011 base rate proceeding, the presiding Administrative Law Judges attempted to determine a specific return on equity implicit in a black-box, non-unanimous settlement. *Pa. P.U.C. v. Aqua Pennsylvania, Inc.* Docket No. R-2011-2267958, Order entered June 7, 2012. The Commission held that the ALJs should not have attempted to calculate a specific return on equity for a black-box settlement, stating as follows:

> The non-unanimous settlement is silent on the effective return on equity as well as all other aspects of Aqua's capital structure. The ALJs however, mistakenly and improperly attempted to calculate the settlement ROE. R.D. Attachment 1.
>
> In considering the Settlement, we are determining, *inter alia*, whether an increase of $16.7 million in annual operating revenue is in the public interest without making a determination of any specific components that may have led to the calculation of the specific revenue requirement. Consequently, we are unable to make any determination regarding the rate of ROE that Aqua may ultimately realize from the rates adopted under the proposed Settlement. Accordingly, the ALJs' Attachment 1 may not be used

[7] It must be noted that Duquesne Light's witness, Mr. Moul, supported an ROE of 11.25%. (Duquesne Light St. No. 9, p. 1.) Therefore, even if all of OCA's adjustments are assumed to be accepted, which would be unreasonable, the 11.02% ROE is less than the 11.25% supported by Mr. Moul. Moreover, in 2008, the Commission granted Aqua Pennsylvania, Inc. an ROE of 11%. *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711, Order entered July 31, 2008, p. 54.

> as a benchmark or for comparison purposes to the agreed-upon DSIC ROE, within the context of this proceeding. Additionally, any reference to the ALJs' ROE calculation should be ignored.

*Id.,* pp. 26-27. The Commission made it quite clear in the *Aqua Pennsylvania* case that it is not appropriate to determine a specific return on equity for a black-box settlement.

In addition, in Peoples TWP LLC's recent base rate proceeding, a customer complainant challenged a "black box" settlement. In the Order, the Commission noted that the customer did not agree with the "black box" nature of the settlement and noted the customer's argument that "the Settlement should provide specifically which adjustments are allowed or disallowed and explain these adjustments in detail." *Pa. PUC v. Peoples TWP LLC,* Docket No. R-2013-2355886, Order entered December 19, 2013, p. 27. The Commission denied the customer's argument, stating as follows:

> We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.

*Id.,* p. 28.

Similarly, at the Public Meeting held on August 2, 2012, Chairman Robert F. Powelson stated as follows:

> The spirit of cooperation, as well as compromise, also permeates our base rate setting process. A fully blown rate case is very expensive, often

> exceeding $1 million, which gets paid for by customers. A significant number of base rate cases before us reach settlement. Clearly, this is a good thing – for customers, companies and the Commission, saving a substantial amount of time and expense, and often resulting in alternatives which may not have come to fruition via further litigation. Most settlements are "black-boxed," as parties to the case do not want to disclose positions on individual issues and adjustments and reaching agreement on every issue in a case to calculate a revenue requirement is at best difficult and impractical. I support settlements and see the black-box option as integral to the success of the settlement process.

*Statement of Chairman Robert F. Powelson, Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Public Meeting, August 2, 2012.

For the reasons explained in the *Aqua Pennsylvania* case, the *Peoples TWP LLC* case and by Chairman Powelson in his Statement, the Commission should deny the NRG Companies' attempts to develop a specific return on equity for the proposed black-box revenue requirement under the Settlement.

### iii. It Is Unreasonable To Assume That All Of OCA's Adjustments Would Be Accepted

Based upon the NRG Companies' cross-examination, it appears that their basis for opposing the proposed revenue increase under the Settlement is that it may allow a return on equity of up to 11.02%. Tr. 228. However, this is an unreasonable argument because in order to accept it, one must assume that all of OCA's proposed adjustments would be accepted.

As explained above, the Company provided substantial record evidence in rebuttal testimony for all of OCA's proposed adjustments. If one assumes that OCA would win one-half of its adjustments and the Company would win the other half, this puts the return on equity for the Settlement revenue increase at 10.3% (11.02% + 9.57% ÷ 2 = 10.3%). (See Attachment C, p. 4, column 6, line 15.) A return on equity of 10.3% is a full 10 basis points below the return on equity of 10.4% granted by the Commission to PPL Electric in its 2012 base rate proceeding. This alone demonstrates the reasonableness of the Settlement.

There are various other ways of demonstrating the reasonableness of the Settlement. As explained above, OCA proposed an adjustment of approximately $4.1 million for professional services expenses primarily relate to vegetation management expenses which the Company has committed to spend. (Duquesne Light St. No. 4-R, p. 9.) In addition, as noted above, if OCA's adjustments to use an end of year rate base were also rejected, this would correspond to an increase in the Company's rate base of approximately $10 million. Finally, OCA has proposed salary and wage adjustments of approximately $4.784 million. If OCA's $4.1 million adjustment related to vegetation management is rejected due to the evidence and the Company's commitment to spend these funds under the Settlement, and OCA's end of year rate base adjustment is rejected and ½ of OCA's wage and salary adjustments are rejected, that would produce a return on equity of 10.3% at a $48 million rate increase. See Attachment C, p. 5 for this mathematical calculation.

As explained above, the most recent return on equity allowance for an electric utility was 10.4% in PPL Electric's 2012 base rate proceeding. *Pa. P.U.C. v. PPL Electric Utilities Corporation,* Docket No. R-2012-2290597, Order entered December 28, 2012, p. 101. The above calculations demonstrate that the Settlement compromises produce a return on equity that is consistent with the conclusion in PPL Electric. Therefore, the proposed revenue increase under the Settlement of $48 million is clearly reasonable, in the public interest and supported by substantial evidence as explained in Section III.A.2.c above.

**e. It Is Contrary To The Public Interest To Allow A Party That Has Presented No Competent Testimony On Revenue Requirement, To Attack A Settlement By Reference To Challenged Testimony Of Settling Parties**

Duquesne Light has worked diligently with the parties that presented competent testimony and evidence on revenue requirement issues to reach a mutually agreeable

compromise of these issues. As explained above, the Commission encourages parties to reach settlements to avoid litigation expense and to foster creative solutions that may not otherwise be achievable in litigation. *Pa. PUC v. Peoples TWP LLC,* Docket No. R-2013-2355886, Order entered December 19, 2013, p. 27.

The NRG Companies, despite presenting no testimony on rate base, revenue and expense adjustments and presenting no competent return on equity analysis, now attempt to disrupt the Settlement achieved by the parties that participated in presenting evidence on these issues. The NRG Companies' disruptive efforts are contrary to the public interest and should not be endorsed.

The NRG Companies claim to be representing its customers' interests who must pay its costs. (NRGP St. No. 1, p. 6.) However, the NRG Companies have not presented any evidence in this proceeding regarding how the proposed rate increase will impact their customers' bills.

Given the complete lack of evidence presented by the NRG Companies regarding revenue requirement issues and the lack of evidence regarding how the rate increase will impact the NRG Companies or its customers, it is unclear why the NRG Companies are opposing the Settlement. The NRG Companies' efforts are contrary to the public interest, contrary to the Commission's policy to promote settlements, and contrary to the Commission's policy to reduce litigation expense. The NRG Companies' opposition to the Settlement should be denied.

### 3. Revenue Allocation and Rate Design

The Company will address revenue allocation and the rate design for each rate class under the Settlement in its Statement in Support.

### 4. Universal Service

The Settlement resolves the parties' universal service issues by compromise. Duquesne Light will explain this in its Statement in Support.

### 5. Customer Service

In its Testimony, NRGP states that it has been "generally satisfied" with Duquesne Light's service, but that it concerns regarding "effective communication." NRGP St. No. 1, p. 4. NRGP states that on occasion, it has taken Duquesne Light several days to respond to inquiries from NRGP. Duquesne Light denies that it has provided inadequate or ineffective communication to NRGP.

The Company responded to concerns about communication in the Rebuttal Testimony of Michele Sandoe. (Duquesne Light St. No. 8-R). Therein, Duquesne Light explained its efforts to communicate with customers during outages and explained why the NRG Companies' vague allegations were unreasonable. (Duquesne Light St. No. 8-R, pp. 14-22.)

NRGP has failed to provide any specific examples in this proceeding of where Duquesne Light failed to provide effective communication. NRGP did not provide any specific examples in its testimony or in discovery. Its contentions amount to vague, unsubstantiated allegations. In discovery, Duquesne Light asked NRGP to identify every communication which NRG believed that it took Duquesne Light too long to respond. NRGP's response was as follows:

> NRGP has not historically maintained records of telephone calls or other verbal communications with Duquesne Light and, accordingly, cannot cite specific dates and times when responses were not received in a timely manner.

(Duquesne Light's Hearing Exhibit 1, p. 2.) Moreover, when asked at the hearing, NRGP's witness, Mr. Dausman, again could not cite to a single specific instance of ineffective communication by Duquesne Light, but only referred to vague, unsubstantiated allegations. (Tr. 415.)

Duquesne Light has demonstrated that it has provided reasonable and effective communication to NRGP. At the hearing, Mr. Dausman admitted that the Company has had

approximately 15 telephone conferences and meetings with NRGP since 2009 to discuss their issues. (Tr. 420.) In addition, Duquesne Light's representatives have physically come to NRGP's offices to have meetings. (Tr. 420 – 421.) Duquesne Light has clearly made extensive efforts to provide effective communication to NRGP.

In testimony, NRGP also alleges that Duquesne Light could "provide better guidance to customers regarding net metering service under Rider No. 21." (NRGP St. No. 1, p. 5.) At the hearing, NRGP's witness Mr. Dausman further indicated that his concerns regarding net metering related to NRGP's potential cogeneration projects. (Tr. 422 – 423.)

Duquesne Light has provided extensive guidance to NRGP regarding cogeneration and net-metering. With respect to co-generation, the Company hired a third-party engineering firm to conduct an analysis for NRGP regarding potential cogeneration projects. (Tr. 422.) The Company also has conducted many meetings with NRGP, and at least one of these meetings involved cogeneration. (Tr. 430.)

Duquesne Light also has provided extensive guidance to all of its customers regarding cogeneration and net metering. Duquesne Light has extensive information on its website regarding net-metering, including:

- Rider No. 21 – Net Metering Service, which explains the applicability of the Rider including who is eligible, metering provisions, billing provisions and net-metering provisions for shopping customers.
- 21 Frequently Asked Questions and answers thereto regarding net-metering and how to connect to Duquesne Light's system.
- A description of the Application Procedure, Customer Checklist and Application Agreement.
- An extensive document describing Facility Connection Requirements.

(See Duquesne Light's Hearing Exhibit No. 2.) At the hearing, Mr. Dausman admitted that he had reviewed the Company's net-metering tariff and net-metering and cogeneration materials on

the Company's website. (Tr. 423.) Mr. Dausman also indicated that he could have asked the Company questions about net-metering at the numerous meetings the Company has had with NRGP since 2009. (Tr. 423.)

The Company has clearly provided reasonable guidance to NRG regarding net-metering and cogeneration.

Duquesne Light has also been responsive to other parties' concerns regarding customer service and communication issues as evidenced by its testimony and commitments under the Settlement that will be filed on or before January 17, 2014. Duquesne Light will provide further explanation in its Statement in Support of the Settlement.

### 6. LED Street Light Program

Duquesne Light will address these issues in its Statement in Support of the Settlement.

## B. RIDER NO. 18 ISSUES

The NRG Complaint generally averred that "Rider No. 18 of Duquesne Light's Tariff should be examined to ensure that the terms, conditions and electric energy purchase price continue to be just, reasonable, and non-discriminatory." (NRG Complaint ¶ 11.) In their request for relief, the NRG Companies generally requested that the Commission "ensure that Tariff Rider No. 18 is just, reasonable and nondiscriminatory." (NRG Complaint ¶ 20.) The NRG Companies subsequently clarified their position in direct testimony and requested that the rate set forth in Rider No. 18 be modified. (NRG Midwest St. No. 1, pp. 6-7.) In surrebuttal, the NRG Companies changed their theory and, for the first time, requested that Rider No. 18 be eliminated in its entirety. (NRG Midwest St. 1-S, pp. 6, 9.) For the reasons set forth below, the NRG Companies have failed to meet their burden of proof, and their Complaint therefore should be dismissed or denied on the merits.

## 1. BACKGROUND OF RIDER NO. 18

Duquesne Light's Rider No. 18 establishes the rates to be paid for power produced by certain specified categories of electric generating facilities pursuant to federal law, the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§ 824, *et seq.* (Duquesne Light St. No. 12-R, P. 19.) Under PURPA, electric public utilities are required to purchase all electricity produced by independent power producers that obtain status as qualifying facilities. Electric utilities are required to purchase electricity from qualifying facilities at rates that are just and reasonable to the electric utility, in the public interest, and which do not discriminate against the qualifying facilities.[8] 16 U.S.C. § 824a-3(b); 18 C.F.R. §§ 292.304(a)(1)(i), (ii).

Under the regulations of the Federal Energy Regulatory Commission ("FERC") implementing PURPA, the electric utility is required to purchase electricity generated by a qualifying facility at the utility's "avoided cost." 18 C.F.R. § 292.304(a)(2). "Avoided costs" are the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility, such utility would *generate itself* or *purchase from another source*. 18 C.F.R. § 292.101(b)(6) (emphasis added). Stated otherwise, the "avoided cost" is the cost the utility would have incurred had it generated the power itself or, alternatively, obtained it from another source.

Although the FERC's regulations implementing PURPA provide that the rate paid to qualifying facilities should be equal to the utility's "avoided costs," FERC regulations also expressly permit qualifying facilities and electric utilities to enter negotiated agreements for rates and terms different from those called for in the regulations. 18 C.F.R. § 292.301(b)(1). As a

[8] Electricity is first produced and sold on the wholesale level before it is sold and distributed to consumers on the retail level. Wholesale power is produced and purchased for resale into the electric market. Wholesale power is not directly provided to end-use customers. Retail power, on the other hand, is purchased on the market and provided directly to end-use customers.

result, qualifying facilities and electric utilities are still permitted to voluntarily agree to rates and terms that are different from the "avoided costs" as defined in the regulations.

State regulatory authorities are required to implement PURPA pursuant to the rules and regulations promulgated by FERC. 16 U.S.C. § 824a-3(f). The Commission issued its Purchase and Sale of Energy and Capacity regulations in 1982, which generally follow FERC's PURPA regulations. *See* 52 Pa. Code §§57.31 *et seq.* Similar to FERC's PURPA regulations, the Commission's regulations provide that nothing limits the authority of electric utilities and qualifying facilities from entering negotiated agreements with prices, terms, or conditions different from those called for in the regulations. 52 Pa. Code § 57.32(c).

FERC has determined that PURPA permits "lock-ins," that is, long-term, fixed-rate contracts with qualifying facilities. *See In re West Penn Power Company*, 71 F.E.R.C. P61,153 (order denying petition for declaratory order, May 8, 1995). Further, FERC's regulations provided that where the power purchase rates are based upon estimates of avoided costs over the specific term of a contract or other legally enforceable obligation, the rates for such purchases do not violate PURPA if they differ from the avoided costs at the time of delivery. 18 C.F.R. § 292.304(b)(5). *See also New York State Elec. & Gas Corp.*, 71 FERC 61,027 (1995) (declining to find a contract in violation of PURPA where the rates based on avoided cots at the time the contract obligation was incurred exceed the current avoided cost rate).

Pursuant to PURPA, Duquesne Light's Rider No. 18 was approved by the Commission in 1981 at Docket No. R-811713. (Duquesne Light St. No. 12-R, p. 19.) Rider No. 18 establishes the rates to be paid for the wholesale power produced by qualifying facilities pursuant to PURPA. (NRG Midwest St. 1-S, p. 6; *see also* Duquesne Light St. No. 12-R, p. 19.) Rider No. 18 provides that the power produced by qualifying facilities will be purchased at the "rate of six

(6) cents per kilowatt-hour, or at a rate based on the Company's avoided costs when such costs exceed six (6) cents per kilowatt-hour."[9] (Duquesne Light St. No. 12-R, p. 20.) The Commission-approved six cent per kilowatt-hour was similar to the "avoided cost" rate adopted by other utilities and states at the time. (Duquesne Light St. No. 12-R, p. 21.) The wholesale PURPA rate established in Rider No. 18 is the rate to be used in power purchase agreements with qualifying facilities. It has no meaning in the abstract, *i.e.*, it is not the contract; it simply establishes a term in the contract.

On August 18, 1982, Duquesne Light entered into a negotiated purchase power agreement with Beaver Valley Power Company ("Beaver Valley"), a qualifying facility pursuant to PURPA and Rider No. 18. (Duquesne Light St. No. 12-R, p. 21.) On February 28, 1985, Duquesne Light entered into a negotiated purchase power agreement with Beaver Falls Municipal Authority ("Beaver Falls"), a qualifying facility pursuant to PURPA and Rider No. 18. (Duquesne Light St. No. 12-R, p. 22.) Both of these agreements provide that the price to be paid for the net power produced by these qualifying facilities is subject to the terms and conditions of Duquesne Light's tariff on file with the Commission or any other jurisdictional authority. (Duquesne Light St. No. 12-R, p. 22.) Consequently, as recognized by the NRG Companies, the wholesale rate paid under both of these negotiated wholesale power purchase agreements is the rate set forth in Rider No. 18. (NRG Midwest St. 1-S, pp. 3, 9.)

The rates paid under Rider No. 18 initially were recovered by Duquesne Light from ratepayers through the Energy Cost Rate, a Commission-approved automatic adjustment clause that allowed the Company to recover its actual cost of fuel, purchased power, and similar cost of

[9] In its filing for Rider No. 18, Duquesne Light explained that, based on the Company's experience with small customer-owned generators, a rate less than six cents per kilowatt-hour would not be sufficient to meet the goals of PURPA -- that is, to promote the development of cogeneration and renewable energy facilities. (Duquesne Light Statement No. 12-R, pp. 19, 20.)

generation, including purchases from qualifying facilities pursuant to PURPA. (Duquesne Light St. No. 12-R, p. 23.) In 1987, the Commission approved, with modifications, Duquesne Light's request to phase out the PURPA rate to new customer-generators. *Pa. P.U.C. et al. v. Duquesne Light Co.*, Docket No. R-860556 1987 Pa. PUC LEXIS 235, 64 Pa. PUC 388 (July 20, 1987). Consequently, the existing power purchase agreements with Beaver Valley and Beaver Falls are the only two remaining power purchase agreements subject to Rider No. 18. Importantly, although the Commission phased out Rider No. 18 to *new* customers, the existing power purchase agreements with Beaver Valley and Beaver Falls remained in effect and subject to the six cents per kilowatt hour wholesale rate set forth in Rider No. 18. The Commission has not at any time modified or terminated the wholesale PURPA rate set forth in Rider No. 18.

On December 3, 1996, Governor Tom Ridge signed the Electricity Generation Customer Choice and Competition Act ("Competition Act"), P.L. 802, No. 138, effective January 1, 1997, 66 Pa.C.S. §§ 2801-2812. The Competition Act restructured Pennsylvania law relating to retail electric service in the Commonwealth. In accordance with the Competition Act, all Pennsylvania EDCs, including Duquesne Light, were required to file restructuring plans for review and approval by this Commission. 66 Pa.C.S. § 2806(d). These restructuring plans were required to provide for the transition from the monopolistic provision of all electric service by utilities to the competitive market for generation.

Duquesne Light's restructuring plan was approved by the Commission in 1998. *Application of Duquesne Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket Nos. R-00974104, et al., 1998 Pa. PUC LEXIS 163 (May 29, 1998). In the order approving Duquesne Light's restructuring plan, the Commission accepted Duquesne Light's offer to divest itself of generation and directed Duquesne Light to,

*inter alia*, file a plan for divestiture of its generation assets. *Id.* at *113-18. As a result, in 2000, Duquesne Light auctioned off its generation assets, approximately 2,500 megawatts, to Orion Power Holdings, Inc. ("Orion"). (Duquesne Light St. No. 12-R, pp. 23-24.)

As part of the agreement to acquire Duquesne Light's generation assets, Duquesne Light and Orion entered into an agreement whereby Duquesne Light assigned and Orion accepted the obligation to purchase the 6.8 megawatts of net power produced from Beaver Valley and Beaver Falls under the negotiated wholesale power purchase agreements described above. This Revised QF Agency Agreement was approved by FERC on March 8, 2001. *See* FERC Docket No. ER01-1138-000. (Duquesne Light St. No. 12-R, p. 24.) Subsequently, NRG Midwest voluntarily assumed the obligations under the Revised QF Agency Agreement, including the obligation to purchase the net power output from Beaver Falls and Beaver Valley, as part of a $1.7 billion merger in 2012 of NRG Energy, Inc. and GenOn Energy, Inc.[10] (NRG Midwest St. No. 1, p. 3.) The 6.8 megawatts of net output produced by the two qualifying facilities still in effect clearly was a very small part of a large transaction. (Duquesne Light St. No. 12-R, p. 24.) Moreover, NRG Midwest is a very large, sophisticated commercial entity with significant experience in energy transactions, including the acquisition/merger of generation assets and the sale and purchase of power in the retail market. (See NRG Midwest St. No. 1, p. 1.)

Under the Revised QF Agency Agreement voluntarily assumed by NRG Midwest in 2012, NRG Midwest is required to purchase the net power produced from Beaver Valley and Beaver Falls under the negotiated wholesale power purchase, which in turn provides that the price to be paid for the net output is the wholesale rate set forth Rider No. 18. (NRG Midwest

[10] Orion was merged with RRI Energy Inc. in 2002, which was subsequently acquired by and merged with GenOn Energy, Inc. in 2010, which in turn was acquired by and merged with NRG Energy, Inc. in 2012. (NRG Midwest Statement No. 1, p. 3.)

St. No. 1, pp. 3-4.) In essence, as a result of NRG's voluntarily assumed obligation to purchase the net power produced from Beaver Valley and Beaver Falls, Duquesne Light has simply become the middleman between NRG Midwest and the qualifying facilities. Beaver Valley and Beaver Falls produce the power and sell the net output to Duquesne Light pursuant to the rate set forth in the negotiated power purchase agreements and Rider No. 18. Duquesne Light then sells the total net output to NRG at the rate set forth in the negotiated power purchase agreements and Rider No. 18, earning no margin on the sale. Consequently, the rates paid pursuant to Rider No. 18 have no impact on the base rates paid by Duquesne Light's retail customers, the revenues received by Duquesne Light, or the services provided to Duquesne Light's customers. (Duquesne Light St. No. 12-R, p. 25.)

To the best of the Company's knowledge, at no time prior to the NRG Complaint has any party, including NRG Midwest's various predecessors in interest, complained of or otherwise requested an update of the wholesale PURPA rate set forth in Rider No. 18. (Duquesne Light St. No. 12-R, p. 17.) Less than one year after it voluntarily assumed the obligation to purchase the net power output from Beaver Valley and Beaver Falls, NRG filed a Complaint in the pending base rate case proceeding, asserting, for the very first time since its approval over 32 years ago, that Rider No. 18 is unjust and unreasonable. The NRG Companies request, as confirmed by NRG Midwest's direct and surrebuttal testimony, that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.)

For the reasons explained below, the NRG Complaint should be denied for the following independent reasons: (1) the NRG Companies have failed to meet their burden to demonstrate that Rider No. 18 and the rates contained therein are unreasonable in any way, and have failed to

provide a credible alternative rate proposal; (2) the Commission is without authority to modify the existing PURPA rate by either modifying the wholesale PURPA rates set forth in Rider No. 18 or eliminating Rider No. 18 entirely as requested by the NRG Companies; and (3) the NRG Complaint failed to join all parties necessary and indispensable to the relief requested in the Complaint.

### 2. The NRG Companies Have Failed to Meet Their Burden of Proof

The NRG Companies broadly assert that Rider No. 18 is unjust, unreasonable, and discriminatory. (NRG Midwest St. No. 1-S, p. 9.) The NRG Companies therefore request that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.) Preliminarily, it must be noted that, as the NRG Companies acknowledged on the record (Tr. 147) and, as further explained above in Section II.B.2, *supra*, the NRG Companies bear the burden of proof with respect to its Rider No. 18 issues. In order for the Commission to grant the relief requested, the NRG Companies must introduce evidence of record demonstrating that Rider No. 18 is no longer just, reasonable, or in the public interest. Further, the NRG Companies must introduce substantial, credible evidence demonstrating that its proposals to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely is just, reasonable, and in the public interest. For the reasons explained below, the NRG Companies have failed to satisfy its burden of proof and, therefore, the NRG Companies' requests for relief must be denied.[11]

[11] Further, even if Duquesne Light had the burden of proof, which it denies for the reasons explained above, Duquesne Light demonstrated that the existing six cent per kilowatt-hour continues to be just, reasonable, and in the public interest.

### a. The NRG Companies have Failed to Meet Their Burden of Proving that the Rider No. 18 is Unjust, Unreasonable, and Not in the Public Interest

The NRG Companies has failed to meet their burden of proving that the Rider No. 18 should be eliminated or that its six cent rate is an unreasonable long-term avoided cost rate. The NRG Companies present four arguments in support of its position on this issue: (1) Rider No. 18 and its six cent rate were preempted by the Pennsylvania Customer Choice and Competition Act; (2) Rider No. 18 has been in effect for many years and has not been updated in a timely manner: (3) the six cent long-term rate in Rider No. 18 is higher than the current PJM spot market price; and (4) NRG Midwest is suffering financial harm because it is required by contract to purchase qualifying facility power at 6 cents and resell it at a loss into the spot market. The NRG Companies' arguments are without merit and should be rejected.

#### i. Duquesne Lights' Obligation to Purchase Power from Qualifying Facilities Under Federal Law Has Not and Cannot be Preempted by State Law or Regulation

In an effort to demonstrate that the Commission-approved Rider No. 18 is no longer just, reasonable, or in the public interest, the NRG Companies argue that the obligation of electric utilities to purchase power from qualifying facilities has been preempted by the Pennsylvania Electricity Generation Consumer Choice and Competition Act, P.L. 802, No. 138, effective January 1, 1997, 66 Pa. C.S. §§ 2801-2812. (NRG Midwest St. No. 1, pp. 5-6) Quite notably, the NRG Companies cite no authority in which a court has espoused such a novel "reverse preemption" theory. To the extent that there is a conflict between the state and federal legislation, the federal statute controls under the Supremacy Clause of the Constitution, U.S. Const. art. VI, cl. 2. A state law cannot preempt a federal law unless the federal act itself

sanctions the application of state standards. *United States v. Hall*, 543 F.2d 1229, 1232 (9th Cir. 1976), *cert. denied*, 429 U.S. 1075 (1977).[12]

Further, there is nothing in the Competition Act, or any other provision of the Public Utility Code or Commission regulations for that matter, that preempted PURPA or otherwise abolished or invalidated contracts with qualifying facilities. Moreover, the NRG Companies' contention is patently erroneous in that the existing PURPA contracts were continued post-restructuring and generally transferred with generation assets to non-regulated entities as part of the restructuring process and not cancelled. (Duquesne Light Statement No. 12-R, pp. 23-24.) Clearly, PURPA and its obligations on electric utilities have not been preempted by the Competition Act as asserted by the NRG Companies.

**ii. The NRG Companies Have Failed to Demonstrate that Rider No. 18 is Outdated**

The NRG Companies contend that Rider No. 18 is unjust and unreasonable because, according to NRG, it is outdated and has not been updated since it was adopted. (NRG Midwest St. No. 1, pp. 5-6.) In support, the NRG Companies argue that Rider No. 18 is an outdated remnant of a prior regulatory scheme and that electric utilities are now only responsible for default service generation supply pursuant to a Commission-approved default service plan. (NRG Midwest St. No. 1, pp. 5-6; NRG Midwest St. No. 1-S, p. 5.) These arguments are without merit.

The NRG Companies appear to suggest that Duquesne Light has an on-going obligation to continually update the rates paid pursuant to Rider No. 18. However, Rider No. 18 has been closed since 1987. *Pa. P.U.C. et al. v. Duquesne Light Co.*, Docket No. R-860556 (July 20,

[12] *See, e.g.*, the McCarran-Ferguson Act, 15 U.S.C.S. §§ 1011-1015, which expressly authorizes reverse preemption of generally applicable federal statutes by state laws enacted for the purpose of regulating the business of insurance.

1987). As a result of the Commission-approved phase out, the only qualifying facilities that are subject to Rider No. 18 are Beaver Valley and Beaver Falls discussed above, which were entered by the parties in 1982 and 1985. *See In re West Penn Power Company*, 71 F.E.R.C. P61,153 (order denying petition for declaratory order, May 8, 1995) (FERC has determined that PURPA permits "lock-ins," that is, fixed-rate long-term QF contracts).

It also should be noted that, until the NRG Companies filed their Complaint in this base rate proceeding, *i.e.*, more than thirty-two years after Rider No. 18 was approved by the Commission, no party has at any time complained or otherwise objected to the rate set forth in Rider No. 18.[13] Indeed, at no time have either of the two qualifying facilities complained about Rider No. 18. Similarly, the NRG Companies' predecessors in interest, Orion or GenOn, never objected to the rates set forth in Rider No. 18. In fact, even the NRG Companies did not object at the time they voluntarily assumed its obligation under the Revised QF Agency Agreement. Further, because Rider No. 18 is now closed, there can be no new additional qualifying facilities subject to Rider No. 18. For these reasons, there is no need for Duquesne Light to update or analyze the rate set forth in Rider No. 18.

The NRG Companies further assert that Rider No. 18 is outdated because the Commission no longer enforces its regulations regarding the purchase and sale of energy and

[13] Importantly, PURPA contracts were addressed in every electric utility restructuring proceeding. Under Duquesne Light's Commission-approved restructuring plan, the obligation to purchase the net power output from the qualifying facilities under Duquesne Light's contracts with the qualifying facilities was assumed as part of the agreement to acquire Duquesne Light's generation assets. No party opposed the transfer of the obligation to purchase the net power output from the qualifying facilities and, moreover, no party proposed that Rider No. 18 be abandoned in light of Electricity Generation Consumer Choice and Competition Act. To now abandon Rider No. 18 as suggested by the NRG Companies would re-open Duquesne Light's restructuring plan that was approved by this Commission in 1998, over 15 years ago. *Application of Duquesne Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket Nos. R-00974104, et al., 1998 Pa. PUC LEXIS 163 (May 29, 1998). The NRG Companies cannot now, after over 15 years, seek to modify Duquesne Light's Commission-approved restructuring plan.

capacity, 52 Pa. Code §§ 57.31, *et seq.* (NRG Midwest St. No. 1, p. 6.) The Commission is required to implement PURPA pursuant to the rules and regulations promulgated by FERC. See 16 U.S.C. § 824a-3(f). The Commission's regulations at 52 Pa. Code §§ 5.31, *et seq.*, have not been repealed or vacated. Indeed, on cross-examination, the witness for NRG Midwest was unable to identify any order that concluded that the Commission's regulations have been repealed or are otherwise no longer enforced as asserted by the NRG Companies. (Tr. 380-381.) The NRG Companies' reliance on the Commission's purported non-enforcement of its regulations is without merit.

The NRG Companies also contend that Rider No. 18 is no longer just and reasonable because electric utilities are now only responsible for default service generation supply pursuant to a Commission-approved default service plan. (NRG Midwest St. No. 1, pp. 5-6.) This argument is based on the incorrect assumption that PURPA has somehow been displaced and preempted by the Competition Act. As explained above, PURPA and the obligation to purchase power from qualifying facilities remains in effect. Unless Duquesne Light received an exemption from FERC or the United States Congress amends PURPA to remove the federally mandated obligation in PURPA to purchase power from small qualifying facilities, Duquesne Light is still obligated to purchase power from the two qualifying facilities under PURPA. There is nothing in the Commission-approved default service plans or any statute that somehow relieves Duquesne Light, or other electric utilities, of the federally mandated obligation in PURPA. Clearly, Duquesne Light continues to have an obligation to purchase power from the two small qualifying facilities under PURPA unless and until that obligation is removed by FERC or the United States Congress.

### iii. The NRG Companies' Citation to Current Spot Market Prices Provides No Support for Its Position

To support its claim that the long-term six cent rate in Rider No. 18 is unreasonable, the NRG Companies cite to spot market prices for energy in the day ahead market. Specifically, the NRG Companies argues that six cent long-term rate is roughly twice the recent spot market price. (NRG Midwest St. No. 1-S, p. 10.) This argument should be rejected for several reasons, as set forth below.

#### (A) The NRG Companies have Failed to Demonstrate that Use of the Day Ahead Locational Marginal Price is an Appropriate Proxy for "Avoided Costs"

In its direct testimony, the NRG Companies request that the wholesale PURPA rate set forth in Rider No. 18 be modified. Specifically, the NRG Companies imply that the Commission should adopt the PJM Interconnect, LLC ("PJM") day ahead locational marginal price ("DALMP") for energy as the avoided cost rate in Rider No. 18. (NRG Midwest St. No. 1, pp. 6-7.) Rather than providing any explanation why using the DALMP is an appropriate proxy for "avoided costs," the NRG Companies merely attached a list of the Duquesne Light zone average DALMP for the last three years.[14] Simply attaching the DALMP for the Duquesne Light zone, without any explanation, clearly does not satisfy the NRG Companies' burden to demonstrate that its proposal is just, reasonable, and in the public interest.

Rider No. 18 establishes the "avoided cost" rate to be paid for the wholesale power produced by qualifying facilities pursuant to PURPA. (NRG Midwest St. 1-S, p. 6; *see also* Duquesne Light St. No. 12-R, p. 19.) "Avoided costs" are the incremental costs to an electric

[14] Duquesne Light explained that the DALMP can be and has been highly variable over the last five years, and explained that the DALMP has been as high has five cents. (Duquesne Light Statement No. 12-RJ, p. 17; Duquesne Light Exhibit WVP 1-RJ) Importantly, however, as explained below the NRG Companies stated that the DALMP was merely a "benchmark" and not necessarily an alternative to the six cent per kilowatt-hour rate set forth in Rider No. 18.

utility of electric energy or capacity or both which, but for the purchase from the qualifying facility, such utility would *generate itself* or *purchase from another source*. 18 C.F.R. § 292.101(b)(6) (emphasis added). The NRG Companies simply have offered no support for the proposal that the DALMP be used as an appropriate proxy for Duquesne's avoided cost. In fact, the NRG Companies' witness specifically declined on multiple occasions to state on cross examination that the DALMP equates to avoided cost. (Tr. 322-328.) Duquesne Light no longer generates electric energy or capacity after restructuring and the DALMP is *not* the price at which Duquesne Light purchases energy or capacity from another source, other than its very largest customers. In the post restructuring environment where Duquesne Light no longer owns generation, the avoided cost could be either the cost of new generation or perhaps the cost for purchasing power for the Company's default service customers, who are primarily residential and small commercial customers. (Tr. 240-242.) Clearly, under the circumstances that exist in today's energy market in Pennsylvania, the DALMP is not the incremental cost incurred by Duquesne Light for the energy or capacity that, but for purchases from a qualifying facility, Duquesne Light would purchase from another source, *i.e.*, it is not the "avoided cost" as defined by FERC's regulations.

Further, even if LMP were the standard, the DALMP is an energy only rate and Duquesne Light buys a "full requirements" product, which includes energy, capacity and ancillary services.[15] At a minimum, NRG Midwest's proposal is incomplete. It appears that the NRG Companies are proposing that Duquesne Light purchase power from the qualifying facilities at actual spot locational marginal price. The Commission's existing PURPA regulations, however, allow the qualifying facilities to select a levelized 10-year energy only rate. 52 Pa. Code § 57.34(b). The regulations are still on the books, the QFs have not requested

[15] 52 Pa. Code § 57.34(c).

an energy only rate and the NRG Companies have provided no evidence or analysis as to a ten-year levelized avoided cost rate for Duquesne Light.

Further, it was unrefuted that any reduction in the wholesale PURPA rate set forth in Rider No. 18 would have dire economic impacts on the qualifying facilities that are dependent on and have relied upon the long-term fixed price provided in Rider No. 18. For example, Beaver Falls explained that if the PURPA rate in Rider No. 18 were reduced, as suggested by the NRG Companies, it would result in negative financial consequences for Beaver Falls and result in an inability to pay its bills and service the debt associated with the hydroelectric facility. (Beaver Falls Municipal Authority St. No. 1-REJ, p. 6.) Such negative financial consequences on clean, renewable hydroelectric facilities would not be consistent with the purpose of PURPA, the Pennsylvania the Alternative Energy Portfolio Standards Act ("AEPS Act"),[16] or the policy of this Commonwealth. This result would not be just, reasonable, or in the public interest.

**(B) Use of a Short-Term Spot Market Price as a Proxy is Inconsistent with the Purpose of PURPA**

A central purpose of PURPA was to provide long-term contracts with qualifying facilities to incentivize renewable sources of generation. FERC has determined that PURPA permits "lock-ins," that is, fixed-rate long-term contracts with qualifying facilities. *See In re West Penn Power Company*, 71 F.E.R.C. P61,153 (order denying petition for declaratory order, May 8, 1995). Use of the highly variable, short-term day ahead locational marginal price and spot market price clearly is inconsistent the avoided cost of the utility associated with the long-term contracts for power purchased under PURPA.

[16] The purpose of the AEPS Act is to provide for the sale of electric energy that is generated from renewable and environmentally beneficial services.. 73 P.S. § 1648.1.

In addition, FERC regulations specifically provide that a PURPA rate in a long-term contract is not unjust or unreasonable because it is higher than "avoided costs" at the time the power is delivered. *See* 18 C.F.R. § 292.303(d). What excess consumers might pay in terms of passed-through "avoided costs" is offset by the general public good of encouraging the development and continuation of alternative renewable energy sources. (Duquesne Light St. No. 12-R, pp. 29-30)

When Duquesne Light filed Rider No. 18 to establish the wholesale rate to be paid pursuant to its PURPA obligation, Duquesne Light explained in its filing that, based on the Company's experience with small customer-owned generators, the "avoided cost" would not be high enough to encourage the development of generating facilities utilizing renewable resources. Without some incentive, Duquesne Light did not believe that it was likely such renewable resources would be developed within the Company's service territory. Thus, the purpose of the Commission-approved Rider No. 18 was to provide a rate that is above the avoided cost when avoided costs are below the six cents per kilowatt hour rate. The fact that the NRG Companies cite to a short term rate that is below 6 cents per kilowatt hour proves nothing nor is it relevant to what is required under PURPA.

The six cent per kilowatt hour rate in Rider No. 18 was established to encourage and incent the development of renewable energy resources, and a price above projected avoided cost was specifically and intentionally selected and approved by the Commission to help achieve this policy goal. The NRG Companies seem to assume that this policy goal is no longer valid in Pennsylvania, but this is clearly not the case. The Commonwealth of Pennsylvania has continued to support the development and maintenance of renewable resources. Indeed, in 2004 the AEPS Act was adopted, which is designed to foster economic development and encourage

reliance on more diverse and environmentally friendly sources of energy. 73 P.S. § 1648.1 *et seq.* Generally, the AEPS Act requires that a certain percentage of all electricity sold to retail customers be derived from alternative energy sources, such as solar, wind, and hydropower. In fact, as Duquesne Light explained in testimony, a bill has recently been introduced that, if adopted, would increase the percentage of electricity required to be produced from alternative energy sources under the AEPS Act. Any redetermination of the rate to be paid to these qualifying facilities, as requested by the NRG Companies, also should reflect the Commonwealth's current policy regarding the development and maintenance of renewable energy resources. The results of that process might or might not result in a rate that is less than or above six cents per kilowatt hour.

**iv. The NRG Companies' Allegations of Harm are Misstated and Not Relevant to this Proceeding**

In an effort to show that the wholesale PURPA rate in Rider No. 18 is no longer reasonable, the NRG Companies assert that it is being harmed financially by reselling the power produced from the qualifying facilities into the spot market at a loss. (NRG Midwest St. No. 1, p. 6.) The NRG Companies' allegations of harm are misstated, unsupported and not relevant to this proceeding for several reasons.

The NRG Companies' obligation to pay six cents for the qualifying facility power results from a voluntary contractual obligation accepted by the NRG Companies. NRG Midwest voluntarily assumed the obligations under the Revised QF Agency Agreement, including the obligation to purchase the net power output from Beaver Falls and Beaver Valley, as part of a $1.7 billion merger in 2012 of NRG Energy, Inc. and GenOn Energy, Inc.[17] (NRG Midwest St.

[17] Orion was merged with RRI Energy Inc. in 2002, which was subsequently acquired by and merged with GenOn Energy, Inc. in 2010, which in turn was acquired by and merged with NRG Energy, Inc. in 2012. (NRG Midwest Statement No. 1, p. 3.)

No. 1, p. 3.) The 6.8 megawatts of net output produced by the two qualifying facilities still in effect clearly was a deminimus part of a large transaction. (Duquesne Light St. No. 12-R, p. 24.) NRG Midwest is a very large, sophisticated commercial entity with significant experience in energy transactions, including the acquisition/merger of generation assets and the sale and purchase of power in the retail market. (NRG Midwest St. No. 1, pp. 1, 3.) Any harm allegedly incurred by the NRG Companies is clearly part of the business risk voluntarily assumed by the NRG Companies when they acquired GenOn and their obligations.

Finally, the NRG Companies' assertion of loss is simply wrong. The NRG Companies' entire analysis is based on a simplistic comparison of the six cent rate it pays with the current three cent DALMP discussed above. They have not provided any evidence to demonstrate financial harm. Moreover, their entire argument is premised on the assumption that the NRG Companies must sell this power into the day ahead spot market.[18] This is simply not true. The NRG Companies' own witness admitted on cross-examination that they own a large number of generating facilities in addition to the qualifying facility contracts. (Tr. 395-96.) Moreover, although the NRG Companies refused to provide any information regarding what price it receives for power sold into the wholesale electric market, the NRG Companies did acknowledge that there are many options for reselling this power, including, but not limited to, selling the power on a long-term basis, participating in a utility's POLR plan, and selling the power to marketers that participate in the retail competition market. (Tr. 398-99.) There is no reason that the NRG Companies must sell the qualifying facility power into the spot market, and no basis to conclude that the NRG Companies are suffering any loss from honoring its contractual obligations.

[18] If the NRG Companies' position were adopted, the contract price would need to be changed every time the DALMP changes.

Moreover, the Commission should not pick winners and losers under commercial agreements. The NRG Companies voluntarily assumed the obligation to purchase power from the qualifying facilities at six cents per kilowatt hour, and they should be required to meet their voluntarily assumed obligation.

**b. Duquesne Light has Demonstrated that the Six Cent Rate in Rider No. 18 Continues to be Just, Reasonable, and in the Public Interest**

Duquesne Light clearly demonstrated that, based upon its recent history of the costs to acquire default service supply, the six cents per kilowatt-hour rate set forth rate forth in Rider No. 18 clearly is within the range of reasonable rates paid by the Company to purchase power to provide default service. As noted earlier in explaining the avoided cost standard under PURPA, the avoided cost is either the utility's avoided generating costs or the utility's cost of purchasing power. In the post restructuring environment where Duquesne Light no longer owns generation, the avoided cost could be either the cost of new generation or the cost for purchasing power for the Company's default service customers. (Tr. 240-42.)

Here, Duquesne Light explained that over the past decade it has experienced a range of full requirements default service rates of five to seven cents per kilowatt-hour. (Tr. 237-38.) Clearly, the six cents per kilowatt-hour wholesale PURPA rate set forth in Rider No. 18 is within the range of the bid prices under full requirements contracts under a completive bid process that form the basis of default service rates, *i.e.*, the costs Duquesne Light incurs to obtain power from another source. The winning bid prices for full requirements contracts under a completive bid process that form the basis of default service rates are a better estimation of avoided costs under current circumstances than is the NRG Companies' spot cost because the bid prices reflect longer term commitments for supply than spot purchases.

### c. The NRG Companies have Failed to Present a Specific and Complete Proposal for this Commission to Consider

Although the NRG Companies request that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely, the NRG Companies have failed to present a specific alternative proposal for a Rider No. 18 rate for this Commission to consider. Indeed, upon cross-examination by both counsel and the ALJ, the NRG Companies were unable to explain how the "avoided costs" should be determined in today's energy market if the wholesale PURPA rates set forth in Rider No. 18 were modified or if Rider No. 18 was eliminated. (Tr. 322-328.) Other than simply stating that a "more appropriate price for the output of the facility" should be established, the NRG Companies also were unable to explain what would be the next step that Duquesne Light, the qualifying facilities, or the Commission should take if the Commission were to grant the relief requested by NRG. (Tr. 399-400, 402-04.)

Similarly, the NRG Companies have failed to demonstrate what would be the impact on Duquesne Light's retail ratepayers if the Commission were to grant the NRG Companies relief. (Tr. 402.) Currently the arrangement has no impact on Duquesne Light's customers. However, granting the relief requested by the NRG Companies ultimately may cause harm to retail customers. As explained above, Duquesne Light continues to have an obligation under PURPA to purchase the net power output from Beaver Falls and Beaver Valley. However, as conceded by the NRG Companies on cross-examination, here it is entirely unknown whether the rates paid to the qualifying facilities would continue to be paid by NRG Midwest under the Revised QF Agency Agreement or whether Duquesne Light and/or its customers would become responsible to pay the rates if the Commission were to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely.

The ALJ and Commission should not, and indeed, cannot, grant the relief requested by the NRG Companies without fully considering and understanding how "avoided costs" are to be recovered in light of EDCs' default service obligations, which could have significant rate impacts to Pennsylvania ratepayers. The NRG Companies, which concede they have the burden of proof, have failed to present a proposal as to the Rider no. 18 rate, to explain how it meets the avoided cost standard and to even attempt to undertake any analysis of the rate impacts to Duquesne Light's customers of its request. For this reason, the NRG Companies have failed to meet their burden of proof, and the NRG Companies' request must be denied.

**d. The Most Relief that the Commission Could Grant in This Case is to Revisit the Calculation of Avoided Cost Rate**

PURPA remains in full force and effect and has not been repealed.[19] Therefore, even assuming, *arguendo*, that the Commission had authority to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely, the Commission would still need to determine the appropriate "avoided costs" to be paid to qualifying facilities in today's electric market.[20] The issue of PURPA rates has never been addressed post-restructuring under the Competition Act and post-Act 129, House Bill No. 2200 amending the Competition Act, and it is entirely unclear what Pennsylvania EDCs' "avoided costs" would be today in light of de-regulation, the lack of utility-owned generating units, or EDCs' default service obligations.

Further, there also is substantial uncertainty as to the extent that the Commission's existing regulations regarding the purchase and sale of energy and capacity from qualifying facilities, 52 Pa. Code § 57.31 et seq., would apply to determine "avoided costs." These

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[19] *See, e.g., Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, 2013 Pa. PUC LEXIS 306, 303 P.U.R.4th 28 (February 15, 2013) (acknowledging the continued existence of PURPA and PURPA contracts).

[20] State regulatory authorities are initially required to establish the "avoided cost" rate to be paid to qualifying facilities pursuant to PURPA. *See* 16 U.S.C. § 824a-3(f).

regulations have not been repealed or otherwise overturned, and remain on the books today. However, a review of these regulations suggests that they were enacted prior to and without anticipating the competitive electric market that exists in Pennsylvania today. Therefore, it must, as an initial matter, be determined if Commission's regulations remain valid to determine "avoided costs" in today's energy market or whether they must be re-evaluated and updated in light of the many changes that have occurred since their adoption. In any event, the regulations currently remain on the books and, absent a waiver, repeal, or finding of inapplicability, would be binding.[21]

Clearly, any determination of appropriate "avoided costs" in today's electric market would have a statewide precedent on all Pennsylvania EDCs and qualifying facilities. Further, in reaching any such determination, the Commission would need to carefully consider how "avoided costs" are to be recovered in light of EDCs' default service obligations, which could have significant rate impacts to Pennsylvania ratepayers.[22] Duquesne Light submits that, even if the Commission has the authority to grant the relief requested by the NRG Companies, which it denies for the many reasons explained above, it would be inappropriate, prejudicial, and a denial of due process for the Commission to make such a statewide and novel determination in today's electric market without providing all potentially affected parties the opportunity to fully participate and/or comment in an appropriate proceeding that has statewide affect.

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[21] The NRG Companies were unable on cross-examination to identify any order that repealed or otherwise found that the Commission's regulations were no longer enforceable. Further, at no time have the NRG Companies or any other party asked for a waiver of the current regulations or for a rulemaking proceeding to implement appropriate regulations that fully account for today's energy market.

[22] For example, here it is entirely unknown whether the rates paid to the qualifying facilities would continue to be paid by NRG Midwest under the Revised QF Agency Agreement or whether Duquesne Light and/or its customers would become responsible to pay the rates if the Commission were to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely.

### 3. The Commission is Without Authority to Modify or Eliminate the PURPA Rate in Rider No. 18

As confirmed by the direct and surrebuttal testimony submitted on behalf of NRG Midwest, the NRG Companies request that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.) However, there is significant uncertainty as to whether the Commission has the authority to grant the relief requested by the NRG Companies.

Under the dormant commerce clause, states have no regulatory authority over the interstate sale of power, whether or not it is regulated by FERC. *Public Utils. Comm'n v Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927). Further, it is well-settled that wholesale power supply agreements are within the jurisdiction of the FERC. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 965-66 (1986). *See also Utilimax.com v. PPL Energy Plus LLC*, 378 F.3d 303, 305 (3d Cir. 2004) (wholesale market for electrical energy is regulated by FERC"); *Joint Application of PECO Energy Company And Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation*, Docket No. A-110550F0160, 2006 Pa. PUC LEXIS 33 at *193 (February 1, 2006) (it is FERC, not the Commission, which has exclusive jurisdiction over the wholesale electric and natural gas markets).

Under PURPA, state regulatory authorities were granted a very important but very limited role with respect to certain wholesale power purchase agreements -- to set the "avoided costs" rate to be paid to qualifying facilities pursuant to PURPA. However, once a state regulatory commission establishes the "avoided cost" to be paid, the state no longer has authority to regulate the qualifying facilities' rate. *See Freehold Cogeneration Assocs., L.P. v. Board of Regulatory Comm'rs*, 44 F.3d 1178 (3d Cir. 1995). In *Freehold*, the Board of Regulatory

Commissioners of the State of New Jersey issued an order that directed a hearing on the rate paid pursuant to a previously approved power purchase agreement between qualifying facility and an electric utility. The qualifying facility sought a declaratory judgment that the Board of Regulatory Commissioners was preempted by PURPA from modifying the terms of a previously approved power purchase agreement. In response, the Board of Regulatory Commissioners argued that, absent legislative restriction, reconsideration of its prior approval of the rate set forth in the power purchase agreements is inherent in the authority of all administrative agencies and not necessarily a characteristic unique to rate-making bodies. The Third Circuit rejected this argument holding:

> [I]n this instance, there is specific federal statutory legislation, PURPA, that bars reconsideration of the prior approval of the PPA at least absent some basis in the law of contracts for setting aside the PPA. No such basis is referred to here. Based on the overall scheme of PURPA and its stated goal, and especially section 210(e) and the implementing rules promulgated by the FERC, we hold that Congress intended to exempt qualified cogenerators from state and federal utility rate regulations.

*Id.* at 1192. The Third Circuit also noted that:

> Where, as here, the PPA has a long-term, fixed price, tension may arise between this consumer protective provision of PURPA and the FERC regulation permitting the parties to hold incremental avoidable cost at the level it has on the date the PPA is effective. Whatever problem this may create is, however, a matter for FERC, not the [Board of Regulatory Commissioners].

*Id.* at 1191, n. 11. The Third Circuit therefore concluded that once the Board of Regulatory Commissioners approved the power purchase agreement between qualifying facility and the electric utility on the ground that the wholesale rates were consistent with avoided cost, just, reasonably, and prudentially incurred, any action or order by the Board of Regulatory Commissioners to reconsider its approval or to deny those rates to qualifying facility under purported state authority was preempted by federal law. *Id.* at 1194.

As acknowledged by the NRG Companies, Rider No. 18 was adopted to establish the rates to be paid for the wholesale power produced by qualifying facilities pursuant to PURPA. (NRG Midwest St. 1-S, p. 6.) The Commission approved Rider No. 18, including the wholesale PURPA rate, in 1981. Therefore, pursuant to the Third Circuit's holding in *Freehold*, the Commission is without authority to alter, revise, or continually monitor the wholesale PURPA rates set forth in Rider No. 18.

Indeed, the Commonwealth Court has explained that PURPA preempts the Commission from reconsidering contracts with qualifying facilities or from changing the rates established for the avoided costs at the time of such contract. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 659 A.2d 10556 (Pa. Cmwlth. 1995), *affirmed by*, 535 Pa. 108, 634 A.2d 207 (1993). In *West Penn*, the utility filed a complaint with this Commission requesting the rescission of prior orders approving rates associated with three qualifying facilities under PURPA. The Commission dismissed the complaint holding that had no further jurisdiction over the rates once approved. The Commonwealth Court affirmed the Commission, holding that:

> Section 210 of PURPA preempts the [Commission] from reconsidering its prior approval of the [power purchase agreements] between West Penn and the QFs *or to change the rates established for the avoided costs at the time of the agreements*. Unless or until PURPA is amended or repealed, reestablishing regulatory power over the area, it appears that the [Commission] cannot reexamine contracts for PURPA power. Because such an order would be preempted by federal law, the [Commission] did not abuse its discretion in refusing to rescind its prior orders as requested in West Penn's complaint.

*Id.* at 1066 (emphasis added).

Similarly, the Commission has held that PURPA prohibits the Commission from revisiting the rates paid by an agreement between a qualifying facility and utility. *Petition of Pennsylvania Electric Company Requesting Approval of Rate Recovery, Under the Energy Cost*

*Rate, for the Costs Proposed to be Paid Under an Agreement with Scrubgrass Power Corporation*, Docket No. P-870248, 1988 Pa. PUC LEXIS 101 at *11-12, 66 Pa. PUC 151 (Jan. 21, 1988). In the *Petition of Pennsylvania Electric Company*, the utility filed a petition requesting approval of rate recovery, under the Energy Cost Rate ("ECR"), of the amounts proposed to be paid to the qualifying facility for electric energy delivered to the utility under the terms of a power purchase agreement. The Commission subsequently approved the rates established by the power purchase agreement between the utility and the qualifying facility. Subsequently, a challenge was made to the regulatory out clause contained in the power purchase agreement that permitted the utility to change the rate paid to the qualifying facility in the event that the Commission disallowed the utility full recovery under the ECR. In addressing these issues, the Commission explained as follows:

> Our disposition of the regulatory out clause issue is relatively simple because in our view the perceived risk that we would second-guess a previously-approved QF contract is nonexistent. Notwithstanding our general powers under the Public Utility Code, to, inter alia, reconsider our prior orders or revise contracts, 66 Pa. C.S. § 703(g) and 66 Pa. C.S. § 508, federal law in the form of PURPA 210 and the regulations thereunder entitle a QF to a known stream of payments based upon estimates of a utility's avoided costs as of the date the qualifying facility makes an offer of acceptance to the utility. As we noted in our Order of October 10, 1986 in *AES Beaver Valley v. West Penn Power*, Docket No. C-844022, in our view federal law would act to prohibit us from reconsidering a prior approval of rate recovery of costs based upon projections that were reasonable at the time they were made.
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> Given the fact that a utility is obligated by law to enter into a long-term agreement with a QF at rates based on its avoided cost projections then in effect, the utility has a corresponding right to collect the costs paid to the QF under the agreement from its ratepayers. To hold otherwise could, in our view, frustrate the intent of Congress as expressed by the enactment of PURPA 210, supra. Therefore, any future decision by this Commission to disallow rate recovery of amounts previously approved could result

> in a challenge on the basis of the doctrine of federal preemption as violative of the Supremacy Clause of the United States Constitution, U.S. Const, art. VI, cl. 2. *See Perez v. Campbell*, 402 U.S. 637, 649 (1971); *Hines v. Davidowitz*, 312 U.S. 52 (1941).... If this Commission would, in the future, attempt to deprive a QF of the revenue stream to which it was entitled, or would attempt to deprive the utility of its corresponding entitlement to rate recovery of this stream of revenues under color of state law, in our opinion this attempt would be subject to a substantial federal preemption challenge.

*Id.* at *11-15. The Commission therefore concluded that, because it would not enforce a contract provision that would permit a previously wholesale rate to be changed, there was no need to strike the regulatory out provision of the power purchase agreement. *Id.* at *18

Based on the clear and consistent holdings from the United States Court of Appeal for the Third Circuit, the Commonwealth Court of Pennsylvania, and this Commission, the Commission is without authority to modify or eliminate the previously-approved wholesale PURPA rate set forth in Rider No. 18 as requested by the NRG Companies.

Further, as explained above, granting the relief requested by the NRG Companies would have a direct and material effect on the existing wholesale power purchase agreements. In essence, if the Commission were to grant the requested relief, the Commission's action would amount to a *de facto* modification or termination of the existing wholesale power purchase agreements with Beaver Valley and Beaver Falls. (*See* Beaver Falls Municipal Authority St. No. 1-REJ) However, the Commission has no jurisdiction over wholesale power purchase agreements, which as explained above are within the exclusive jurisdiction of FERC. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 965-66 (1986). Further, as explained above, the Commission has concluded that it is the Commission's policy to not revisit the rates paid under power purchase agreements with qualifying facilities for the term of the agreement. *Petition of Pennsylvania Electric Company, supra.* Accordingly, the Commission is without authority to

modify the existing PURPA rate by either modifying the wholesale PURPA rates set forth in Rider No. 18 or eliminating Rider No. 18 entirely as requested by the NRG Companies.

It is anticipated that the NRG Companies will argue that the Commission has the authority to modify or eliminate the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely because Rider No. 18 remains a Commission-approved tariff provision and because Duquesne Light reserved the right to modify the power purchase price through a tariff filing with the Commission or other jurisdictional authority.[23] (NRG Midwest St. No. 1-S, pp. 4,-5, 7-8.) The fact that wholesale rate is set forth in a Commission-approved tariff does not and cannot grant the Commission jurisdiction to modify or eliminate the wholesale PURPA rates. *See Pickford v. Pennsylvania Public Utility Commission*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010) ("[a]s a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it"). Further, parties cannot by agreement bestow the Commission with jurisdiction where it otherwise does not exist. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967); *Commonwealth v. VanBuskirk,* 449 A.2d 621 (Pa.Super. 1982). As explained above, except for the limited purpose of establishing and approving the initial PURPA rates, the Commission has no jurisdiction of any kind over rates for the wholesale of power and jurisdiction cannot be created by agreement or by including wholesale rates in a state tariff, as the NRG Companies suggest.

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[23] It is anticipated that the NRG Companies will argue that the Commission has previously modified Rider No. 18 and, therefore, it has the authority to grant the relief requested here. As Duquesne Light explained in its testimony, the Commission previously has made certain changes to specific portions of Rider No. 18. However, these prior modifications by the Commission were related only to the implementation of Rider No. 18 and, importantly, had *no effect* on the previously-approved wholesale PURPA rate set forth in Rider No. 18. (Duquesne Light Statement No. 12-RJ, p. 12) *See, e.g., Pa. P.U.C. et al. v. Duquesne Light Co.*, Docket No. R-860556, 1987 Pa. PUC LEXIS 235, 64 Pa. PUC 388 (July 20, 1987) (approving the phase out of Rider No. 18 to new customers, and allowing the exiting power purchase agreements with Beaver Valley and Beaver Falls to remain in effect and subject to the six cents per kilowatt-hour wholesale rate in Rider No. 18).

It also is anticipated that the NRG Companies will argue that the Commission has authority to modify or eliminate the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely because Duquesne Light reserved the unilateral right in the power purchase agreements with Beaver Valley and Beaver Falls to modify the power purchase price through a tariff filing with the Commission or other jurisdictional authority. It must be noted however, that both of these agreements pre-dated the Third Circuit's holding in *Freehold*, *supra*, as well as the Commonwealth Court's holding in *West Penn Power*, *supra*. Duquesne Light's authority to unilaterally ask this Commission to modify the wholesale PURPA rate set forth in Rider No. 18 is seriously in doubt in light of the disposition by both the Third Circuit and the Commonwealth. Moreover, in addressing the regulatory out provision in *Petition of Pennsylvania Electric Company*, *supra*, the Commission clearly suggested that it would not enforce any unilateral attempt by a utility to modify a wholesale PURPA rate:

> The question of our legal authority to second-guess QF contracts aside, an independent reason exists to defuse the perceived risk of future rate disallowance. Assuming, arguendo, that we could revisit previously-approved utility/QF contracts under the authority of the provisions of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, our prior orders consistently have approved rate recovery of amounts to be paid under power purchase agreements with QFs for the term of the agreement. Therefore, independent of any legal analysis, we have made a conscious policy decision to grant substantive rate approval of such amounts up-front, and we hereby reaffirm this long-standing policy. Notwithstanding any general power we may possess, in our opinion it would be myopic for us to endanger the development of cost-effective cogeneration/small power production in Pennsylvania by holding the threat of contract revisitation over the heads of utilities and QFs.

*Id.* at *10-16. Although the Commission did not strike the regulatory out provision, it clearly signaled its intention to not enforce any such provisions that would permit the utility to unilaterally modify the wholesale PURPA rate.

Based on the foregoing, the Commission is without authority to modify the existing PURPA rate by either modifying the wholesale PURPA rates set forth in Rider No. 18 or eliminating Rider No. 18 entirely. To the extent that the NRG Companies seek relief from the existing wholesale power purchase agreements with Beaver Valley and Beaver Falls, the NRG Companies' remedy is to make an appropriate filing with FERC, which has exclusive jurisdiction over wholesale power purchase agreements, as well as the NRG Companies' obligation to purchase the net power output from these qualifying facilities.

### 4. The NRG Companies Failed to Join an Indispensable Party

The NRG Companies request that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.) However, for the reasons explained below, the NRG Companies failed to join all parties that are necessary and indispensable to the relief requested by the NRG Companies.[24] Therefore, the NRG Companies' request for relief must be dismissed.

As explained above, there are two qualifying facilities, Beaver Valley and Beaver Falls, which have existing power purchase agreements that are subject to the wholesale PURPA rate set forth in Rider No. 18. If the Commission were to grant the relief requested by NRG and either eliminate Rider No. 18 or modify the rate in Rider No. 18, such action clearly would directly and materially affect the Beaver Valley and Beaver Falls.

Indeed, if the Commission were to reduce the wholesale PURPA rate in Rider No. 18, this would directly, and adversely, affect the rate paid to the qualifying facilities under the existing power purchase agreements. Indeed, Beaver Falls explained that if the PURPA rate in Rider No. 18 were reduced, as suggested by the NRG Companies, it would result in several

[24] Although Beaver Falls was granted intervention status, the other remaining qualifying facility directly impacted by the relief requested by the NRG Companies, Beaver Valley still has not intervened or otherwise been joined as a party to the Complaint.

negative financial consequences for Beaver Falls and result in an inability to pay its bills and service the debt associated with the hydroelectric facility. (Beaver Falls Municipal Authority St. No. 1-REJ, p. 6.)

Further, if the Commission were to eliminate Rider No. 18, there would be no wholesale PURPA rate in Duquesne Light's tariff as required by the existing power purchase agreements and, therefore, the existing agreements would be terminated. Beaver Falls explained that if the power purchase agreement were terminated, the hydroelectric facility would cease operations. Further, even if the facility ceased operations, Beaver Falls would still incur annual operating expenses of approximately $125,000 and would still be responsible to service its existing debt. If the power purchase agreement was terminated as a result of Rider No. 18 being eliminated as requested by the NRG Companies, Beaver Falls would be without any income to offset these expenses. (Beaver Falls Municipal Authority St. No. 1-REJ, p. 6.)

As clearly demonstrated by the testimony of Beaver Falls, it is beyond doubt that both Beaver Valley and Beaver Falls are necessary and indispensable parties to the claims and relief sought by NRG. *See, Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (1975) ("an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction").

It appears from the Certificate of Service attached to the Complaint that the NRG Companies served a courtesy copy of the Complaint on the owners of Beaver Valley and Beaver Falls. However, Beaver Valley and Beaver Falls were not named or otherwise identified in the Complaint as parties in interest. Due to the NRG Companies' failure to identify or join these qualifying facilities as parties, the Commission did not serve the NRG Complaint on Beaver

Valley and Beaver Falls as required by 52 Pa. Code § 5.21, which provides that "a complaint will be served by the Commission, by certified mail, upon the respondent."

Moreover, given the vague and cryptic averments in the Complaint -- "Rider No. 18 of Duquesne Light's Tariff should be examined to ensure that the terms, conditions and electric energy purchase price continue to be just, reasonable, and non-discriminatory" -- there was nothing in the Complaint to suggest that the existing wholesale power purchase agreements could be materially and adversely modified or possibly terminated altogether as a result of the Complaint. Simply stated, there was nothing in the Complaint to put Beaver Falls and Beaver Valley on notice that they could be materially and detrimentally affected by the relief sought by the NRG Companies.

In fact, it was not until the NRG Companies served their direct and surrebuttal testimonies on November 1, 2013 and December 9, 2013, respectively, that the NRG Companies requested that the Commission either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely. Notably, Beaver Falls and Beaver Valley were not parties to the proceeding at that time and, as evidenced by the certificates, were not served with the NRG Companies' direct and surrebuttal testimonies. Clearly, Beaver Valley and Beaver Falls were without any notice of the NRG Companies' specific request for relief in this proceeding.

Remarkably, counsel for the NRG Companies stated at the hearing on December 16, 2013, that the NRG Companies did not join the qualifying facilities as parties because, according to the NRG Companies' counsel, it did not know the identity of all the qualifying facilities at the time it filed the Complaint. (Tr. 145.) It is difficult to understand how NRG did not at least know the identity of Beaver Falls and Beaver Valley when it has been purchasing the net power output from these facilities since 2012 and, moreover, where these two facilities are specifically

identified in the Revised QF Agency Agreement assumed by the NRG Companies. Further, even if the NRG Companies were without knowledge of the qualifying facilities at the time they filed NRG Complaint, as stated by the NRG Companies' counsel, Duquesne Light clearly explained in its Preliminary Objections to the NRG Complaint that Beaver Falls and Beaver Valley were the only qualifying facilities subject to Rider No. 18 and that they are indispensable parties to the relief requested by the NRG Companies. The NRG Companies clearly could have joined Beaver Falls and Beaver Valley as indispensable parties by amending the Complaint or by filing a motion to join. To date, however, the NRG Companies have failed to join both qualifying facilities as indispensable parties.

Following the ALJ's December 12, 2013 denial of Duquesne Light's Preliminary Objections, which requested, among other things, that the Complaint be dismissed for failure to join indispensable parties, Beaver Falls filed a Petition to Intervene, which was granted on December 17, 2013, *i.e.*, the second day of hearings in the base rate case proceeding. Although Beaver Falls was granted intervention status, this does not resolve the indispensable party issue for three reasons. First, the fact remains that Beaver Falls has had no meaningful opportunity to file dispositive motions, participate in discovery, develop a position, or prepare testimony in support of its position. Second, it is well-settled that an intervenor does not have the same rights as a party. *See* 52 Pa. Code § 5.75(c). Finally, and most importantly, Beaver Valley still has not intervened or otherwise been joined as a party to the Complaint.

To date, both qualifying facilities have not been joined as parties. The NRG Companies' failure to join the qualifying facilities as parties to the Complaint is fatal to the cause of action. *See Bucks County Servs. v. Phila. Parking Auth.*, 71 A.3d 379 (Pa. Cmwlth. 2013) (the failure to join an indispensable party deprives a court of subject matter jurisdiction and is fatal to a cause

of action). Indeed, it appears from recent Commission precedent that if the NRG Complaint proceeds to be litigated without first joining all necessary and indispensable parties, the parties would, at a minimum, be required to re-litigate these issues again with all necessary and indispensable parties.

For example, in *J3 Energy Group, Inc. v. West Penn Power Company*, Docket No. C-2011-2219920 (Oct. 31, 2013), an unsuccessful bidder to a competitive procurement by West Penn Power Company ("West Penn") filed a complaint challenging the evaluation of the bids. The complaint was not served on the successful bidder, nor was the successful bidder named as a party to the complaint. The unsuccessful bidder and West Penn litigated the complaint for over two and one-half years, after which an Initial Decision was issued dismissing the complaint. Over one year after the Initial Decision was issued, the Commission issued an Opinion and Order ("*J3 Order*") that declined to address the merits of the complaint and, *sua sponte*, concluded that:

> As the current contractor for West Penn, with a significant interest in the continued performance under the contract, [successful bidder] must be joined as an indispensable party, even at this stage of the proceeding. Otherwise, without [successful bidder] as a party, the Commission does not have subject matter jurisdiction to proceed.

(*J3 Order*, p. 10) The Commission therefore ordered that the Initial Decision be vacated, the successful bidder be joined as an indispensable party, and that the proceeding be remanded to the Office of Administrative Law Judge for further proceedings with all necessary and indispensable parties. (*J3 Order*, pp. 11-12) The Commission's disposition in the *J3 Order* is directly on point with respect to the NRG Complaint.

At the hearing, counsel for the NRG Companies asserted that the *J3 Order* is not controlling because there the complainant challenged the results of a competitive bidding process and here the NRG Companies are challenging a tariff provision. The NRG Companies simply

ignore the relief requested and, instead, focuses exclusively on the fact that Rider No. 18 is set forth in a tariff. The NRG Companies' argument turns the fundamental principle of indispensable parties on its head. It is clear the relief that the NRG Companies seek is to either modify the wholesale rate set forth in Rider No. 18 or to eliminate the wholesale rate by removing Rider No. 18 from Duquesne Light's tariff. (NRG Midwest St. 1, pp. 6-7; NRG Midwest St. 1-S, pp. 6, 9, 12.) If the Commission were to grant any of the relief requested by the NRG Companies, such action clearly would directly affect the existing wholesale power purchase agreements. Notably, the NRG Companies do not dispute or otherwise refute that the qualifying facilities would be directly affected if the Commission were to grant the requested relief.

Importantly, Rider No. 18 is not a retail distribution rate. Currently, the rates paid pursuant to Rider No. 18 have no impact on the base rates paid by Duquesne Light's retail distribution customers, the revenues received by Duquesne Light, or the services provided to Duquesne Light's customers. Unlike the retail distribution rates paid by all Duquesne Light customers, there is nothing in a base rate case filing to suggest that the *wholesale PURPA rate* could be changed or eliminated in a distribution base rate case proceeding. Indeed, as explained above, it was not until the NRG Companies served their direct and surrebuttal testimony, which was not served on the qualifying facilities, that there was any indication that the wholesale PURPA rate could allegedly be changed in this distribution base rate proceeding. The relief requested by the NRG Companies is distinctly different than a general base rate increase that may impact the distribution rates paid by retail customers. The relief requested by the NRG Companies would only affect the wholesale PURPA rates received by two remaining qualifying facilities as explained above, it would be highly unfair and prejudicial if this Commission were

to grant the NRG Companies the relief requested without providing both the qualifying facilities the opportunity to participate and protect their interest under the existing power purchase agreements.

The NRG Companies' failure to join all necessary and indispensable parties is fatal to its cause of action. *See Bucks County Servs., supra.* Therefore, the NRG Complaint must be dismissed. If the NRG Complaint is not dismissed and both qualifying facilities are not joined as indispensable parties, the parties will be required to re-litigate these issues again with all necessary and indispensable parties. Clearly, it would be a waste of the Commission's and parties' resources to litigate the NRG Complaint, either as part of the base rate case proceeding or at a postponement of that hearing, without first joining all necessary and indispensable parties to the Rider No. 18 issues.

### 5. Impact On The Revenue Requirement If Rider No. 18 Is Modified Or Eliminated.

At the hearing, the ALJ asked that Duquesne Light brief the following issue:

> If Rider No. 18 is either modified or eliminated based upon the recommended decision, will that have any impact on the revenue requirement.

Tr. 457.

In response to the ALJ's question, there will be no impact on the revenue requirement for this distribution rate case if Rider No. 18 is either modified or eliminated. This case is about Duquesne Light's distribution revenues. Rider No. 18 involves the wholesale purchase of energy from the QFs. (Duquesne Light St. No. 12-R, p. 18.) Energy costs and revenues are not considered in this proceeding. In addition, the Company's witness, Mr. Pfrommer, testified as follows in this proceeding:

> ... the rates paid pursuant to Rider No. 18 have no impact on the base rates paid by Duquesne Light's retail customers, the revenues

> received by Duquesne Light, or the services provided to Duquesne Light's customers.

(Duquesne Light St. No. 12-R, p. 25, lines 14-17.)

It must be noted, however, that the NRG Companies currently pay for the power generated by the QFs. (Duquesne Light St. No. 12-R, p. 25.) If Rider No. 18 was modified or eliminated and these modifications relieved the NRG Companies of this obligation to purchase power from the QFs, Duquesne Light may be required to pay for this power. In this situation, Duquesne Light would be entitled to recover the costs of this power from its customers to the extent its costs could not otherwise be recovered in the market.

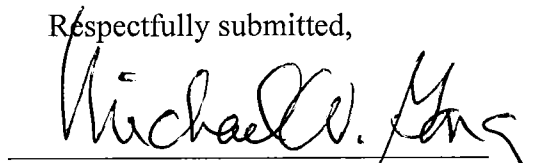
### C. MISCELLANEOUS ISSUES

None.

## IV. CONCLUSION

For all the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Conrad A. Johnson and the Pennsylvania Public Utility Commission approve the Joint Petition for Approval of Non-Unanimous Settlement that will be filed on or before January 17, 2014 without modification and deny the relief requested in the Formal Complaint filed by the NRG Companies.

Respectfully submitted,

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Date: January 6, 2014

# Attachment A

## PROPOSED FINDINGS OF FACT

1. On August 2, 2013, Duquesne Light filed Supplement No. 81 to become effective on October 1, 2013, together with supporting data, written testimony, and exhibits.

2. Duquesne Light, in Supplement No. 81, proposed a general increase in distribution rates designed to produce approximately $76.3 million in additional annual base rate operating revenues based upon data for a Fully Projected Future Test Year ("FPFTY") ending April 30, 2015. (Duquesne Light Exh. No. 2.)

3. Duquesne has achieved a Settlement in Principle that has been agreed to or not opposed by all active parties in this proceeding, except for NRG Companies, on all issues except for the issues raised by NRG Companies. (Tr. 70-71.)

4. The Non-Unanimous Settlement provides for a distribution revenue increase of $48 million annually. (Duquesne Light St. No. 12-RJ, p. 4.)

5. The distribution revenue increase of $48 million is approximately 66% of the proposed revenue increase of $72.732 million set forth in the Company's rebuttal testimony. (Duquesne Light St. No. 5-R, p. 3.)

6. The Company has undertaken considerable efforts to control costs, improve customer service and continue to provide highly reliable service to customers since the Company's last base rate proceeding in 2010. (Duquesne Light St. No. 1, p. 4.)

7. Despite its best efforts, the cost of providing elective distribution service has increased in many areas, including increased investment in facilities to maintain high levels of service and reliability, increased operation and maintenance ("O&M") expenses related to vegetation management and increased costs for the Company's Information Technology ("IT") and cyber security initiatives. (Duquesne Light St. No. 2, pp. 4-5.)

8. The Company is in the process of implementing a major IT project, referred to as the FOCUS project, to implement a new customer information and billing system, a Meter Data Management System and several other systems that will provide back office IT systems to support the use of smart meters. (Duquesne Light St. No. 1, p. 9.)

9. The Company has incurred and continues to incur significant O&M expenses for its IT projects, an average of approximately $4.66 million per year for the HTY, FTY and FPFTY, that must be recovered from customers. (Duquesne Light Ex. No. 2, Schedule D-11.)

10. The Company is enhancing its vegetation management program to meet increasing challenges in maintaining highly reliable and continuous service to customers and reduce outages from storms. (Duquesne Light St. No. 4, p. 2.) The Company is projecting an increase in vegetation management spending from $8.1 million in the HTY, to $12.3 million for the FTY and $15.0 million for the FPFTY.

11. The increase in vegetation management spending is primarily due to three factors: (1) increased contractor costs; (2) increased work to eliminate Ash trees that have been infected by the Emerald Ash Borer that pose a safety threat to the Company's distribution system; and (3) a change in the Company's vegetation management specifications to include pruning or removal of targeted trees that have a higher potential of causing outages due to falling trees and limbs. (Duquesne Light St. No. 4-R, pp. 3-4.)

12. The Company is committing to spend $15 million for distribution system vegetation management on an annual basis for three years commencing with the effective date of new rates in this proceeding. (Duquesne Light St. No. 4-R, p. 9.)

13. The Company will incur a significant cost increase related to its need to expand its IT team and to assure appropriate levels of cyber security. The Company has recently hired a

Chief Information Officer who will build a team to provide increased oversight of the Company's IT initiatives. (Duquesne Light St. No. 1, p. 13; Duquesne Light St. No. 2-R, p. 9.)

14. Absent rate relief, Duquesne Light projected an overall return on rate base of approximately 5.67% for the FPFTY. (*See* Duquesne Light Exh. No. 2, Schedule C-1, Column 2, line 3.)

15. The distribution revenue increase of $48 million is within the range of litigation positions of the parties that presented evidence regarding revenues and expenses in this proceeding. (I&E St. No. 2-SR, p. 22; OCA St. No. 1-SR, p. 2.)

16. The proposed Settlement revenue increase of $48 million is very close to I&E's final litigation position in its surrebuttal testimony of $41.47 million. (I&E St. No. 2-SR, p. 22.) A minor adjustment to I&E's proposed return on equity would bridge the gap between I&E's proposed revenue requirement and the revenue requirement under the Settlement, without any other adjustments. In addition, the proposed revenue increase of $48 million under the Settlement is near the mid-point of the Company and OCA litigation positions ($72.732 million + $18.378 million = $91.11 million ÷ 2 = $45.6 million). (OCA St. No. 1-SR, p. 2.)

17. In its Rebuttal Testimony, the Company supported a revenue increase of $72.732 million. (Duquesne Light St. No. 5-R, p. 3.)

18. In testimony, the Company's witness, Mr. Moul, recommended a return on equity of 11.25%. (Duquesne Light St. No. 9, p. 1.)

19. Mr. Moul relied on four well recognized measures of the cost of equity in reaching his recommendation, including the Discounted Cash Flow ("DCF") model, the Risk Premium ("RP") analysis, the Capital Asset Pricing Model ("CAPM") and the Comparable Earnings ("CE") approach. (Duquesne Light St. No. 9, p. 1.) Mr. Moul's DCF analysis alone

supported a return on equity of 10.78%. (Duquesne Light St. No. 9, p. 24.)

20. I&E's proposed revenue increase included a proposed return on equity of 9.54%, which is considerably lower than the 10.4% return on equity that the Commission awarded PPL Electric in its 2012 base rate proceeding. *Pa. P.U.C. v. PPL Electric Utilities Corporation,* Docket No. R-2012-2290597, Order entered December 28, 2012, p. 101.

21. OCA's proposed revenue increase included a proposed return on equity of 9.0%, which is also considerably lower than the 11.25% recommended by the Company's witness, Mr. Moul, and also well below the 10.4% return on equity that the Commission granted PPL Electric in *Pa. P.U.C. v. PPL Electric Utilities Corporation,* Docket No. R-2012-2290597, Order entered December 28, 2012, p. 101. (*See* OCA St. No. 1-R, Schedule D.)

22. Duquesne Light is about one-half the size of PPL Electric, making Duquesne Light a more risky utility. Duquesne Light St. No. 9-R, p. 27. Duquesne Light is also more risky due to the lack of diversity in the size and scope of its service territory. In addition, interest rates and equity costs have increased since the Commission granted PPL Electric a 10.4% return on equity. (Duquesne Light St. No. 9-R, pp. 28-29.)

23. The OCA proposed several adjustments to the Company's wages and salaries expenses. In total, these adjustments were $4.784 million. (Duquesne Light St. No. 2-R, p. 6.)

24. The OCA argued that the Company's annual wage increase should be limited to 3.0% per year. (OCA St. No. 1, p. 14.)

25. While the Company's employees are awarded average merit increases of 3.0% per year, deserving employees receive additional increases that bring the weighted average wage increase for the Company to approximately 3.4%. (Duquesne Light St. No. 2-R, p. 6.)

26. The OCA proposed to limit the Company's projected increase in employees by

the percentage increase in personnel from the end of the HTY, March 2013, to the midpoint of the FTY, September 2013. (OCA St. No. 1, p. 14.) In Rebuttal Testimony, the Company explained that it was on pace to hire its projected number of employees. (Duquesne Light St. No. 2-R, p. 8, lines 13-25.)

27. The Company recently hired a Vice President of Human Resources on November 2013 who will be leading an effort to fill the open positions. (Duquesne Light St. No. 2-R, p. 9.) Utilizing a trending analysis to determine employee count fails to account for the new CIO and CISO departments that are yet to be filled. (Duquesne Light St. No. 2-R, p. 9.)

28. Incentive compensation is a necessary part of an employee's compensation package in order to attract and maintain highly qualified employees. (Duquesne Light St. No. 2-R, p. 13.)

29. Duquesne Light recently expanded its incentive compensation programs to: (1) include supervisors in the Company's existing short-term incentive plan; and (2) institute a new long-term incentive plan. (Duquesne Light St. No. 2-R, p. 13.)

30. OCA's proposal to reduce the Company's incentive compensation failed to consider the increased costs associated with expanding the Company's incentive compensation plans. (Duquesne Light St. No. 2-R, p. 13.)

31. Duquesne Light recently hired an independent third party to benchmark its executive compensation plans against other utilities. The third party analysis concluded that Duquesne Light's total executive compensation plans were competitive with peer companies. (Duquesne Light St. No. 2-R, p. 14.)

32. The OCA proposed a reduction to the Company's uncollectible accounts expense of $1.493 million. The OCA's adjustment is based on its argument that Duquesne Light should

rely solely on a 5-year average write-off percentage as the basis for estimating the FPFTY uncollectible expense in this proceeding. (*See* OCA St. No. 1, p. 22; OCA St. No. 1-SR, Schedule C-1.3.)

33. The Company demonstrated that it was experiencing an increase in uncollectible expense in 2013 over and above the 5-year average. (Duquesne Light St. No. 5-R, p. 19.)

34. The Company will incur additional write-offs in 2014 due to a moratorium on terminating service associated with implementing its new billing system. (Duquesne Light St. No. 5-R, p. 19.)

35. I&E also proposed a reduction of $1.63 million to the Company's uncollectible expense. (I&E St. No. 2-SR, p. 22.) I&E's proposal was based on using a three-year average write-off percentage to determine the Company's uncollectible expense. (I&E St. No. 2-SR, p. 7.)

36. A five-year average provides a better base than a three-year average for determining the write-off percentage in this proceeding. (Duquesne Light St. No. 5-R, p. 22.)

37. I&E's proposal failed to account for the significant increase in uncollectibles actually experienced in 2013 and further failed to account for the projected increase in uncollectibles in 2014 due to the moratorium on shut-offs. (Duquesne Light St. No. 5-R, pp. 21-22.)

38. The OCA proposed a reduction to the Company's professional service expense account of $4.107 million. (OCA St. No. 1-SR, Schedule C-1.5.) The OCA claimed that this adjustment should be adopted because the Company did not properly allocate transmission-related vegetation management expenses and other transmission maintenance costs to the transmission function. (OCA St. No. 1, p. 29.)

39. The Company correctly allocated distribution and transmission costs. (Duquesne Light St. No. 5-R, p. 17.) The Company provided Exhibit RLO-3, which demonstrated that the overall expense allocated to transmission for the FPFTY was consistent with the allocation for the prior four years.

40. The allocation from FPFTY expense by budget cost element to FERC accounts based on historic relationships can create distortions by FERC account, but does not result in an overstatement of total distribution expense. (Duquesne Light St. No. 5-R, p. 18.)

41. The OCA's professional services adjustment is effectively an adjustment to reduce the Company's claimed distribution vegetation management expense which is included in professional services since it is provided primarily by outside contractors. (Duquesne Light St. No. 5-R, p. 18.) The Company's commitment to spending its full requested distribution vegetation management expense of $15 million per year provides a further basis to reject OCA's professional services adjustment. (Duquesne Light St. No. 4-R, p. 9.)

42. The OCA proposed a reduction to the Company's utilities costs of $696,000. (OCA St. No. 1-SR, Schedule C-1.5.) The basis of OCA's proposed adjustment was that the Company's utilities cost for the FPFTY should be the same as its costs for the HTY. (OCA St. No. 1, p. 31.)

43. The Company's HTY utilities costs were abnormally low as compared to 2009, 2010 and 2011. (Duquesne Light St. No. 2-R, pp. 14-15.)

44. The OCA proposed a reduction to the Company's mailing costs of $998,000. (OCA St. No. 1-SR, Schedule C-1.5.)

45. The Company listed several new letters that it anticipated sending to customers, including communications related to vegetation management, payment reminders to commercial

and governmental customers, referrals to smart comfort programs and other letters. The Company will incur additional costs to send more new letters to customers. (Duquesne Light St. No. 2-R, p. 15.)

46. The OCA proposed to rely on a mid-year rate base for the FPFTY instead of an end of year balance. The effect of this adjustment would have been to reduce the Company's rate base by $10 million. (OCA St. No. 1-SR, Schedule B-1.)

47. Various reasons exist why the Company should be permitted to use an end of year rate base and to annualize expenses, including:

- Under the Test Year Concept in Pennsylvania, rate base is determined at the end of the test year;
- The Company has used the same methodology for annualizing revenues and expenses in prior cases; and
- Using an end of year rate base would allow for application of the DSIC mechanism at the end of the FPFTY.

(Duquesne Light St. No. 5-R, pp. 11-12.)

48. I&E proposed to increase the Company's present rate revenues by approximately $3.5 million, which would reduce the Company's revenue requirement. (I&E St. No. 4-SR, p. 5.) I&E's proposed revenue adjustment was based on using a simple three-year average gain and a loss of customers for all rate schedules. (I&E St. No. 4-SR, p. 5.)

49. I&E's simplistic historical average methodology suffered many flaws. (Duquesne Light St. No. 3-R, p. 3, lines 1-12.)

50. I&E's revenue adjustment improperly attributed excessive growth levels to commercial customer counts due to the sharp increase in customers after the Great Recession of 2008-2009. (Duquesne Light St. No. 3-R, pp. 3-4.)

51. The Company would have advanced knowledge of new customers for large rate

schedules and would not reach I&E's projected customer numbers for the large customer rate schedules in the FPFTY. (Duquesne Light St. No. 3-R, p. 6.)

52. The Company's present rate revenues would decrease by approximately $615,000 (thereby increasing the Company's revenue requirement) if the Company updated its projected customer count based on the current number of customers. (Duquesne Light St. No. 3-R, p. 7.)

53. If the Company simply used current customer counts without modeling for changes to the end of the FPFTY, the Company's present rate revenues would decrease by $1.64 million. (*See* Exh. JH 2-R.)

54. I&E proposed a reduction in the Company's normalized rate case expense of $374,000. This adjustment was based on normalizing the Company's claimed rate case expense over 44 months as opposed to 36 months. (I&E St. No. 2-SR, p. 7.)

55. A 36-month period should be used because the Company's last base rate case was filed three years ago, and the Company expects to file its next rate case in three years. (Duquesne Light St. No. 5-R, p. 24.)

56. I&E also proposed to reduce the Company's default service filing expenses by $241,000 to reflect average expenses for the last two default service filings as opposed to allowing the Company to recover its actual expenses for the last filing. (I&E St. No. 2-SR, p. 7.) I&E's position was unreasonable because it was speculative, would likely not allow the Company to recover its actual costs and was inconsistent with how the Company recovered default service costs in prior cases. (Duquesne Light St. No. 5-R, pp. 26-28.)

57. NRG Companies oppose the proposed distribution revenue increase of $48 million under the Settlement. (Tr. 71, 221-28.)

58. NRG Companies neither proposed a specific revenue requirement nor presented

any testimony or evidence regarding revenue or expense adjustments in this proceeding.

59. NRG Companies claim to be representing their customers' interests who must pay their costs. (NRGP St. No. 1, p. 6.) However, NRG Companies have not presented any evidence in this proceeding regarding how the proposed rate increase will impact their customers' bills.

60. NRG Companies' only testimony regarding revenue requirement was that they opposed an excessive rate of return and that the Company's proposed return on equity of 11.25% was higher than the return on equity of 10.2% for DSIC mechanisms in the most recent quarterly earnings report. (NRGP St. No. 1, pp. 6-7.)

61. The NRG Companies' witness, Mr. Dausman, has never testified as an expert on return on equity for ratemaking purposes nor did he perform any analysis on return on equity in this proceeding. (Tr. 409.)

62. The "black box" concept facilitates settlement because it allows a settlement without requiring parties to abandon or reverse their positions on issues, which could impact their positions in later cases.

63. In testimony, NRG Companies made vague, unsubstantiated allegations about Duquesne Light's communications to NRG regarding outages. (*See* Duquesne Light's Hearing Exhibit No. 1, p. 2.)

64. The Company communicates in many ways to customers concerning outages. (Duquesne Light St. No. 8-R, pp. 18-25.)

65. NRG Companies state that they have been "generally satisfied" with Duquesne Light's service. (NRGP St. No. 1, p. 4.)

66. NRG Companies failed to provide any specific examples in this proceeding where Duquesne Light has not provided effective communication.

67. When asked at the hearing. NRG Companies' witness, Mr. Dausman, could not identify the date and time of a single, specific instance of ineffective communication by Duquesne Light. (Tr. 415.)

68. Duquesne Light has had approximately 15 telephone conferences and meetings with NRG Companies since 2009 to discuss to discuss their issues. (Tr. 420.)

69. Duquesne Light's representatives have physically come to NRG Companies' offices to have meetings. (Tr. 420-21.)

70. Duquesne Light has provided extensive guidance to NRGP regarding cogeneration and net-metering. With respect to co-generation, the Company hired a third-party engineering firm to conduct an analysis for NRGP regarding potential cogeneration projects. (Tr. 422.)

71. The Company has conducted many meetings with NRG Companies, and at least one of these meetings involved cogeneration. (Tr. 430.)

72. Duquesne Light has provided extensive guidance to all of its customers regarding cogeneration and net metering, such as the extensive information on its website regarding net-metering, including:

- Rider No. 21 – Net Metering Service, which explains the applicability of the Rider including who is eligible, metering provisions, billing provisions and net-metering provisions for shopping customers.
- 21 Frequently Asked Questions and answers thereto regarding net-metering and how to connect to Duquesne Light's system.
- A description of the Application Procedure, Customer Checklist and Application Agreement.
- An extensive document describing Facility Connection Requirements.

(*See* Duquesne Light's Hearing Exhibit No. 2.)

73. NRG Companies' witness, Mr. Dausman, admitted that he had reviewed the

Company's net-metering tariff and net-metering and cogeneration materials on the Company's website. (Tr. 423.)

74. Mr. Dausman could have asked the Company questions about net-metering at the numerous meetings the Company has had with NRG Companies since 2009. (Tr. 423.)

75. Concerning Rider No. 18, NRG Companies' Complaint generally averred that "Rider No. 18 of Duquesne Light's Tariff should be examined to ensure that the terms, conditions and electric energy purchase price continue to be just, reasonable, and non-discriminatory." (NRG Complaint ¶ 11.)

76. In its request for relief, NRG Companies generally requested that the Commission "ensure that Tariff Rider No. 18 is just, reasonable and nondiscriminatory." (NRG Complaint ¶ 20.)

77. NRG Companies subsequently clarified their position in direct testimony and requested that the rate set forth in Rider No. 18 be modified. (NRG Midwest St. No. 1, pp. 6-7.)

78. In surrebuttal, NRG Companies changed their theory and, for the first time, requested that Rider No. 18 be eliminated in its entirety. (NRG Midwest St. 1-S, pp. 6, 9.)

79. Duquesne Light's Rider No. 18 establishes the rates to be paid for power produced by certain specified categories of electric generating facilities pursuant to federal law, the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§ 824, *et seq.* (Duquesne Light St. No. 12-R, P. 19.)

80. Pursuant to PURPA, Duquesne Light's Rider No. 18 was approved by the Commission in 1981 at Docket No. R-811713. (Duquesne Light St. No. 12-R, p. 19.)

81. Rider No. 18 establishes the rates to be paid for the wholesale power produced by qualifying facilities pursuant to PURPA. (NRG Midwest St. 1-S, p. 6; *see also* Duquesne Light

St. No. 12-R, p. 19.)

82. Rider No. 18 provides that the power produced by qualifying facilities will be purchased at the "rate of six (6) cents per kilowatt-hour, or at a rate based on the Company's avoided costs when such costs exceed six (6) cents per kilowatt-hour." (Duquesne Light St. No. 12-R, p. 20.)

83. The Commission-approved six cent per kilowatt-hour was similar to the "avoided cost" rate adopted by other utilities and states at the time. (Duquesne Light St. No. 12-R, p. 21.)

84. On August 18, 1982, Duquesne Light entered into a negotiated purchase power agreement with Beaver Valley Power Company ("Beaver Valley"), a qualifying facility pursuant to PURPA and Rider No. 18. (Duquesne Light St. No. 12-R, p. 21.)

85. On February 28, 1985, Duquesne Light entered into a negotiated purchase power agreement with Beaver Falls Municipal Authority ("Beaver Falls"), a qualifying facility pursuant to PURPA and Rider No. 18. (Duquesne Light St. No. 12-R, p. 22.)

86. Both of these agreements provide that the price to be paid for the net power produced by these qualifying facilities is subject to the terms and conditions of Duquesne Light's tariff on file with the Commission or any other jurisdictional authority. (Duquesne Light St. No. 12-R, p. 22.)

87. Consequently, as recognized by NRG Companies, the wholesale rate paid under both of these negotiated wholesale power purchase agreements is the rate set forth in Rider No. 18. (NRG Midwest St. 1-S, pp. 3, 9.)

88. The rates paid under Rider No. 18 initially were recovered by Duquesne Light from ratepayers through the Energy Cost Rate, a Commission-approved automatic adjustment clause that allowed the Company to recover its actual cost of fuel, purchased power, and similar

cots of generation, including purchases from qualifying facilities pursuant to PURPA. (Duquesne Light St. No. 12-R, p. 23.)

89. In 1987, the Commission approved, with modifications, Duquesne Light's request to phase out the PURPA rate to new customer-generators. *Pa. P.U.C. et al. v. Duquesne Light Co.*, Docket No. R-860556 1987 Pa. PUC LEXIS 235, 64 Pa. PUC 388 (July 20, 1987). Consequently, the existing power purchase agreements with Beaver Valley and Beaver Falls are the only two remaining power purchase agreements subject to Rider No. 18. (Duquesne Light St. No. 12-R, p. 27.)

90. The existing power purchase agreements with Beaver Valley and Beaver Falls have remained in effect and subject to the six cents per kilowatt hour wholesale rate set forth in Rider No. 18, and the Commission has not at any time modified or terminated the wholesale PURPA rate set forth in Rider No. 18.

91. In 2000, Duquesne Light auctioned off its generation assets, approximately 2,500 megawatts, to Orion Power Holdings, Inc. ("Orion"). (Duquesne Light St. No. 12-R, pp. 23-24.)

92. As part of the agreement to acquire Duquesne Light's generation assets, Duquesne Light and Orion entered into an agreement whereby Duquesne Light assigned and Orion accepted the obligation to purchase the 6.8 megawatts of net power produced from Beaver Valley and Beaver Falls under the negotiated wholesale power purchase agreements described above. This Revised QF Agency Agreement was approved by FERC on March 8, 2001. *See* FERC Docket No. ER01-1138-000. (Duquesne Light St. No. 12-R, p. 24.)

93. NRG Midwest did not assume the obligation to purchase the net power produced by the two qualifying facilities until 2012. (Duquesne Light St. No. 12-R, p. 24.)

94. NRG Midwest voluntarily assumed the obligations under the Revised QF Agency

Agreement, including the obligation to purchase the net power output from Beaver Falls and Beaver Valley, as part of a $1.7 billion merger in 2012 of NRG Energy, Inc. and GenOn Energy, Inc. (NRG Midwest St. No. 1, p. 3.)

95. Orion was merged with RRI Energy Inc. in 2002, which was subsequently acquired by and merged with GenOn Energy, Inc. in 2010, which in turn was acquired by and merged with NRG Energy, Inc. in 2012. (NRG Midwest St. No. 1, p. 3.)

96. The 6.8 megawatts of net output produced by the two qualifying facilities still in effect clearly was a very small part of a large transaction. (Duquesne Light St. No. 12-R, p. 24.)

97. Under the Revised QF Agency Agreement voluntarily assumed by NRG Midwest in 2012, NRG Midwest is required to purchase the net power produced from Beaver Valley and Beaver Falls under the negotiated wholesale power purchase, which in turn provide that the price to be paid for the net output is the wholesale rate set forth Rider No. 18. (NRG Midwest St. No. 1, pp. 3-4.)

98. As a result of NRG Companies' voluntarily assumed obligation to purchase the net power produced from Beaver Valley and Beaver Falls, Duquesne Light has simply become the middleman between NRG Companies and the qualifying facilities. Consequently, the rates paid pursuant to Rider No. 18 have no impact on the base rates paid by Duquesne Light's retail customers, the revenues received by Duquesne Light, or the services provided to Duquesne Light's customers. (Duquesne Light St. No. 12-R, p. 25.)

99. At no time prior to the NRG Complaint has any party, including NRG Midwest's predecessor in interest, complained of or otherwise requested an update of the wholesale PURPA rate set forth in Rider No. 18. (Duquesne Light St. No. 12-R, p. 27.)

100. NRG Companies request that the Commission adopt the PJM Interconnect, LLC

("PJM") day ahead locational marginal price ("DALMP") for energy as the avoided cost rate in Rider No. 18. (NRG Midwest St. No. 1, pp. 6-7.) Rather than providing any explanation why using the DALMP is an appropriate proxy for "avoided costs," NRG Companies merely attached a list of the Duquesne Light zone average day ahead DALMP for the last five years.

101. Rider No. 18 establishes the "avoided cost" rate to be paid for the wholesale power produced by qualifying facilities pursuant to PURPA. (NRG Midwest St. 1-S, p. 6; *see also* Duquesne Light St. No. 12-R, p. 19.)

102. Duquesne Light no longer generates electric energy or capacity after restructuring and the DALMP is *not* the price at which Duquesne Light purchase energy or capacity from another source. (Tr. 240-42.)

103. The DALMP can be and has been highly variable and at times can be and has been negative, as shown in Duquesne Light Exhibit WVP 1-RJ (RTLMP in the exhibit refers to Real Time Locational Marginal Price; DALMP refers to Day Ahead Locational Marginal Price).

104. The purpose of the Commission-approved Rider No. 18 was to provide a rate that is above the avoided cost when avoided costs are below the six cents per kilowatt hour rate. (Duquesne Light St. No. 12-RJ, p. 16.)

105. The six cent per kilowatt hour rate in Rider No. 18 was established to encourage and incent the development of renewable energy resources, and a price above projected avoided cost was specifically and intentionally selected and approved by the Commission to help achieve this policy goal. (Duquesne Light St. No. 12-R, pp. 19-21.)

106. NRG Companies' obligation to purchase the net output from these qualifying facilities arises solely from the voluntarily assumed Revised QF Agency Agreement, which is a FERC-approved agreement. (Duquesne Light St. No. 12-R, pp. 24, 26.)

107. NRG Companies own a large number of generating facilities in addition to the qualifying facility contracts. (NRG Midwest St. No. 1, p. 1.)

108. NRG Companies have many options for reselling power. (Tr. 398-99.)

109. Over the past decade, Duquesne Light has experienced a range of full requirements default service rates of five to seven cents per kilowatt-hour. (Tr. 237-38.)

110. NRG Companies have failed to present a specific proposal for this Commission to consider in either modifying the wholesale PURPA rates set forth in Rider No. 18 or eliminating Rider No. 18 entirely.

111. Upon cross-examination by both counsel and the ALJ, NRG Companies were unable to explain how the "avoided costs" should be determined in today's energy market if the wholesale PURPA rates set forth in Rider No. 18 were modified or if Rider No. 18 was eliminated. (Tr. 322-28.)

112. The Commission previously has made certain changes to specific portions of Rider No. 18. However, these prior modifications by the Commission were related only to the implementation of Rider No. 18 and, importantly, had no effect on the previously-approved wholesale PURPA rate set forth in Rider No. 18. (Duquesne Light Statement No. 12-RJ, p. 12.)

113. If the Commission were to grant the relief requested by NRG Companies and either eliminate Rider No. 18 or modify the rate in Rider No. 18, such action clearly would directly and materially affect the Beaver Valley and Beaver Falls, which are the two qualifying facilities with existing power purchase agreements subject to the wholesale PURPA rate set forth in Rider No. 18. (Duquesne Light St. No. 12-R, p. 26-27.)

114. If the Commission were to reduce the wholesale PURPA rate in Rider No. 18, this would directly, and adversely, affect the rate paid to the qualifying facilities under the existing

power purchase agreements. If the PURPA rate in Rider No. 18 were reduced as suggested by NRG Companies, it would result in several negative financial consequences for Beaver Falls and result in an inability to pay its bills and service the debt associated with the hydroelectric facility. (Beaver Falls Municipal Authority St. No. 1-REJ, p. 6.)

115. NRG Companies do not dispute or otherwise refute that the qualifying facilities would be directly affected if the Commission were to grant the requested relief.

## PROPOSED CONCLUSIONS OF LAW

1. Under the Public Utility Code, a public utility's rates must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. §§ 1301 and 1304.

2. A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa.C.S. § 315(a); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004).

3. A public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims made in its filing that no other party has questioned. *Allegheny Center Assocs. v. Pa. P.U.C.*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

4. Although the ultimate burden of proof does not shift from the utility seeking a rate increase, a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa. P.U.C. v. PECO*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. P.U.C. v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991).

5. Duquesne Light's Rider No. 18 has been approved by the Commission. Tariff provisions previously approved by the Commission are deemed just and reasonable; a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof in a general base rate case proceeding).

6. The Commonwealth Court has explained that "where a customer is heard to

complain concerning a *proposed* change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable[;]" however, "[w]here the complaint involves an *existing* rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable." *Brockway Glass Co. v. Pa. P.U.C.*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981) (emphasis in original).

7. Duquesne Light has not proposed nor is it seeking any changes, amendments, or modifications to Rider No. 18 in this base rate proceeding. A party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof. *See Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Jan. 11, 2007).

8. NRG Companies bear the burden to demonstrate that Rider No. 18 is no longer just and reasonable, and that their proposals to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely are just, reasonable, and in the public interest.

9. Any finding must be supported by and based upon substantial evidence of record. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

10. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).

11. Substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted).

12. In order to meet their burden, NRG Companies must introduce substantial evidence of record and that evidence must be more convincing than the evidence presented by another party. *Samuel J. Lansberry, Inc. v Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Brown v. Commonwealth of Pa.*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

13. The Commission's long-standing policy is to encourage settlements, partial settlements and/or stipulations among interested parties in base rate proceedings. The Commission has adopted a specific Policy Statement setting forth settlement guidelines and procedures for major rate cases. This policy statement is set forth in 52 Pa. Code §§ 69.401 et seq.

14. The Commission's regulations also encourage parties to amicably resolve their disputes through settlements. Section 5.231(a) of the Commission's regulations, 52 Pa. Code § 5.231(a), states that "It is the policy of the Commission to encourage settlements."

15. The Commission's standards for reviewing a non-unanimous or partial settlement are the same as those for deciding a fully contested case. The relevant standard is whether the proposed non-unanimous settlement is supported by substantial evidence that is consistent with statutory requirements. *Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline,* Docket Nos. A-2010-2213893 et al., 2011 Pa. P.U.C. LEXIS 1521, Order entered July 25, 2011, *citing Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket Nos. R-00973953 and P-00971265, 1997 Pa. P.U.C. LEXIS 51, Order entered December 23, 1997; *Popowsky [ARIPPA] v. Pa. P.U.C.*, 792 A.2d 636 (Pa. Cmwlth 2002).

16. The Settlement is reasonable, in the public interest, and is supported by

substantial evidence.

17. The Settlement should be approved without modification.

18. A public utility, whose facilities and assets have been dedicated to the service of the public, is entitled to an opportunity to earn a fair rate of return on its investment. *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 262 U.S. 679, 690 (1923).

19. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. *Bluefield*, 262 U.S. at 693. These principles have been adopted and applied by the appellate courts of Pennsylvania in numerous cases. *See, e.g.*, *Riverton Consolidated Water Co. v. Pa. P.U.C.*, 186 Pa. Super. 1, 140 A.2d 114 (1958); *City of Pittsburgh v. Pa. P.U.C.*, 182 Pa. Super. 376, 126 A.2d 777 (1956); *Lower Paxton Twp. v. Pa. P.U.C.*, 13 Pa. Cmwlth. 135, 317 A.2d 917 (1974).

20. The determination of a fair rate of return requires the review of many factors, including: (1) the earnings that are necessary to assure confidence in the financial integrity of the company and to provide a reasonable credit profile to permit access to capital markets on reasonable terms, and (2) the amount of the investment, the size and nature of the utility and, its business and financial risks, in comparison to other enterprises. *Pa. P.U.C. v. Pennsylvania Gas and Water Co. - Water Division*, 19 Pa. Cmwlth. 214, 233, 341 A.2d 239 (1975); *Lower Paxton Twp., supra.*

21. The Commission's findings must be based upon substantial and competent evidence on the record before it, not upon speculation or hypothesis. *Ohio Bell Telephone Co. v. Pub. Util. Comm. of Ohio*, 301 U.S. 292 (1937); *United States Steel Corp. v. Pa. P.U.C.*, 37 Pa.

Cmwlth. 195, 390 A.2d 849 (1978); *Octoraro Water Co. v. Pa. P.U.C.*, 38 Pa. Cmwlth. 83, 391 A.2d 1129 (1978).

22. Duquesne Light has provided substantial evidence to support a revenue requirement increase of more than $48 million.

23. NRG Companies failed to provide any substantial evidence regarding revenue requirement issues in this proceeding; therefore, their opposition to the proposed revenue requirement under the Settlement should be denied.

24. NRG Companies' attempts to determine a specific return on equity for the proposed revenue requirement under the Settlement should be dismissed because the proposed revenue increase of $48 million under the Settlement is a "black box" settlement.

25. In Aqua Pennsylvania's 2011 base rate proceeding, the presiding Administrative Law Judges attempted to determine a specific return on equity implicit in a black-box, non-unanimous settlement. *Pa. P.U.C. v. Aqua Pennsylvania, Inc.* Docket No. R-2011-2267958, Order entered June 7, 2012. The Commission held that the ALJs should not have attempted to calculate a specific return on equity for a black-box settlement. *Id.*, pp. 26-27. The Commission held in the *Aqua Pennsylvania* case that it is not appropriate to determine a specific return on equity for a black-box settlement.

26. In Peoples TWP LLC's recent base rate proceeding, the Commission held that parties are not required to identify which adjustments are allowed or disallowed under a "black box settlement." *Pa. PUC v. Peoples TWP LLC,* Docket No. R-2013-2355886, Order entered December 19, 2013, p. 27.

27. Under PURPA, electric public utilities are required to purchase all electricity produced by independent power producers that obtain status as qualifying facilities. Electric

utilities are required to purchase electricity from qualifying facilities at rates that are just and reasonable to the electric utility, in the public interest, and which do not discriminate against the qualifying facilities. 16 U.S.C. § 824a-3(b); 18 C.F.R. §§ 292.304(a)(1)(i), (ii).

28. Under the regulations of the Federal Energy Regulatory Commission ("FERC") implementing PURPA, the electric utility is required to purchase electricity generated by a qualifying facility at the utility's "avoided cost." 18 C.F.R. § 292.304(a)(2).

29. "Avoided costs" are the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility, such utility would *generate itself* or *purchase from another source*. 18 C.F.R. § 292.101(b)(6) (emphasis added). Stated otherwise, the "avoided cost" is the cost the utility would have incurred had it generated the power itself or, alternatively, obtained it from another source.

30. Although the FERC's regulations implementing PURPA provide that the rate paid to qualifying facilities should be equal to the utility's "avoided costs," FERC regulations also expressly permit qualifying facilities and electric utilities to enter negotiated agreements for rates and terms different from those called for in the regulations. 18 C.F.R. § 292.301(b)(1). As a result, qualifying facilities and electric utilities are still permitted to voluntarily agree to rates and terms that are different from the "avoided costs" as defined in the regulations.

31. State regulatory authorities are required to implement PURPA pursuant to the rules and regulations promulgated by FERC. 16 U.S.C. § 824a-3(f).

32. The Commission issued its Purchase and Sale of Energy and Capacity regulations in 1982, which generally follow FERC's PURPA regulations. *See* 52 Pa. Code §§57.31 *et seq.* Similar to FERC's PURPA regulations, the Commission's regulations provide that nothing limits the authority of electric utilities and qualifying facilities from entering negotiated agreements

with prices, terms, or conditions different from those called for in the regulations. 52 Pa. Code § 57.32(c).

33. FERC has determined that PURPA permits "lock-ins," that is, long-term, fixed-rate contracts with qualifying facilities. *See In re West Penn Power Company*, 71 F.E.R.C. P61,153 (order denying petition for declaratory order, May 8, 1995).

34. FERC's regulations provide that where the power purchase rates are based upon estimates of avoided costs over the specific term of a contract or other legally enforceable obligation, the rates for such purchases do not violate PURPA if they differ from the avoided costs at the time of delivery. 18 C.F.R. § 292.304(b)(5). *See also New York State Elec. & Gas Corp.*, 71 FERC 61,027 (1995) (declining to find a contract in violation of PURPA where the rates based on avoided cots at the time the contract obligation was incurred exceed the current avoided cost rate).

35. NRG Companies failed to meet their burden of proving that the Rider No. 18 is unjust, unreasonable, and not in the public interest.

36. NRG Companies failed to introduce substantial, credible evidence demonstrating that their proposals to either modify the wholesale PURPA rates set forth in Rider No. 18 or eliminate Rider No. 18 entirely is just, reasonable, and in the public interest.

37. NRG Companies failed to demonstrate that the obligation of electric utilities to purchase power from qualifying facilities has been preempted by the Pennsylvania Electricity Generation Consumer Choice and Competition Act, P.L. 802, No. 138, effective January 1, 1997, 66 Pa.C.S. §§ 2801-2812.

38. To the extent that there is a conflict between the state and federal legislation, the federal statute controls under the Supremacy Clause of the Constitution, U.S. Const. art. VI, cl.

2.

39. A state law cannot preempt a federal law unless the federal act itself sanctions the application of state standards. *United States v. Hall*, 543 F.2d 1229, 1232 (9th Cir. 1976), *cert. denied*, 429 U.S. 1075 (1977).

40. Nothing in the Competition Act, or any other provision of the Public Utility Code or Commission regulations for that matter, preempts PURPA or otherwise abolishes or invalidates contracts with qualifying facilities.

41. Duquesne Light has no on-going obligation to continually update the rates paid pursuant to Rider No. 18.

42. The Commission is required to implement PURPA pursuant to the rules and regulations promulgated by FERC. *See* 16 U.S.C. § 824a-3(f).

43. The Commission's regulations at 52 Pa. Code §§ 5.31, *et seq.*, have not been repealed or vacated.

44. Unless Duquesne Light received an exemption from FERC, or the United States Congress amends PURPA to remove the federally mandated obligation in PURPA to purchase power from small qualifying facilities, Duquesne Light is still obligated to purchase power from qualifying facilities under PURPA. Nothing in the Commission-approved default service plans or any statute that relieves Duquesne Light or other electric utilities of the federally mandated obligation in PURPA.

45. NRG Companies failed to demonstrate that use of the day ahead LMP is an appropriate proxy for "avoided costs."

46. A central purpose of PURPA was to provide long-term contracts with qualifying facilities to incentivize renewable sources of generation. FERC has determined that PURPA

permits "lock-ins," that is, fixed-rate long-term contracts with qualifying facilities. *See In re West Penn Power Company*, 71 F.E.R.C. P61,153 (order denying petition for declaratory order, May 8, 1995). Use of the highly variable, short-term day ahead locational marginal price and spot market price clearly is inconsistent the avoided cost of the utility associated with the long-term contracts for power purchased under PURPA.

47. FERC regulations specifically provide that a PURPA rate in a long-term contract is not unjust or unreasonable because it is higher than "avoided costs" at the time the power is delivered. *See* 18 C.F.R. § 292.303(d).

48. Duquesne Light has presented substantial and credible evidence that the six cents per kilowatt-hour rate set forth in Rider No. 18 continues to be just, reasonable, and in the public interest.

49. The Commission is without authority to modify or eliminate the PURPA rate in Rider No. 18.

50. Under the dormant commerce clause, states have no regulatory authority over the interstate sale of power, whether or not it is regulated by FERC. *Public Utils. Comm'n v Attleboro Steam & Elec. Co.*, 273 US 83 (1927).

51. It is well-settled that wholesale power supply agreements are within the jurisdiction of the FERC. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 965-66 (1986); *see also Utilimax.com v. PPL Energy Plus LLC*, 378 F.3d 303, 305 (3d Cir. 2004) (wholesale market for electrical energy is regulated by FERC"); *Joint Application of PECO Energy Company And Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation*, Docket No. A-110550F0160, 2006 Pa. PUC LEXIS 33 at *193 (February 1, 2006) (observing that it is FERC,

not the Commission, which has exclusive jurisdiction over the wholesale electric and natural gas markets).

52. Under PURPA, state regulatory authorities were granted a very important but very limited role with respect to wholesale power purchase agreements -- to set the "avoided costs" rate to be paid to qualifying facilities pursuant to PURPA. However, once a state regulatory commission establishes the "avoided cost" to be paid, the state no longer has authority to regulate the qualifying facilities' rate. *See Freehold Cogeneration Assocs., L.P. v. Board of Regulatory Comm'rs*, 44 F.3d 1178 (3d Cir. 1995).

53. PURPA preempts the Commission from reconsidering contracts with qualifying facilities or from changing the rates established for the avoided costs at the time of such contract. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 659 A.2d 10556 (Pa. Cmwlth. 1995), *affirmed by*, 535 Pa. 108, 634 A.2d 207 (1993).

54. PURPA prohibits the Commission from revisiting the rates paid by an agreement between a qualifying facility and utility. *Petition of Pennsylvania Electric Company Requesting Approval of Rate Recovery, Under the Energy Cost Rate, for the Costs Proposed to be Paid Under an Agreement with Scrubgrass Power Corporation*, Docket No. P-870248, 1988 Pa. PUC LEXIS 101 at *11-12, 66 Pa. PUC 151 (Jan. 21, 1988).

55. If the Commission were to grant the requested relief, the Commission's action would amount to a *de facto* modification or termination of the existing wholesale power purchase agreements with Beaver Valley and Beaver Falls. (*See* Beaver Falls Municipal Authority St. No. 1-REJ.)

56. The Commission has concluded that it is the Commission's policy to not revisit the rates paid under power purchase agreements with qualifying facilities for the term of the

agreement. *Petition of Pennsylvania Electric Company, supra.*

57. The fact that wholesale rate is set forth in a Commission-approved tariff does not and cannot grant the Commission jurisdiction to modify or eliminate the wholesale PURPA rates. *See Pickford v. Pennsylvania Public Utility Commission*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010) ("[a]s a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it").

58. Parties cannot by agreement bestow the Commission with jurisdiction where it otherwise does not exist. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967); *Commonwealth v. VanBuskirk,* 449 A.2d 621 (Pa. Super. 1982).

59. Beaver Valley and Beaver Falls are necessary and indispensable parties to the claims and relief sought by NRG Companies. *See Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (1975) ("an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction").

60. NRG Companies failed to join an indispensable party.

61. NRG Companies' failure to join the qualifying facilities as parties to the Complaint is fatal to the cause of action; therefore, their complaint must be dismissed. *See Bucks County Servs. v. Phila. Parking Auth.*, 71 A.3d 379 (Pa. Cmwlth. 2013) (the failure to join an indispensable party deprives a court of subject matter jurisdiction and is fatal to a cause of action).

62. If the NRG Companies' Complaint proceeds to be litigated without first joining all necessary and indispensable parties, the parties would, at a minimum, be required to re-

litigate these issues again with all necessary and indispensable parties. *See J3 Energy Group, Inc. v. West Penn Power Company*, Docket No. C-2011-2219920 (Oct. 31, 2013).

## PROPOSED ORDERING PARAGRAPHS

It is hereby ordered that:

1. The Joint Petition for Approval of Non-Unanimous Settlement is approved without modification.

2. The Complaint of NRG Companies is denied in its entirety.

3. That Duquesne Light's Petition filed at Docket No. M-2009-2123948, to amend, to the extent necessary, the Commission's April 4, 2013 Order approving the Company's Final Smart Meter Procurement and Installation Plan requesting that FOCUS project costs, exclusive of costs that have previously been recovered through the Company's Smart Meter Charge, be recovered in base rates is consolidated with this base-rate proceeding and is granted;

4. That the proceedings at Docket Nos. R-2013-2372129, the Office of Consumer Advocate (C-2013-2379084), the Office of Small Business Advocate (C-2013-2380474), Jacquelyn 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 Midwest, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC (C-2013-2390562) are marked closed; and

5. That the Commission issue an Order terminating the proceeding, and authorizing Duquesne Light to file the tariff attached as Appendix A to the Settlement Petition to become effective for service on and after May 1, 2014.

# Attachment B

**Duquesne Light Company**
**Docket No. R-2013-2372129**
**Fully Projected Future Test Year Ended April 30, 2015**
**($ in Thousands)**
**Summary of Final Company Adjustments and Final Jurisdictional Adjusted Positions**

| Line # | Description | Factor Or Reference | [1] TOTAL TRANSMISSION & DISTRIBUTION As Filed Pro Forma At Present Rates A | [2] Rebuttal Adjustments B | [3] Pro Forma As Filed With Rebuttal Adj. At Present Rates [1]+[2] | [4] JURISDICTIONAL DISTRIBUTION As Filed Pro Forma At Present Rates C | [5] Pro Forma As Filed With Rebuttal Adj. At Present Rates D |
|---|---|---|---|---|---|---|---|
| | **RATE BASE** | | | | | | |
| 1 | Plant in Service | | $ 3,561,964 | $ - | $ 3,561,964 | $ 2,736,977 | $ 2,736,977 |
| 2 | Accumulated Depreciation | | (1,143,950) | (2,167) | (1,146,117) | (926,167) | (928,031) |
| 3 | Net Plant | L 1 + L 2 | 2,418,014 | (2,167) | 2,415,847 | 1,810,810 | 1,808,946 |
| 4 | Cash Working Capital | | 42,531 | (1,336) | 41,195 | 40,068 | 37,997 |
| 5 | Materials & Supplies | | 20,627 | | 20,627 | 12,222 | 12,222 |
| 6 | Pension Capitalized | | 69,215 | 2,425 | 71,640 | 53,184 | 55,047 |
| 7 | Customer Deposits | | (8,115) | | (8,115) | (8,115) | (8,115) |
| 8 | Deferred Income Taxes | | (469,029) | 828 | (468,201) | (364,915) | (364,998) |
| 9 | RATE BASE | Sum L 3 to L 8 | $ 2,073,243 | $ (250) | $ 2,072,993 | $ 1,543,254 | $ 1,541,100 |
| | **OPERATING REVENUE** | | | | | | |
| 10 | Distribution Tariff Charges | | $ 419,634 | $ (616) | $ 419,018 | $ 419,634 | $ 419,018 |
| 11 | Generation Charges | | 122,581 | | 122,581 | - | - |
| 12 | Transmission Charges | | 116,414 | | 116,414 | - | - |
| 13 | Sales For Resale | | 660 | | 660 | - | - |
| 14 | Late Payment Fees | | 3,569 | | 3,569 | 3,622 | 3,622 |
| 15 | Reconnect Fees | | 1,142 | | 1,142 | 1,089 | 1,089 |
| 16 | DL Transmission Dispatch | | 786 | | 786 | - | - |
| 17 | Rent From Electric Property | | 7,276 | | 7,276 | 8,699 | 8,699 |
| 18 | Customer Work - Reimburse & O&M Fixed | | 831 | | 831 | - | - |
| 19 | Pole Attachment | | 592 | | 592 | - | - |
| 20 | Other Electric Revenue | | 3,169 | | 3,169 | 455 | 455 |
| 21 | Total Operating Revenue | L 10 to L 20 | 676,654 | (616) | 676,038 | 433,499 | 432,883 |
| | **OPERATING EXPENSE** | | | | | | |
| 22 | Cost of Purchased Power | | 116,326 | | 116,326 | - | - |
| 23 | Transmission | | 9,044 | | 9,044 | - | - |
| 24 | Distribution | | 39,520 | | 39,520 | 39,509 | 39,509 |
| 25 | Customer accounts | | 49,786 | 760 | 50,546 | 49,127 | 49,773 |
| 26 | Customer service and info | | 3,412 | (1,026) | 2,386 | 3,412 | 2,386 |
| 27 | Administrative and general | | 97,959 | 300 | 98,259 | 84,519 | 84,752 |
| 28 | Depreciation | | 111,937 | (2,167) | 109,770 | 96,461 | 94,601 |
| 29 | Amortization Other | | 10,548 | | 10,548 | - | - |
| 30 | Taxes other than income | | 45,742 | (3,331) | 42,411 | 34,059 | 31,394 |
| 31 | Total Operating Expense | L 22 to L 30 | 484,275 | (5,463) | 478,811 | 307,088 | 302,418 |
| 32 | OIBIT - Revenue & Expense | L 21 - L 31 | 192,379 | 4,847 | 197,227 | 126,411 | 130,465 |
| 33 | Income Tax Expense | | 62,703 | 1,873 | 64,575 | 38,954 | 41,173 |
| 34 | Net Operating Income | L 32 - L 33 | $ 129,676 | $ 2,974 | $ 132,652 | $ 87,457 | $ 89,292 |
| 35 | Rate of Return Available | L 34 / L 9 | | | | 5.67% | 5.79% |
| 36 | Proposed Cost of Capital | DLC Exh 2, Sch B-6 | | | | 8.36% | 8.36% |
| 37 | Operating Income Required | L 9 * L 36 | | | | $ 129,016 | $ 128,836 |
| 38 | Operating Income Deficiency | L 37 - L 34 | | | | 41,559 | 39,544 |
| 39 | Revenue Conversion Factor | E | | | | 1.835381 | 1.839280 |
| 40 | Proposed Revenue Increase | L 38 * L 39 | | | | $ 76,277 | $ 72,732 |

Duquesne Light Company
Docket No. R-2013-2372129
Fully Projected Future Test Year Ended April 30, 2015
($ in Thousands)
Summary of Final Company Adjustments and Final Jurisdictional Adjusted Positions

FOOTNOTES

| [1] | [2] | [3] |
|---|---|---|
| Line # | Footnote | Lines | Description |
| 1 | A | Lines 1 to 9 | Exhibit DLC-2, Schedule D-1, page 3 of 3, column 1 |
| 2 | | Lines 10 to 35 | Exhibit DLC-2, Schedule D-2, column 3 |
| 3 | B | All Lines | Exhibit RLO-1-R ERRATA 12-2-13, Page 1, Sum of Columns 2 to 13 |
| 4 | C | Lines 1 to 9 | DLC Exhibit 2, Schedule D-1, page 3 of 3, column 2 |
| 5 | | Line 10 | DLC Exhibit 2, Schedule D-1, page 2 of 3, column 2, Line 2 |
| 6 | | Lines 11 to 15 | DLC Exhibit 6-1, page 5 of 6, Distribution column, lines 181 to 184 |
| 7 | | Lines 17 to 19 | DLC Exhibit 6-1, page 5 of 6, Distribution column, line 185 |
| 8 | | Line 20 | DLC Exhibit 6-1, page 5 of 6, Distribution column, line 186 |
| 9 | | Lines 22 and 23 | DLC Exhibit 6-1, page 3 of 6, Distribution column, lines 79 and 80 |
| 10 | | Line 24 | DLC Exhibit 6-1, page 3 of 6, Distribution column, line 102 |
| 11 | | Line 25 | DLC Exhibit 6-1, page 3 of 6, Distribution column, line 110 |
| 12 | | Line 26 | DLC Exhibit 6-1, page 3 of 6, Distribution column, line 113 |
| 13 | | Line 27 | DLC Exhibit 6-1, page 4 of 6, Distribution column, line 133 |
| 14 | | Line 28 | DLC Exhibit 2, Schedule D-1, page 2 of 3, column 2, Line 7 |
| 15 | | Line 30 | DLC Exhibit 2, Schedule D-1, page 2 of 3, column 2, Line 8 |
| 16 | | Line 33 | DLC Exhibit 2, Schedule D-1, page 2 of 3, column 2, Lines 11 and 12 |
| 17 | D | Lines 1 to 9 | Exhibit RLO-2-R, Schedule D-1, page 3 of 3, column 2 |
| 18 | | Line 10 | Exhibit RLO-2-R, ERRATA, 12-2-13, Schedule D-1, page 2 of 3, column 2, line 2 |
| 19 | | Lines 11 to 15 | Exhibit 6-1 (R), page 5 of 6, Distribution column, lines 181 to 184 |
| 20 | | Lines 17 to 19 | Exhibit 6-1 (R), page 5 of 6, Distribution column, line 185 |
| 21 | | Line 20 | Exhibit 6-1 (R), page 5 of 6, Distribution column, line 186 |
| 22 | | Lines 22 and 23 | Exhibit 6-1 (R), page 3 of 6, Distribution column, lines 79 and 80 |
| 23 | | Line 24 | Exhibit 6-1 (R), page 3 of 6, Distribution column, line 102 |
| 24 | | Line 25 | Exhibit 6-1 (R), page 3 of 6, Distribution column, line 110 |
| 25 | | Line 26 | Exhibit 6-1 (R), page 3 of 6, Distribution column, line 113 |
| 26 | | Line 27 | Exhibit 6-1 (R), page 4 of 6, Distribution column, line 133 |
| 27 | | Line 28 | Exhibit RLO-2-R, ERRATA 12-2-13, Schedule D-1, page 2 of 3, column 2, Line 7 |
| 28 | | Line 30 | Exhibit RLO-2-R, ERRATA 12-2-13, Schedule D-1, page 2 of 3, column 2, Line 8 |
| 29 | | Line 33 | Exhibit RLO-2-R, ERRATA 12-2-13, Schedule D-1, page 2 of 3, column 2, Lines 11 and 12 |
| 30 | E | Line 39 | Column 4 - Exhibit DLC-2, Schedule D-18, page 3 of 3, line 11 |
| 31 | | Line 39 | Column 5 - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 11 |

# Attachment C

## Return on Equity At Settlement Revenue If All OCA Adjustments are Accepted

($ in Thousands)

| Line # | Description | Reference Or Factor | [1] | [2] | [3] | [4] | [5] | [6] |
|---|---|---|---|---|---|---|---|---|
| | | | | OCA Sur-Rebuttal | | | | |
| | | | Present Rates | | Increase | Proposed Revenues | Settlement Revenue Increase | OCA ROE Settlement Revenues & OCA Adj |
| | | | | | | [2]+[3] | | [2]+[5] |
| | Footnote | | A | B | C | D | E | |
| 1 | Revenue | | | $ 434,412 | $ 18,378 | $ 452,790 | $ 48,000 | $ 482,412 |
| 2 | O&M Expense | | 0.012361 | 160,353 | 227 | 160,580 | 593 | 160,946 |
| 3 | Depreciation | | | 94,216 | | 94,216 | | 94,216 |
| 4 | Taxes - OTI | | 0.058357 | 30,488 | 1,072 | 31,560 | 2,801 | 33,289 |
| 5 | State Income Taxes | | 0.092922 | 8,374 | 1,706 | 10,080 | 4,460 | 12,834 |
| 6 | Federal Income Taxes | | 0.292756 | 40,729 | 5,380 | 46,109 | 14,052 | 54,781 |
| 7 | Total Expense | | | 334,160 | 8,385 | 342,545 | 21,906 | 356,066 |
| 8 | Net Income | | L 1 - L 7 | $ 100,252 | $ 9,993 | $ 110,245 | $ 26,094 | $ 126,346 |
| 9 | Rate Base | | | $ 1,531,076 | | $ 1,531,076 | | $ 1,531,076 |
| 10 | Total ROR | | L 8 / L 9 | 6.55% | | 7.20% | | 8.25% |
| 11 | Weighted Interest | | OCA St. No. 1 Sch D | 2.22% | | 2.22% | | 2.22% |
| 12 | Weighted Preferred | | OCA St. No. 1 Sch D | 0.30% | | 0.30% | | 0.30% |
| 13 | Weighted Return to Equity | | L 10 - L 11 - L 12 | 4.03% | | 4.68% | | 5.73% |
| 14 | Equity Percent in Capital Structure | | OCA St. No. 1, Sch D | 51.94% | | 51.94% | | 51.94% |
| 15 | Return on Equity | | L 13 / L 14 | 7.76% | | 9.00% | | 11.02% |

**FOOTNOTES ON PAGES 6 to 8**

**Return on Equity At Settlement Revenue If All OCA Adjustments are Rejected**

($ in Thousands)

| Line # | Description | Reference Or Factor | [1] As Filed At Present Rates | [2] OCA Loses All Adjustments | [3] Revised At Present Rates [2]+[3] | [4] Settlement Revenue Increase | [5] OCA ROE Settlement Revenues & No OCA Adj [4]+[5] |
|---|---|---|---|---|---|---|---|
| | Footnote | A | B | F | | E | |
| 1 | Revenue | | $ 434,412 | $ (1,529) | $ 432,883 | $ 48,000 | $ 480,883 |
| 2 | O&M Expense | 0.012361 | 160,353 | 16,070 | 176,423 | 593 | 177,016 |
| 3 | Depreciation | | 94,216 | 385 | 94,601 | | 94,601 |
| 4 | Taxes - OTI | 0.058357 | 30,488 | 906 | 31,394 | 2,801 | 34,195 |
| 5 | State Income Taxes | 0.092922 | 8,374 | (1,909) | 6,465 | 4,460 | 10,925 |
| 6 | Federal Income Taxes | 0.292756 | 40,729 | (6,021) | 34,708 | 14,052 | 48,760 |
| 7 | Total Expense | | 334,160 | 9,431 | 343,591 | 21,907 | 365,498 |
| 8 | Net Income | L 1 - L 7 | $ 100,252 | $ (10,960) | $ 89,292 | $ 26,093 | $ 115,385 |
| 9 | Rate Base | | $ 1,531,076 | $ 10,023 G | $ 1,541,099 | | $ 1,541,099 |
| 10 | Total ROR | L 8 / L 9 | 6.55% | | 5.79% | | 7.49% |
| 11 | Weighted Interest | OCA St. No. 1 Sch D | 2.22% | | 2.22% | | 2.22% |
| 12 | Weighted Preferred | OCA St. No. 1 Sch D | 0.30% | | 0.30% | | 0.30% |
| 13 | Weighted Return to Equity | L 10 - L 11 - L 12 | 4.03% | | 3.27% | | 4.97% |
| 14 | Equity Percent in Capital Structure | OCA St. No. 1, Sch D | 51.94% | | 51.94% | | 51.94% |
| 15 | Return on Equity | L 13 / L 14 | 7.76% | | 6.30% | | 9.57% |

**FOOTNOTES ON PAGES 6 to 8**

## Calculation of Revenue Requirement for 10.4% ROE
## Assuming Major OCA Adjustments Rejected

($ in Thousands)

| Line # | Description | Reference Or Factor | [2] OCA Rebuttal At Present Rates | [3] ADJUSTMENTS Wages & Salaries | [4] ADJUSTMENTS Incentive Comp | [5] ADJUSTMENTS Employee Benefits | [6] ADJUSTMENTS Uncollect Accounts | [7] ADJUSTMENTS Profess Services | [8] ADJUSTMENTS Utilities | [9] ADJUSTMENTS Mailing | [10] Year-End Rate Base & Expense Annual | [11] Revenue | [12] Revenue Increase For ROE of 10.40% | [13] Total [2] to [12] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Footnote | A | B | H | I | J | K | L | M | N | O | P | Q | |
| 1 | Revenue | | $ 434,412 | | | | | | | | | $ (606) | $ 58,750 | $ 492,556 |
| 2 | O&M Expense | 0.012361 | 160,353 | $ 4,784 | $ 1,054 | $ 918 | $ 1,493 | $ 4,107 | $ 598 | $ 857 | $ 1,221 | (7) | 726 | 176,102 |
| 3 | Depreciation | | 94,216 | | | | | | | | 385 | | | 94,601 |
| 4 | Taxes - OTI | 0.058357 | 30,488 | | | 428 | | | | | 124 | (35) | 3,428 | 34,433 |
| 5 | State Income Taxes | 0.092922 | 8,374 | (444) | (98) | (125) | (139) | (382) | (56) | (80) | (161) | (56) | 5,459 | 12,293 |
| 6 | Federal Income Taxes | 0.292756 | 40,729 | (1,400) | (309) | (394) | (437) | (1,202) | (175) | (251) | (506) | (177) | 17,199 | 53,076 |
| 7 | Total Expense | | 334,160 | 2,939 | 648 | 827 | 917 | 2,523 | 367 | 526 | 1,063 | (277) | 26,813 | 370,506 |
| 8 | Net Income | L 1 - L 7 | $ 100,252 | $ (2,939) | $ (648) | $ (827) | $ (917) | $ (2,523) | $ (367) | $ (526) | $ (1,063) | $ (329) | $ 31,937 | $ 122,050 |
| 9 | Rate Base | | $ 1,531,076 | | | | | | | | $ 10,023 | | | $ 1,541,099 |
| 10 | Total ROR | L 8 / L 9 | 6.55% | | | | | | | | | | | 7.92% |
| 11 | Weighted Interest | OCA St. No. 1 Sch D | 2.22% | | | | | | | | | | | 2.22% |
| 12 | Weighted Preferred | OCA St. No. 1 Sch D | 0.30% | | | | | | | | | | | 0.30% |
| 13 | Weighted Return to Equity | L 10 - L 11 - L 12 | 4.03% | | | | | | | | | | | 5.40% |
| 14 | Equity % in Capital Structure | OCA St. No. 1, Sch D | 51.94% | | | | | | | | | | | 51.94% |
| 15 | Return on Equity | L 13 / L 14 | 7.75% | | | | | | | | | | | 10.40% |
| | **Calculation of Distribution Component** | | | | | | | | | | | | | |
| 16 | Total Company Expense | | | 5,572 | 1,228 | 1,069 | 1,493 | 4,107 | 696 | 998 | 1,422 | | | |
| 17 | Distribution Factor | | | 0.8585 | 0.8585 | 0.8585 | 1.0000 | 1.0000 | 0.8585 | 0.8585 | 0.8585 | | | |
| 18 | Distribution Amount | L 16 * L 17 | | $ 4,784 | $ 1,054 | $ 918 | $ 1,493 | $ 4,107 | $ 598 | $ 857 | $ 1,221 | | | |

**FOOTNOTES ON PAGES 6 to 8**

**Return on Equity At Settlement Revenue If One-Half of Major OCA Adjustments Rejected**

($ in Thousands)

| Line # | Description | Reference Or Factor | [1] As Filed At Present Rates | [2] OCA Wins One-Half of Adjustments | [3] Revised At Present Rates | [4] Settlement Revenue Increase | [5] Settlement Revenues & One-Half of OCA Adjust |
|---|---|---|---|---|---|---|---|
| | Footnote | | A | R | [1] + [2] | E | [3] + [4] |
| 1 | Revenue | | $ 434,412 | $ (765) | $ 433,647 | $ 48,000 | $ 481,647 |
| 2 | O&M Expense | 0.012361 | 160,353 | 8,035 | 168,388 | 593 | 168,981 |
| 3 | Depreciation | | 94,216 | 193 | 94,409 | | 94,409 |
| 4 | Taxes - OTI | 0.058357 | 30,488 | 453 | 30,941 | 2,801 | 33,742 |
| 5 | State Income Taxes | 0.092922 | 8,374 | (955) | 7,419 | 4,460 | 11,879 |
| 6 | Federal Income Taxes | 0.292756 | 40,729 | (3,011) | 37,718 | 14,052 | 51,770 |
| 7 | Total Expense | | 334,160 | 4,715 | 338,875 | 21,907 | 360,782 |
| 8 | Net Income | L 1 - L 7 | $ 100,252 | $ (5,480) | $ 94,772 | $ 26,093 | $ 120,865 |
| 9 | Rate Base | | $ 1,531,076 | $ 5,012 | $ 1,536,088 | | $ 1,536,088 |
| 10 | Total ROR | L 8 / L 9 | 6.55% | | 6.17% | | 7.87% |
| 11 | Weighted Interest | OCA St. No. 1 Sch D | 2.22% | | 2.22% | | 2.22% |
| 12 | Weighted Preferred | OCA St. No. 1 Sch D | 0.30% | | 0.30% | | 0.30% |
| 13 | Weighted Return to Equity | L 10 - L 11 - L 12 | 4.03% | | 3.65% | | 5.35% |
| 14 | Equity Percent in Capital Structure | OCA St. No. 1, Sch D | 51.94% | | 51.94% | | 51.94% |
| 15 | Return on Equity | L 13 / L 14 | 7.76% | | 7.03% | | 10.30% |

**FOOTNOTES ON PAGES 6 to 8**

## Return on Equity After Rejection of Selected Adjustments in OCA Rebuttal Positions And Use of Settlement Revenue

($ in Thousands)

| Line # | Description | Reference Or Factor | [1] OCA Rebuttal At Present Rates | [2] SELECTED ADJUSTMENTS Wages & Salaries One-Half | [3] SELECTED ADJUSTMENTS Professional Services | [4] SELECTED ADJUSTMENTS Year-End Rate Base & Expense Annualization | [5] Settlement Revenue | [6] OCA ROE After Selected Adjustments [2] to [6] |
|---|---|---|---|---|---|---|---|---|
| | Footnote | A | B | S | L | O | E | |
| 1 | Revenue | | $ 434,412 | | | | $ 48,000 | $ 482,412 |
| 2 | O&M Expense | 0.012361 | 160,353 | $ 2,392 | $ 4,107 | $ 1,221 | 593 | 168,666 |
| 3 | Depreciation | | 94,216 | | | 385 | | 94,601 |
| 4 | Taxes - OTI | 0.058357 | 30,488 | | | 124 | 2,801 | 33,413 |
| 5 | State Income Taxes | 0.092922 | 8,374 | (222) | (382) | (161) | 4,460 | 12,070 |
| 6 | Federal Income Taxes | 0.292756 | 40,729 | (700) | (1,202) | (506) | 14,052 | 52,372 |
| 7 | Total Expense | | 334,160 | 1,469 | 2,523 | 1,063 | 21,907 | 361,122 |
| 8 | Net Income | L 1 - L 7 | $ 100,252 | $ (1,469) | $ (2,523) | $ (1,063) | $ 26,093 | $ 121,290 |
| 9 | Rate Base | | $ 1,531,076 | | | $ 10,023 | | $ 1,541,099 |
| 10 | Total ROR | L 8 / L 9 | 6.55% | | | | | 7.87% |
| 11 | Weighted Interest | OCA St. No. 1 Sch D | 2.22% | | | | | 2.22% |
| 12 | Weighted Preferred | OCA St. No. 1 Sch D | 0.30% | | | | | 0.30% |
| 13 | Weighted Return to Equity | L 10 - L 11 - L 12 | 4.03% | | | | | 5.35% |
| 14 | Equity % in Capital Structure | OCA St. No. 1, Sch D | 51.94% | | | | | 51.94% |
| 15 | Return on Equity | L 13 / L 14 | 7.76% | | | | | 10.30% |
| | **Distribution Expense Calculation** | | | | | | | |
| 16 | Total Company Expense | | | 5,572 | 4,107 | 1,422 | | |
| 17 | Distribution Factor | | | 0.8585 | 1.0000 | 0.8585 | | |
| 18 | Distribution Amount | L 16 * L 17 | | $ 4,784 | $ 4,107 | $ 1,221 | | |
| 19 | One-Half of Distribution Amount | L 18 * 50% | | $ 2,392 | | | | |

**FOOTNOTES ON PAGES 6 to 8**

($ in Thousands)

## FOOTNOTES

| Line # | Reference | Lines | Description | [1] Amount |
|---|---|---|---|---|
| 1 | A | L 2 | Uncollectible Expense Rate - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 2 | 0.010900 |
| 2 | | | PUC / OCA& SBA Assessment as a % of Revenue - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 5 | 0.001461 |
| 3 | | | Total ( L 1 + L 2) | 0.012361 |
| 4 | | L 4 | Gross Receipts Tax Expense Rate - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 4 | 0.058357 |
| 5 | | L 5 | State Income Tax Expense Rate - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 7 | 0.092835 |
| 6 | | L 6 | Federal Income Tax Expense Rate - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 9 | 0.292756 |
| 7 | B | L 1 to L 9 | OCA St. No. 1-SR, Table 1, "Adjusted Present Rates" column | |
| 8 | C | L 1 to L 9 | OCA St. No. 1-SR, Table 1, "Revenue Adjustment" column | |
| 9 | D | L 1 to L 9 | OCA St. No. 1-SR, Table 1, "Total Allowable Revenue" column | |
| 10 | E | L 1 | Settlement - Distribution Revenue Increase | |
| 11 | | L 2 | L 1 times rate in column 1 | |
| 12 | | L 4 | L 1 times rate in column 1 | |
| 13 | | L 5 | L 1 times rate in column 1 | |
| 14 | | L 6 | L 1 times rate in column 1 | |
| 15 | F | L 1 to L 8 | OCA St. No. 1-SR, Schedule C "Adjustments" - Reflects the loss of all OCA Revenue and Expense Adjustments | |
| 16 | | | | |
| 17 | G | L 9 | OCA St. No. 1-SR, Schedule B "Adjustments" - Reflects the loss of all OCA Rate Base Adjustments | |
| 18 | H | L 2 | OCA St. No. 1-SR, Schedule C-1.1 "Adjustment to Forecasted FPFTY Payroll Expense | $ 5,572 |
| 19 | | | OCA St. No. 1-SR, Schedule C-1.1 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 20 | | | Adjustment Amount (L 18 * L 19) | $ 4,784 |
| 21 | | L 5 | Line 2 times rate in column 1. | |
| 22 | | L 6 | Line 2 times rate in column 1. | |
| 23 | I | L 2 | OCA St. No. 1-SR, Schedule C-1.1 "Adjustment to Incentive Compensation" | $ 1,228 |
| 24 | | | OCA St. No. 1-SR, Schedule C-1.1 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 25 | | | Adjustment Amount (L 23 * L 24) | $ 1,054 |
| 26 | | L 5 | Line 2 times rate in column 1. | |
| 27 | | L 6 | Line 2 times rate in column 1. | |

($ in Thousands)

## FOOTNOTES

| Line # | Reference | Lines | Description | [1] Amount |
|---|---|---|---|---|
| 28 | J | L 2 | OCA St. No. 1-SR, Schedule C-1.2 "Reduction to FPFTY Employee Benefits" | $ 1,069 |
| 29 | | | OCA St. No. 1-SR, Schedule C-1.2 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 30 | | | Adjustment Amount (L 28 * L 29) | $ 918 |
| 31 | | L 5 | Line 2 times rate in column 1. | |
| 32 | | L 6 | Line 2 times rate in column 1. | |
| 33 | K | L 2 | OCA St. No. 1-SR, Schedule C-1.3 "Adjustment to Uncollectible Accounts Expense"" | $ 1,493 |
| 34 | | L 5 | Line 2 times rate in column 1. | |
| 35 | | L 6 | Line 2 times rate in column 1. | |
| 36 | L | L 2 | OCA St. No. 1-SR, Schedule C-1.5 "Reallocation of Transmission Maintenance to Transmission" | $ 4,107 |
| 37 | | | OCA St. No. 1-SR, Schedule C-1.1 Jurisdictional Distribution Allocation Factor | 1.0000 |
| 38 | | | Adjustment Amount (L 36 * L 37) | $ 4,107 |
| 39 | | L 5 | Line 2 times rate in column 1. | |
| 40 | | L 6 | Line 2 times rate in column 1. | |
| 41 | M | L 2 | OCA St. No. 1-SR, Schedule C-1.5 "Other Cost Elements - Utilities" | $ 696 |
| 42 | | | OCA St. No. 1-SR, Schedule C-1.5 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 43 | | | Adjustment Amount (L 41 * L 42) | $ 598 |
| 44 | | L 5 | Line 2 times rate in column 1. | |
| 45 | | L 6 | Line 2 times rate in column 1. | |
| 46 | N | L 2 | OCA St. No. 1-SR, Schedule C-1.5 "Other Cost Elements - Mailing Costs" | $ 998 |
| 47 | | | OCA St. No. 1-SR, Schedule C-1.2 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 48 | | | Adjustment Amount (L 46 * L 47) | $ 857 |
| 49 | | L 5 | Line 2 times rate in column 1. | |
| 50 | | L 6 | Line 2 times rate in column 1. | |
| 51 | O | L 2 | OCA St. No. 1-SR, Schedule C-1.1 "Elimination of FPFTY Wage Increase Annualization" | $ 1,422 |
| 52 | | | OCA St. No. 1-SR, Schedule C-1.1 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 53 | | | Adjustment Amount (L 51 * L 52) | $ 1,221 |

($ in Thousands)

## FOOTNOTES

| Line # | Reference | Lines | Description | [1] Amount |
|---|---|---|---|---|
| 54 | O | L 3 | OCA St. No. 1-SR, Schedule C-2 "Totals" - Juris. Adjustment | $ 385 |
| 55 | | L 4 | OCA St. No. 1-SR, Schedule C-3 "Elimination Annualization of Payroll Expense" and Source (6) | $ 124 |
| 56 | | L 5 | Sum Lines 2, 3 and 4 times rate in column 1. | |
| 57 | | L 6 | Sum Lines 2, 3 and 4 times rate in column 1. | |
| 58 | | L 9 | OCA St. No. 1-SR, Schedule B-1 "Net Jurisdictional Rate Base Adjustment" | $ 10,023 |
| 59 | P | L 1 | OCA St. No. 1-SR, Schedule C, Source (2) Reverse Update | $ 616 |
| 60 | | L 2 | L 1 times rate in column 1 | |
| 61 | | L 4 | L 1 times rate in column 1 | |
| 62 | | L 5 | L 1 times rate in column 1 | |
| 63 | | L 6 | L 1 times rate in column 1 | |
| 64 | Q | L 1 | Rate Base - Page 1, Column 13, line 9 | $ 1,541,099 |
| 65 | | | Rate of Return used in Calculation - Page 1, line 10, column 13 | 7.92% |
| 66 | | | Net Income Requirement ( L 64 * L 65 ) | $ 122,055 |
| 67 | | | Net Income at Present Rates - Page 3 of 8, Sum L 8, columns 2 to 11 | 90,113 |
| 68 | | | Additional Net Income Required ( L 66 - L 67 ) | 31,942 |
| 69 | | | Gross Revenue Conversion Factor - Exhibit RLO-2-R, Schedule D-18, page 3 of 3, line 11 | 1.839280 |
| 70 | | | Additional Revenue Requirement ( L 68 * L 69 ) | $ 58,750 |
| 71 | | L 2 | L 1 times rate in column 1 | |
| 72 | | L 4 | L 1 times rate in column 1 | |
| 73 | | L 5 | L 1 times rate in column 1 | |
| 74 | | L 6 | L 1 times rate in column 1 | |
| 75 | R | L 1 to L 9 | Reflects one-half of the OCA adjustments shown in Footnotes D and E | |
| 76 | S | L 2 | OCA St. No. 1-SR, Schedule C-1.2 "Reduction to FPFTY Employee Benefits" | $ 5,572 |
| 77 | | | OCA St. No. 1-SR, Schedule C-1.2 Jurisdictional Distribution Allocation Factor | 0.8585 |
| 78 | | | Adjustment Amount (L 76 * L 77) | $ 4,784 |
| 79 | | | One-Half of OCA Salary & Wage Adjustment on Line 78 Rejected | $ 2,392 |
| 80 | | L 5 | Line 2 times rate in column 1. | |
| 81 | | L 6 | Line 2 times rate in column 1. | |