



January 30, 2014

VIA HAND DELIVERY

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

Re: **Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company; Docket Nos. R-2013-2372129, C-2013-2390562, et al.**

**OBJECTIONS OF NRG POWER MIDWEST LP, NRG ENERGY CENTER PITTSBURGH LLC, AND RELIANT ENERGY NORTHEAST LLC TO THE JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT**

Dear Secretary Chiavetta:

In accordance with Administrative Law Judge Conrad A. Johnson's Third Interim Order, dated January 23, 2014, in the above-referenced matter, enclosed for filing with the Commission please find the Objections of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC to the Joint Petition for Non-Unanimous Settlement. All active parties to this proceeding have been served in accordance with the enclosed Certificate of Service.

Please do not hesitate to contact me should you have any questions regarding this filing or require additional information. Please date-stamp the extra enclosed copy of the filing and return it with our messenger. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

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

DPZ/JLB/kmg  
Enclosure

cc: Administrative Law Judge Conrad A. Johnson (via Electronic & First Class Mail)  
Per Certificate of Service

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## **I. BACKGROUND**

On August 2, 2013, Duquesne Light filed with the Pennsylvania Public Utility Commission (“Commission”) at Docket No. R-2013-2372129 Supplement No. 81 to the company’s *Tariff Electric – Pa. P.U.C. No. 24* (“Tariff”), representing a request for, among other things, a general increase in electric distribution rates.

On September 26, 2013, the Commission entered an order in the above-captioned proceeding. The order initiated an investigation of the proposed Supplement No. 81 and further provided that consideration should also be given to the reasonableness of Duquesne Light’s existing rates, rules, and regulations.

On October 28, 2013, the NRG Companies timely filed a formal complaint (“Complaint”) at Docket No. C- 2013-2390562 in the Duquesne Light rate proceeding. Among other things, the NRG Companies expressed concern regarding Duquesne Light’s Tariff Rider No. 18 – Rate for Purchase of Electric Energy from Customer-Owned Renewable Resources Generating Facilities (“Rider No. 18”), a provision contained within Duquesne Light’s existing rates, rules, and regulations. Rider No. 18 establishes the price at which Duquesne Light will purchase electricity from certain small generators that are also Duquesne Light customers.

On December 16, 17 and 20, 2013, evidentiary hearings were held in this matter, which included the entry of prepared testimony and cross-examination of several of the parties’ witnesses.

In accordance with the litigation schedule established in this proceeding, the parties served main briefs in this matter on January 6, 2014, and reply briefs on January 17, 2014.

On January 16, 2014, Duquesne Light filed the Non-Unanimous Settlement on behalf of itself and the Commission’s Bureau of Investigation & Enforcement, the Office of Consumer

Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Duquesne Industrial Intervenors, Citizens for Pennsylvania's Future and United States Steel Corporation (together, "Joint Petitioners").

## II. LEGAL STANDARDS

While it is the policy of the Commission to encourage settlements between the parties, 52 Pa. Code §§ 5.231, 69.401, the terms and conditions of any settlement must nevertheless be within the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991). Pursuant to 66 Pa. C.S. § 315(a), the public utility bears the burden of proving in Commission-initiated proceedings that its proposed and existing rates are just and reasonable. As a result, Duquesne Light bears the burden of proof with respect to proving that the rate increase proposed in the Non-Unanimous Settlement, as well as other provisions of its tariff, are just and reasonable. However, the Joint Petitioners together bear the burden of proving that the proposed Non-Unanimous Settlement is in the public interest. *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013).

## III. OBJECTIONS

The Commission should not approve the Non-Unanimous Settlement as proposed because it is not in the public interest. The Settlement does not address the concerns raised about Rider No. 18. Specifically, as the NRG Companies have argued in their Main Brief and Reply Brief, which arguments are incorporated herein by reference, Rider No. 18 is in direct conflict with the Electricity Generation Customer Choice and Competition Act (the "Competition Act"),

66 Pa. C.S. § 2801 *et seq.*, and the Alternative Energy Portfolio Standards Act (“AEPS Act”), 73 P.S. § 1648.1 *et seq.*, and no longer serves a legitimate purpose. Rather, it is an outdated tariff provision that reflects a regulatory scheme that no longer applies in Pennsylvania and which has never been revised to account for restructuring of the electric utility industry, the development of a competitive market for generation and related services and the default service obligations of electric distribution companies. As such, Rider No. 18 as a matter of law is unjust, unreasonable and otherwise contrary to the public interest. Not only has Duquesne Light failed to show that Rider No. 18 is just and reasonable, by allowing Rider No. 18 to maintain the force and effect of law, the Non-Unanimous Settlement would not be in the public interest. Accordingly, the Commission should not approve the Non-Unanimous Settlement as proposed.

If the Commission is inclined to approve the Non-Unanimous Settlement, it should do so only on the condition that Duquesne Light remove Rider No. 18 from its Tariff. In the alternative, should the Commission determine that Rider No. 18 should not be eliminated entirely, it should require Duquesne Light, as a condition of its approval, to modify the six cents per kilowatt-hour price contained in Rider No. 18 to a price that reflects the average PJM Interconnect locational marginal price for energy in the Duquesne Zone.

The NRG Companies note that the Joint Petitioners have requested that the Commission terminate its investigation into this matter, mark the matter closed and issue an order terminating the proceeding. Non-Unanimous Settlement 17. Because the Complaint has been consolidated with the base rate case and the Commission directed the examination of Duquesne Light’s existing tariff provisions, this relief should not be granted until the issues related to Rider No. 18 have been fully resolved.

The Commission's statutory responsibility in evaluating the Non-Unanimous Settlement is to determine whether it is in the "public" interest – not the interest of Duquesne Light; not the interest of Beaver Falls Municipal Authority; not the interest of Beaver Valley Power Company; and, not the interest of the NRG Companies. The public interest is broader than the individual economic interests of specific persons or entities.

Base rate proceedings represent the primary process by which the Commission periodically cleanses the tariffs of its regulated public utilities in order to ensure that the tariffs, which have the force and effect of law, remain consistent with the law and with the Commission's regulatory scheme implementing the law. Rider No. 18 is no longer consistent with the law or the Commission's regulatory scheme and, therefore, should be removed in its entirety from Duquesne Light's tariff. The Commission has the exclusive authority to determine what can and cannot be contained in Duquesne Light's Commission-approved tariff and it should not permit Duquesne Light and Beaver Falls Municipal Authority to continue to use Rider No. 18 as a shield to protect themselves indefinitely from change. Such use of a tariff is not in the public interest.

#### **IV. CONCLUSION**

Both the Competition Act and the AEPS Act, in conjunction with the market for competitive generation in Pennsylvania, have rendered Rider No. 18 obsolete. Rider No. 18 is a relic of an outdated regulatory scheme and directly conflicts with current law and is therefore unjust, unreasonable and otherwise contrary to the public interest. The Non-Unanimous Settlement is not in the public interest because it would allow Rider No. 18 to remain in the Tariff. As a result, the Commission should not approve the Non-Unanimous Settlement. In the alternative, the Commission should condition any approval of the Non-Unanimous Settlement by

requiring Duquesne Light to either eliminate or modify Rider No. 18 as requested by the NRG Companies.

Respectfully submitted,

COZEN O'CONNOR



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DATED: January 30, 2014

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

I hereby certify that I have this day served a true copy of the Objections of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC to the Joint Petition for Non-Unanimous Settlement, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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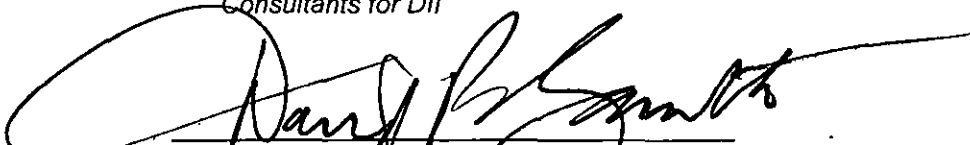
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