

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 4, 2014

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission,
et al. v. Duquesne Light Company
Docket No. R-2013-2372129

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Response to Objection of NRG to the Joint Petition for Approval of Non-Unanimous Settlement in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

cc: Honorable Conrad A. Johnson
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2013-2372129
	:	
Duquesne Light Company	:	

THE OFFICE OF CONSUMER ADVOCATE’S RESPONSE
TO OBJECTION OF NRG TO THE JOINT PETITION FOR APPROVAL OF NON-
UNANIMOUS SETTLEMENT

Pursuant to the Third Interim Order dated January 23, 2014, of Administrative Law Judge Conrad A. Johnson (ALJ), the Office of Consumer Advocate (OCA) submits the following response to the Objection of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC (collectively NRG) to the Joint Petition for Non-Unanimous Settlement (NRG Objection).

On August 2, 2013, Duquesne Light Company (Duquesne, DLC or the Company) filed Supplement No. 81 to Tariff Electric - Pa. P.U.C. No. 24 (Supplement No. 81). On August 9, 2013, the Bureau of Investigation & Enforcement (I&E) filed a Notice of Appearance. On August 16, 2013, the OCA filed a Formal Complaint, Public Statement, and Notice of Appearance. On August 22, 2013, the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement, and Notice of Appearance. Formal Complaints were also filed by the Duquesne Industrial Interveners (DII); Jacquelyn and Robert Miller; Gwendolyn L. LeVert; Aimee-Marie Dorsten; Connie Shiavo; and NRG. Petitions to Intervene were filed by the International Brotherhood of Electrical Workers, Local 29 (IBEW); United States Steel Corporation (U.S. Steel); Citizen Power, Inc.; Community Action Association of Pennsylvania (CAAP); CAUSE-PA; Interstate Gas Supply, Inc. (IGS); Citizen’s for Pennsylvania’s Future

(PennFuture); and Beaver Falls Municipal Authority (Beaver Falls). All petitions to intervene were granted. Rate protests were also filed by various individuals.

The ALJ convened a prehearing conference on October 4, 2013, and a litigation schedule was adopted. Various parties submitted direct, rebuttal, surrebuttal and rejoinder testimonies pursuant to the litigation schedule, which were submitted into the record at hearings on December 16, 17 and 20, 2013. Prior to the hearings, Duquesne, I&E, OCA, OSBA, CAUSE-PA, DII, PennFuture, and U.S. Steel (collectively the Joint Petitioners) entered into a settlement in principle (Settlement). Other parties, including CAAP, Citizen's Power, IGS, IBEW and Beaver Falls indicated that they would not oppose the Settlement. At hearings on December 16, 17, and 20, 2013, the issues raised by NRG were litigated, and NRG cross-examined I&E witness Christine Wilson and OCA witness David J. Effron.

Pursuant to the ALJ's Order entered October 22, 2013, and his direction at the hearing on December 20, 2013, the OCA filed a Main Brief on January 6, 2014, on the issue of burden of proof regarding NRG's Tariff Rider No. 18 issue. I&E also filed a Main Brief on the issue of burden of proof. DLC, NRG and Beaver Falls submitted Main Briefs on the issues of burden of proof and Tariff Rider No. 18. The Company also briefed the issue of revenue requirement in the context of an opposed settlement¹ and NRG's non-Tariff Rider No. 18 issues regarding customer service. On January 16, 2014, the Company submitted the Settlement with accompanying Joint Petitioners' Statements in Support of the Settlement.² On January 17, 2014, the OCA submitted a Reply Brief to the Company's Main Brief revenue requirement sections. In its Reply Brief, DLC stated that it would not be necessary for the ALJ to specifically determine

¹ By letter dated January 15, 2014, DLC withdrew all Proposed Findings of Fact from its Main Brief that bore on matters addressed by the Settlement.

² The four customer complainants have not been active in this proceeding. The Company served a copy of the Settlement on the customer complainants on January 16, 2014.

the parties' proposed revenue requirement adjustments referenced in DLC's Main Brief. DLC R.B. at 12. I&E submitted a Reply Brief on the burden of proof issue. Also on January 17, 2014, DLC, Beaver Falls and NRG submitted reply briefs on the Tariff Rider No. 18 issues.

On January 30, 2014, NRG submitted its NRG Objection asserting that the Settlement is not in the public interest because it does not address NRG's concerns about Tariff Rider No. 18. NRG Objection at 3. Additionally, NRG noted that the Joint Petitioners' request in the Settlement that the Commission terminate its investigation in this docket and terminate the proceeding should not be granted because NRG's Tariff Rider No. 18 issue has not been resolved. *Id.* at 4, citing Settlement at 17. The OCA submits that since NRG did not challenge any specific provision in the Settlement relating to revenue requirement, rate design, allocation, universal service and customer service, the LED program, or state tax adjustment surcharge, there is no need to address these aspects of the Settlement in response to the NRG Objection.³

The Public Utility Commission (Commission) encourages settlements. See 52 Pa. Code §§ 5.231, 69.410. The OCA supports comprehensive settlements and works towards comprehensive settlements in all cases in which it is a party. The OCA submits, however, that comprehensive settlements are not always achievable, and in such instances, a partial settlement may be achieved, with remaining issues carved out for litigation. The Commission has approved such settlements. See e.g. Pa. PUC v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2010-2215623, Opinion and Order (Oct. 14, 2011 and March 15, 2012) (Commission approved partial settlement and decided litigated issues of residential rate design and CAP-Plus). In this matter, a comprehensive settlement was not reached, and NRG's Tariff Rider No. 18 and customer service⁴ issues were litigated. NRG's issues do not impact the matters in the Settlement, which

³ Additionally, the Company's Main Brief sections on revenue requirement and the OCA's Reply Brief to those sections need not be considered.

⁴ NRG did not pursue its customer service issues in its Main Brief submitted on January 6, 2014.

include revenue requirement, rate design, allocation, universal service and customer service, the LED program, or state tax adjustment surcharge. Now that litigation has concluded, the record is closed and briefs have been submitted, NRG's issues are ripe for disposition. Consequently, the NRG Objection that the Settlement is not in the public interest because it does not include NRG's Tariff Rider No. 18 issue must be rejected. There is no need to address specific provisions of the Settlement, such as revenue requirement and allocation, in response to the NRG Objection because NRG did not object to any specific provisions in the Settlement. As discussed in the OCA's Statement in Support of Settlement, the OCA submits that the Settlement should be approved without modification.

Respectfully Submitted,



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Date: February 4, 2014
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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission, *et al.* v. Duquesne Light Company
Docket No. R-2013-2372129

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Response to Objection of NRG to the Joint Petition for Approval of Non-Unanimous Settlement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of February 2014.

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