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February 4, 2014

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 Duquesne Light Company's Response to the NRG Companies' Objections to the Joint Petition for Non-Unanimous Settlement in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Anthony D. Kanagy

MWG/skr
Enclosure

cc: Certificate of Service
Honorable Conrad A. Johnson

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**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, and Reliant Energy Northeast LLC	:	C-2013-2390562
v.	:	
Duquesne Light Company	:	

**DUQUESNE LIGHT COMPANY'S RESPONSE
TO THE NRG COMPANIES' OBJECTIONS TO THE
JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT**

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I. INTRODUCTION

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files its Response to the Objections of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC (collectively the “NRG Companies”) to the Joint Petition for Non-Unanimous Settlement (“Settlement”) that was filed on January 16, 2014 in the above-captioned proceeding.

The NRG Companies object to the Settlement because it does not address the NRG Companies’ concerns regarding Rider No. 18. This is not a permissible basis to oppose the Settlement. The Settlement does not address the Rider No. 18 issues in any manner. Instead, these issues have been separately reserved for litigation. The NRG Companies have had a full and fair opportunity to litigate the Rider No. 18 issues, including submitting testimony, conducting cross-examination and submitting briefs on the Rider No. 18 issues. Administrative

Law Judge Conrad A. Johnson (the “ALJ”) and the Pennsylvania Public Utility Commission (“Commission”) can both approve the Settlement and separately decide the Rider No. 18 issues, which have no impact on the Settlement.

It is the Commission’s policy to encourage settlements, including non-unanimous settlements or stipulations, because they reduce litigation time and expense for parties and customers. 52 Pa. Code § 69.401. As explained herein, in the Company’s Briefs and in the Company’s Statement in Support of the Settlement, the Settlement is supported by substantial evidence, is in the public interest and should be approved without modification. Moreover, for the reasons explained in the Company’s Initial and Main Briefs, the ALJ and the Commission should deny the NRG Companies’ requests to eliminate or revise Rider No. 18, including the NRG Companies’ requests to change the rate under Rider No. 18.

II. BACKGROUND

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 Fully Projected Future Test Year 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 matter was assigned to the Office of Administrative Law Judge, and ALJ Conrad A. Johnson was assigned to preside over the proceeding. Various parties intervened in the proceeding.

On January 16, 2014, Duquesne Light filed the Settlement which was joined by the Company, the Bureau of Investigation and Enforcement (“I&E”), 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”),¹ Citizens for Pennsylvania’s Future (“PennFuture”) and United States Steel Corporation (“U. S. Steel”) (collectively the “Joint Petitioners”). Other active parties in this proceeding, including the Community Action Association of Pennsylvania (“CAAP”), Citizen Power, Inc. (“Citizen Power”), Interstate Gas Supply, Inc. (“IGS”), International Brotherhood of Electrical Workers, Local 29 (“IBEW”), and Beaver Falls Municipal Authority (“Beaver Falls”) have all indicated that they do not oppose the Settlement.² The NRG Companies are the only parties in this proceeding that have opposed the Settlement.

On January 23, 2014, the ALJ issued a Third Interim Order Establishing Deadline for Filing Objections and Response to Joint Petition for Approval of Non-Unanimous Settlement. Therein, the ALJ ordered that any party wishing to object to the Settlement should file objections so that they are received by 4:30 p.m. on Thursday, January 30, 2014. The ALJ also ordered that responses to objections should be filed so that they are received by the Secretary, the ALJ and other parties by 4:30 p.m. on Tuesday, February 4, 2014.

On January 30, 2014, the NRG Companies filed their Objections to the Settlement. Pursuant to the ALJ’s Third Interim Order, Duquesne Light hereby files its Response to the NRG Companies’ Objections.

¹ WHEMCO Inc./WHEMCO-Steel Castings, Inc. participated in this proceeding as a member of DII, however, for purposes of this Joint Petition for Approval of Non-Unanimous Settlement, WHEMCO Inc./WHEMCO-Steel Castings, Inc. elected status as a non-objecting party.

² There are four customer complainants in the above-captioned proceeding: Jacquelyn and Robert Miller, Docket No. C-2013-2383835; Gwendolyn L. LeVert, Docket No. C-2013-2383980; Aimee-Marie Dorsten, Docket No. C-2013-2386037; and Connie Schiavo, Docket No. C-2013-2386284. These customer complainants have not been active parties and have not indicated that they oppose the Settlement.

III. RESPONSE TO THE NRG COMPANIES' OBJECTIONS

A. THE COMMISSION CAN APPROVE THE NON-UNANIMOUS SETTLEMENT AND SEPARATELY DECIDE THE RIDER NO. 18 ISSUES.

In their Objections, the NRG Companies argue that the Commission should not approve the Settlement because it does not address the Rider No. 18 issues. NRG Objections, p. 3. The NRG Companies are correct that the Settlement does not address the Rider No. 18 issues. However, this is not a permissible basis to reject the Settlement. The Rider No. 18 issues are not addressed by the Settlement and were separately reserved for litigation. The NRG Companies have also offered no objection to any matter resolved by the Settlement. Duquesne Light, the NRG Companies and other interested parties have addressed the Rider No. 18 issues in their Briefs. *See, e.g.*, Duquesne Light Initial Brief, pp. 46-81; Duquesne Light Reply Brief, pp. 13-29; Beaver Falls Main Brief, pp. 12-31; Beaver Falls Reply Brief, pp. 8-13; NRG Companies Main Brief, pp. 8-16; NRG Companies Reply Brief, pp. 3-13. Moreover, the NRG Companies have not opposed any specific term or provision of the Settlement, only that the Settlement does not include the Rider No. 18 issues. In addition, the NRG Companies state that if the Commission were to approve the Settlement it should be conditioned upon Rider No. 18 either being eliminated or modified. NRG Objections, p. 4.

It is well established that the ALJ and the Commission can both approve the Settlement and separately decide the Rider No. 18 issues. The Rider No. 18 issues are separate and apart from the issues agreed to under the Settlement and have no bearing or impact on the Settlement issues. For these reasons, the NRG Companies' argument that the Settlement should not be approved because it does not include Rider No. 18 issues or that any approval should be conditioned upon Rider No. 18 being either eliminated or modified should be summarily dismissed.

B. DUQUESNE LIGHT COULD NOT REASONABLY RESOLVE THE RIDER NO. 18 ISSUES IN THIS PROCEEDING.

Duquesne Light has a long history of working with all parties to attempt to amicably resolve its major proceedings. The Company has reached settlements with all parties in its last two base rate proceedings in 2006 and 2010. *See, Pa. P.U.C. v. Duquesne Light Company*, Docket No. R-00061346, Order approving settlement entered December 1, 2006; *Pa. P.U.C. v. Duquesne Light Company*, Docket No. R-2010-2179522, Order approving settlement entered February 24, 2011. In addition, the Company has reached full settlements with all parties in its Provider of Last Resort (“POLR”) IV and POLR V default service proceedings. *See, Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247, Order approving stipulations resolving all issues among all parties entered June 22, 2007; *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2133550, Order approving settlement entered June 21, 2010.

With respect to the Settlement and the issues raised by the NRG Companies on Rider No. 18, Duquesne Light could not reasonably resolve these issues in this proceeding. One of the most important reasons was that the NRG Companies failed to join all indispensable parties in the proceeding, notably the two Qualifying Facilities (“QF”) who would be directly affected by any change to Rider No. 18. *See Duquesne Light Initial Brief*, pp. 75-81.³ Duquesne Light does not believe that it is appropriate to change Rider No. 18 in this proceeding without allowing both of the QFs a full and fair opportunity to participate. Duquesne Light attempted to remedy this

³ Beaver Falls was permitted to intervene in these proceedings at the hearings and was permitted to submit testimony and cross-examine witnesses. However, given the late notice to Beaver Falls that the NRG Companies were proposing to eliminate Rider No. 18 or change the rate under Rider No. 18, Beaver Falls’ rights to fully defend its interests were limited at best.

significant issue by requesting that the Rider No. 18 issues be severed into a separate proceeding where all necessary parties would be joined, but the NRG Companies opposed this proposal.

As stated above, Duquesne Light has a history of working with parties and reaching settlements, and the Settlement in this case is not unreasonable just because the Rider No. 18 issues were not settled, especially in light of the complexities and issues related to Rider No. 18.

C. THE COMMISSION ENCOURAGES NON-UNANIMOUS SETTLEMENTS.

As explained above, the NRG Companies' basis for rejecting the Settlement is that it does not address their concerns about Rider No. 18. There is no requirement that settlements address all issues raised by all parties, and in fact the Commission encourages non-unanimous settlements (or stipulations) that resolve less than all issues.

Section 69.401 of the Commission's Policy Statement provides as follows:

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

A stipulation is a resolution of less than all issues in which all or less than all interested parties have joined.

52 Pa. Code § 69.401.⁴

The Commission does not require that Settlements be unanimous to be in the public interest. See Duquesne Light Initial Brief, pp. 39-40, citing *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-2011-2267958, Order entered June 7, 2012; *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, Order entered December 19, 2013. The NRG Companies' argument that the Settlement is not in the public interest because it does not address the Rider

⁴ The Non-Unanimous Settlement is a resolution of less than all issues in which less than all interested parties have joined.

No. 18 issues is contrary to the Commission's policy to encourage parties to amicably resolve their disputes or as much of their disputes as possible. The NRG Companies should not be permitted to disrupt other parties' efforts to resolve their concerns simply because the Rider No. 18 issues were not resolved. Notably, the NRG Companies have not opposed any specific term or provision of the Settlement (only that the Settlement does not include Rider No. 18 issues). The NRG Companies' objection to the Settlement simply because it does not address Rider 18 issues should be denied.

D. THE NRG COMPANIES' ADVOCACY OF THEIR POSITION ON RIDER NO. 18 IN THEIR OBJECTIONS SHOULD BE DISREGARDED.

In their Objections, the NRG Companies repeat the arguments that they made in their Briefs regarding Rider No. 18. The NRG Companies argue that Rider No. 18 conflicts with the Electricity Generation Choice and Competition Act ("Competition Act") and the Alternative Energy Portfolio Standards Act ("AEPS Act"). The NRG Companies further argue that Rider No. 18 no longer serves a legitimate public interest and is not in the public interest. NRG Companies Objections, pp. 2-3.

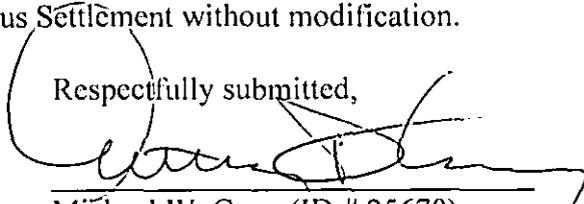
The NRG Companies' arguments regarding Rider No. 18 were appropriately addressed in their briefs and are not a basis to reject the Settlement for the reasons explained above. Duquesne Light has explained in its Briefs why the NRG Companies' arguments regarding Rider No. 18 are without merit and incorporates those arguments herein by reference. *See* Duquesne Light Initial Brief, pp. 46-81; Duquesne Light Reply Brief, pp. 13-29. Therefore, references to these issues in the NRG Companies' objections are inappropriate and should be disregarded.

IV. CONCLUSION

Duquesne Light and other parties have provided substantial evidence in their Statements in Support and in briefs explaining why the Settlement is supported by substantial evidence, is in

the public interest and should be approved. The NRG Companies' opposition to the Settlement on the basis that it does not address Rider No. 18 issues should be denied. As stated above, there is no requirement that settlements address all issues raised by all parties, and in fact the Commission encourages non-unanimous settlements (or stipulations) that resolve less than all issues. The NRG Companies did not object to any provision contained in the actual Settlement. Moreover, the NRG Companies have had a full and fair opportunity to litigate and brief the Rider No. 18 issues and their argument that these issues must be addressed in the Settlement or that the Settlement somehow should be conditioned upon their resolution is without merit. Therefore, Duquesne Light Company respectfully requests that Administrative Law Judge Conrad A. Johnson recommend, and that the Pennsylvania Public Utility Commission approve, the Joint Petition for Approval of Non-Unanimous Settlement without modification.

Respectfully submitted,



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Date: February 4, 2014

Attorneys for Duquesne Light Company

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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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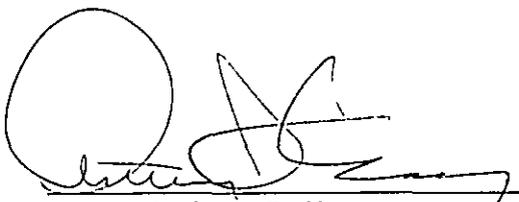
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