



April 4, 2014

VIA E-FILE

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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Re: Pennsylvania Public Utility Commission, et al. v. Duquesne Light Company; Docket Nos. R-2013-2372129, C-2013-2390562, et al.

EXCEPTIONS OF THE NRG COMPANIES TO THE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON ISSUED MARCH 28, 2014

Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find the Exceptions of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC to the Recommended Decision of Administrative Law Judge Conrad A. Johnson issued in the above-referenced proceeding on March 28, 2014. 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. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
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DPZ/kmg
Enclosure

cc: Honorable Robert F. Powelson, Chairman
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Honorable Pamela A. Witmer, Commissioner
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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 Exceptions of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC, and Reliant Energy Northeast LLC to the Recommended Decision of Administrative Law Judge Conrad A. Johnson issued March 28, 2014, 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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I. INTRODUCTION

On March 28, 2014, the Pennsylvania Public Utility Commission (“Commission”) issued the preliminary Recommended Decision (the “Recommended Decision”) of Administrative Law Judge Conrad A. Johnson (the “Presiding Officer”) in this proceeding. The Presiding Officer recommended that the Commission approve the Joint Petition for Non-Unanimous Settlement (“Settlement”) submitted by Duquesne Light Company (“Duquesne Light”), the Bureau of Investigation and 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, the Citizens for Pennsylvania’s Future, and the United States Steel Corporation. R.D. at 59.

The Settlement, however, does not resolve all of the issues that were properly and timely raised in the instant proceeding.¹ Therefore, the Presiding Officer further recommended that the Commission hold certain issues raised in the context of this base rate case “in abeyance” for resolution in a separate recommended decision—specifically, “the Rider No. 18 portion”² of the Complaint of NRG Power Midwest LP, NRG Energy Center Pittsburgh LLC and Reliant Energy Northeast LLC (together, the “NRG Companies”). R.D. at 60, ¶ 5. The Presiding Officer also recommended that, “upon the Commission’s consideration of the recommendations in Paragraphs 5, 6 and 7” of his recommended order (regarding resolution of the Rider No. 18 issues), that the Commission close the base rate investigation at Docket No. R-2013-2372129. R.D. at 61, ¶ 8.

¹ As a partial resolution of the issues, the Settlement nevertheless requested that the investigation and proceeding be terminated *in their entirety*. Settlement 17; Objections of the NRG Companies to the Joint Petition for Non-Unanimous Settlement 4. This inconsistency is in large part why the NRG Companies objected to the Settlement.

² Duquesne Light’s Tariff Rider No. 18 – Rate for Purchase of Electric Energy from Customer-Owned Renewable Resources Generating Facilities (“Rider No. 18”) is a provision contained within the company’s existing rates, rules, and regulations that establishes the price at which it will purchase electricity from certain small generators that are also customers. (NRG Midwest Exhibit No. 6, at 1.)

Because the Recommended Decision (1) fails to provide for the timely resolution of the Rider No. 18 issues raised by the Complaint of the NRG Companies, and (2) fails to clearly establish the procedural posture in which the Rider No. 18 issues are to be considered, the NRG Companies respectfully submit exceptions. The NRG Companies specifically request that the Commission direct that a recommended decision on the Rider No. 18 issues be submitted by a date certain and clarify that the Rider No. 18 issues are to be considered in the context of the existing base rate investigation in which Duquesne Light bears the burden of proof.

II. EXCEPTIONS

Exception No. 1. The Recommended Decision fails to provide for the timely resolution of the Rider No. 18 issues.

In his Recommended Decision, the Presiding Officer recommends that the Commission hold “in abeyance” the Rider No. 18 issues for resolution in a separate recommended decision. R.D. at 60, ¶ 5. By holding these issues in abeyance, the Commission would allow the Presiding Officer additional time in which to carefully consider the Rider No. 18 issues. The NRG Companies appreciate the Presiding Officer’s attention to the issues raised in their Complaint and do not object to reserving consideration of the issues to a separate recommended decision.³ Nevertheless, the Commission should modify the recommendation in order to ensure that all outstanding issues properly raised and consolidated in this base rate proceeding can be resolved within a reasonable amount of time.

At the outset, it is important to recognize that Duquesne Light filed Supplement No. 81 to the company’s Tariff Electric – Pa. P.U.C. No. 24 on August 2, 2013, and elected to use the

³ While the NRG Companies objected to severance as it was proposed by Duquesne Light in its most recent motion to sever, filed March 25, 2014, the NRG Companies did not oppose the treatment of the Rider No. 18 issues in a separate recommended decision, provided their concerns regarding timing and the burden of proof were appropriately addressed.

alternative method of customer notification set forth at 52 Pa. Code § 53.45(b)(4) (allowing customer notification through bill inserts). In doing so, Duquesne Light also agreed to extend from 60 to 90 days (*i.e.*, until October 31, 2013) the minimum period in which the filing of a complaint places the burden of proof upon Duquesne Light with respect to proposed rates. The Complaint of the NRG Companies was timely filed on October 28, 2013. Accordingly, the NRG Companies have lawfully raised their issues in the context of the instant base rate investigation proceeding. In addition, the Commission explicitly stated in its suspension order that the entirety of Duquesne Light's tariff should be examined, including its "existing rates, rules, and regulations." Order, Docket No. R-2013-2372129, at 2 (Order entered Sept. 26, 2013). The Rider No. 18 issues were therefore properly raised and consolidated in the base rate proceeding.

As long as the Rider No. 18 issues remain unresolved, the NRG Companies continue to be subject to an unjust, unreasonable, and unduly discriminatory power purchase price. No less than the other parties to this proceeding, the NRG Companies have an interest in seeing their concerns addressed as expeditiously as possible, in accordance with the requirements of procedural due process. While respecting the Presiding Officer's decision, any delay caused by holding the Rider No. 18 issues in abeyance should not result in a final decision being rendered by the Commission on those issues any later than originally anticipated by the Presiding Officer when he made his initial request to Duquesne Light to extend voluntarily the effective date of its tariff supplement – which request was denied by Duquesne Light. The Presiding Officer had requested an extension until June 6, 2014, in order to address the Rider No. 18 issues and afford the parties appropriate due process. As such, and so that the ultimate resolution of the Rider No. 18 issues is not unduly delayed, the Commission should direct that a recommended decision on the Rider No. 18 issues be issued in time to be considered at the June 5, 2014 Public Meeting

with the parties being afforded reasonable time in which to file exceptions and replies to exceptions.

Exception No. 2. The Recommended Decision is ambiguous with respect to the procedural posture in which the Rider No. 18 issues are to be considered.

While the Presiding Officer recommends that the Commission hold “in abeyance” the Rider No. 18 issues for resolution in a separate recommended decision, he also recommends that the base rate investigation at Docket No. R-2013-2372129 be closed upon the Commission’s consideration of the recommendations in Paragraphs 5, 6 and 7 of his recommended order (regarding resolution of the Rider No. 18 issues). R.D. at 61, ¶ 8. It is unclear whether he intends for the separate recommended decision to be issued in the context of an ongoing Commission investigation.

The NRG Companies respectfully suggest that the Commission clarify this portion of the recommendation to require the Presiding Officer to issue a separate recommended decision in the context of the ongoing Commission investigation, which investigation will be closed *only* upon the Commission’s final disposition of the Rider No. 18 issues. This approach would be consistent with the Commission’s September 26, 2013 order to investigate Duquesne Light’s *existing* tariff provisions, and further consistent with the Commission’s February 6, 2014 decision not to consider Duquesne Light’s December 13, 2013 Petition for Interlocutory Review and Answer to Material Questions. Because the Complaint of the NRG Companies is related to and was properly consolidated with the base rate case investigation, and the Commission directed the examination of Duquesne Light’s existing tariff provisions, which include Rider No. 18, the Commission’s investigation must not be terminated unless and until the issues related to Rider No. 18 have been fully resolved.

Importantly, premature closure of the Commission's ongoing investigation could inappropriately shift the burden of proof from Duquesne Light to the NRG Companies on the Rider No. 18 issues. As argued by the NRG Companies, the Commission's Bureau of Investigation and Enforcement and the Office of Consumer Advocate in their respective briefs, a proceeding initiated on motion of the Commission places the burden of proof with respect to both proposed and existing tariff provisions on the utility. 66 Pa. C.S. § 315(a). Because the Commission ordered the present investigation and directed the examination of Duquesne Light's existing tariff provisions, which include Rider No. 18, the burden of proof with respect to Rider No. 18 currently rests with Duquesne Light. It would be wholly inappropriate if, by terminating the Commission's existing investigation and addressing the Rider No. 18 issues in the context of a severed complaint docket, it could shift the burden of proof to the NRG Companies.⁴ As such, the Commission should hold open its ongoing investigation pending final resolution of the Rider No. 18 issues, ensuring that the burden of proof properly remains with Duquesne Light.

III. CONCLUSION

Wherefore, the NRG Companies respectfully request that the Commission modify the Recommended Decision consistent with the foregoing and issue an order that:

1. Directs the issuance of a recommended decision on the Rider No. 18 issues in time to be considered by the Commission at the June 5, 2014 Public Meeting with the parties being afforded reasonable time in which to file exceptions and replies to exceptions; and,

⁴ Outside the context of a Commission-directed investigation, the burden of proof in a complaint proceeding against a tariff is upon the complainant. See 66 Pa. C.S. § 332(a) ("Burden of Proof").

2. Holds open the existing base rate investigation at Docket No. R-2013-2372129 pending final resolution of the Rider No. 18 issues.

Respectfully submitted,

COZEN O'CONNOR

A large, stylized handwritten signature in blue ink, likely belonging to David P. Zambito, is written over a horizontal line. The signature is cursive and spans across the line, with some loops extending above and below it.

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