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ORIGINAL

February 26, 2007

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

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2007 FEB 26 PM 3:32
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SECRETARY'S BUREAU

Re: Petition of Duquesne Light Company for Approval of
Default Service Plan for the Period January 1, 2008
through December 31, 2010

Dear Secretary McNulty:

P-00072247

Enclosed for filing please find the original and three copies of the Retail Energy Supply Association's Petition to Intervene in the above-referenced matter. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Certificate of Service (w/encs)

DOCUMENT FOLDER

HAR:71597.1/MID051-242246

18

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

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**PETITION TO INTERVENE
OF RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to 52 Pa. Code §§ 5.72-5.7 and the notice published by the Pennsylvania Public Utility Commission ("PUC" or "Commission") February 10, 2007, in the Pennsylvania Bulletin, 37 Pa.B. 736, the Retail Energy Supply Association ("RESA") hereby petitions to intervene in the above-captioned proceeding and, in support hereof, states as follows:

1. RESA is a non-profit organization and trade association of retail energy suppliers who share the common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than regulated utility structures. Virtually all RESA members are electric generation suppliers ("EGSs") licensed to sell electric energy in the markets of Pennsylvania's major electric distribution companies ("EDCs"), including the Duquesne Light Company ("Duquesne" or "Company") service territory. RESA's members are actual or potential participants in Duquesne's retail electric market. RESA is a separate legal entity from its membership, does not represent any specific member, and is authorized by its membership to represent members' consensus interests in this matter.¹

ORIGINAL

¹ RESA's members include Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The opinions expressed in this filing may not represent the view of all members of RESA.

DOCKETED
FEB 27 2007

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2. RESA's attorneys in this matter are:

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(717) 237-7160
DClearfield@wolfblock.com
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3. On January 25, 2007, Duquesne filed a petition requesting approval of its default service plan for the period from January 1, 2008 through December 31, 2010 ("Default Service Plan" or "Plan"), as well as other related approvals Duquesne states are required for implementation of its Plan. Duquesne proposes three different plans for each major customer group – residential customers, small commercial and industrial ("Small C&I") customers, and large commercial and industrial ("Large C&I") customers.

(a) For residential customers, Duquesne proposes a three-year fixed rate, and the phase-out (by 12/31/2009) of declining second energy blocks for residential heating customers.

(b) For Small C&I customers, Duquesne proposes fixed annual rates for 2008 but, unlike the plan for residential customers, proposes to adjust these rates annually (for 2009 and 2010) based upon changes in an annual forward market price index. Duquesne also proposes to phase-out (by 12/31/2009) supply related demand charges and declining second energy blocks for Rate GM/GMH customers.

(c) For Large C&I customers, Duquesne proposes to offer a real time hourly market price service as the default service beginning January 1, 2008, with no fixed price service ("FPS") option, which is consistent with the May 31, 2007 expiration of Duquesne's current FPS option.

4. Duquesne asserts that the rates for residential and Small C&I customers are "based on prevailing market prices for a three-year, fixed price full requirements contract for 2008 through 2010," but Duquesne's initial fixed rates for customers are based upon Duquesne's review and adjustment of the results of wholesale solicitations for full requirements Default Service supply for residential and/or small C&I customers in several states, including Pennsylvania, New Jersey, Maryland and Illinois. The "three-year, fixed price full requirements contract" referenced by Duquesne is its contract with its affiliate, Duquesne Power ("DP"), which will obtain the actual Default Service supply for these customers through wholesale market purchases in PJM. It is not clear to what extent DP has commitments concerning the actual Default Supply for these customers, but it is clear that Duquesne does not propose to obtain Default Service supply for residential and Small C&I customers directly through a competitive auction or RFP process.

5. Intervention is permitted where a person has an interest in the proceeding which may be directly affected and which is not adequately represented by existing parties, and as to which the person may be bound by the action of the Commission in the proceeding. 52 Pa. Code § 5.72(a)(2). Intervention is also permitted where participation of the person may be in the public interest. 52 Pa. Code § 5.72(a)(3). A "person" includes a corporation and an association. 52 Pa. Code § 1.8.

6. RESA meets the standard for intervention set forth in 52 Pa. Code § 5.72(a)(2). As an advocacy organization whose members include EGSs actually conducting or potentially conducting business in Duquesne's service territory, RESA has interests that will be directly affected by this matter. This proceeding will determine the rates, terms and conditions of Default Service in Duquesne's service territory against which RESA's members must compete to

provide electric generation and related services to retail customers during 2008-2010. Duquesne asserts that its Plan is designed to promote retail competition in Duquesne's service territory. While RESA does not necessarily agree that the Plan, as proposed, will promote retail competition for residential and Small C&I customers, RESA submits that there can be no doubt that the Commission's action on Duquesne's Plan will determine the extent to which retail competition will continue to develop in Duquesne's service territory during 2008-2010 – and that the Commission's action in this proceeding will directly affect the interests of RESA and its members in providing electric generation and related services to retail customers in Duquesne's service territory during 2008-2010.

7. RESA's intervention is also in the public interest, as required by 52 Pa. Code § 5.72(a)(3). RESA's members participate or are interested in participating in the retail electric markets of all the major EDCs in Pennsylvania, as well as in the retail electric markets in the neighboring jurisdictions of Delaware, Maryland, the District of Columbia, New Jersey and New York, and also in the New England area, including Connecticut, New Hampshire, Massachusetts, Maine and Rhode Island. The primary purpose of RESA is to permit its members to utilize economies of scale to participate in the various state public utility commission proceedings that determine the rates, rules and policies that affect the development of the retail electric markets in their respective states and in the service territories of particular electric utilities. RESA's participation in this proceeding permits its membership, which may not be able to participate otherwise due to economic constraints, to participate to ensure that their interests are heard and protected.

8. As RESA's positions are determined by the consensus of its members, RESA's interests in this proceeding are not adequately represented by other parties, including other

RESA members that may participate individually, non-RESA EGSs or other marketer trade associations with memberships different than RESA's.

9. RESA supports Duquesne's plan for Large C&I customers but, as stated above, does not agree that Duquesne's plans, as proposed, will promote retail competition for residential and Small C&I customers. RESA also submits that the plans for these customers do not comply with the "prevailing market prices" standard² of the Electricity Generation Customer Choice and Competition Act, and that these plans are not consistent with the Commission's recently issued Advance Notice of Final Rulemaking ("ANOFR") concerning post-transition period Default Service. More specifically:

(a) RESA opposes Duquesne's non-competitive wholesale procurement plan for residential and Small C&I customers, including the methodologies for establishing the fixed rates and the two annual adjustments for Small C&I customers;

(b) RESA supports the elimination of supply related demand charges and declining energy block rates immediately, or as soon as reasonably possible;

(c) RESA supports Duquesne's purchase of receivables program, regular meetings with EGSs and improved communications among Duquesne's employees concerning Code of Conduct issues, but RESA submits that Duquesne's existing Code of Conduct should be strengthened, primarily with respect to affiliate relationships and transactions, to provide a more level playing field between Duquesne-affiliated EGS(s) and non-affiliated EGSs, which will promote the development of retail competition in Duquesne's market;

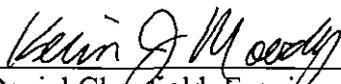
² 66 Pa. C.S. § 2807(e)(3).

(d) RESA does not agree with Duquesne's analyses of the cost allocation procedures of the Duquesne companies and Duquesne's supply contract with DP; and

(e) RESA submits that Duquesne's Plan should be modified to include other measures to promote the development of retail competition for all customers in Duquesne's service territory, including a bill ready billing option.

WHEREFORE, the Retail Energy Supply Association respectfully requests that it be permitted to intervene and be granted party status in the above-captioned proceeding.

Respectfully submitted,



Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
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213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7160

Attorneys for Retail Energy Supply
Association

Date: February 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Petition to Intervene upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: February 26, 2007



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Re: Petition of Duquesne Light Company for Approval of
Default Service Plan for the Period January 1, 2008
through December 31, 2010

P-000-72247

Dear Secretary McNulty:

Enclosed for filing please find the original and three copies of Direct Energy Services, LLC's Prehearing Memorandum in the above-referenced matter. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Certificate of Service (w/encs)

HAR:71572.1/DIR023-242252

81

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

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PREHEARING MEMORANDUM OF DIRECT ENERGY SERVICES, LLC

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and Your Honor's prehearing conference notice, Direct Energy Services, LLC ("Direct Energy") submits this prehearing memorandum.

I. HISTORY OF PROCEEDING

ORIGINAL

On January 25, 2007, Duquesne requested approval of its provider of last resort ("POLR"), or Default Service Plan, for the period from January 1, 2008 through December 31, 2010 ("POLR IV Plan"), composed of different plans for residential customers, small commercial and industrial ("Small C&I") customers, and large commercial and industrial ("Large C&I") customers. Duquesne proposes: (i) a three-year fixed rate for residential customers; (ii) fixed annual rates for 2008, with annual adjustments for 2009 and 2010, for Small C&I customers; and (iii) real time hourly market price service, with no fixed price service ("FPS") option, for Large C&I customers.

Duquesne's initial fixed rates for residential and Small C&I customers are based upon Duquesne's adjustment of the prices resulting from wholesale solicitations for Default Service supply for residential and/or small C&I customers in Pennsylvania and other states, including New Jersey, Maryland and Illinois. Duquesne proposes to obtain Default Service supply from its

affiliate, Duquesne Power ("DP"), rather than directly through a competitive auction or RFP process.

Direct Energy, a Commission-licensed electric generation supplier ("EGS"), petitioned to intervene in this matter to protect its interests in providing service to retail customers in Duquesne's service territory during 2008-2010. A number of other EGSs and other parties have sought to intervene as well, and Direct Energy has participated in discussions with interested stakeholders prior to this prehearing conference.

II. STATUS OF SETTLEMENT DISCUSSIONS AND DISCOVERY

Although Direct Energy has not been invited to participate in any settlement discussions, Direct is willing to engage in settlement discussions with other parties on all issues that affect its interests in this proceeding. Direct Energy intends to engage in informal and formal discovery as it deems necessary. Direct Energy understands that Duquesne proposes that the modifications of the Commission's discovery rules adopted in the Duquesne/Macquarie merger proceedings be adopted in this proceeding as well, and Direct does not oppose those modifications.

III. PROPOSED LITIGATION SCHEDULE

Direct Energy does not object to the revised proposed litigation schedule circulated by Duquesne on February 22, 2007.

IV. FACTUAL AND LEGAL ISSUES

Direct Energy intends to coordinate its litigation with other parties with similar interests. Direct Energy submits that Duquesne's Default Service procurement plan for residential and Small C&I customers, and the manner in which Duquesne has established the initial fixed rates and the annual adjustments for Small C&I customers, do not comply with the prevailing market prices requirement of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2807(e)(3). Direct Energy submits that Default Service rates for residential and Small

C&I customers must be based upon competitive solicitations and adjusted more frequently than proposed by Duquesne to comply with the Act, such as quarterly for residential customers and monthly for Small C&I customers.

Direct Energy reserves the right to address other issues raised by other parties as they may affect Direct Energy's interests in this matter.

V. WITNESSES AND SUBJECTS OF TESTIMONY

Direct Energy has not yet determined whether it will address the issues through its own witnesses and/or through witness(es) sponsored jointly with other parties.

Respectfully submitted,



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Kevin J. Moody, Esquire
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213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7160

Date: February 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Senior Attorney
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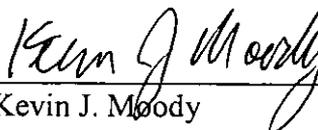
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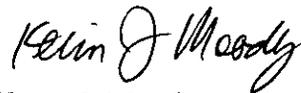
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If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Certificate of Service (w/encs)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

**PREHEARING MEMORANDUM OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, Section 5.222 of the Commission's regulations, 52 Pa. Code § 5.222, and Your Honor's prehearing conference order issued February 6, 2007, the Retail Energy Supply Association ("RESA") submits this Prehearing Memorandum.

I. HISTORY OF PROCEEDING

ORIGINAL

On January 25, 2007, Duquesne filed a petition requesting approvals to implement its default service plan for the period from January 1, 2008 through December 31, 2010 ("Default Service Plan" or "Plan"), which consists of three different rate plans for each major customer group:

- For residential customers, a three-year fixed rate, and the phase-out (by 12/31/2009) of declining second energy blocks for residential heating customers.
- For small commercial and industrial ("Small C&I") customers, fixed annual rates for 2008, with annual adjustments for 2009 and 2010 based upon changes in an annual forward market price index, as well as the phase-out (by 12/31/2009) of supply related demand charges and declining energy blocks for Rate GM/GMH customers.
- For large commercial and industrial ("Large C&I") customers, real time hourly market price service as the default service beginning January 1, 2008, with no fixed price service ("FPS") option, which is consistent with the May 31, 2007 expiration of Duquesne's current FPS option.

However, the rate plans for residential and Small C&I customers are not based upon a competitive auction or RFP process, but upon rates established by Duquesne's review and

adjustment of the results of wholesale solicitations for full requirements Default Service supply for residential and/or small C&I customers in several states, including Pennsylvania, New Jersey, Maryland and Illinois. Duquesne's affiliate, Duquesne Power ("DP"), will obtain the actual Default Service supply for residential and Small C&I customers through wholesale market purchases in PJM.

RESA is a non-profit organization and trade association of retail energy suppliers who share the common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than regulated utility structures. Virtually all RESA members are electric generation suppliers ("EGSs") licensed to sell electric energy in the markets of Pennsylvania's major electric distribution companies ("EDCs"), including the Duquesne Light Company ("Duquesne" or "Company") service territory. RESA's members are actual or potential participants in Duquesne's retail electric market. RESA is a separate legal entity from its membership, does not represent any specific member, and is authorized by its membership to represent members' consensus interests in this matter.¹

This proceeding will determine the rates, terms and conditions of Default Service in Duquesne's service territory against which RESA's members must compete to provide electric generation and related services to retail customers during 2008-2010. Accordingly, RESA intervened in this matter to protect the interests of RESA and its members in providing service to retail customers in Duquesne's service territory during 2008-2010.

¹ RESA's members include Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The opinions expressed in this filing may not represent the view of all members of RESA.

II. FACTUAL AND LEGAL ISSUES

RESA supports Duquesne's plan for Large C&I customers, but not the plans for residential and Small C&I customers. RESA intends to coordinate its litigation with its individual member company parties and other parties with similar interests, and intends to address the following factual and legal issues:

1. Whether Duquesne's non-competitive wholesale procurement plan for residential and Small C&I customers, and the methodologies for establishing the fixed rates and the two annual adjustments for Small C&I customers, comply with the "prevailing market prices" standard of Section 2807(e)(3) the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2807(e)(3).
2. Whether the plans for residential and Small C&I customers are consistent with the Commission's recently issued Advance Notice of Final Rulemaking ("ANOFR") concerning post-transition period Default Service.
3. Whether supply related demand charges and declining energy block rates for residential and Small C&I customers should be eliminated sooner than proposed by Duquesne.
4. Whether Duquesne's existing Code of Conduct should be strengthened, primarily with respect to affiliate relationships and transactions, to provide a more level playing field between Duquesne-affiliated EGS(s) and non-affiliated EGSs, to promote the development of retail competition in Duquesne's market.
5. Whether the cost allocation procedures of the Duquesne companies and/or Duquesne's supply contract with DP provide unlawful competitive advantages to Duquesne and its affiliates, particularly its EGS-affiliate, Duquesne Light Energy.
6. Whether Duquesne's Plan should be modified to include other measures to promote the development of retail competition for all customers in Duquesne's service territory, including a bill ready billing option.

RESA reserves the right to address other issues raised by other parties as they may affect RESA's interests in this matter.

III. PROPOSED LITIGATION SCHEDULE

RESA participated in a conference call on February 21, 2007 with other parties to develop a proposed litigation schedule. Although RESA believes that an accelerated schedule is not necessary and may be counter productive to a negotiated resolution of this matter, RESA does not object to the proposed schedule included in Duquesne's prehearing memorandum.

IV. STATUS OF SETTLEMENT DISCUSSIONS

RESA is willing to engage in settlement discussions with all parties concerning all issues that affect its interests in this matter. As of the prehearing conference, RESA has not engaged in settlement discussions with Duquesne, although certain RESA members have. RESA is encouraged by Duquesne's statement during the February 21 conference call concerning its intentions and willingness to engage in settlement discussions, and looks forward to beginning these discussions as soon as possible.

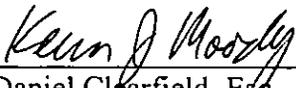
V. STATUS OF DISCOVERY

RESA intends to take advantage of Duquesne's offer of informal discovery, and will engage in formal discovery as it deems necessary. RESA has no objection to the adoption of the same modifications to the Commission's discovery rules as adopted in the Duquesne/Macquarie merger proceedings, which RESA understands Duquesne intends to propose in this proceeding.

VI. WITNESS(ES)/SUBJECT(S) OF TESTIMONY

RESA continues to evaluate Duquesne's prepared testimony and has not yet decided whether it will address the issues through its own witness(es) and/or through witness(es) sponsored jointly with other parties.

Respectfully submitted,



Daniel Clearfield, Esq.
Kevin J. Moody, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
213 Market Street, 9th Fl.
Harrisburg, PA 17108-0865
(717) 237-7160

Dated: February 26, 2007

Attorneys for the Retail Energy Supply
Association

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA E-MAIL & FIRST CLASS MAIL

David B. MacGregor, Esquire
Post and Schell, PC
Four Penn Center
1600 JFK Blvd.
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Michael W. Gang, Esquire
Andrew S. Tubbs, Esquire
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Tanya J. McCloskey, Esquire
Darryl Lawrence, Esquire
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Johnnie Simms, Esquire
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Scott Ruben, Counsel
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Joseph L. Vullo, Esquire
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John E. McCaffrey, Esquire
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Harrisburg, PA 17101-1503

George Jugovic, Jr.
Senior Attorney
PennFuture
425 Sixth Ave., Suite 2770
Pittsburgh, PA 15219

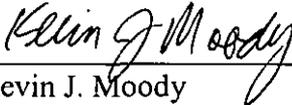
Adrian D. Newall
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John Hanger, Esquire
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David I. Fein
Senior Regulatory Counsel
Constellation Energy
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Date: February 26, 2007



Kevin J. Moody

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Kevin J. Moody
Direct Dial: (717) 237-7187
Direct Fax: (717) 237-2767
E-mail: kmoody@wolfblock.com

ORIGINAL

February 26, 2007

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

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2007 FEB 26 PM 3:32
PA PUC
SECRETARY'S BUREAU

Re: Petition of Duquesne Light Company for Approval of
Default Service Plan for the Period January 1, 2008
through December 31, 2010

P-00072247

Dear Secretary McNulty:

Enclosed for filing please find the original and three copies of Direct Energy Services, LLC's Petition to Intervene and Protest in the above-referenced matter. As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Certificate of Service (w/encs)

DOCUMENT FOLDER

HAR:71573.1/DIR023-242252

79

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

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SECRETARY'S BUREAU

PETITION TO INTERVENE AND PROTEST
OF DIRECT ENERGY SERVICES, LLC

ORIGINAL

Pursuant to 52 Pa. Code §§ 5.51 - 5.53 and 5.71-5.75, Direct Energy Services, LLC ("Direct Energy") submits this petition seeking to intervene and participate in Duquesne Light Company's ("Duquesne") POLR IV proceeding. In support of its intervention, participation and protest, Direct Energy states as follows:

1. Direct Energy is licensed by the Commission at No. A-110164 to provide electricity and related services to all classes of retail customers throughout Pennsylvania, including Duquesne's service territory. Direct Energy is an indirect wholly-owned subsidiary of Centrica plc, a leading provider of energy and other energy-related services to approximately 18 million homes and business worldwide representing over 30 million customer relationships. In North America, Direct Energy has over 3 million gas and electricity customers, and over 5 million customer relationships. Direct Energy has a unique business model, and extensive experience in providing energy services to residential customers, small and large commercial and industrial ("C&I") customers, and government entities. The majority of Direct's customers are residential and mass market (small business) customers. Direct offers retail energy customers many products, including fixed-price and price protection programs.

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FEB 27 2007

2. On January 25, 2007, Duquesne requested approval of its provider of last resort ("POLR"), or Default Service Plan, for the period from January 1, 2008 through December 31, 2010 ("POLR IV Plan"), composed of different plans for residential customers, small commercial and industrial ("Small C&I") customers, and large commercial and industrial ("Large C&I") customers. Duquesne proposes: (i) a three-year fixed rate for residential customers; (ii) fixed annual rates for 2008, with annual adjustments for 2009 and 2010, for Small C&I customers; and (iii) real time hourly market price service, with no fixed price service ("FPS") option, for Large C&I customers. Duquesne's initial fixed rates for residential and Small C&I customers are based upon Duquesne's adjustment of the prices resulting from wholesale solicitations for Default Service supply for residential and/or small C&I customers in Pennsylvania and other states, including New Jersey, Maryland and Illinois. Duquesne proposes to obtain Default Service supply from its affiliate, Duquesne Power ("DP"), rather than directly through a competitive auction or RFP process.

3. Pursuant to 52 Pa. Code § 5.72(a)(2), a person who has an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission" may intervene in the proceeding.

4. Direct Energy has a direct interest in the outcome of this proceeding. Although Direct Energy currently serves no customers in Duquesne's market, Direct Energy is licensed by the PUC to do so and intends to do so if it believes the market structure will support sustained and robust electric competition, especially among residential and Small C&I customers. Direct Energy has been certified technically by Duquesne Light to provide competitive electric services in Duquesne's service territory. Direct Energy has participated directly, or through a trade

association (RESA), in Duquesne's prior POLR and other proceedings which have affected the rates, terms and conditions of Default Service in Duquesne's service territory. The Commission's action in this proceeding will determine the rates, terms and conditions of Duquesne's Default Service during the period 2008 -2010 against which Direct Energy must compete and will have a significant effect on the level of retail competition that will be experienced in the Duquesne market during this period and, thus, on the ability of Direct Energy to do business in Duquesne's market. In view of Direct's unique business model, Direct's interests in this proceeding cannot be adequately represented by other EGS parties with different business models and different customer target markets. Direct's interests are also not adequately represented in this proceeding by a trade association (RESA) to which Direct Energy belongs, and which has also requested to intervene, because RESA's positions represent the consensus of its members and not necessarily the position of any particular member. Accordingly, Direct Energy's interest clearly satisfies the requirements of 52 Pa. Code § 5.72(a)(2).

5. In addition, the Commission's regulation provides that a person who has "[a]nother interest of such nature that participation of the petitioner may be in the public interest" may intervene in the proceeding. 52 Pa. Code § 5.72(a)(3). As a member of the Centrica group of companies providing energy and energy related services to nearly 18 million homes and businesses worldwide, Direct Energy has the experience and resources to aid the Commission in carrying out its duties and responsibilities under the Electricity Generation Customer Choice and Competition Act¹ to ensure that the goals of the Act are met. Accordingly, Direct Energy's participation in this proceeding is clearly in the public interest.

¹ 66 Pa. C.S. §§ 2801-2812 ("Electric Choice and Competition Act").

6. Direct Energy supports the Large C&I customer portion of Duquesne's Plan and the purchase of receivables program, but submits that Duquesne's methodologies for establishing the initial fixed rates for residential and Small C&I customers, as well as the annual adjustments for Small C&I customers, are contrary to the prevailing market prices requirement of Section 2807(e)(3) of the Electric Choice and Competition Act. Direct Energy also submits that the residential and Small C&I customer portion of Duquesne's Plan is inconsistent with the Commission's Advance Notice of Final Rulemaking ("ANOFR") concerning Default Service after the expiration of rate caps. Direct Energy submits that Default Service rates for residential and Small C&I customers must be based upon competitive solicitations and adjusted more frequently than proposed by Duquesne to comply with the Section 2807(e)(3) of the Electric Choice and Competition Act.

7. Direct Energy will be represented in this proceeding by the following counsel:

Daniel Clearfield, Esquire
Kevin Moody, Esquire
Wolf, Block, Schorr & Solis-Cohen LLP
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7160
Fax: (717) 237-7161
dclearfield@wolfblock.com
kmoody@wolfblock.com

8. Copies of all documents filed in this proceeding should also be served on:

Frank Lacey
Director, Government and Regulatory Affairs
Direct Energy
42 Lintel Drive
McMurray, PA 15317
Phone: 724-941-2149
frank.lacey@directenergy.com

WHEREFORE, for all of the foregoing reasons, Direct Energy Services, LLC respectfully requests that its Petition to Intervene in this proceeding be granted.

Respectfully submitted,



Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr & Solis-Cohen LLP
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7160

Date: February 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Petition to Intervene and Protest upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA E-MAIL & FIRST CLASS MAIL

David B. MacGregor, Esquire
Post and Schell, PC
Four Penn Center
1600 JFK Blvd.
Philadelphia, PA 19103-2921

Michael W. Gang, Esquire
Andrew S. Tubbs, Esquire
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Washington, DC 20036-3816

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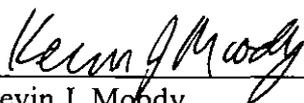
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Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

David I. Fein
Senior Regulatory Counsel
Constellation Energy
111 Market Place
Suite 500
Baltimore, MD 21202

Date: February 26, 2007



Kevin J. Moody



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 28, 2007

Commonwealth Reporting Company
700 Lisburn Road
Camp Hill, PA 17011

Re: Petition of Duquesne Light Company for Approval of Default Service Plan
for the Period of January 1, 2008 Through December 31, 2010

Docket No. P-00072247

To Whom It May Concern::

Enclosed please find an original and one (1) copy of the **Prehearing Memorandum of the Office of Trial Staff (OTS)** in the above-captioned proceeding.

DOCUMENT
FOLDER

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff
Attorney ID #29363

Enclosure

CDS/clp

c: Honorable Larry Gesoff

BA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Default Service Plan : Docket No. P-00072247
for the Period of January 1, 2008 Through :
December 31, 2010 :

DOCUMENT
FOLDER

PREHEARING MEMORANDUM
OF THE
OFFICE OF TRIAL STAFF

DOCKETED
MAR 9 - 2007

TO ADMINISTRATIVE LAW JUDGE LARRY GESOFF:

The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits the following Prehearing Memorandum in the above-captioned proceeding in response to Your Honor’s Prehearing Conference Order issued February 6, 2007.

The Office of Trial Staff prosecutor in this proceeding is Charles Daniel Shields. All correspondence directed to the Office of Trial Staff regarding this instant petition proceeding should be addressed as follows:

**Charles Daniel Shields, Senior Prosecutor
Office of Trial Staff
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265**

The OTS fax number is (717) 772-2677. Senior Prosecutor Shields can be reached directly during normal business hours by telephone at (717) 783-6151 and by electronic mail at chshields@state.pa.us.

Per the Corrected Hearing Notice of the Office of Administrative Law Judge dated February 16, 2007, the Prehearing Conference is scheduled for 10:30 a.m. on Wednesday, February 28, 2007, in Hearing Room 1 in the Commonwealth Keystone Building for the Harrisburg parties and the 11th Floor Hearing Room in the Pittsburgh State Office Building for ALJ Gesoff and the Pittsburgh parties.

I. INTRODUCTION

On January 25, 2007, Duquesne Light Company (“Duquesne” or “Company”) filed a Petition For Approval Of Default Service Plan For The Period January 1, 2008 Through December 31, 2010. Duquesne also submitted Direct Testimony with the Petition and requested expedited Commission consideration. On February 6, 2007, OTS file a Notice of Appearance for this proceeding. On February 15, 2007, OTS submitted Interrogatories OTS-1 through OTS-13 to Duquesne. OTS Senior Prosecutor Shields will fully participate in the Prehearing Conference on Wednesday.

II. ISSUES

The following list represents OTS’s preliminary determination of the potential major issues in this case. The listing is as complete as can be made by the OTS at this time. OTS specifically reserves the right to address other issues, as it deems appropriate

when any such relevant issues arise. This present listing of OTS potential issues are as follows:

- Applicability of a fixed rate vs. a variable rate
- Term of any fixed rate
- Applicability and calculation of the Market Rate Adjustment
- Recovery of charges in Transmission Service Charge

III. WITNESS

It is currently expected that OTS may call the following expert witness, without being limited thereto:¹

Michael Gruber, Fixed Utility Valuation Engineer
mgruber@state.pa.us

OTS reserves the right to call additional witnesses or delete the name of the witness listed above. The above listing is provided without the benefit of complete discovery or analysis of the positions of potential other parties to this proceeding. Prepared direct testimony and brief additional live direct testimony may be submitted by this OTS witness as issues are identified and developed during the course of the proceeding.

In addition to the direct testimony and exhibits presented by this OTS witness and the evidence adduced through cross-examination of witnesses for Duquesne and other

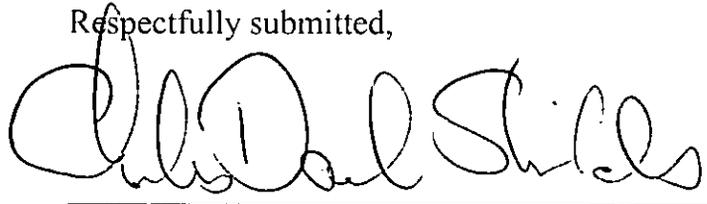
parties, OTS intends to rely upon the Duquesne Petition, answers to data requests and interrogatories, annual reports and other documents submitted to the Commission, other relevant Commission filings, any other relevant Commonwealth agency letters or reports, general financial market information sources and other public documents and reports.

IV. CONCLUSION

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs, OTS will accept electronic delivery of documents with a follow-up hard copy provided by regular first class mail.

OTS represents that we will make all good faith efforts to attempt to successfully resolve this matter through settlement. In the event such discussions and/or any other efforts fail to result in a full and complete resolution of the matter, OTS is prepared to fully litigate this case.

Respectfully submitted,

A handwritten signature in black ink, reading "Charles Daniel Shields". The signature is written in a cursive style and is positioned above a horizontal line.

Charles Daniel Shields
Senior Prosecutor
Office of Trial Staff

Dated: February 26, 2007

¹ OTS would ask each active party to include the e-mail address of this OTS Technical Witness in their respective distribution list (in addition to OTS Senior Prosecutor Shields) for **any and all** e-mail messages distributed regarding this proceeding.

PROPOSED SCHEDULE²

Petition of Duquesne Light Company :
for Approval of Default Service Plan : Docket No. P-00072247
for the Period of January 1, 2008 Through :
December 31, 2010 :

March 29 Direct testimony of opposing parties due In Hand
April 13 Rebuttal testimony due In Hand
April 20 Surrebuttal testimony due In Hand
April 26-27 Evidentiary hearings
May 14 Main Briefs are due In Hand
May 22 Reply Briefs are due In Hand

*Electronic or fax service on the due date will satisfy the “in-hand” requirement with a follow-up hard copy is promptly sent by first-class mail.

² It is our understanding that this proposed schedule is acceptable to the parties and the presiding Administrative Law Judge

OALJ Hearing Report

Please check Those Blocks Which Apply

Docket No.:	P-00072247		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Case Name:	Petition of Duquesne Light Company	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	HBG	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
Date:	February 28, 2007			
		RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Larry Gesoff	DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	DATE:		
<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JUL 3 2007</p> <p style="text-align: center;">PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU</p>		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		
		DOCUMENT FOLDER		

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Charles Daniel Shields Telephone: (717) 783-6151	PO Box 3265 Harrisburg PA 17105-3265 E-mail Address: cshields@state.pa.us	Office of Trial Staff Fax Number: (717) 720-2677
TODD S. STEWART Harrisburg Telephone: 717 236 1300	PO Box 1778 100 N 10th St Harrisburg PA 17101 E-mail Address: tstewart@hust-law.com	Dominion Energy Fax Number: 717 236 4841
Brian F. Kripe Buchanan Ingersoll & Rooney Telephone: 717-237-4820	One South Market Square 213 Market Street, 3rd Floor Harrisburg PA 17101 E-mail Address: brian.kripe@bipr.com	Reliant Energy, Inc. Fax Number: 717-233- 0852

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address	Who are you representing?
Kerri J Moody Wolf, Block, Schorn and Solis-Goben LLP	213 Market St, 9th Fl. P.O. Box 805 Harrisburg, PA 17108-805 City State Zip	RESA Direct Energy
Telephone: 717-237-7187	E-mail Address: kmoody@wolfblock.com	Fax Number: 717-237-2767
Sharon E. Webb	300 N. 2nd St, Ste 1102 Commerce Bldg City State Zip Harrisburg PA 17101	OSBA
Telephone: (717) 783-2525	E-mail Address: swebb@state.pa.us	Fax Number: (717) 783-2831
Adam L. Benshoff	100 Pine Street City State Zip Harrisburg PA 17108	OII
Telephone: (717) 237-5298	E-mail Address: abenshoff@mcr.com	Fax Number: (717) 237-5300
DAVID EVRARD	555 WALNUT ST., 5th Floor City State Zip HARRISBURG PA 17101-1923	OCA
Telephone:	E-mail Address: devrard@paoca.org	Fax Number: 717-783-7152
David MacGregor Post & Schell 215-587-1197	Four Penn Center 1600 JFK Blvd City State Zip Philadelphia PA 19103	Duquesne Light Co.
Telephone:	E-mail Address: dmaGregor@postschell.com	Fax Number:
ANTHONY D. KANA GY POST & SCHELL 717-612-6034	17 N. 2nd St. 12th Floor City State Zip Harrisburg PA 17107	Duquesne Light Company
Telephone:	E-mail Address: akana@postschell.com	Fax Number: 717-731-1985
Telephone:	E-mail Address:	Fax Number:
Telephone:	E-mail Address:	Fax Number:

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

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Please check Those Blocks Which Apply

Docket No.:	P-00072247		YES	NO
		Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Petition of Duquesne Light Company	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Pittsburgh	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
Date:	February 28, 2007	Estimated Add'l Days:	April 26-27, 2007 in Harrisburg	
ALJ:	Larry Gesoff	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting Company	DATE:	May 14 + 22, 2007	
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAR 8 2007

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Name and Telephone Number	Address			Who are you representing?
Michael W. Gang, Esquire Anthony Kanagy, Esquire	Post & Schell, P.C. 17 North Second Street, 12 th Floor			Duquesne Light Company
	City	State	Zip	
	Harrisburg	PA	17101-1601	
Telephone:	E-mail Address:			Fax Number:
David B. MacGregor, Esquire	Post & Schell, P.C., Four Penn Center, 1600 John F. Kennedy Blvd.			Duquesne Light Company
	City	State	Zip	
	Philadelphia	PA	19103-2808	
Telephone	E-mail Address:			Fax Number:
Gary A. Jack, Esquire	Duquesne Light Company 411 Seventh Avenue, 8-2			Duquesne Light Company
	City	State	Zip	
	Pittsburgh	PA	15219	
Telephone:	E-mail Address:			Fax Number:

RJP

Check this box if additional parties or attendees appear on back of form.

Karen Cross
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address			Who are you representing?
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Telephone:	E-mail Address:			Fax Number:
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Telephone:	E-mail Address:			Fax Number:



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
March 1, 2007

IN REPLY PLEASE
REFER TO OUR FILE

In Re: P-00072247

(SEE ATTACHED LIST)

Petition of Duquesne Light Company

For Approval of Default Services Plan for the Period January 1,
2008, through December 31, 2010

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearings
Date: Thursday, April 26, 2007
Friday, April 27, 2007
Time: 9:00 a.m.
Location: Hearing Room 4
Plaza Level
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Presiding: Administrative Law Judge Larry Gesoff
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: 412-565-3550
Fax: 412-565-5692

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MAR 2 - 2007

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988

pc: Judge Gesoff
Stacy Nolan, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

P-00072247 PETITION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF DEFAULT SERVICE PLAN FOR THE PERIOD JANUARY 1, 2008 THROUGH DECEMBER 31, 2010

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WASHINGTON DC 20006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Default Service Plan for : Docket No. P-00072247
the Period January 1, 2008 Through :
December 31, 2010 :

**PREHEARING MEMORANDUM
OF DUQUESNE INDUSTRIAL INTERVENORS**

**DOCUMENT
FOLDER**

The Duquesne Industrial Intervenors ("DII") hereby submit this Prehearing Memorandum in the above-captioned proceeding. DII intends to participate in this proceeding as an "active" party.

I. HISTORY OF THE PROCEEDING

On January 25, 2007, the Duquesne Light Company ("Duquesne" or "Company") submitted to the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of Default Service Plan ("Petition"). The Petition indicates that the request is submitted pursuant to 52 Pa. Code § 5.41 and requests expedited approval so that the Commission may rule on the Petition no later than July 1, 2007.

On February 26, 2007, DII filed an Answer in Opposition and Petition to Intervene in this proceeding. A description of DII is set forth in Paragraph 1 of DII's Answer in Opposition and Petition to Intervene. DII's Petition to Intervene is pending, and awaits Administrative Law Judge ("ALJ") Larry Gesoff's disposition.

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PUC

II. ANTICIPATED ISSUES AND SUB-ISSUES

DII's preliminary review of the Company's filing indicates the need for Commission investigation into at least the following issues which are discussed in greater detail in DII's Answer in Opposition and Petition to Intervene:

- a. Duquesne's failure to include a fixed price service alternative for Large Commercial and Industrial ("Large C&I") customers;
- b. Duquesne's failure to include a monthly price service option for Large C&I customers;
- c. Whether the addition of the \$3.97/MWh "retail adder" will cause Duquesne to collect more than its actual costs to provide Provider of Last Resort ("POLR") service; and
- d. Whether Duquesne has provided sufficient justification for its request to have this POLR plan trump any future POLR Regulations or, in the alternative, whether consideration of the Large C&I plan should be delayed until the final default service regulations and policy statement are issued.

DII anticipates pursuing these issues during this proceeding, and reserves the right to raise and address other issues of concern and to respond to issues raised by other parties.

III. PROPOSED WITNESSES

DII is in the process of evaluating whether it will sponsor testimony in this proceeding. In the event that DII decides to sponsor testimony, it will inform the parties and the ALJ as soon as possible of the intended witness(es) and topics of testimony. DII also intends to participate in this proceeding through the submission of discovery, the cross-examination of other parties' witnesses, participation in settlement negotiations as they occur, and the submission of briefs, exceptions and reply exceptions, as necessary.

IV. PROPOSED SCHEDULE AND DISCOVERY RULES

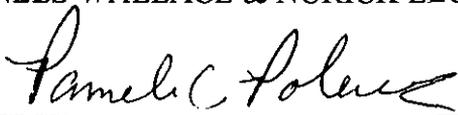
DII is working with the parties to develop an appropriate procedural schedule. DII will cooperate to develop discovery rules in accordance with the Commission's regulations and any ALJ directives.

V. POSSIBILITY OF SETTLEMENT

DII is willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. 78276)
Adam L. Benshoff (Pa. I.D. 200498)
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Fax: (717) 237-5300

Counsel to the Duquesne Industrial Intervenors

Dated: February 26, 2007



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

March 12, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

**DOCUMENT
FOLDER**

**Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the
Period January 1, 2008 Through December 31, 2010; Docket No. P-00072247**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan in the above-referenced proceeding. Also enclosed are the original and three copies of the required Notice to Plead.

As shown by the attached Certificate of Service, all parties have been duly served. Please date stamp the extra copies of this transmittal letter, the Motion and the Notice, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to the Duquesne Industrial
Intervenors

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SECRETARY'S BUREAU

PCP/nk

Enclosures

c: Honorable Larry Gesoff (via e-mail and first class mail)
Certificate of Service

BTL

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Default Service Plan for : Docket No. P-00072247
the Period January 1, 2008 Through :
December 31, 2010 :

NOTICE TO PLEAD

Pursuant to Section 5.103(b) of the Commission's Regulations, 52 Pa. Code §5.103(b), all parties are hereby provided notice that any response to the enclosed Motion of the Duquesne Industrial Intervenors to Sever and Postpone Consideration of the Large Commercial and Industrial Default Service Plan in the above-captioned matter must be submitted within 20 days of service of the motion.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*

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Adam L. Benshoff (Pa. I.D. 200498)
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Fax: (717) 237-5300

Counsel to the Duquesne Industrial Intervenors

Dated March 12, 2007

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company
for Approval of Default Service Plan for
the Period January 1, 2008 Through
December 31, 2010

Docket No. P-00072247

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**MOTION OF DUQUESNE INDUSTRIAL INTERVENORS TO
SEVER AND POSTPONE CONSIDERATION OF LARGE
COMMERCIAL AND INDUSTRIAL DEFAULT SERVICE PLAN**

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, 52 Pa. Code § 5.103, the Duquesne Industrial Intervenors ("DII") hereby submit this Motion to Sever and Postpone Consideration of the Large Commercial and Industrial Default Service Plan submitted by Duquesne Light Company ("Duquesne" or "Company") in the above-referenced matter. Specifically because the proposal submitted by Duquesne is in conflict with the design of the default service options for Large Commercial & Industrial ("Large C&I") customers that is permitted under the proposed final regulations issued in the recently-issued Advance Notice of Final Rulemaking Order entered at Docket No. L-00040169¹ and the proposed Policy Statement issued by the Commission regarding default service at Docket No. L-00070183², DII respectfully submits that consideration of Duquesne's proposal should be stayed pending finalization of these two Commission actions. This delay will result in a more efficient use of the parties' and the Commission's resources once the permissible

¹ Rulemaking re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2), Docket No. L-00040169, Advance Notice of Final Rulemaking Order (Feb. 9, 2007) ("ANOFR").

² Default Service and Retail Electric Markets, Docket No. L-00070183, Proposed Policy Statement (Feb. 9, 2007) (cont'd footnote)

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structure of the default service plan is finalized by the Commission. Furthermore, because Duquesne's proposal simply continues the hourly-priced option as the only default service option for customers, the Company is not harmed by severing and delaying consideration of this aspect of its proposal. In support hereof, DII states:

1. On January 25, 2007, the Company submitted its proposed default service plan for the period January 1, 2008, through December 31, 2010. As part of the default service plan, the Company proposed to offer only hourly-priced service for Large C&I customers on Rate Schedules GL, GLH, L and HVPS during the identified default service period. Duquesne also requested for its default service plan to be grandfathered from compliance with any subsequently finalized default service regulations through December 31, 2010.

2. The Duquesne Industrial Intervenors submitted a timely Petition to Intervene on February 26, 2007, requesting to participate in the proceeding. At the Prehearing Conference held on February 28, 2007, DII's Petition to Intervene was granted.

3. On February 9, 2007, the Commission issued an ANOFR regarding default service plans under Section 2807(e)(2) of the Public Utility Code. The proposed final regulations allow default service providers to offer customers with registered peak demands in excess of 500 kW a Price to Compare ("PTC") that changes on a monthly basis, or more frequently. See ANOFR, p. 19.

4. Similarly, on February 9, 2007, the Commission issued the Proposed Policy Statement regarding default service plans that, in addition to the monthly PTC, authorizes the default service provider to propose to offer fixed price service for longer durations to Large C&I customers. See Policy Statement, Annex A, § 69.1805.

(continued footnote)
("Policy Statement").

5. In prior default service proceedings, DII has consistently asserted that Duquesne should offer a one-year (or longer) fixed price service option for customers on Rate Schedules GL, GLH, L and HVPS. In conjunction with other industrial user groups throughout the state and the Industrial Energy Consumers of Pennsylvania ("IECPA"), DII submitted Comments to the Commission's ANOFR and Proposed Policy Statement setting forth this position. See IECPA et al., Comments to ANOFR, Docket No. L-00040169, pp. 3-9 (attached as Exhibit A).

6. On March 2, 2007, the Company also submitted Comments on the ANOFR and Policy Statement. The Company asserted that the new regulations should be effective in 2011, to coincide with the filing of the Company's next default service plan. See Duquesne Comments to ANOFR and Policy Statement, Docket Nos. L-00040169, pp. 4-5 and Docket No. L-00070183 (attached hereto as Exhibit B).

7. In conjunction with IECPA, et al., DII will submit Reply Comments regarding the ANOFR and Policy Statement on March 23, 2007, opposing Duquesne's request to delay applicability of the final default service regulations in its territory for the Large C&I plan.

8. The issuance of the ANOFR and Proposed Policy Statement significantly alter the backdrop against which Duquesne, the other interested parties and the Commission must evaluate the default service options for the Company's Large C&I customers for the period from January 1, 2008, through December 31, 2010. To promote economic development and the continued viability of industry in the Pittsburgh area, the Company should use all flexibility that it is granted by the final default service regulations and Policy Statement to offer rate options in addition to hourly-priced service to its Large C&I customers. At a minimum, DII believes that Duquesne should implement the monthly PTC option as outlined in the ANOFR to ensure that its Large C&I customers are not disadvantaged in comparison to customers in the remainder of the

state, most of which continue to pay annual, fixed and capped generation supply rates. A monthly PTC could be an effective complement to the current options available to Large C&I customers in the Duquesne market to provide a measure of price stability during times when a customer must return to default service for a short (or long) time due to EGS delivery failures or other events.

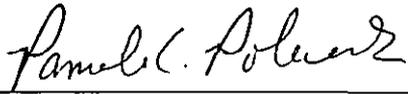
9. Under the Provider of Last Resort ("POLR") III ruling, Large C&I customers will have hourly-priced service as their only default service option beginning on June 1, 2007. Because Duquesne proposes to continue this structure for the next default service period, it has *not entered into a long-term contract with any wholesale supplier to provide a fixed price for the Large C&I default service plan.* This makes the Large C&I plan fundamentally different from the default service plans for the Small Commercial and Residential classes, for which continued expedited consideration and the suggested grandfathering may be appropriate. In addition, it places Duquesne at little (or no) financial risk if consideration of the Large C&I plan is delayed until the default service regulations and Policy Statement are finalized.

10. Administration efficiency supports delaying consideration of Duquesne's proposal until after the regulations are finalized. As set forth in DII's Petition to Intervene, DII will oppose any request for waiver of the application of the proposed regulations to the next default service plan. It makes little sense for the parties and the Commission to consider arguments regarding the permissible structure for Duquesne's plan in this proceeding when this precise issue remains pending before the Commission in the rulemaking and policy statement dockets that will be concluded shortly. The efficient use of both the Commission's and the parties' resources clearly support delaying consideration of Duquesne's proposal until after those documents are finalized.

WHEREFORE, for the reasons stated above, DII respectfully requests that this Honorable Commission grant the Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the Duquesne Industrial Intervenors

Dated: March 12, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RULEMAKING RE ELECTRIC :
DISTRIBUTION COMPANIES' : DOCKET NO. L-00040169
OBLIGATION TO SERVE RETAIL :
CUSTOMERS AT THE CONCLUSION :
OF THE TRANSITION PERIOD PURSUANT :
TO 66 PA C.S. § 2807(e)(2) :**

**COMMENTS OF INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA,
DUQUESNE INDUSTRIAL INTERVENORS, MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE, PENN POWER USERS GROUP,
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP, PP&L INDUSTRIAL
CUSTOMER ALLIANCE, AND WEST PENN POWER INDUSTRIAL INTERVENORS**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COMMENTS.....	3
A. Default Service Rate Design Should Include a Mandatory Long-Term Fixed-Rate Option for Large C&I Customers	3
1. A PTC Adjusted on a Monthly (or More Frequent) Basis Generally Does Not Satisfy C&I Customers' Business Planning Needs	3
2. The Competition Act Supports Approval of Long-Term, Fixed-Price Options for C&I Customers	5
B. The Commission Should Authorize the Use of Declining Block Rates and Demand Charges To Encourage Efficiency.....	9
C. For Larger EDCs, Transmission and Ancillary Services Costs Should Be Separately Stated from the PTC Consistent with the Underlying Demand and Energy Components of These Costs.....	12
D. Congestion Must Be Included in the Wholesale Generation Product Price and Excluded from Reconciliation through the PTC.....	15
E. The Commission Should Clarify That the Distribution Rate Should Be Reduced in an Amount Equal to any Default Service Costs That Are Reallocated to the Default Service Rate	16
F. Long-Term Bilateral Contracts with Affiliates Should Be Permitted Default Service Procurement Options	17
G. The Commission Must Provide Customers with Due Process and a Meaningful Opportunity To Be Heard in the Context of PTC Reconciliation Proceedings	19
H. Default Service Plans Should Not Include Highly Confidential Customer Information	21
I. Proper Implementation of Section 54.189(c) Is Necessary To Facilitate Shopping in the Post-Restructuring Period	23
III. CONCLUSION.....	25

I. INTRODUCTION

At its Public Meeting on February 8, 2007, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted an Advance Notice of Final Rulemaking Order ("Rulemaking Order") in the above-captioned proceeding. Pursuant to Section 2807(e)(2) of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), the Commission initiated this rulemaking proceeding to promulgate regulations defining the obligation of electric distribution companies ("EDCs") to serve electric retail customers at the conclusion of the restructuring transition periods. The Rulemaking Order sets forth proposed "provider-of-last-resort" ("POLR") regulations that have been revised to reflect comments received during the second public comment period that concluded on April 7, 2006. The Commission seeks public comment on the Rulemaking Order.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.") respectfully submit these comments. IECPA, et al., are ad hoc groups of large commercial and industrial ("C&I") customers receiving service from almost all EDCs in Pennsylvania. Because IECPA, et al. members use substantial volumes of electricity in their manufacturing and operational processes, electric costs represent a sizeable component of overall operating costs.

This proceeding represents one facet of the Commission's "comprehensive strategy for addressing retail rates in the context of expiring rate caps."¹ Given the direct and substantial impact that the expiration of rate caps will have on the cost of operating their respective manufacturing and production facilities, IECPA, et al. submit these Comments in order to highlight areas of particular concern to large C&I customers.² As detailed more fully herein, IECPA, et al. respectfully request that the Commission ensure that the final POLR regulations: (1) include a long-term (i.e., one year or longer), fixed-price default service pricing option; (2) preserve the use of declining block rates and demand charges; (3) ensure that transmission service and charges remain unbundled as required under Section 2804(3) of the Public Utility Code; (4) confirm that congestion is included in the wholesale suppliers' bids and will not be subject to reconciliation in the Price-to-Compare ("PTC"); (5) eliminate the current proposal for the Default Service Provider ("DSP") to include as part of its default service program a schedule identifying a customers' load sizes or their contract expiration dates; (6) enable DSPs to perform their duty to provide POLR serve at the lowest reasonable long-term costs by permitting them to enter into long-term contracts; (7) provide the public with timely notice and a meaningful opportunity to review periodic rate changes; and (8) confirm that the requirement to treat customers returning to default service as a "new applicant" does not require the customer to execute a new service agreement or permit the default service providers to impose additional credit or other requirements on the customer that would not have been required if the customer had remained on default service.

¹ See Default Service and Retail Electric Markets, Docket No. L-00070183, p. 2 (Proposed Policy Statement) (entered Feb. 8, 2007).

II. COMMENTS

A. **Default Service Rate Design Should Include a Mandatory Long-Term Fixed-Rate Option for Large C&I Customers.**

The Rulemaking Order revises Sections 54.187(b), (c), and (d) by eliminating the language mandating fixed-rate options and hourly rates for certain customer classes. See Rulemaking Order, p. 17. In lieu of these fixed-rate options and hourly rates, the Rulemaking Order proposes that each customer will have a single rate option (i.e., PTC) that would be adjusted periodically.³ Id. at 19. With respect to large C&I customers, the Rulemaking Order provides default service rates: "shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW...." See Section 54.187(j). In addition, revisions to Section 54.187(c) also eliminate "declining blocks" as well as demand charges from rate schedules. See Rulemaking Order, p. 17. Finally, the Rulemaking Order attempts to provide additional guidance on the allocation of cost elements through modifications to Section 54.187(d). See id.

The revisions to Section 54.187 set forth in the Rulemaking Order do not comport with the letter and spirit of the Competition Act. Accordingly, the PUC should modify the proposed POLR regulations and provide the clarification discussed below.

1. **A PTC Adjusted on a Monthly (or More Frequent) Basis Generally Does Not Satisfy C&I Customers' Business Planning Needs.**

From a C&I customer perspective, a default service rate that fluctuates on a monthly basis, or more frequently, is impractical, unreasonable, and, in some cases, infeasible. Many C&I customers have load profiles or production/manufacturing processes that prevent the

(continued footnote)

² Contemporaneous with these Comments, IECPA, et al. are filing Comments in the Proposed Policy Statement proceeding at Docket No. L-00070183.

utilization of a monthly pricing option. Moreover, not all C&I customers have the sophistication and resources to administer such an option efficiently. A rate that fluctuates on a monthly basis (or more frequently) is volatile and, as such, unpredictable. Due to its volatile and unpredictable nature, such a pricing option introduces significant uncertainty to customers' business planning and budgeting processes. As the costs of doing business in the Commonwealth continue to escalate, the pressure on Pennsylvania industry to remain competitive at home and abroad intensifies. A key component of C&I customers' respective strategies for maintaining and enhancing their competitive posture is energy cost management. The effective implementation of an energy cost management strategy, however, depends on C&I customers' ability to budget for anticipated future needs (e.g., capital investment, production, and staffing levels) and develop the means by which to fulfill those needs during their annual business planning cycles.

The usefulness of a business plan, however, depends on the underlying inputs. For energy-intensive C&I customers, a critical business plan input is anticipated energy costs. A monthly PTC, however, does not provide C&I customers with the level of certainty regarding energy costs necessary to plan for the future, even in the short-term. A default service rate that is constantly in flux is at odds with the typical C&I customer's annual business planning cycle. As a result, a monthly PTC will only frustrate C&I customers' efforts to manage energy costs, the success of which is integral to preserving and enhancing their competitiveness in the national and international marketplace. Accordingly, a POLR plan that only offers a monthly default service rate cannot meet the business needs of Pennsylvania's large C&I customers.

(continued footnote)

³ See Section 54.187(b) ("Except for rates consistent with 54.187(f), each default service customer shall be offered a single rate option, which shall be identified as the PTC.").

To be clear, IECPA, et al. do not oppose the monthly PTC as one default service option; however, it should not be the only default service option. Such a rate may be a desirable option under certain circumstances. For example, a monthly fixed PTC may be a useful option for a customer that is in between long-term contracts. Under this scenario, the customer could use the monthly PTC as a bridge between competitive supply contracts in the event that it does not complete the contracting process with a new supplier in sufficient time to ensure that the new supplier begins service as of the termination date of the prior contract. A monthly pricing option may also be useful when market conditions at the time a customer is entering into the new contract are inflating competitive offers, which may become more moderate in the short-term, thereby resulting in lower rates for the customer's next competitive supply contract. Finally, depending on the design of the monthly rate, customers with operations that can withstand monthly electric price changes, or that can modify consumption in response to those changes, may view this default service option as a viable, least-cost procurement strategy. Notwithstanding the potential utility of a monthly PTC, a long-term, fixed-price option must accompany any monthly default pricing option.

2. The Competition Act Supports Approval of Long-Term, Fixed-Price Options for C&I Customers.

The proposed regulations are designed to implement Section 2807(e)(3) of the Competition Act. Section 2807(e)(3) defines the post-transition obligation to serve as follows:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

See 66 Pa. C.S. § 2807(e)(3). Providing large C&I customers with a long-term, fixed-rate option is consistent with the Competition Act if the energy is acquired at prevailing market prices and the DSP recovers fully all reasonable costs. Multiple products exist in the wholesale market with differing duration and price stability. Each product has its own "prevailing market price" at a given time. By using the plural term "prevailing market prices" in Section 2807(e)(3), the General Assembly clearly expressed its desire for the Commission to adopt default service regulations that provide multiple products, such as a long-term fixed-rate for large C&I customers.

The Competition Act also recognizes EDCs' ability to develop and implement rates that will specifically address customers' needs. Under Section 2806(h), the Commission has the authority to "approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives." See 66 Pa. C.S. § 2806(h). As discussed above, large C&I customers need long-term price certainty in order to manage energy costs. The lack of a long-term, fixed-price option will undermine C&I customers' cost management efforts and, consequently, place them at competitive disadvantage vis-à-vis industry rivals located in lower-cost jurisdictions. In light of the Competition Act's intent to permit negotiated tariffs in order to meet the needs of a specific utility customer, requiring DSPs to offer a long-term, fixed-price option is consistent with the Competition Act.

The Commission's Proposed Policy Statement allows a DSP to propose an annual (or longer) fixed-rate option for large C&I customers. See Proposed Policy Statement, §

69.1805(3).⁴ Although IECPA, et al. appreciate the Commission's recognition of its prior arguments by including this as a permissive default service offering, to meet the goals of the Competition Act it should be a mandatory default service offering. An overarching objective of the Competition Act is to "benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs." 66 Pa. C.S. § 2802(7). As the General Assembly determined in passing the Competition Act, the "cost of electricity is an important factor in decisions made by businesses concerning locating, expanding, and retaining facilities in this Commonwealth." Id. § 2802(6). On the eve of the expiration of transitional rate caps, which will expose Pennsylvania customers to the brunt of market forces, Pennsylvania's capability to realize the objectives of the Competition Act is of paramount importance. To protect the Commonwealth's ability to retain existing and entice new business and industry, and in light of the General Assembly's recognition that a key to realizing this objective is linked to the cost of electricity, the Commission should mandate that DSPs provide a long-term, fixed-price default service option; otherwise, large C&I customers will be severely disadvantaged in their ability to compete in the national and international market place for industry and jobs. Such an outcome clearly contravenes the intent of the Competition Act.

The Competition Act requires that electric service should be available to all customers on reasonable terms and conditions. See 66 Pa. C.S. § 2802(9). A PTC that is "adjusted on a monthly basis, or more frequently" for large customers is not reasonable, because it subjects such customers to arbitrary price increases, which can detrimentally affect load usage. Moreover,

⁴ This aspect of the Proposed Policy Statement appears to conflict with Section 54.187(b) of the proposed regulations, which states: "Except for rates available consistent with 54.187(F) [use of automatic adjustment clause] each default service customer shall be offered a single rate option, which shall be identified as the PTC." Even if the long-term fixed rate continues to be optional, the regulations must be modified to reflect the permissive authorization consistent with the Proposed Policy Statement.

frequent adjustments, which are largely driven by unpredictable locational marginal prices ("LMP") resulting from a flawed wholesale market design that is highly sensitive to steep and volatile natural gas prices, may also result in higher than expected prices. Because large customers utilize significant amounts of electricity, this can result in significant budget expenditures. As discussed supra, this level of price volatility undermines a company's business planning procedures. If large customers are unable to specifically determine and plan for budgetary expenses, their ability to manage energy costs and, thus, optimize production/manufacturing processes will likely be compromised. Thus, a POLR pricing strategy that undermines large customers' ability to do business in the Commonwealth is directly inconsistent with the Competition Act, which recognizes that electric service is "essential...to orderly economic development." 66 Pa. C.S. § 2802(9).

The intent of the Competition Act is to provide a DSP that is a competitive alternative to the marketplace. See 66 Pa. C.S. § 2806(h). If POLR regulations do not require DSPs to offer a long-term, fixed-price option for large customers, such customers would be forced into the competitive market in order to obtain fixed-price options and, consequently, the DSP will not be a competitive alternative. Under this scenario, electric generation suppliers ("EGSs") will have the opportunity to raise their fixed prices significantly above what the market would otherwise bear merely because EGSs would control the universe of fixed-price options and, consequently, could exercise considerable leverage vis-à-vis customers seeking such options. As a result, large customers would be subject to unjust and unreasonable rates from EGSs as a direct result of the lack of a fixed-price option for POLR rates.

Artificially boosting shopping levels by such means is not consistent with true competition or success under the Competition Act. Mandating that DSPs offer a long-term,

fixed-price option for large C&I customers will ensure that DSPs represent a competitive alternative in the post-restructuring marketplace. Moreover, such a long-term, fixed-price option can act as a benchmark that will discipline the prices that EGSs can demand in the market. Accordingly, the DSP must be required to offer at least one long-term, fixed-priced option for large C&I customers.

Finally, under the Public Utility Code and Commission regulations, different classes of customers can be treated differently as long as the disparate treatment is not unduly discriminatory. See 66 Pa. C.S. § 1304. Requiring large customers on default service to receive a default service rate that is "adjusted on a monthly basis, or more frequently" would discriminate against this customer class by subjecting only these customers to price volatility, arbitrary price increases, and artificial market prices.⁵ Although some customers may opt for a monthly PTC, many large C&I customers have inadequate resources to cope with this type of pricing methodology and engage in manufacturing/production processes that are not compatible with a monthly PTC. Accordingly, all customers must be offered at least one long-term, fixed-price PORL option; no customer should be forced to pay prices that fluctuate on a monthly basis or even more frequently.

B. The Commission Should Authorize the Use of Declining Block Rates and Demand Charges To Encourage Efficiency.

In order to provide "incentives for conservation" and to "reflect the actual cost of energy," the Commission revised Section 54.187(c) by eliminating "declining blocks" and demand charges from rate schedules.⁶ See Rulemaking Order, p. 17. Implicit in the

⁵ The Commission proposes quarterly adjustments for smaller customers. See §§ 54.187(h) & (i).

⁶ Similarly, the Proposed Policy Statement re-affirms this and provides that demand charges should be removed. In the Comments filed contemporaneously in that proceeding, IECPA, et al. also express opposition to the elimination of demand charges and declining block rates.

Commission's rationale for these revisions is the presumption that declining block rates and demand charges impede conservation and prevent customers from seeing accurate price signals. As discussed below, this presumption is erroneous. The use of declining block rates and demand charges promotes efficiency, a goal that is not mutually exclusive with conservation. Moreover, these tools also ensure that customers realize accurate price signals, in light of the fact that the actual costs incurred by a load-serving entity ("LSE") to serve its customers include both energy and demand components.

The PJM Interconnection, L.L.C. ("PJM") wholesale market structure includes charges that are assessed on demand (i.e., MW or kW) and energy (i.e., MWh or kWh) bases. For example, capacity and transmission⁷ are assessed on a demand basis, while energy and most ancillary services are assessed on an energy basis. To provide customers with proper signals regarding the need to minimize their peak demand during PJM peak periods, retail rates must reflect both an energy and a demand component.

For example, assume that the owner of a hypothetical large office building determined that it could use 5% fewer kWh of electricity by cycling its air conditioning unit on and off during peak days and that the building's demand increased by 50% each time the air conditioner cycled back on. This dramatic demand increase would not occur if the air conditioner were operating on a constant basis to produce the same internal temperature. Under this scenario, the building owner's conservation strategy may not further the PUC's efficiency goals. If the retail rate design were to include a demand charge that reflected the demand impact of the cycling, then the building owner would have an incentive to efficiently use electricity and avoid drastic

⁷ IECPA, et al. explain in Section II.C why transmission should not be included in the PTC.

demand spikes. If the retail rate design reflects only an energy charge, then the appropriate price signal is not conveyed to the customer.

Similarly, using a demand charge and declining block structure encourages large C&I customers to operate manufacturing facilities at a higher load factor (i.e., more efficiently) to result in lower realized per kWh costs. In other words, as a customer's efficiency (i.e., load factor) increases, the cost of serving that customer decreases. A pricing structure that fails to recognize this efficiency benefit will result in unjust and unreasonable rates. Thus, declining block rates and demand charges must not be eliminated, as these rate design components best reflect the cost differences and efficiencies attributable to high-load factor customers.

If rates are set based on cost of service, customers will receive proper and efficient price signals that will guide their consumption. Such rates do not either discourage or encourage conservation, but rather encourage efficient and economic use of energy. While it is true that, all else being equal, higher kWh rates will result in lower consumption (and thus "conservation"), it does not follow that this is an optimal outcome. If off-peak energy, for example, is lower cost than on-peak energy, efficiency is not promoted by raising the off-peak rate, simply to discourage usage. If rates are based on cost, including cost-based fixed charges where justified, customers will face prices that are consistent with the costs of providing each component of electric service and, consequently, make rational consumption decisions. Thus, if declining block rates or demand charges are cost justified, then such rate designs are appropriate and do not represent an impediment to conservation. The Commission should authorize demand charges and declining block rate structures for default service.

C. For Larger EDCs, Transmission and Ancillary Services Costs Should Be Separately Stated from the PTC Consistent with the Underlying Demand and Energy Components of These Costs.

Section 54.187(d) provides that the PTC "shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class." See § 54.187(d). This is contrary to the unbundling requirement in the Competition Act and should be revised. In addition, the Commission must ensure that unbundled retail transmission rates are developed based on cost of service principles.

The General Assembly specifically mandated that the rate elements must be unbundled and introduced a new standard to evaluate retail transmission rates. The Competition Act "establish[es] standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity...." 66 Pa. C.S. § 2802(12). Section 2804 sets forth the "interdependent standards" that "shall govern" the Commission's "regulation of the restructured electric utility industry." Id. § 2804 (emphasis added). Section 2804(3) provides that the Commission "shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." Id. § 2804(3) (emphasis added). Section 2804(6) further provides:

Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

Id. § 2804(6) (emphasis added). The Commission's PTC proposal does not properly give effect to the General Assembly's legislative intent. To effectuate the legislative intent underlying the

statutory standards in Section 2804, the Commission must separate the charges for transmission from the charges for generation and adopt a retail transmission charge that accurately tracks the manner in which an LSE is assessed transmission and ancillary services charges by PJM, as discussed below. Modifying the PTC to remove the transmission and ancillary services costs will not only realize the mandates of the Competition Act, but also comport with practices already in place in the Met-Ed, Penelec, PPL and Duquesne service areas.⁸ Any service that previously was unbundled as part of a restructuring proceeding, distribution base rate proceeding, or default service proceeding should remain unbundled.

Furthermore, POLR regulations should specify that retail transmission and ancillary service rules will be developed on a cost of service basis. The Commonwealth Court recently confirmed that the Competition Act requires the Commission to separately review and establish rates for each of the unbundled services on a stand-alone basis, with cost of service acting as the "polestar" for this determination. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006). Retail rate design is a critical link between Pennsylvania's retail market and the wholesale market administered by PJM. Successfully linking wholesale issues to retail rate design issues is a key to realizing the Competition Act's competition and reliability objectives. Thus, to the extent possible, policies between wholesale and retail markets should be coordinated in order to maximize market efficiencies and, thus, capture the potential benefits of competitive electric markets for consumers.

The Commonwealth Court's decision in Lloyd, as well as sound principles of cost causation and rate making, require the PUC to allocate and establish rates to recover transmission and ancillary services costs from retail ratepayers in a manner that mirrors PJM's

⁸ IECPA, et al. recognize that the unbundling and allocation proposal may not be appropriate for very small EDCs.

allocation methodology and billing procedures. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010 (Pa. Commw. Ct. 2006); see also 66 Pa. C.S. § 2804(6). First, the allocation of transmission and ancillary services costs among rate schedules must recognize that many of these costs are demand-related and should use a demand allocator similar to the one used by PJM to assess transmission charges. This allocation is required to avoid interclass shifting of cost responsibility. Second, for customers with interval metering, a retail transmission rate should be developed with demand and energy components to mirror PJM charges. This is necessary to avoid intraclass cost shifting. If the Commission follows these two principles, customers will pay the identical transmission costs irrespective of whether the customer purchases its generation supply from an EDC or EGS. See 66 Pa. C.S. § 2804(6) (requiring customers' transmission rates to be comparable to the utility's own use of its system).

In order to deliver generation from generating plants to the distribution system to which their generation customers are connected, LSEs operating in the Commonwealth must secure transmission and ancillary services from PJM. The rates that an LSE pays for these services are established by PJM and approved by the Federal Energy Regulatory Commission ("FERC"). Network Transmission Charges are the costs that an LSE incurs as a user and purchaser of transmission services from PJM for its POLR customers. Network Transmission Charges are incurred on a demand (i.e., kW) basis. Ancillary Services Charges relate to charges for "services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation" of the transmission system. Whether ancillary service charges are incurred on a demand or energy (i.e., kWh) basis depends on the particular service. Thus, an LSE's transmission and ancillary services costs are incurred on both a demand and energy basis, based on contribution to the coincident peaks of PJM and annual kWh usage.

As revised, Section 54.187(c) has the effect of removing the use of demand-based charges to recover default service costs, some of which are demand-based, such as transmission and certain ancillary services. In other words, although the basis for an LSE's transmission and ancillary services costs is readily identifiable, revised Section 54.187(c) limits LSEs to recovering all default service costs on an energy-only (i.e., kWh) basis. Such a proposal will result in an unjust and unreasonable allocation of an LSE's transmission and ancillary services costs, particularly with respect to large C&I customers. A properly designed PTC must appropriately distinguish between energy- and demand- based components. A separate charge (on a demand and energy basis) must be used to recover transmission and ancillary service costs. By eliminating the use of a demand-based rate component (e.g., declining block rates, demand charges) to recover demand-based default service costs, the Commission's proposal contravenes sound principles of cost causation and rate making and establishes a disconnect between PJM's wholesale market and Pennsylvania's retail market. It would likewise result in unjust and unreasonable rates.

D. Congestion Must Be Included in the Wholesale Generation Product Price and Excluded from Reconciliation through the PTC.

As proposed, the PTC will be designed to recover generation, transmission⁹, and the other default service cost elements. See § 54.187(d). At the DSP's option, the PTC may be subject to reconciliation "to recover all prudently incurred non-alternative energy default costs." See § 54.187(f). Although the Commission recently denied a Petition for Reconsideration regarding whether congestion is a generation charge or a transmission charge, it is widely expected that this

⁹ As set forth in Section II.C, IECPA et al. object to including transmission in the PTC.

issue will be appealed to the Commonwealth Court.¹⁰ IECPA, et al. fully support the arguments raised by MEIUG and PICA that congestion is a generation charge. Regardless of the classification, however, the Commission should amend the proposed regulations to clearly confirm that congestion risks (and costs) will be borne by the wholesale supplier and that congestion expenses cannot be recovered through the PTC.

If congestion charges are included in the PTC, as opposed to in the winning supplier's bid, this may result in a DSP accepting non-economic bids over the course of its competitive procurement program due to transmission constraints across the PJM region. Another undesirable consequence would be that a DSP would not be able to offer a genuine fixed-price service, given that the costs flowed through the PTC as a result of the location of the purchased generation could fluctuate considerably, thereby having a significant impact on customer bills. Accordingly, IECPA, et al. request that the Commission include this clarification in its final order in this proceeding.

E. The Commission Should Clarify That the Distribution Rate Should Be Reduced in an Amount Equal to any Default Service Costs That Are Reallocated to the Default Service Rate.

According to the Rulemaking Order, a DSP may use an automatic adjustment clause to recover energy default service costs, but is required to use an automatic adjustment clause to recover costs related to implementation of the Energy Portfolio Standards Act of 2004. IECPA, et al. support the Commission's elimination of the very detailed description of the rate mechanisms and costs that should be recovered through the generation charges. The Commission's revision provides clarity and will facilitate the implementation of final POLR regulations by eliminating the potential for error.

¹⁰ See Pa. Pub. Util. Comm'n, et al. v. Metropolitan Edison Co. and Pa. Elec. Co.; Docket Nos. R-00061366 et al.
(cont'd footnote)

The Rulemaking Order also attempts to provide additional guidance on the allocation of cost elements. See Rulemaking Order, p. 17. The Rulemaking Order provides that any default service costs should not be recovered through the distribution rate. Id. Moreover, distribution costs may not be recovered twice as a result of any reallocation that occurs as a result of this rulemaking. Id. Specifically, Section 54.187(d) provides, in relevant part:

An EDC's default service costs shall not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, shall not be recovered through the distribution rate.

The Commission's intention in this provision appears to be that customers' distribution rates should be reduced in an amount equal to any default service costs that are reallocated to the default service rate in order to ensure that such costs are not recovered through an EDC's default service rates. The language in Section 54.187(d), however, does not go far enough in providing the necessary degree of clarification. To that end, IECPA, et al. request that the Commission further clarify Section 54.187(d) by adding language indicating that distribution rates must be reduced on a dollar-for-dollar basis to reflect any costs reallocated to the default service rate.

F. Long-Term Bilateral Contracts with Affiliates Should Be Permitted Default Service Procurement Options.

In the Rulemaking Order, the Commission encourages DSPs to "acquire a portfolio of generation supply products." Rulemaking Order, p. 19. Rather than procuring all generation at one time for the duration of the default service program, the Commission explains that DSPs should consider a "mix of fixed-term and spot market energy purchases, laddered contracts, and the use of both supply and demand resources." Id. at 19-20. IECPA, et al. support the Commission's decision to encourage DSPs to utilize a "portfolio approach" for procuring default

(continued footnote)
(filed Jan. 26, 2007).

service. This approach is consistent with the Competition Act's intention to permit DSPs to maintain a well-equipped "toolbox" of instruments to procure supply from a variety of sources in order to offer electricity to customers at just and reasonable rates.

According to the proposed regulations, a DSP's procurement plan "should be designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at the lowest reasonable long-term cost." See § 54.186(b)(1). Notwithstanding the goal of securing default service at the "lowest reasonable long-term cost" to customers, the Commission inappropriately restricts DSPs from using long-term bilateral contracts with affiliates to procure electricity for POLR customers. See Rulemaking Order, n.4; id. at 14-15. This restriction is fundamentally at odds with the goal set forth in Section 54.186(b)(1).

As a threshold matter, the Competition Act does not prohibit a DSP from entering into long-term contracts or contracts with affiliates. A long-term contract satisfies Section 2807(e)(3) as long as it reflects the prevailing market price for similar contracts of like character and duration at the time of execution. The Commission has the power to review any affiliated interest agreement under Chapter 21 of the Public Utility Code to ensure that ratepayers are not disadvantaged. See 66 Pa. C.S. §§ 2101-2106. FERC also has a process to review contracts between FERC-regulated utilities and their affiliates. Because many affiliates of EDCs in Pennsylvania continue to own lower fuel cost, highly depreciated generation facilities in PJM, negotiating a long-term, bilateral contract based on the affiliate generator's actual costs may produce the lowest reasonable rates for customers. The Pennsylvania consumers who have paid the stranded costs associated with this generation should not be deprived of this option.

The Rulemaking Order and Proposed Policy Statement, however, vacillate between implementing procurement strategies designed to mute the impact of market movements (such as laddering and the portfolio approach) and the clear goal of exposing customers to market forces to encourage conservation and EGS entry. In doing so, the PUC has inappropriately eliminated one element of a balanced portfolio approach that could benefit customers; *i.e.*, allowing the DSP to enter into long-term bilateral contracts with affiliated generation owners. As FERC has recognized, "in markets that are competitive, a combination of long-term contracts and adequate demand response provide[s] the best way to limit exposure to price risk in spot energy markets." See Midwest Indep. Transmission Sys. Operator, Inc., 102 FERC ¶ 61,280 at P 58 (2003). To ensure that DSPs are able to obtain electricity for POLR customers at just and reasonable rates, DSPs must be permitted to include the use of long-term contracts with affiliates in their procurement toolbox.

G. The Commission Must Provide Customers with Due Process and a Meaningful Opportunity To Be Heard In the Context of PTC Reconciliation Proceedings.

Revised Section 54.184(f) outlines the standards for tariff filings resulting from the Commission's decision to require regular adjustments of the PTC. See Rulemaking Order, p. 24. Under this section, DSPs are required to submit tariff supplements proposing adjustments to the PTC on a quarterly or monthly basis, as applicable. See § 54.184(f). DSPs must provide written notice of their filings upon Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Office of Trial Staff ("OTS"), EGSs registered in the service territory, and the Regional Transmission Organization ("RTO") in whose control area the DSP is operating. *Id.*; see also § 54.185(b) (directing the DSP to provide copies to other EGSs upon request). A customer or any of the parties that received notice of the filing will have an opportunity to file

exceptions to the default service tariff. See § 54.184(f). The scope of the exceptions is limited to "whether the DSP has properly implemented the procurement plan" and "accurately calculated rates." Id. Exceptions must be filed within 20 days of the date that the tariffs are filed with the Commission. Id.

According to the Rulemaking Order, the adjustable PTC was modeled, in part, on the PUC's regulations governing natural gas supply costs under Section 1307. See Rulemaking Order, p. 4. As proposed, however, the POLR regulations bear little resemblance to the provision under Section 1307. Pursuant to 1307, purchased gas costs ("PGC") are established on an annual basis, but subject to quarterly adjustments. See 66 Pa. C.S. § 1307(f). The Commission convenes an annual proceeding to review the proposed rates, including procurement practices to ensure the natural gas costs are consistent with a least cost procurement policy. Id. § 1307(f)(3)(v). Likewise, the PGC process provides customer with a meaningful opportunity to be heard. Id. § 1307(f)(4)

If the Commission's goal is to model the PTC after the PGC, then the Commission should reconsider mandating PTCs that are subject to adjustment on such a frequent basis (i.e., monthly for large customers and quarterly for smaller customers) to alleviate the burden on customers and to observe the principles of administrative efficiency, and to provide due process. Moreover, the Commission must provide customers with equivalent due process rights. Conspicuously absent from this provision is a requirement that the DSP serve its POLR customers with notice of its tariff filings. It is meaningless to provide customers with an opportunity to file exceptions, if the DSP is not required to notify its customers in a timely manner of the tariff filing. At a minimum, any customer that participates in the implementation proceeding or otherwise makes a request should receive timely notice and a copy of the filings.

The Commission should further provide interested parties with additional time to review the filings and the opportunity to be heard in the context of a public hearing. As proposed, the PTC reconciliation proceedings will not afford large C&I customers a meaningful opportunity to review and comment on DSP filings. As discussed supra, the PTC for large customers will be adjusted at least on a monthly basis. By logical extension, this means that customers will receive notices of filings (assuming the Commission adopts IECPA, et al.'s recommendation that DSPs be required to serve their POLR customers) at least on a monthly basis. In addition to the PTC itself being impractical as a pricing option, as discussed above, providing large customers with 20 days to review and comment on DSP filings that they receive each month is unduly burdensome. Twenty days is also insufficient to allow customers a meaningful opportunity to review and, as necessary, oppose these filings.

Finally, the proposed regulations unduly restrict the scope of the exceptions to "whether the DSP has properly implemented the procurement plan" and "accurately calculated rates." The Commission should not unreasonably limit the scope of the exceptions. Customers should be permitted to address not only the DSP's arithmetic, but also any matters related to the substance of the filing and the DSP's use of the PTC rate.

Thus, Section 54.184(f) must be modified to provide customers with equal due process and a meaningful opportunity to be heard in the context of PTC reconciliation proceedings.

H. Default Service Plans Should Not Include Highly Confidential Customer Information.

In the Rulemaking Order, the Commission sets forth revised Section 54.185(d), which identifies the required elements of a DSP's default service program filing. See Rulemaking Order, p. 12. Section 54.185(d)(7) requires a default service program to include a "schedule identifying all generation contracts of greater than 2 years in effect between a DSP, where it is

the incumbent EDC, and retail customers in that service territory." See § 54.185(d)(7). Section 54.185(d)(7) further provides that the schedule "should identify the load size and end date of the contracts." Id. Information pertaining to a customer's load size and contract expiration date is highly confidential and the public disclosure of such information is not critical to the procurement process. Accordingly, IECPA, et al. respectfully request that the Commission delete Section 54.185(d)(7), thereby eliminating the requirement that this highly confidential customer information is disclosed as part of a DSP's default service program.

According to Section 54.185, a DSP must file its default service program with the PUC Secretary and serve copies of such filing upon the OCA, OSBA, OTS, EGSs registered in the service territory (as well as other EGSs upon request), and the RTO in whose control area the DSP is operating. See § 54.185(a) & (b). As part of its default service program, a DSP must include a schedule identifying all generation contracts of greater than 2 years in effect between a DSP, including the load size and end date of the contracts, and retail customers in that service territory. See § 54.185(d)(7).

Customer-specific information, such as load size and contract duration, is highly confidential and commercially sensitive. Providing this information as well as a list of retail customers in a particular service territory would likely enable any inquiring mind to determine a large C&I customer's load size.¹¹ Based on this information, an industry rival could potentially *infer pricing and profit margin figures or glean insight into proprietary and confidential production processes.* C&I customers go to great lengths to ensure the confidentiality of this information. Releasing it into the public domain not only thwarts C&I customers' efforts, but also increases the likelihood that it will fall into the hands of a competitor.

It is unclear why this highly confidential customer information is a necessary part of the procurement process. Information about a customer's load size and contract expiration date is not, and should not become, public information as part of a DSP's default service program filing. In fact, protecting the confidentiality of such information is consistent with the Competition Act as well as Commission regulations. If, however, the Commission determines that such information is necessary, the Commission should – at a minimum – require such information be subject to confidential treatment.

I. Proper Implementation of Section 54.189(c) Is Necessary To Facilitate Shopping in the Post-Restructuring Period.

Section 54.189(c) provides that a "DSP shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service." See § 54.189(c). Although this language mirrors Section 2807(e)(4) of the Public Utility Code, additional clarity is required regarding the scope of this obligation.

IECPA, et al. believe that the intention of the General Assembly was to ensure that the DSP could not engage in actions that would unreasonably discourage a customer from accessing competitive supply (or returning to default service). By having the ability to impose onerous requirements when a customer returns from competitive supply service that would not be imposed if the customer had remained on default service, the default service provider may discourage customers from accessing competitive supply at all. A primary example of this would be allowing the default service provider to demand a deposit or otherwise impose onerous creditworthiness requirements on the returning customer. Similarly, a customer should not be required to execute a new service agreement upon returning to default service (unless the

(continued footnote)

¹¹ For some service territories and facilities with uniquely large loads, the peak load information can be readily tied
(cont'd footnote)

customer has negotiated a rate in exchange for a commitment to remain on default service). Such requirements would have a chilling effect on customers' willingness to enter the market for fear that a return to default service would be costly, time-consuming or otherwise subject to risk and uncertainty. Moreover, such requirements would disregard the prior service relationship between a customer and the EDC. Thus, in order to facilitate shopping in the post-restructuring period, the Commission should clarify that customers may switch between POLR providers and EGSs without being subject to onerous and unnecessary requirements.

(continued footnote)
to a specific customer.

III. CONCLUSION

WHEREFORE, Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") respectfully request that the Pennsylvania Public Utility Commission modify the POLR regulations consistent with the Comments set forth herein.

Respectfully submitted,

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Power Industrial Intervenors

Dated: March 2, 2007

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Rulemaking Re Electric Distribution Companies'
Obligation to Serve Retail Customers at the
Conclusion of the Transition Period Pursuant
To 66 Pa. C.S. § 2807(e)(2)

Docket No. L-00040169

Default Service and Retail Electric Markets

Docket No. L-00070183

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INITIAL COMMENTS OF DUQUESNE LIGHT COMPANY

Pursuant to the Pennsylvania Public Utility Commission's ("Commission's") Advance Notice of Final Rulemaking Order ("ANFRO") and Proposed Policy Statement, issued in these proceedings on February 9, 2007, Duquesne Light Company ("Duquesne" or the "Company") hereby submits the following comments.

BACKGROUND

Duquesne has extensive experience with post-transition default service.

Duquesne has successfully implemented three default service plans and currently has a fourth default service plan pending before the Commission.

Duquesne's plans have supported the development of competitive retail markets, and its service territory has one of the highest levels of retail shopping in the United States. (See attachment A for U.S. retail shopping statistics.) Many industry observers point to Texas as having the most advanced retail markets in the country. According to a recent Texas commission report on the state of competition, "54% of electricity sold in the competitive market in Texas is supplied by providers other than the traditional

affiliated REP.”¹ By comparison, Duquesne has 54% of its total system load being supplied by alternative electric generation suppliers (“EGSs”). Duquesne also has a higher level of retail shopping than all of the utilities in New York.²

As retail markets continue to develop, Duquesne also has provided residential and small commercial and industrial (“C&I”) customers stable rates that are below the regulated rates in effect prior to its restructuring. Relative to the regulated generation rate caps approved in Duquesne’s restructuring case in May of 1998, residential and small C&I customers in Duquesne’s service area are expected to realize about \$950 million in savings (nominal dollars) over the 1999-2010 period, if the Commission approves Duquesne’s most recent default service plan. In addition, to the extent that customers have realized and will continue to realize even greater savings by shopping for electricity, the total savings resulting from Duquesne’s restructuring are even larger.

Duquesne presently provides default service by means of a bilateral contract with its affiliate, Duquesne Power. In order to fulfill its contract obligations for the default service supply requirements, Duquesne Power has negotiated contracts at prevailing market prices with competitive wholesale suppliers.

GENERAL COMMENTS

The ANOFR states at 21 that: “The experience of Duquesne shows that retail markets can work. Duquesne’s territory has the highest rate of customer choice in Pennsylvania.” Yet despite this success in Duquesne’s service territory, the

¹ Report to the 80th Texas Legislature, Scope of Competition in Electric Markets, PUCT, January 2007, at 51.

² Most New York utilities rely on a “portfolio” supply approach that the proposed rules are purporting to emulate. (ANFRO at 21.)

Commission's proposed rulemaking ironically would prohibit the current framework in place in Duquesne's service territory. While the Commission need not adopt the Duquesne model as the only default service model, the successful results of the Duquesne model strongly suggest that the Commission should at least allow that model to be an option for future consideration.

There are many principles in the proposed rules that Duquesne favors. Duquesne supports the Commission's recognition of the risk of being too prescriptive in its approach to this rulemaking. Accordingly, the Commission states it has not attempted to dictate the exact manner by which every default service provider ("DSP") will acquire electricity, adjust rates and recover its costs.³ Reserving some aspects of the regulation to a policy statement allows for greater flexibility as markets continue to change and represents sound public policy. Duquesne also supports the Commission's efforts for a gradual shift or transition to competitive markets while attempting to mitigate price shocks for retail customers. Duquesne further agrees that the Commission should tailor default service to reflect the market situation faced by different types of customers. Other provisions that Duquesne supports are noted in these comments on pages 22-24.

Duquesne is concerned, however, that the proposed rules may have unintended consequences that will frustrate the Commission's objectives to facilitate retail choice and hinder the ability to provide customers with reasonable rates that mitigate rate shock. The Company respectfully requests the Commission to reconsider these features in light of these comments. There also are several portions of the proposed rulemaking for which Duquesne seeks further clarification.

³ ANFRO, at 5. However, Duquesne would note that contrary to this statement, the PUC rules propose to prohibit bilateral contracts as an acquisition option and require adjustments of rates for residential and small commercial customers at least quarterly.

a) Effective Date Needs to be Clarified

Duquesne requests that the Commission clarify the effective date of the proposed regulations. The Policy Statement at page 2 states that “the Commission anticipates that the initial guidelines will be applied to the first set of default service programs following the expiration of the generation rate caps...” This reference to generation rate caps seems to refer to 2011, when all Pennsylvania utilities will have completed their transition periods. In the ANFRO at page 11, the Commission refers to “the first default service program filed after the effective date of these regulations.” But the effective date is not clearly defined in the regulations.

Duquesne believes that the proposed rules should apply to POLR service provided in 2011 and thereafter when the vast majority of electric customers in the state transition from their generation rate caps to a post-transition period default service offering. Under this approach, all customers in the state would be affected by the rule changes at the same time and customer education and communication efforts can be effectively coordinated on a statewide basis. As the Commission is well aware, there are concerns about the present competitiveness of the electric energy market. If default service regulations are placed into effect now, they would apply only to a very limited number of Pennsylvania customers. Even if the Commission determines that wholesale solicitations are appropriate in future default service regulations, a state-wide or multi-jurisdictional solicitation process may prove to be the most economic and efficient means to procure default service supplies. The Commission should not require Duquesne, on a stand-alone basis, to implement these proposed rules. For these reasons, Duquesne recommends that the Commission provide that the default service regulations will not become effective

until the major electric distribution companies (“EDCs”) have completed their transition periods.

Further clarification in the regulations also is necessary so that they do not interfere with interim plans filed prior to the effective date of the Commission’s order. Duquesne is concerned that its planning and litigation process for default service rates effective January 1, 2008, is occurring at the same time as these rulemakings. Prior to the effective date of the default service regulations, EDCs should be permitted to present interim default service plans that will remain in effect until the beginning of 2011. The Commission also should acknowledge that each interim plan will stand on its own and will not bind parties that later litigate plans offered by other EDCs.

If the Commission decides to make the default service regulations effective at some earlier date than 2011, then Duquesne urges the Commission to clarify in the draft rules themselves (and not the policy statement) that interim plans filed or approved prior to the effective date of final regulations will not be subject to the regulations.⁴ This regulatory certainty is needed so that utilities will know that their filed or approved plan will not have to be altered in midstream or their submitted plan may be rejected due to finalization of these pending rules.

b) Prohibition of Bilateral Contracts Will Harm Customers and Retail Competition

The proposed rulemaking would forbid the use of bilateral contracts. Duquesne believes that this is an overly prescriptive approach. The Commission should permit

⁴ From a practical standpoint, it would be extremely difficult, if not impossible, for Duquesne to reach agreement on a bid process and bid documents and then to conduct multiple solicitations at different points in time to establish retail rates effective for January 1, 2008.

alternative supply procurement methods, especially methods that have already proven to be successful in benefiting customers and retail competition. Prevailing market prices may be established by comparisons with other market prices in the region, through a market price index formula, or by a solicitation. In fact, Duquesne already has experience establishing default service rates deemed to be in compliance with the Electricity Generation Customer Choice and Competition Act ("Competition Act") using each of these different methods.⁵ The Commission explicitly recognized in Duquesne's POLR III proceeding that "a competitive procurement process is not the exclusive method to arrive at a prevailing market price."⁶

Wholesale solicitations do not necessarily provide the same level of price certainty to retail customers nor have wholesale solicitations proven to result in higher levels of shopping than currently experienced in Duquesne's service area. In fact, Duquesne currently has significantly higher residential shopping levels than other jurisdictions that have relied on solicitations to establish default service prices. Duquesne also is concerned that repeated attempts to conduct RFPs limited to its service area have not produced a sufficient pool of bidders to establish a viable competitive wholesale market. While a solicitation process is *one* reasonable way to procure power, it is not necessarily the *most* reasonable method for all utilities under all market conditions.

⁵ The Company started serving default service customers from its owned generation. Duquesne subsequently divested its generating assets and served its default service customers by means of negotiated full-requirements supply contracts with a non-affiliate during the POLR I and POLR II periods. In POLR III, Duquesne treated Large C&I customers differently from residential and small C&I customers. Large C&I customers were supplied with a PJM hourly market index formula rate. Alternatively, Large C&I customers could elect a fixed rate established by a solicitation. Meanwhile, POLR III residential and small C&I customers on default service were supplied at a three-year fixed price based on an agreement with Duquesne's affiliate, where the rate levels were established based on comparisons with recent solicitations. Each of these methods to supply and establish default service rates was approved by the Commission, and, considered consistent with establishing rates at "prevailing market" prices per the Competition Act.

⁶ Reconsideration Order at 26.

c) The Commission Should Not Impose Mandated Quarterly Rate Adjustments For Residential and Small C&I Customers

The Commission proposes quarterly rate adjustments and reconciliation for residential and small C&I customers. The Commission should not impose mandated quarterly rate adjustments. Under such an approach, default service customers, not the default service supplier, will be responsible for market price risks. Attempts to frequently adjust retail rates for residential customers (e.g., in New York and Massachusetts) and attempts to rely on a portfolio approach with reconciliation (e.g., New York) have in many instances resulted in more rate shock for customers and less retail shopping than experienced in Duquesne's service area. Attachment B shows that residential customers in Massachusetts and New York have been exposed to more rate volatility than in Duquesne's service area, and in most cases, retail shopping is lower than in Duquesne's service area. "Massachusetts based the generation portion of the POLR service on the price of supply procured in wholesale markets through fixed-priced, short-term (three or six months) supply contracts. Rates for the generation portion of POLR service in the Boston Edison (north) territory increased from 7.5 to 12.7 cents per KWh from 2005 to 2006."⁷ Meanwhile, very few EGSs are providing residential customers with fixed price offerings and the level of shopping is substantially below that in Duquesne's service area.

The reliance on wholesale solicitations may severely limit the ability of retail EGSs to enter the market to provide the rate stability that small customers' desire. In several jurisdictions, customers have been exposed to short-term market price volatility,

⁷ Draft Report to Congress on Competition in the Wholesale and Retail Markets for Electric Energy, Docket No. AD05-17-000, Electric Energy Market Competition Task Force and the FERC, June 2006, at 71.

but retail shopping levels are lower than in Duquesne's service area. Customers then experience volatile retail rates and have few opportunities to mitigate that exposure in the competitive market. The Commission should not ignore this market evidence, and should allow for longer term default service rates for residential and small C&I customers, as long as those default service rates are based on prevailing market prices and promote retail competition.

SPECIFIC COMMENTS

a) Bilateral Contracts Should Be Permitted

The proposed rules prohibit bilateral contracts. Duquesne believes it is a mistake to exclude this option. DSPs should be allowed discretion in how they obtain electric energy at prevailing market prices. While a DSP must acquire electric energy at prevailing market prices, it should not be forced to procure its electric supply in a particular manner. A given procurement method may not be appropriate in all market circumstances for all customers. The DSP may obtain its supply through a bilateral agreement, structured bid solicitations such as auctions or requests for proposals ("RFP"), and/or spot market purchases. Other states allow DSPs discretion in how they obtain electric supply.⁸ Duquesne agrees with the Independent Regulatory Review Commission (IRRC) and other commentators that question the need to prescribe the manner in which electricity can be procured. (ANFRO at 13.) Section 2807(e) of the Competition Act

⁸ For example, DSPs in Texas and in New York, which have relatively high levels of retail shopping, do not rely on a mandated type of procurement process and have allowed DSPs discretion in how they obtain supply to meet their default service obligations. In contrast, recent experience in neighboring states demonstrates that structured solicitations may not always foster a robust retail market for electricity. In many cases, EGSs have been unable to compete in markets where solicitations are used to determine default service rates (e.g., Maryland, New Jersey, and Massachusetts).

does not expressly mandate that competitive bidding be used to procure electric generation supply for default service customers. Bilateral contracts are used by gas companies and electric utilities in Pennsylvania, New York, and in many other jurisdictions. The Commission even acknowledges “these bilateral contracts may very well reflect ‘prevailing market prices’” (ANFRO at 14), but then the Commission arbitrarily excludes the use of bilateral contracts and denies the value of such contracts even though they are pervasive throughout the industry. The Commission should not seek to impose a “one-size fits all” approach to procurement that may impose additional costs and/or risks on retail customers and may potentially harm retail competition. While the Competition Act requires the DSP to acquire electric energy at prevailing market prices, it does not mandate the methods by which it must procure its electric supply.

There are several possible methods to procure electric supply. Under one method, a DSP may conduct a formal structured solicitation (e.g., an auction or RFP) to obtain supply. Alternatively, a DSP could reach a bilateral agreement, or obtain supplies in competitive wholesale spot electricity markets. Furthermore, electricity supply may be procured in the form of fixed-price full requirements contracts that involve an all-in price for all of the customers’ electricity needs, or supply could be procured in the form of standard wholesale electric energy “block” products for a defined quantity in each hour. These block products are traded frequently in a liquid commodity market, but they do not cover certain risks associated with serving retail customers, such as uncertain customer usage and switching. Different procurement methods allocate risks differently between the DSP, wholesale suppliers, and retail customers, and no single method may be preferable in all cases for all customer types.

The Commission should not adopt and mandate a competitive supply procurement method that could be applied to all types of customers in all circumstances. For example, requiring that DSPs rely solely on structured solicitations to procure supply and ignoring other available methods leaves the Commission and the Commonwealth's consumers exposed to potentially significant price increases,⁹ the possibility that the procurement method may not be successful at attracting bids,¹⁰ and the chance that the development of retail competition will be stymied.¹¹

The DSP should have discretion in how it chooses to obtain its supply and how supply risks are most effectively allocated among the DSP, wholesale suppliers, and retail customers. In some states, default service supply for large C&I customers is procured in the hourly spot market and the cost is passed on to customers through a market index formula rate. Certainly, this method of procurement is not likely to be appropriate for residential customers who have very few opportunities in retail competitive markets and need more price stability in the design of their default service. Price stability can be provided to smaller customers with the use of longer-term supply contracts obtained through solicitations or through a bilateral supply agreement. A solicitation process is generally a more structured approach than a bilateral agreement, and the development of a solicitation typically involves settling upon a standard format for the terms, conditions,

⁹ In Maryland, the results from a March 2006 RFP resulted in significant rate increases for customers. PEPSCO's residential customers faced an increase of 39% for a typical bill, for Delmarva Power & Light a 35% annual increase, and for Baltimore Gas & Electric, 72%. In Delaware, Delmarva Power & Light's proposed rates for residential customers resulting from a structured solicitation process increased the total annual bill by about 59% on average. In Illinois, the legislature is currently considering whether to reverse the rate impact from its most recent structured solicitation. In Pennsylvania, Pike County Light & Power customers faced a 129% increase in rates from their structured solicitation process.

¹⁰ For example, Duquesne did not receive any bids from wholesale suppliers at any price in its structured supply procurement process completed in March 2006 and only one bid in its procurement process completed in May 2006.

¹¹ In many instances, alternate retail suppliers have been unable to compete in markets where structured solicitations are used to determine default service rates (e.g., Maryland, New Jersey, and Massachusetts).

and bid procedures of the supply contract before the contract is put out to bid. The contract terms, conditions, and bid procedures can have a significant impact on the success or failure of the solicitation. They can affect the number of suppliers willing to participate, the resulting price levels, and the risks allocated to retail customers and winning bidders. A solicitation also requires time and funds to implement, and customers are exposed to market price movements during the regulatory proceedings and implementation period leading up to the solicitation. In contrast, if an EDC or another supplier is willing to assume certain risks and provide other benefits to retail customers in a bilateral supply agreement (e.g., by holding its fixed-price offer open while regulators consider the proposed rate levels), then the bilateral agreement may be the preferred procurement method. The bilateral agreement may allow an EDC and retail customers to “know the price” and customer rate impacts in advance of a lengthy regulatory review period rather than require the Commission to approve a solicitation process with an uncertain future price outcome with only one business day to assess the reasonableness of the results.

Under any of the above procurement methods, regulators are able to determine whether the resulting supply rates represent prevailing market prices. Prevailing market prices may be established by comparisons with other market prices in the region, through a market price index formula, or by a structured solicitation.¹² Various versions of a market index formula have been implemented around the country to establish market-

¹² In fact, the Pennsylvania Commission has previously approved post-transition period default service plans for Duquesne that relied on different supply procurement approaches and different methods to establish prevailing market prices.

based default service rates, including for New York State Electric & Gas,¹³ Rochester Gas & Electric,¹⁴ the State of Illinois,¹⁵ and the State of Texas.¹⁶ Regulators can also determine whether proposed rates reflect prevailing market prices by comparing and benchmarking the proposed rates with prices that have resulted from solicitations for default service supply in other service areas.

Given the potential customer benefits of allowing various supply procurement methods and the ability to determine whether the resulting rates represent prevailing market prices using any of a variety of methods, the Commission should clarify that the "prevailing market price" standard in the Competition Act can be satisfied through a variety of supply procurement methods rather than restrict the Commonwealth to a single or dual supply acquisition approach.

The Commission has stated in its order that the public interest can best be served by modeling certain portions of the default service rules on its form of regulation of natural gas supply. (ANFRO at 4.) Certainly, gas companies in the Commonwealth can and do enter into negotiated bilateral contracts for their supply. Likewise, electric power plants, whether regulated or unregulated, enter into not only competitive solicitations and purchases from the spot market, but also large and extensive bilateral contracts. DSPs

¹³ NYSEG offered customers fixed retail rates for a two-year period based on forward electric prices. Joint Proposal, Petition of New York State Electric & Gas Corporation for Approval of its Electric Price Protection Plan at 32-33, Case 01-E-0359 (NYPSC Jan. 2002).

¹⁴ RG&E offers customers fixed retail rates for one year based on forward electric prices. Electric Rate Joint Proposal, Proceeding on Motion of the Commission as the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service at 15-17, Case 03-E-0765 (NYPSC Mar. 9, 2004).

¹⁵ Illinois utilities offered non-residential customers a power purchase option service based on a forward market index. Both residential and non-residential customers that shopped received a market value energy credit based on a forward market price formula, through January 1, 2007. Commonwealth Edison Company Retail Tariff, Rider PPO Power Purchase Option – Market Index, Tariff Sheet at 151.1-15.

¹⁶ Senate Bill 7, the Texas electric restructuring law, specified that a retail affiliate of the incumbent utility must provide Price to Beat ("PTB") service. PTB is comprised of a non-fuel "base rate" plus a fuel factor. While the base rate was frozen, the fuel factor was subject to a market index adjustment mechanism linked to natural gas prices.

should have the same flexibility in purchasing their electric supply as gas companies do. If a DSP is able to enter into negotiations with different suppliers that provide benefits to retail customers and the DSP can demonstrate that the resulting rates reflect prevailing market prices, why would the Commission want to prohibit this as an option? The exclusion of the use of bilateral contracts will unnecessarily harm customers.¹⁷

Duquesne disagrees with the statement made by the Commission that competitive solicitations are “the optimal method of acquiring electricity” since they include “a direct exposure to market forces.” (ANOFR at 14.) This implies that bilateral contracts do not include a direct exposure to market forces. This is simply not true. A DSP acquiring energy under a bilateral agreement is going to be aware of market prices – whether spot market, futures or recent solicitations – and its supply options, including competing offers from other electric suppliers. In any event, the DSP clearly has the burden of proof to demonstrate to the Commission that the proposed default service rates represent prevailing market prices.

Further, the Commission has stated that procurement plans should have the objective of obtaining the lowest reasonable long-term costs. (§ 54.186 (b)1.) Duquesne agrees with that statement and believes, in many instances, bilateral contracts will result in lower costs for customers. It is true that a DSP opting to enter into a bilateral contract has a higher burden to show the Commission that it in fact is obtaining power supply at the prevailing market price. Many utilities will not desire to take this

¹⁷ Wholesale suppliers participating in structured solicitations also typically require retail customers to bear additional risks. In the solicitations conducted in New Jersey and Maryland, if a wholesale supplier defaults during the contract period, the utility is allowed to recover incremental replacement costs from retail customers. In Maryland, retail customers bear the costs associated with certain customer switching risks, as well as the risk of a failure to secure bids, the risk associated with auction pricing anomalies, and the risk of wholesale supplier default.

risk, and will rely on a structured solicitation for its own protection, since there is less risk for the DSP with a solicitation. But if this Commission is truly concerned about obtaining power at the lowest cost for its customers and the DSP is willing to assume this higher burden of proof, bilateral contracts should be permitted as an option.

Finally, the Commission's logic for excluding the use of bilateral contracts does not apply to Duquesne. The Commission notes in a footnote "that most Pennsylvania EDCs have wholesale energy supply affiliates with substantial generation assets" and that "permitting the routine use of bilateral contracts would allow an EDC to negotiate a contract with its affiliate, with all the potential risk and conflicts this would entail." (ANFRO, Footnote 4, at 14, emphasis added.) In response, Duquesne notes that it is not in the same situation as "most Pennsylvania EDCs" since it does not have energy supply affiliates that possess substantial generation assets.¹⁸ While bilateral contracts with an affiliate may require more regulatory oversight to assure fairness,¹⁹ they are routinely used across the United States as a supply option and should not be prohibited. Given Duquesne's situation, it is not necessary to incur the costs associated with conducting multiple wholesale solicitations each year or to eliminate the possibility of customer benefits provided by a bilateral contract in order to address the concerns associated with "wholesale energy supplier affiliates with substantial generation assets." Duquesne simply does not have substantial generation assets. The PUC should reconsider this matter and permit the use of bilateral contracts.

¹⁸ Duquesne owns only 104 MW, recently purchased on September 1, 2006, none of which is used or proposed to be used for POLR service.

¹⁹ In addition to Commission oversight, the Federal Energy Regulatory Commission ("FERC") has jurisdiction over all wholesale sales of power by public utilities, including those between affiliates and non-affiliates. (FPA Sec. 205). FERC reviews affiliate power supply transactions and Duquesne must demonstrate that it will ensure no harm to consumers or wholesale competition from any affiliate power supply deal.

b) The Proposed Frequency of Rate Adjustments For Small Customers Is Not Appropriate at this Stage of Market Development

In the summary of changes, the Commission states “we do not attempt to dictate the exact manner by which every EDC will acquire electricity, adjust rates and recover their costs.” (ANFRO at 5.) But then, the proposed rules, contrary to that statement, require mandatory rate adjustments on a quarterly basis or more frequently for all customers up to 500 kW (§54.187). The Commission should reconsider as Duquesne believes mandated frequent rate adjustments for small customers, when combined with laddered contracts and reconciliation, is inappropriate, will harm retail customers and will not benefit retail competition.

1. Frequent Rate Adjustments for Small Customers Will Harm Retail Customers

The Commission claims that regular adjustments to default service rates will ensure that rates track prevailing market prices and customers will not experience large changes in rates. (ANFRO at 4). Duquesne disagrees for several reasons. First, the laddering of contracts at different points in time and blending them into default service rates when coupled with reconciliation of costs and revenues from prior periods will mean that at any point in time retail rates likely will not reflect current market prices. Second, this interpretation of prevailing market prices incorrectly limits it to short-term market products and ignores the fact that prevailing market prices may exist for longer term products. Third, market evidence from other jurisdictions (including New York and Massachusetts) indicates that retail customers have experienced significant changes in their default service rates when they have been exposed to frequent rate adjustments.

(Attachment B shows that these rates have been much more volatile than the default service rates in effect in Duquesne's service territory.)

Retail and wholesale markets are still evolving. Given the volatility of electric prices, the uncertain development of competitive retail markets for smaller customers, and the customers' preference for fixed prices, residential and small C&I customers should continue to be able to be offered a fixed rate default service. Smaller customers, and especially residential customers, do not want to be exposed to short-term wholesale market price volatility while competitive retail markets continue to develop.²⁰ Customer switching among residential customers, in particular, has been slow to materialize. Most utilities with retail access in the United States have more than 95 percent of their residential load remaining on utility default service. At this stage of market development, EGSs can not be relied on to provide fixed price certainty to all residential and small C&I customers. The Commission should not assume that EGSs will suddenly appear, offer fixed price services at reasonable prices to all customers, and remain in business for years into the future.

In New York, where most utilities change retail rates monthly based on a portfolio of supply contracts, customers have been exposed to volatile rates, and still most residential customers remain on default service despite numerous efforts to promote retail shopping.²¹ The New York Consumer advocate describes how it is almost impossible for ordinary customers to compare competitive electric service company (called "ESCO") prices with monthly utility default service rates. "Fluctuating rates make it impossible for

²⁰ This position is based on the review of testimony, public utility filed comments, and papers prepared by residential and small customer advocates in Pennsylvania and nationally.

²¹ Many utilities have implemented purchase of receivables programs, retail access credits, referral programs and extensive customer education programs in order to stimulate retail competition.

ordinary consumers to compare ESCO rates with default service rates. This lack of price transparency allows ESCOs to market their service based on short-term 'bait and switch' techniques, brand name attraction, or in protest to unreasonable price spikes from the current provider."²²

By comparison, Duquesne has reset its supply rates to market levels every few years as it moved from POLR I to POLR II to POLR III and in its most recent POLR filing. This frequency of resetting rates has resulted in manageable rate impacts for customers at each reset and customer shopping.²³ Unlike other utilities both within and outside Pennsylvania that have abruptly moved from long-term generation rate caps to solicitations, Duquesne has successfully avoided sharp rate increases and provided customers with stable rates over time.

Some may argue that customers should experience frequent rate adjustments for economic efficiency reasons, if not for competitive reasons. This argument is dampened, however, to the extent that default service rates could reflect "stale" prices due to laddering and/or reconciliation. Providing customers dynamic and volatile price signals to encourage economically efficient load response is especially difficult for residential and small C&I customers unless expensive smart metering is implemented. In some jurisdictions, customers experience significant price volatility with little economic benefit. In the absence of cost-effective enabling technology (e.g., advanced metering, communications, and metering data management systems) for smaller customers, there is

²² Public Utility Law Project Comments in its Opposition to the Motion to Dismiss at 10, Case 05-E-1222, 2006.

²³ Duquesne's residential shopping levels are 9th in the United States based on amount of residential shopping load.

little benefit to sending customers volatile market price signals,²⁴ and in the absence of EGSs willing to serve that market, there is little customers can do to mitigate the impact of volatile market prices.

The DSP should be permitted to establish market-based default service rates that vary hourly or are fixed for periods of up to multiple years depending on the level of market development and the needs of different customer types. The durations and pricing structures of default service supply agreements may vary across customer types and across service areas. The term “prevailing market prices” should not be defined narrowly to limit electricity default service only to short-term market prices (e.g., a quarter or less) for all types of default service customers in all situations.²⁵ It is especially important that the Commission clarify that the intent of the Competition Act is not to expose residential and small C&I retail customers in the Commonwealth to significant market price volatility at a time when few alternatives exist in the competitive retail market.²⁶

The Commission should acknowledge that prevailing market prices may include the prices of long-term fixed price default service products, and should not be limited

²⁴ Without such technology, utilities must take metered usage and allocate it to hours in the month using deemed load shapes regardless of the customer’s actual usage. Therefore, there is little economic incentive for a customer to change consumption without the necessary enabling technology to support those actions. Utilities also typically have limited ability to communicate price signals in advance to allow customers to respond to short-term price signals. Monthly prices are billed long after consumption occurs and price information is not revealed until after-the-fact. Furthermore, while there have been numerous studies and pilot programs attempting to measure customer response to market prices, the specifics regarding the magnitude of price movements, the frequency and timing of price movements, how prices are communicated to customers, and specific customer characteristics may impact the ability of customers to respond to the market prices even with the appropriate enabling technology.

²⁵ In the POLR III Order, the Pennsylvania Commission found that Duquesne had established, by a preponderance of the evidence, that its proposed rates for residential and small C&I customers satisfied the Competition Act’s requirements that such rates reflect prevailing market prices for the three-year term period beginning January 1, 2005, through December 31, 2007.

²⁶ Most states in the U.S. either have not adopted or have suspended efforts to implement retail competition due to concerns about higher market prices and customer exposure to market price fluctuations. In states where retail competition has been implemented, the vast majority of residential and small C&I customers remain on default service provided by the EDC.

only to short-term market prices. On one hand, the proposed rules wisely do not prohibit the use of long-term supply contracts; however, on the other hand, they require DSPs to adjust retail rates at least quarterly. As people throughout the nation are painfully aware, large increases in energy prices, such as those experienced recently, are extremely difficult to control and manage. This is especially true given that the vast majority of residential and small C&I customers in Pennsylvania remain on default service and have very limited affordable alternatives to utility service. Rates for these customers should be based on longer-term supply products in order to provide some level of rate stability while competitive wholesale and retail markets continue to develop. At the same time, these rates should reflect the prevailing market prices for those longer-term supply products, including any associated costs and risks, in order to provide an opportunity for retail competition to further develop. In this way, residential and small C&I customers can benefit from price stability, while being served at prevailing market prices that allow competitive retail markets to continue to evolve.

The Competition Act clearly does not specify the term of potential default service products, and it should not be interpreted by the Commission to force all default service customers in the Commonwealth onto rates that expose these customers to short-term market price volatility with little opportunity to mitigate this exposure in an immature competitive retail market.

2. Frequent Rate Adjustments for Small Customers Will Not Benefit Retail Competition

It is ironic that the Commission states that the experience of Duquesne shows that retail markets can work (ANFRO at 21), and then proceeds to require Duquesne to

procure power and adjust rates in a manner that would undermine its successful development of a retail market. The Commission asserts that a PTC fixed for long periods of time, will stifle competition. (ANFRO at 21.) Yet Duquesne has fixed its PTC for residential and small C&I customers for three-year periods during both the POLR II and POLR III plans and has relatively high levels of customer shopping.

Retail rates should represent the prevailing market price levels at the time they are proposed, taking into account all of the costs and risks associated with providing default service to retail customers for the time period those rates are in effect, be it monthly, yearly, three years, etc.

It simply is not true that frequent adjustments of retail rates necessarily will result in more shopping among small customers. The Commission assumes that EGSs will respond by entering the market and offer customers fixed prices. (ANFRO at 22.) This is a huge assumption with grave consequences if the Commission is wrong and especially risky at this stage of market development. In Massachusetts, default service rates were adjusted frequently yet there is very little shopping among residential customers. In New York, while rates adjust monthly for most customers, still residential shopping is lower than in Duquesne's service territory in many cases. Unlike in Duquesne's service area, EGSs do not have a fixed price benchmark to compete against.²⁷

As the statute provides, "... the electric distribution company or Commission-approved alternative supplier shall acquire electric energy at prevailing market prices to

²⁷ Stable default service rates will not necessarily harm or promote retail competition. Stable rates can be set at below market levels, at market levels, or above-market levels with differing impacts on retail competition. In some cases, a fixed price default service may provide a benchmark against which EGSs may compete and allow EGSs to market "known savings" off of that benchmark. If variable default service rates are unknown in the future, then it becomes difficult for an EGS to guarantee savings while providing the customer price security.

serve that customer and shall recover fully all reasonable costs. 66 Pa. C.S. §2807(e).

There is no support at all legally that prices must be updated quarterly, monthly or whatever time period one may choose to be “prevailing market price”.

It is Duquesne’s recommendation that the Commission not force DSPs to adjust rates on a quarterly or more frequent basis for residential and small C&I customers with limited opportunities to mitigate their exposure to volatile market prices. Certainly the Commission should be able to entertain a possible suspension of any automatic adjustment based on alternative proposals or agreements. The Commission needs the flexibility to be able to adopt such an approach and entertain varying frequencies of price adjustments. A DSP should be allowed to propose a frequency of rate adjustment that is tailored to the customer needs and market circumstances at the time of its filing. In general, more sophisticated customers in a more developed retail market should be exposed to more frequent rate adjustments. But given the current stage of retail market development for small customers, the Commission should not prescribe quarterly rate adjustments. The proposed rulemaking appears to have gone from one extreme (e.g., fixed rate caps for ten years as was approved as part of utility restructuring) to another (i.e., quarterly rate adjustments). Duquesne’s past POLR plans demonstrate that a more moderate approach may better achieve the Commission’s objectives of mitigating rate shocks for customers and facilitating a competitive retail market. The Commission should gather through its experience from various utilities over a period of time to determine, at a future date, whether it desires to mandate more frequent rate adjustments or whether it desires to permit continued flexibility and experimentation with rate adjustments.

c) Provisions that Duquesne Supports

Duquesne supports many provisions in the proposed rulemaking.

1. The Company appreciates that the Commission does not want to be “too prescriptive in its approach” and the notion of developing a separate policy statement that contains guidelines for DSPs. (ANFRO at 4.)
2. Duquesne also appreciates that the Commission has allowed flexibility regarding reconciliation. While it recommends reconciliation, it does not mandate it. (ANFRO at 4.)
3. Duquesne agrees that the EDC should be the initial default service supplier. (ANFRO at 8.)
4. Duquesne also appreciates that the Commission has recognized that its initial approach to rate design and cost recovery was too prescriptive and too complex (ANFRO at 16-17), and it supports the Commission’s effort to simplify the price to compare and to eliminate declining blocks and demand charges. (ANFRO at 4,17.)
5. Duquesne also agrees with the proposed program duration of two to three years. (ANFRO at 11.) It provides flexibility and allows for a plan that is neither too short nor too long.

PROPOSED POLICY STATEMENT

Duquesne has reviewed the proposed Policy Statement in conjunction with default service rules, and supports the concept that a Policy Statement is beneficial in allowing

much greater flexibility to the Commission in formulating its policy on default service.

Duquesne agrees with the following items pronounced in the Policy Statement.

1. Duquesne supports the concept that a “DSP may propose procurement approaches that vary from those outlined in this Policy Statement.” (Page 4.) It is unfortunate that the default service rules do not permit the same flexibility. The proposed rules should be made consistent with the Commission’s Policy Statement.
2. Duquesne supports the concept that DSPs consider a portfolio approach in managing their default service obligation (page 4), but believes that each DSP should have discretion on how it chooses to acquire its supply at prevailing market prices (i.e., no mandatory contract terms or mix of contracts should be administratively prescribed by the Commission).
3. Duquesne supports the Commission’s suggestion that different procurement strategies may be necessary for different customer classes, consistent with the level of energy knowledge, financial resources, and opportunity to shop in the competitive market. (Page 5.)
4. Duquesne concurs that the Commission should not mandate or prohibit the use of long-term contracts. (Page 5.)
5. For a DSP that chooses to reconcile its costs and revenues, Duquesne supports the concept that adjustment intervals can be increased in frequency at the option of the DSP if there are large undercollections or overcollections. (Page 7-8.)

6. Duquesne agrees with eliminating declining energy blocks and demand charges. (Page 8)

The following items Duquesne does not concur with or has comments with respect to the policy and respectfully requests reconsideration of the Commission.

1. The language in §69.1805 is generally too prescriptive with respect to how the DSP is to procure supply. It states that “contracts should be laddered...with a minimum of two competitive bid solicitations a year.” Multiple procurements over the course of the year may or may not be beneficial. Duquesne also does not agree with the statement that “long-term contracts should only be used when necessary and required for DSP compliance with alternative requirements, and should be restricted to covering a relatively small portion of the default service load.”
(§69.1805) The provision of providing a stable and reliable power source is too important to rely on spot and short-term contracts, especially for residential and other small C&I customers with relatively few competitive alternatives. Long-term contracts can be structured to provide pricing flexibility. Accordingly, the Commission should not take a position opposed to long-term contracts. In addition, fixed-term contracts should not have dictated to them a given length of time, in this case one year. [§ 69.1805(2)] Fixed term contracts should be tailored towards what is

appropriate given the needs of the customer, the level of customer education (market understanding) and the level of market development.

2. The guidance that the price to compare will be adjusted at least every quarter for residential and small C&I customers . The Commission should make clear that it is willing to entertain and consider other adjustment frequencies. (§69.1809)
3. Likewise, while reconciliation may be recommended, if a utility desires to forgo reconciliation that should be permissible. Not all utilities will want to bear that risk of no reconciliation, but it should be an option in order to maintain flexibility. (§69.1809)
4. While the consideration of many items such as common standards for access to customer information, a purchase of receivables program, uniform supplier tariffs, a retail choice ombudsman, etc. are worthwhile, the public interest would not be served by consideration of a customer referral program in which retail customers are referred to EGSs. Duquesne has concerns that such referral programs do not have ample customer protections and rely on a "bait and switch" approach, whereby customers get minimal savings for a two month introductory period (less than \$3/month) and then are assigned to an unregulated rate not subject to Commission oversight. According to NYS Assemblyman Paul Tonko, the program is merely a "bait-and-switch game" that lacks transparency.²⁸

²⁸ "Slim odds for energy savings", Albany Times-Union, May 7, 2006.

Opponents describe the program as a “gimmick” and are also concerned that customers are effectively being slammed.²⁹

CONCLUSION

Duquesne has extensive and successful experience with post transition default service plans. It has maintained stable rates for small customers and yet has one of the highest percentages of retail shopping load in the country. In fact, it has well over 95% of all the residential shopping, 81% of all the commercial shopping and 90% of all the industrial shopping in the entire state. Well over half of Duquesne’s total load is shopping with alternative energy suppliers. In spite of this, Duquesne’s total rates are lower today than they were 15 years ago for customers and Duquesne provides a reasonable level of price certainty. Duquesne’s experience is truly a success story.

What is rather discouraging is that despite this success, Duquesne’s past POLR plans would not be permitted under these proposed rules. To remedy this outcome, two changes are necessary: (1) the proposed rules should allow bilateral contracts as a procurement option and (2) the proposed rules should not mandate a quarterly rate adjustment for residential and small C&I customers. In addition, as discussed earlier, Duquesne respectfully requests that the Commission clarify the effective date of the proposed rulemaking and define it as January 1, 2011.

Finally, there are many provisions that Duquesne supports in these proposed rules. The Commission has done an excellent job in some areas of providing much needed flexibility as markets continue to evolve. Duquesne agrees with the overall timeframes of the plans, the recommendations but not mandates on matters, the simplicity

²⁹ “Incentives set to lure consumers to alternative utilities”, Buffalo News, June 8, 2006.

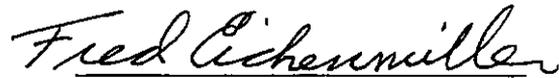
of price comparison, the gradual shifting to a competitive market, the elimination of declining rate blocks and demand charges, and the overall regulatory strategy of having policy statements that can be flexible as the market changes. Duquesne congratulates the Commission on its good judgment in these areas.

Duquesne appreciates this opportunity to participate and comment.

Dated this 2nd day of March 2007.

Respectfully submitted,

Duquesne Light Company

A handwritten signature in cursive script that reads "Fred Eichenmiller".

Fred Eichenmiller, Director
Rates and Regulatory Affairs

Attachments

Attachment A Shopping Levels in the United States: Total Customer Load

Attachment B Residential Default Service Rates for Duquesne and Selected Utilities (NY and MA)
Residential Switching Rates for Duquesne and Selected Utilities (NY and MA)

Attachment A

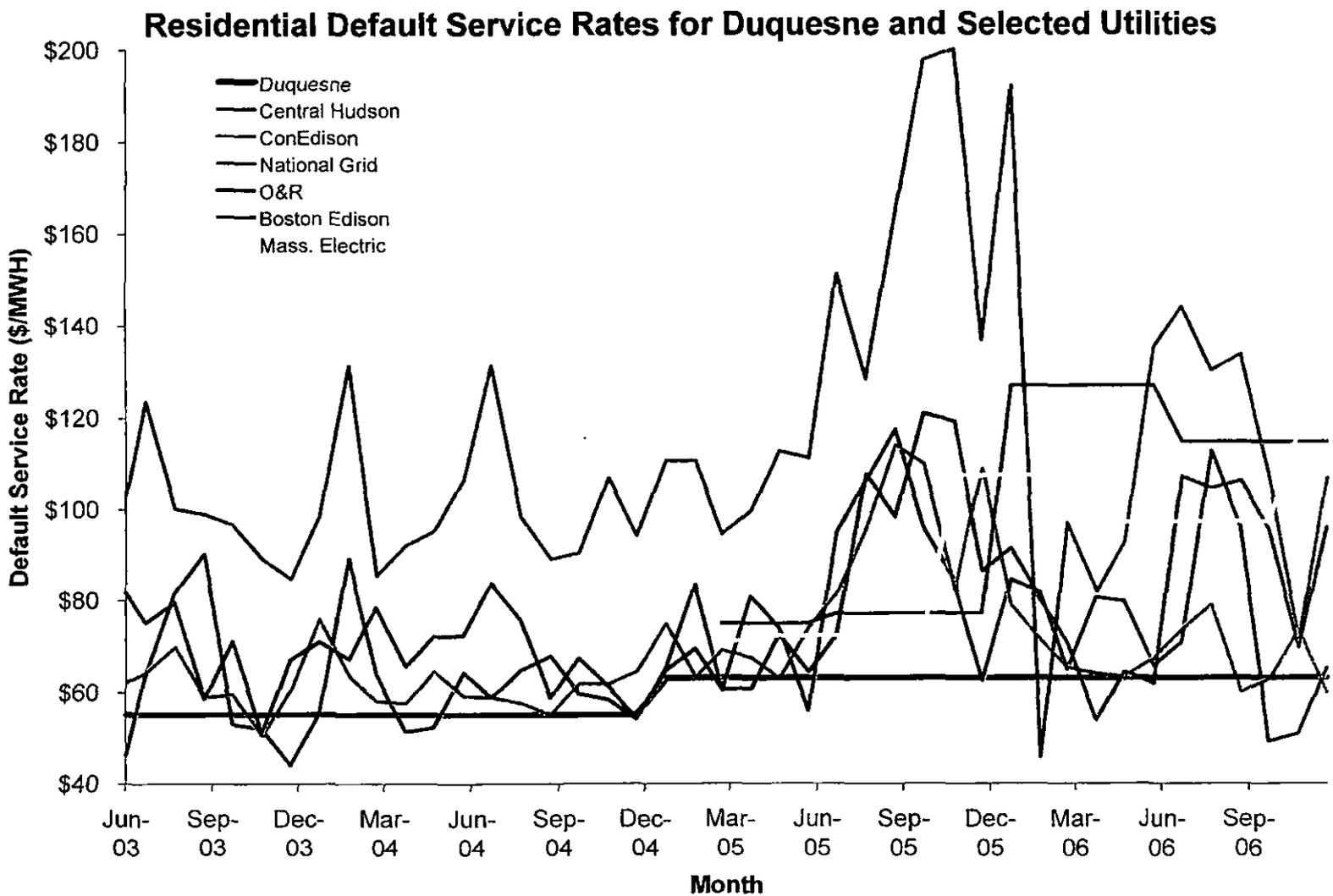
U.S. Retail Access Shopping Statistics

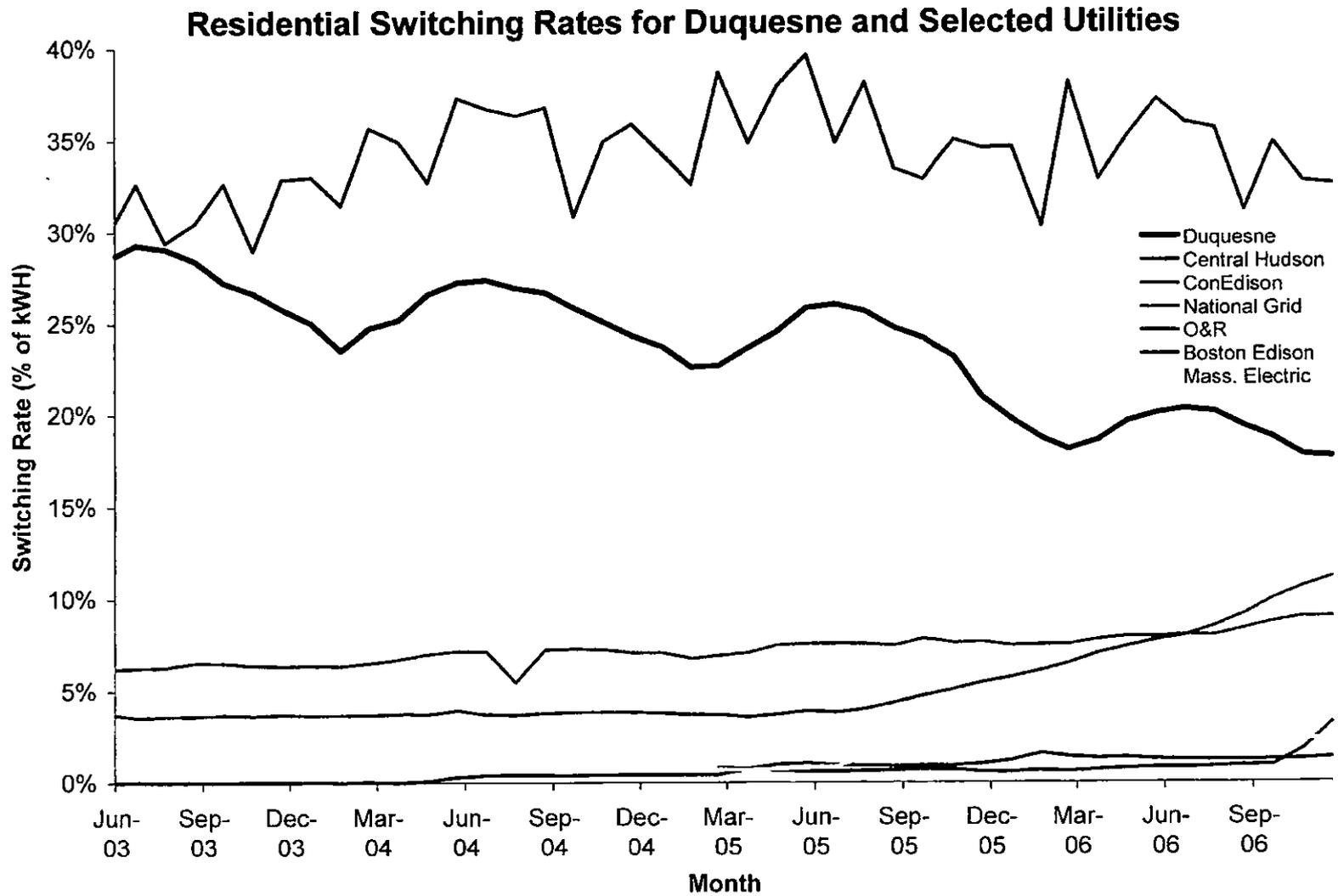
Total Customer Load				
Rank	Utility	State	Migration Rate	Notes
1	AEP Texas North Company	TX	73%	
2	AEP Texas Central Company	TX	70%	
3	Texas-New Mexico Power	TX	62%	
4	TXU	TX	56%	
5	Duquesne Light Co.	PA	54%	<i>a/</i>
6	Potomac Electric Power Co.	DC	53%	
7	Rochester Gas & Electric	NY	51%	
8	Centerpoint	TX	51%	
9	NSTAR	MA	49%	
10	Fitchburg Gas & Electric	MA	49%	
11	Consolidated Edison	NY	45%	
12	Illinois Power	IL	44%	
13	Potomac Electric Power Co.	MD	44%	
14	Central Maine Power Co.	ME	43%	
15	Massachusetts Electric Co.	MA	41%	
16	Western Massachusetts Electric Co.	MA	40%	
17	Niagara Mohawk Power Corp.	NY	40%	
18	Orange and Rockland Utilities	NY	38%	
19	Commonwealth Edison	IL	36%	
20	Delmarva Power & Light	DE	36%	
21	AmerenCILCO	IL	36%	
22	Baltimore Gas & Electric	MD	36%	
23	Bangor Hydro Electric Co.	ME	36%	
24	Maine Public Service Co.	ME	35%	
25	New York State Electric & Gas	NY	34%	
26	Central Hudson Gas & Electric	NY	31%	
27	AmerenCIPS	IL	30%	
28	Allegheny (Potomac Edison, Monongahela)	MD	30%	
29	Delmarva Power & Light	MD	28%	
30	PSEG	NJ	22%	
31	Dayton Power & Light	OH	22%	
32	Atlantic City Electric	NJ	22%	
33	Ohio Edison	OH	21%	
34	JCP&L	NJ	20%	
35	Narragansett Electric Co.	RI	15%	
36	Toledo Edison	OH	13%	
37	Cleveland Electric Illuminating	OH	12%	
38	Rockland Electric	NJ	11%	
39	Detroit Edison	MI	8%	
40	Pennsylvania Power Co.	PA	4%	
41	Consumers Energy	MI	4%	
42	Cincinnati Gas & Electric	OH	3%	
43	PECO Energy Co.	PA	3%	
44	Met Ed / Penelec	PA	1%	
45	Columbus Southern Power Co.	OH	1%	
46	Pennsylvania Power & Light	PA	0%	
47	MidAmerican Energy Company	IL	0%	
47	Ohio Power Company	OH	0%	
47	Allegheny Power (West Penn Power)	PA	0%	

Notes:
 Some differences exist in how jurisdictions define customer groups and in how they measure customer shopping.

a/ Duquesne figures based on Company billed kWh as of January 2007. OCA reports 47% shopping for all customers in Duquesne's service area based on non-coincident peak load as of January 2007. The OCA's figure is comparable to those reported for other Pennsylvania utilities.

Source: State websites.





CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant):

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Pamela C. Polacek

Dated this 12th day of March, 2007, at Harrisburg, Pennsylvania.

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DOCUMENT FOLDER

March 16, 2007

VIA E-MAIL AND FIRST CLASS MAIL

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Re: Petition of Duquesne Light Company For Approval of Default Service Plan For
The Period January 1, 2008 Through December 31, 2010;
Docket No. P-00072247

RECEIVED
2007 MAR 19 PM 9:04
SECRETARY'S OFFICE

Dear Mr. Jack:

Enclosed please find Direct Energy Services, LLC's Interrogatories, Set I, to Duquesne Light Company, in the above-referenced matter.

Very truly yours,



Kevin J. Moody
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosure

cc: Cert. of Service w/enc.

BTL

HAR:71973.1/DIR023-242252

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Interrogatories upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Pittsburgh, PA 15221

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PennFuture
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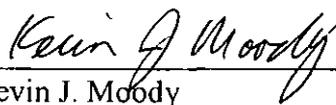
Adrian D. Newall
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David I. Fein
Senior Regulatory Counsel
Constellation Energy
111 Market Place
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Date: March 16, 2007



Kevin J. Moody

**Reger
Rizzo
Kavulich
& Darnall** LLP
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March 22, 2007

Via Hand Delivery:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

**DOCUMENT
FOLDER**

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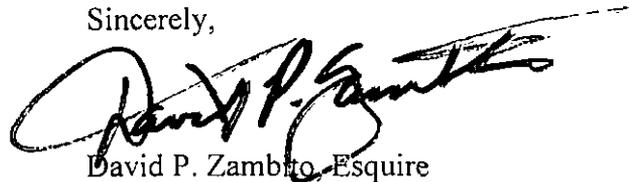
Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010; Docket No. P-00072247;
NOTICE OF APPEARANCE

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of my Notice of Appearance on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,



David P. Zambito, Esquire
Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc.

DPZ/kmg
Enclosures

cc: As per Certificate of Service

BA

5/7

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

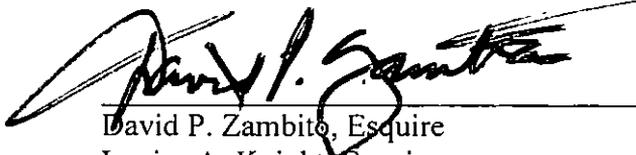
Petition of Duquesne Light Company :
for Approval of Default Service Plan : Docket No. P-00072247
for the Period January 1, 2008 :
through December 31, 2010 :

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2007 MAR 22 PM 2:18
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NOTICE OF APPEARANCE

Please enter our appearance in the above-designated matter on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. We are authorized to accept service on behalf of said parties in this matter. On the basis of this notice, we request a copy of each document hereafter issued by the Commission in this matter.

DOCUMENT
FOLDER



David P. Zambito, Esquire
Louise A. Knight, Esquire
Attorney ID Nos. 80017 & 26167
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20 North Market Square, Suite 300
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Fax: (717) 233-1884
Email: dzambito@rrkdllaw.com

Dated: March 22, 2007

Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc.

DOCKETED
MAR 22 2007

CERTIFICATE OF SERVICE
(Docket No. P-00072247)

I hereby certify that I have this day served the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

The Honorable Larry Gesoff
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SGoldenberg@foxrothschild.com
(*Pennsylvania Large Energy Users Coalition*)

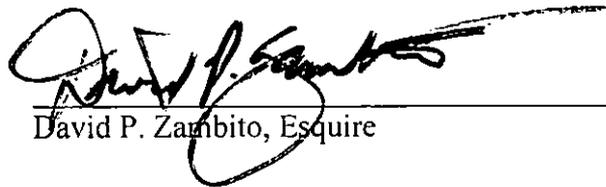
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Pasciullo@pasciullolawfirm.com

Dated this 22nd day of March, 2007



David P. Zambito, Esquire

Gary A. Jeffries
Senior Counsel

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501 Martindale Street, Suite 400, Pittsburgh, PA 15212-5817
Phone: 412-237-4729, Fax: 412-237-4782
E-mail: gjeffries@dom.com
Web Address: www.dom.com



Dominion®

March 29, 2007

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

P-00072247

**DOCUMENT
FOLDER**

Re: Request for Changes to Service Lists

Dear Secretary McNulty:

Dominion Resource Services, Inc. respectfully requests that your office update the Commission's official service lists in the proceedings listed in Attachment A to this letter to reflect a change of contact information for Gary A. Jeffries, effective March 16, 2007:

Former Information

Gary A. Jeffries
Dominion Retail, Inc.
1201 Pitt Street
Pittsburgh, PA 15221
Phone: 412-473-4129
Facsimile: 412-473-4170
E-mail: gjeffries@dom.com

New Information

Gary A. Jeffries
Dominion Retail, Inc
Suite 400, 501 Martindale Street
Pittsburgh, PA 15212-5817
Phone: 412-237-4729
Facsimile: 412-237-4782
E-mail: gjeffries@dom.com

Please contact the undersigned, should you have any questions regarding this filing. Thank you for your attention to this matter.

Respectfully,

Gary A. Jeffries
Senior Counsel

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2007 APR -2 11:10:53
SECRETARY'S BUREAU

Cc: All parties of record

Attachment A
March 29, 2007
Correspondence to PA PUC

DOCKET NUMBER

SERVICE LIST CONTACT

C-20066728
C-20067076
L-00040169
P-00072247

Gary A. Jeffries
Gary A. Jeffries
Gary A. Jeffries
Gary A. Jeffries

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pasciullo@pasciullolawfirm.com

NLP PC

March 29, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room
Harrisburg, PA 17120

Re: Petition of Duquesne Light Company for Approval of Default Service Plan
for the Period January 1, 2008 through December 31, 2010
Docket No.: P-00072247

Dear Secretary McNulty:

Enclosed for filing with the commission on behalf of Conservation Consultants,
Inc. in the above proceeding are an original and two copies of its Notification to
Administrative Law Judge Larry Gesoff concerning direct testimony and the
accompanying Certificate of Service.

Sincerely,
PASCIULLO LAW FIRM P.C.



Nicholas A. Pasciullo

**DOCUMENT
FOLDER**

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PA.P.U.C.
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11

ORIGINAL

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pasciullo@pasciullolawfirm.com

NAP PC

March 29, 2007

VIA EMAIL AND FIRST CLASS MAIL

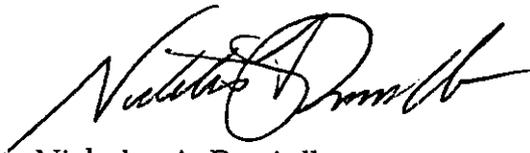
The Honorable Larry Gesoff
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Re: Petition of Duquesne Light Company for Approval of Default Service Plan
for the Period January 1, 2008 through December 31, 2010

Dear Judge Gesoff:

Please be advised that Conservation Consultants, Inc. ("CCI") will not be submitting Direct Testimony in the above proceeding. CCI respectfully reserves the right to submit rebuttal and/or surrebuttal testimony and to cross-examine witnesses. In addition, to the extent deemed appropriate by the Court, CCI reserves the right to testify in person at hearings in this matter.

Sincerely,
PASCIULLO LAW FIRM P.C.



Nicholas A. Pasciullo
Attorney for Conservation Consultants, Inc.

c: Counsel of Record
Certificate of Service Attached

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2007 APR -2 AM 9:18
PA.P.U.C.
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ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties listed below in accordance with Prehearing Order dated February 28, 2007 and the requirements of Title 52 Pa.Code § 1.54.

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2007 APR -2 AM 9:18
A.P.U.C.
SECRETARY'S BUREAU

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Washington, DC 20004

George Jugovic, Jr. Esquire
Citizens for Pennsylvania's Future
425 Sixth Avenue, Suite 2770
Pittsburgh, PA 15219

This 29th day of March, 2007.

Respectfully submitted,
PASCIALLO LAW FIRM P.C.



Nicholas A. Pasciullo, Esquire
Attorney for Conservation Consultants, Inc.

**Reger
Rizzo
Kavulich
& Darnall** LLP
ATTORNEYS AT LAW

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March 29, 2007

Via Hand Delivery:

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Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

ORIGINAL

SECRETARY'S BUREAU

2007 MAR 29 PM 4:11

RECEIVED

Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010; Docket No. P-00072247;
Certificate of Service for Constellation NewEnergy Statement No. 1.

Dear Mr. McNulty:

Enclosed for filing with the Commission on behalf of Constellation NewEnergy, Inc. in the above-referenced proceeding are an original and three (3) copies of the Certificate of Service for Constellation NewEnergy Statement No. 1. Copies of the Statement have been served in accordance with the Certificate of Service. Please date-stamp the extra copy of this filing and return it with our messenger service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,



David P. Zambito, Esquire
Counsel for Constellation NewEnergy, Inc.

DPZ/kmg

Enclosures

cc: Per Certificate of Service

CERTIFICATE OF SERVICE
(Docket No. P-00072247)

I hereby certify that I have this day served the foregoing document (Constellation NewEnergy Statement No. 1) upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

The Honorable Larry Gesoff
Pennsylvania Public Utility Commission
1103 State Office Building
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legesoff@state.pa.us

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(Retail Energy Supply Association)

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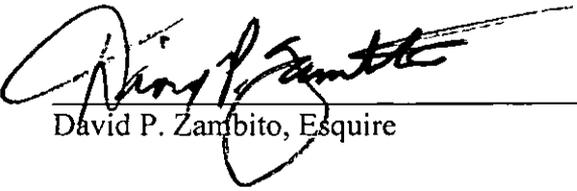
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Dated this 29th day of March, 2007



David P. Zambito, Esquire

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March 29, 2007

VIA HAND DELIVERY

The Honorable Larry Gesoff
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1103 State Office Building
300 Liberty Ave.
Pittsburgh, PA 15222

**DOCUMENT
FOLDER**

2007 MAR 29 PM 3:52
SECRETARY'S BUREAU
P.U.C.

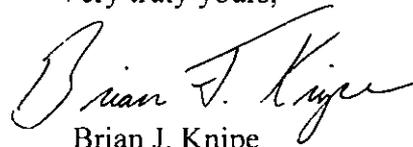
RECEIVED

Re: Petition of Duquesne Light Company For Approval of Default Service
Plan For The Period January 1, 2008 Through December 31, 2010, Docket
No. P-00072247

Dear Judge Gesoff:

On behalf of Reliant Energy, Inc. ("Reliant") I have enclosed four (4) copies of the Direct Testimony of James A. Ajello, Reliant Statement No. 1. We have served copies of this document on the parties to this proceeding in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/eh

Enclosures

cc: James J. McNulty, Secretary (transmittal letter and Certificate of Service only, by hand delivery)
Certificate of Service (first-class mail)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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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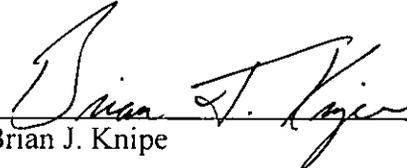
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Brian J. Knipe

Dated this 29th day of March, 2007

Hawke



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March 29, 2007

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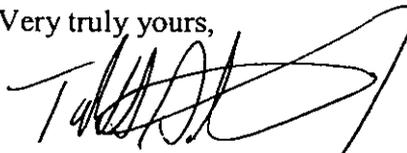
RE: Petition of Duquesne Light Company for Approval of Default Service Plan for the
Period January 1, 2008, through December 31, 2010; Docket No. P-00072247;
**PREPARED DIRECT TESTIMONY OF THOMAS J. BUTLER ON
BEHALF OF DOMINION RETAIL, INC.**

Dear Judge Gesoff:

Enclosed please find an original and one copy of the Prepared Direct Testimony of
Thomas J. Butler on behalf of Dominion Retail, Inc., in the above-captioned matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail, Inc.

TSS/bks

Enclosures

cc: James J. McNulty, Secretary (Cover Letter and Certificate of Service)
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

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I hereby certify that I have this day served a true copy of the foregoing document 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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Todd S. Stewart

Dated this 29th day of March, 2007.



McNees Wallace & Nurick LLC
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March 29, 2007

VIA E-MAIL AND FIRST CLASS MAIL

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**DOCUMENT
FOLDER**

**Re: Petition of Duquesne Light Company for Approval of Default Service Plan
for the Period January 1, 2008 Through December 31, 2010;
Docket No. P-00072247**

Dear Judge Gesoff:

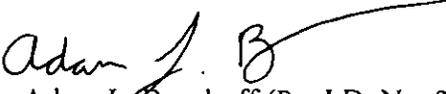
Please be advised that the Duquesne Industrial Intervenors ("DII") will not be submitting Direct Testimony in the above-referenced proceeding. DII reserves the right, however, to file Rebuttal Testimony in response to issues raised in other parties' Direct Testimony.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this document.

Thank you.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By 
Adam L. Benschhoff (Pa. I.D. No. 200498)

Counsel to the Duquesne Industrial Intervenors

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ALB/lhi

c: James J. McNulty, Secretary (via hand delivery) ✓
Certificate of Service

CERTIFICATE OF SERVICE

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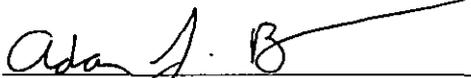
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Dated this 29th day of March, 2007, at Harrisburg, Pennsylvania.

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April 2, 2007

VIA HAND DELIVERY

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APR 03 2007

Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010; Docket No. P-00072247 ("POLR IV Plan")

Dear Secretary McNulty:

On March 12, 2007, Duquesne Industrial Intervenor's (DII) filed a motion in this docket requesting that Commission consideration of the large commercial and industrial (C&I) customer portion of Duquesne Light Company's ("Duquesne") POLR IV Plan be severed from the Plan and stayed pending finalization of the Commission's recently issued Default Service regulation and Policy Statement proposals (Docket Nos. L-00040169, M-00072009).

DII seeks to require Duquesne to offer fixed price service ("FPS") and monthly price service options to large C&I customers, in addition to the hourly price service ("HPS") proposed by Duquesne. The Retail Energy Supply Association (RESA), a party in this docket, submits this letter in lieu of a formal answer in opposition to DII's motion.

At the outset, RESA notes that DII's motion sets forth no standard by which its motion should be judged. However, the Commission has concluded that a severance must be for good cause,¹ and the standards for a stay pending appeal of a final order are well-known.² Assuming

¹ *In Re West Penn Power Company*, 83 Pa. P.U.C. 547, 550 (C-00946317), Order entered December 16, 1994 (citing *Brillhart v. Edison Light & Power Co.*, 68 D. & C. 48 (1949) (prejudice to the moving party should greatly outweigh the procedural convenience of a consolidated case).

these standards are applicable, DII has not satisfied them. Simply put, there is nothing precluding DII from presenting its proposals in this docket within the litigation schedule adopted in this docket, while granting DII's motion would inject uncertainty into Duquesne's large C&I customer market which would adversely affect the positive and substantial development of the retail market. Accordingly, RESA submits that DII's motion should be denied for any one of the following reasons.³

First and foremost, the competitive retail electric market for large C&I customers in Duquesne's service territory is working, with over 98% of the load receiving supply from competitive suppliers⁴ and only six out of nearly 900 large customers taking Duquesne's FPS.⁵ In Duquesne's POLR III case, the Commission determined that effective June 1, 2007, Duquesne's large C&I customers no longer need the FPS as a further transition service. RESA submits that the maturation of Duquesne's competitive retail electric market for large C&I customers demonstrates: (1) the correctness of the Commission's decision that FPS is no longer necessary after May 31, 2007, as well as Duquesne's decision to continue this large C&I customer POLR pricing structure into the POLR IV period; and (2) why DII's motion – which seeks to *require* Duquesne to offer FPS during the POLR IV period – should be denied.

² The standards for a stay pending appeal of a final order are: (1) likelihood of prevailing on the merits; (2) irreparable harm without the stay; (3) stay will not substantially harm other parties; and (4) stay will not adversely affect the public interest. *Pa. P.U.C. v. Process Gas Consumers*, 467 A.2d 805 (Pa. 1983). RESA submits that more of a showing than required by the *Process Gas* standards is required to grant DII's motion because the Default Service orders are not final Commission orders or determinations, but tentative determinations subject to change as a result of the Commission's review and analysis of the comments, as well as the subsequent review of the Commission's final rulemaking by the Independent Regulatory Review Commission, the Office of Attorney General, and the applicable standing committees of the General Assembly.

³ RESA's members include Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Retail Services, LLC; Sempra Energy Solutions, LLC; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The opinions expressed in this filing represent the position of RESA as an organization but may not represent the view of all members of RESA.

⁴ Duquesne POLR IV Plan petition at 3, 13 (as of January 2007).

⁵ *Id.* at 12-13, n.3 (as of December 31, 2006).

James McNulty
April 2, 2007
Page 3

Second, Duquesne's proposed large C&I customer plan is, in fact, consistent with the Commission's recent Default Service orders, which propose that large C&I customers should receive Default Service rates that adjust at least monthly or more frequently, and would *permit* a Default Service Provider (DSP) to propose an FPS option for the Commission's consideration. As a result of the maturation of Duquesne's large C&I customer market, Duquesne has decided to offer HPS – which adjusts more frequently than monthly, and not to offer an FPS option.

DII's request to require Duquesne to exercise its discretion in a particular way is completely inappropriate. Properly understood, DII's request to require Duquesne to take propose certain additional POLR service options for large C&I customers is actually *inconsistent* with the Commission's Default Service proposals, not consistent with them.

Finally, the relief requested by DII is impractical. Duquesne's POLR IV period begins January 1, 2008, and there is no assurance that the Commission's final Default Service regulations will become effective well enough in advance of January 1, 2008 to permit Duquesne to implement them then – assuming that the final regulations would *require* Duquesne to offer the Default Service options DII seeks.

For the reasons set forth above, DII's motion should be denied.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/lww

cc: Hon. Larry Gesoff
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing RESA letter response to DII's Motion in P-00072247 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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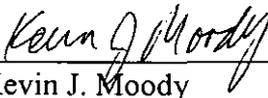
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Date: April 2, 2007



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April 2, 2007

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**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 21, 2010
Docket No. P-00072247**

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Answer of Duquesne Light Company to the Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of the Large Commercial and Industrial Default Service Plan in the above-referenced proceeding.

As indicated on the certificate of service, copies have been served on the parties in the manner indicated.

Respectfully submitted,

Anthony D. Kanagy

DOCUMENT
FOLDER

ADK/jl

Enclosures

cc: Honorable Larry Gesoff, Administrative Law Judge
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

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**ANSWER OF DUQUESNE LIGHT COMPANY TO MOTION OF DUQUESNE
INDUSTRIAL INTERVENORS TO SEVER AND POSTPONE CONSIDERATION OF
THE LARGE COMMERCIAL AND INDUSTRIAL DEFAULT SERVICE PLAN**

TO: ADMINISTRATIVE LAW JUDGE LARRY GESOFF:

On March 12, 2007, Duquesne Industrial Intervenors ("DII") filed a Motion to Sever and Postpone Consideration of the Large Commercial and Industrial Default Service Plan ("Motion to Sever" or "Motion") in the above-captioned proceeding. Pursuant to 52 Pa. Code §5.103(c), Duquesne Light Company ("Duquesne Light") hereby answers the Motion.

I. INTRODUCTION

DII bases its Motion to Sever on the premise that Duquesne Light's default service plan for large commercial and industrial ("Large C&I") customers is "in conflict" with the design of the default service options allowed under the proposed default service regulations and policy statement recently issued by the Pennsylvania Public Utility Commission ("Commission") on February 9, 2007. DII's premise is incorrect for several reasons. First, the Commission's default service regulations are only proposed regulations and are not final. Therefore, they have no force and effect, are not applicable to this proceeding and can provide no basis for any action in this proceeding. Second, if the default service regulations become final, they will not apply to this proceeding. This proceeding is currently scheduled to be concluded in July 2007 so that Duquesne Light has adequate time to implement the new default service plan in order to provide default service to customers on January 1, 2008. It is extremely unlikely that final regulations

will be adopted before July 2007. Further, the Commission has indicated that any new regulations should only apply to plans filed after the effective date of the regulations. Third, even if the regulations would apply, Duquesne Light's plan for Large C&I customers is fully compliant with the proposed regulations. DII seeks monthly fixed price service for Large C&I customers, but the regulations do not mandate that default service providers ("DSPs") provide such service. Fourth, if DII wanted Duquesne Light to offer a fixed price default service for Large C&I customers in this proceeding, DII should have requested it in direct testimony so that parties could have litigated this and other related issues, including under what terms and conditions a fixed price default service for Large C&I customers may be appropriate under the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa.C.S. §§ 2801 et. seq. These arguments are explained in detail below.

II. ARGUMENT

A. The Default Service Regulations Are Not Final And Cannot Be Used As A Basis For Making A Decision In This Proceeding.

As explained above, DII bases its Motion to Sever on the premise that Duquesne Light's default service plan for Large C&I customers conflicts with the Commission's proposed default service regulations that were issued on February 9, 2007 through the Advanced Notice of Final Rulemaking Order at Docket No. L-00040169 ("Order"). See Motion, p. 1. DII's Motion to Sever should be dismissed because the Commission's proposed default service regulations are not final and have no force and effect in this proceeding.

In addition, because the regulations are proposed, they will likely change. In fact, the Commission has requested comments and reply comments on the proposed regulations. Based upon the comments that the Commission receives, the Commission will likely modify the proposed regulations, and this review will necessarily take time.

Furthermore, under the provisions of the Regulatory Review Act, 71 P.S. §§ 745.1 – 745.14, a Pennsylvania agency's regulations must first be reviewed by the applicable standing committees of the Legislature, the Attorney General and IRRC before they may become effective. 71 P.S. § 745.5a. These entities may disapprove the regulations, and such disapproval could result in the regulations being withdrawn. 71 P.S. § 745.5a. Because the regulations are not final, they cannot form the basis for determining the merits of Duquesne Light's default service plan. In this regard, Duquesne Light must have a new default service plan in place by January 1, 2008, and it is extremely unlikely that the regulations will be adopted in time to consider the effect of the regulations on such plan. Additionally, this case cannot be litigated by the parties based upon current Commission policy, and then decided based on new rules not in place during the evidentiary phase of the proceeding. This is presumably the reason that the Commission has stated that the regulations will not apply to plans filed before the effective date.

It must be emphasized that the Commission has approved three prior default service plans for Duquesne Light without default service regulations. The Commission should not delay action on Duquesne Light's current default service plan in order to wait for final regulations, especially where there is no guarantee when the regulations will become final.

B. When The Regulations Become Final, They Should Not Apply To Duquesne Light's Default Service Plan.

DII's Motion to Sever also should be dismissed because when the default service regulations become final, they should not apply to Duquesne Light's current default service plan.

In the Order setting forth the proposed regulations, the Commission states as follows (p. 11):

After reflecting on the IRRC's and other parties comments on this issue, the Commission has revised the language of Section 54.185(c) on the program duration by selecting a two to three year term for the first default service program filed after the effective date of these regulations.

This statement by the Commission indicates that the Commission recognizes that it is not possible to apply the regulations to default service programs that were filed before the effective date of the regulations. As a result, when the proposed regulations become final, they will not apply to Duquesne Light's default service plan. Therefore, DII's Motion to Sever should be dismissed.

C. Duquesne Light's Plan for Large C&I Customers Is Fully Compliant With The Proposed Regulations.

As indicated above, DII bases its Motion to Sever on the proposition that Duquesne Light's default service plan for Large C&I customers is "in conflict" with the Commission's proposed regulations. Motion, p. 1. This statement is incorrect. Duquesne Light's default service plan for Large C&I customers is fully compliant with the proposed regulations.

The proposed regulations provide that default rates are to be adjusted on a monthly basis, or more frequently, for customers with a registered peak load equal to or greater than 500 kW. Section 54.187(j). For its Large C&I customers, Duquesne Light proposes in this proceeding to offer hourly priced service.¹ Therefore, Duquesne Light's default service plan for Large C&I customers fully complies with the rate adjustment requirements of the proposed regulations.

DII also states that, "at a minimum, DII believes that Duquesne Light should implement the monthly PTC option as outlined in the ANOFR...." Motion, p. 3. By this statement, DII implies that DSPs are required to offer monthly service to Large C&I customers under the proposed regulations. This is not correct. The proposed regulations do not require monthly prices but, in fact, allow DSPs to adopt rates that adjust more frequently. Under its plan, Duquesne Light proposes hourly adjustments for Large C&I default rates. This is fully consistent with the proposed regulations.

¹ Duquesne Light's Large C&I customers are those customers that have monthly metered demands greater than 300 kW.

There is considerable risk involved with providing monthly fixed price service to Large C&I customers because Large C&I customers are under no obligation to use a specific amount of power. This creates substantial risk of cost recovery for any DSP that proposes to offer a monthly fixed priced service to Large C&I customers because the DSP must estimate the usage of the customer and obtain that power without any assurance that the customer will use the power. Further, if the DSP offers a fixed price and the customer uses more power than expected, the DSP is at risk if it cannot obtain the additional power at the fixed price. Moreover, in Duquesne Light's service territory, approximately 98% of the Large C&I load is shopping. Depending upon changes in market conditions, these customers could all return to default service if market prices would rise above the fixed price, only to leave when market prices fall. While DII may argue that such risks can be dealt with by requiring bidding supplier(s) to absorb such risk, the very small levels of Large C&I customers not shopping make it highly unlikely that non-affiliated suppliers would be willing to even bid to offer fixed price service to Large C&I customers.² As of December 31, 2006, only 6 out of 871 eligible Large C&I customers were receiving fixed price default service from Duquesne Light. It is very unlikely that suppliers would bid to provide fixed price service to six customers.

Moreover, Duquesne Light would be required to implement considerable additional administrative and technical processes to offer a monthly priced service. This would not be prudent given the low number of customers taking fixed price service.

² Duquesne Light has experienced significant difficulty in obtaining bidders to provide fixed price service to Large C&I customers. In October 2004, Duquesne Light conducted a competitive RFP process to obtain fixed price power for Large C&I customers. This RFP process resulted in six bids, most of which offered to supply only a limited number of tranches, and the bids varied widely in price. Few customers elected the resulting fixed price option. Duquesne Light conducted a second RFP in March 2006, and no suppliers bid in this RFP. The Commission then made changes to the RFP process in order to encourage supplier participation. Even after the Commission's changes, Duquesne Light only received one bid and that bid was from its affiliate, Duquesne Power.

D. If DII Wanted A Fixed Price Service, DII Should Have Asked For A Fixed Price Service In Its Direct Testimony In This Proceeding.

DII states that it has consistently asserted that Duquesne Light should offer a “one-year (or longer) fixed price service option” for Large C&I customers. Motion, p. 5. In addition, DII states that “At a minimum, DII believes that Duquesne should implement the monthly PTC option as outlined in the ANOFR...” Motion, p. 3. Under the procedural schedule of this proceeding, parties were required to file direct testimony on March 29, 2007. However, DII did not file any direct testimony. If DII wanted Duquesne Light to offer a fixed price default service to Large C&I customers, DII should have asked for it in its direct testimony in this proceeding and fully explained all terms and conditions of its request. Then parties would have had the opportunity to litigate issues regarding fixed price service for Large C&I customers, including under what terms and conditions a fixed price service for Large C&I customers may be appropriate under the Competition Act.

DII had a full and fair opportunity to raise these issues in its direct testimony in this proceeding and failed to do so. There is no reason to sever issues regarding default service for Large C&I customers in this proceeding when DII had a full and fair opportunity to present testimony supporting its request for fixed price service and chose not to present this testimony.

III. RESPONSE TO NUMBERED PARAGRAPHS

Below, Duquesne Light responds to the averments contained in the numbered paragraphs of DII’s Motion.

1. The averments contained in Paragraph 1 of the Motion are admitted. As a point of clarification, Duquesne Light requested that *if the Commission’s default service regulations became effective prior to January 1, 2011, the Commission grant a waiver of the regulations to*

the extent that they conflict with Duquesne Light's default service plan.³ Of note, Duquesne Light's plan for Large C&I customers does not conflict with the Commission's proposed regulations.

2. The averments contained in Paragraph 2 of the Motion are admitted.

3. The averments contained in Paragraph 3 of the Motion are admitted. In further response, Duquesne Light notes that the proposed regulations do not require DSPs to offer a monthly rate to customers with registered peak demands in excess of 500 kW but allow DSPs to offer default service rates that change more frequently, such as hourly.

4. In response to Paragraph 4, Duquesne Light notes that neither the proposed regulations nor the policy statement require DSPs to offer a fixed price service to Large C&I customers for any duration. DSPs may offer fixed price services to these customers but are not required to do so.

5. In Paragraph No. 5, DII alleges that in prior default service proceedings, it "has consistently asserted that Duquesne Light should offer a one-year (or longer) fixed price service option for customers on Rate Schedules GL, GLH, L and HVPS." DII does not identify which prior proceedings it is referring to. In further response, Duquesne Light notes that after its March 20, 2006 RFP failed to elicit a single bid to provide a fixed price service for Large C&I customers, Duquesne Light proposed that its fixed price service for Large C&I customers expire on May 31, 2006, because no supplier was willing to supply a fixed price product in the competitive solicitation. The Commission directed Duquesne Light to conduct another RFP to attempt to obtain a fixed price service for Large C&I customers because of the Commission's concern that some Large C&I customers may have assumed that fixed price service would be

³ In Comments to the proposed default service regulations, Duquesne Light and other parties have recommended that the regulations not become effective until January 1, 2011.

available through May 31, 2007, based upon the Commission's October 5, 2004 Order in the POLR III proceeding. *See Request for Proposals Compliance Filing for Fixed Price Service to Large Commercial and Industrial Customers for the period June 1, 2006 through May 31, 2007 RE: Duquesne Light Company*, Docket No. P-00032071, Order entered May 4, 2006. However, the Commission noted that if no bids were received in the subsequent RFP, Large C&I customers would be required to take hourly priced default service or take service from an EGS. In response to the subsequent RFP, Duquesne Light received one bid and that was from its affiliate, Duquesne Power.

6. The averments contained in Paragraph No. 6 of the Motion are admitted.

7. Duquesne Light admits that DII submitted reply comments regarding the Commission's proposed default service regulations and policy statement on March 23, 2007, wherein DII opposed Duquesne Light's request to delay applicability of the final default service regulations until 2011 when rate caps of Pennsylvania electric distribution companies expire. In further answer, Duquesne Light's plan for Large C&I customers complies with the Commission's proposed default service regulations.

8. The averments contained in Paragraph No. 8 of the Motion are denied. The issuance of the proposed regulations and policy statement do not alter the "backdrop against which Duquesne Light, the other interested parties and the Commission must evaluate the default service option for the Company's Large C&I customers for the period from January 1, 2008, through December 31, 2010." The proposed regulations are not final, and if they become final, the regulations should not apply to plans filed prior to the effective date. Order, p. 11. Moreover, Duquesne Light's default service plan for Large C&I customers fully complies with the Commission's proposed regulations.

DII also argues that Duquesne Light “should use all flexibility that is granted by the final default service regulations and policy statement to offer rate options in addition to hourly-priced service to its Large C&I customers.” Duquesne Light disagrees that the regulations require DSPs to offer Large C&I customers rate options in addition to hourly priced service. In addition, Duquesne Light currently offers both fixed price and hourly default service to Large C&I customers. As of December 31, 2006, only 6 out of 871 eligible customers were receiving fixed price default service from Duquesne Light. This low number does not justify Duquesne Light continuing to offer a fixed price service to Large C&I customers. Moreover, there is considerable competition for Large C&I customers in Duquesne Light’s service territory. In fact, 98% of Large C&I load is receiving service from EGSs. This indicates that Large C&I customers have competitive options available. There is no basis to require Duquesne Light to offer other options to Large C&I customers.

9. In response to Paragraph No. 9, Duquesne Light admits that its Large C&I customers will have hourly-priced service as their only default service option beginning June 1, 2007, and that Duquesne Light has not entered into a long-term contract with a supplier to provide a fixed price for the Large C&I default plan. However, Duquesne Light denies any inference or allegation that the averments in Paragraph No. 9 or the rest of the Motion support delaying consideration of the Large C&I default service plan. As noted above, Duquesne Light’s default service plan for Large C&I customers complies with the proposed regulations. In addition, the proposed regulations do not require Duquesne Light to offer a fixed price default service for Large C&I customers. Therefore, there is no reason to delay consideration of the Large C&I plan. Moreover, Duquesne Light denies that it would not incur additional costs if the Large C&I plan is delayed.

10. The averments contained in Paragraph No. 10 of the Motion are denied. As stated above, the proposed regulations are not final and should not apply to Duquesne Light's default service plan when they become final. Therefore, there will be no administrative efficiency in delaying consideration of Duquesne Light's default service plan. Moreover, Duquesne Light's plan for Large C&I customers fully complies with the Commission's proposed regulations.

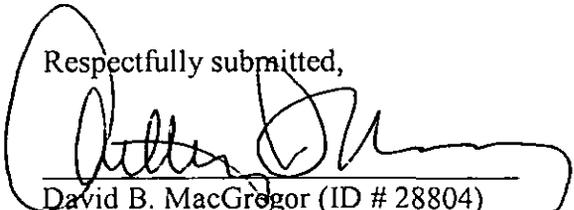
In addition, there is no guarantee or even strong indication that the proposed regulations will be "concluded shortly." The Commission first set forth its proposed default service regulations in December 2004, and final regulations have not been adopted at this time. The parties recently submitted comments and reply comments with regard to the proposed regulations, and the Commission will likely further modify the regulations to incorporate comments from other parties. In addition, the regulations must be reviewed by IRRC, the applicable standing committees of the Legislature and the Attorney General, and these entities may disapprove or request further modification to the proposed regulations.

IV. CONCLUSION

As indicated above, DII's Motion to Sever should be denied. DII's Motion is based on proposed regulations that are not applicable to this proceeding. Moreover, even if the proposed regulations applied to this proceeding, Duquesne Light's default service plan for Large C&I customers fully complies with the proposed regulations. In addition, if DII wanted Duquesne Light to offer a fixed price service for Large C&I customers, DII should have asked for this in its direct testimony in this proceeding. Duquesne Light's current default service plan expires on December 31, 2007, and Duquesne Light seeks regulatory certainty with regard to its next default service plan. As such, Duquesne Light respectfully requests that the Commission expeditiously approve Duquesne Light's default service plan for all customer classes.

WHEREFORE, for the foregoing reasons, the Pennsylvania Public Utility Commission should deny the Motion of the Duquesne Industrial Intervenors to Sever and Postpone Consideration of Duquesne Light Company's default service plan for Large Commercial & Industrial customers.

Respectfully submitted,



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Date: April 2, 2007

Counsel for Duquesne Light Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of Duquesne Light Company to Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of the Large Commercial and Industrial Default Service Plan has 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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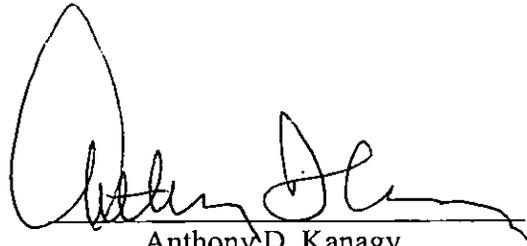
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April 2, 2007

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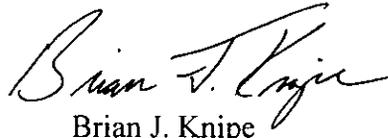
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Re: Petition of Duquesne Light Company For Approval of Default Service
Plan For The Period January 1, 2008 Through December 31, 2010, Docket
No. P-00072247

Dear Secretary McNulty:

On behalf of Reliant Energy, Inc. ("Reliant"), enclosed for filing are an original and three (3) copies of Reliant Energy, Inc.'s Answer in Opposition to the Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan. Copies of this document have been served on the parties to this proceeding in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/eh

Enclosures

cc: The Honorable Larry Gesoff (via e-mail and first class mail)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
For Approval of Default Service Plan : Docket No. P-00072247
For The Period January 1, 2008 :
Through December 31, 2010 :

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**RELIANT ENERGY, INC.'S ANSWER IN OPPOSITION TO THE MOTION
OF DUQUESNE INDUSTRIAL INTERVENORS TO SEVER AND
POSTPONE CONSIDERATION OF LARGE COMMERCIAL
AND INDUSTRIAL DEFAULT SERVICE PLAN**

Reliant Energy, Inc. ("Reliant"), pursuant to 52 Pa. Code § 5.103, hereby submits this Answer in Opposition to the Motion of Duquesne Industrial Intervenors ("DII") to Sever and Postpone Consideration of Large Commercial and Industrial ("C&I") Default Service Plan ("Motion").

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Introduction

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DII's Motion should be denied. Postponing consideration of a default service plan scheduled to begin on January 1, 2008 is completely inappropriate, and never more so than in the case of Duquesne Light Company ("Duquesne" or "Company"). The Commission has recognized that Duquesne is further along than any other Pennsylvania electric distribution company ("EDC") in the transition to competitive electric markets. Also, in preparing its Default Service Plan,¹ Duquesne took pains to effectuate the Commission's policy of encouraging settlements by developing the Default Service Plan in collaboration with parties and carefully balancing Pennsylvania's mandate to move ahead to competitive electric markets and the parties'

¹ *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247 ("Petition").

competing interests. The Company is moving in the right direction, and the unnecessary delay proposed by DII would only halt that progress.

Further, postponement of Duquesne's Default Service Plan for Large C&I customers until the Commission issues final default service regulations² would serve absolutely no purpose. DII's motion is founded on the patently incorrect premise that Duquesne's proposal conflicts with the proposed regulations.³ To the contrary, the Company's Large C&I proposal is consistent with the Commission's proposed rules, and awaiting the rules' finalization will change nothing.

In addition, Pennsylvania law does not permit severance of any portion of the Default Service Plan. While severance may benefit DII — an ad hoc coalition of only three Large C&I customers in Duquesne's service territory⁴ — piecemeal litigation of the Default Service Plan would inconvenience or prejudice the Commission, the Company and other parties, and many Large C&I customers who are not members of DII and do not share its view that the Commission should ignore the mandates of the Choice Act⁵ and back away from competitive electric markets in Duquesne's service territory.

Argument

I. Postponement Would Halt the Commission's and Duquesne's Progress in the Transition to Competitive Electric Markets

In its recent ANOFR, the Commission recognized that Duquesne's retail electric markets are the most developed in Pennsylvania:

² See *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169, Advance Notice of Final Rulemaking Order entered Feb. 9, 2007 ("ANOFR"); *Default Service and Retail Electric Markets*, Docket No. L-00070183, Proposed Policy Statement entered Feb. 9, 2007.

³ See Motion at p. 1.

⁴ DII's Petition to Intervene states that its membership includes "The Techs (GalvTech, MetalTech and NexTech)." Therefore, DII's Motion represents the views of no more than three Large C&I customers of Duquesne.

⁵ The Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 ("Choice Act").

The experience of Duquesne shows that retail markets can work. Duquesne's territory has the highest rate of customer choice in Pennsylvania. Its overall retail electric rates remain 15% below what they were when the Competition Act was passed in 1996.⁶

Duquesne's Default Service Plan for Large C&I customers promises to keep the Company moving in the right direction. It would provide a single hourly priced service to customers with peak registered demands of 300 kW and above.

Meanwhile, the Commission's issuance of the ANOFR and Proposed Policy Statement represents a major step toward finalizing default service rules. While Reliant does not agree with every aspect of the ANOFR and Policy Statement,⁷ Reliant applauds the Commission for moving forward with the issuance of default service regulations. It is well-recognized that the process of developing default service regulations has taken years, as the Commission has encountered unavoidable delays caused by developments such as the passage of the Alternative Energy Portfolio Standards Act⁸ and the need to investigate policies to mitigate increases in retail electric rates.⁹ Now, however, the Commission is poised to take the decisive steps that may prepare Pennsylvania for the statewide transition to electric competition.

Duquesne's proposed Default Service Plan also embodies other important policies of the Commission, particularly the Commission's policy of encouraging settlements over litigation.¹⁰ In developing its Default Service Plan, Duquesne engaged in extensive discussions with parties and developed a plan that carefully balances the parties' competing interests while observing the

⁶ ANOFR at 21 n.10 (citations omitted).

⁷ See, e.g., *Comments of Reliant Energy, Inc. on Proposed Policy Statement, Advance Notice of Final Rulemaking Order, and Price Mitigation Tentative Order*, Docket No. L-00040169 (Mar. 2, 2007) at 3 ("While Reliant does not agree with every aspect of the PPS and ANOFR, it does believe that, for the most part, these proposed policies and guidelines can begin to effectuate the move towards a robust, competitive retail market for all customers as called for by the Choice Act.")

⁸ 73 P.S. §§ 1648.1-1648.8.

⁹ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957.

¹⁰ 52 Pa. Code §§ 5.231, 69.401.

Choice Act's mandate to move Duquesne forward to electric competition.¹¹ Indeed, as a result of the Company's efforts, Reliant and Dominion Retail, Inc., two licensed electric generation suppliers ("EGSs"), have agreed to support or not oppose the basic structure of Duquesne's Default Service Plan.

DII's Motion would bring all this progress to a standstill. While the Commission endeavors to continue Duquesne's transition to fully competitive markets and to develop a plan for the rest of Pennsylvania's EDCs to catch up to Duquesne, DII seeks to bring Duquesne back to its pre-transition state by requesting the Commission to require the Company's Default Service Plan to offer the same products offered by EDCs who remain subject to rate caps.¹²

If there is one EDC territory in which the Commission should move forward decisively in continuing the transition to robust retail electric competition, it is Duquesne's. Postponement would only frustrate the efforts of the Commission, Duquesne and other parties to this proceeding. Therefore, DII's Motion should be denied.

II. Duquesne's Default Service Plan for Large C&I Customers is Consistent with the Commission's Proposed Regulations

The stated purpose of DII's request for postponement is for the Commission to evaluate Duquesne's Large C&I Default Service Plan in light of the Commission's proposed default service regulations. The fundamental assumption underlying DII's request is that the Company's proposal "is in conflict with" the design of the Large C&I default service options permitted by the ANOFR and Proposed Policy Statement.¹³ This assumption, however, is completely

¹¹ Petition ¶ 7.

¹² Motion ¶ 8.

¹³ *Id.* at p. 1.

incorrect. To the contrary, both the ANOFR and Proposed Policy Statement allow Duquesne to provide Large C&I customers with a single hourly priced service.

The proposed ANOFR provides that default service rates for customer classes with a maximum registered peak load of 25 kW to 500 kW shall be adjusted on a quarterly basis or more frequently,¹⁴ and default service rates for customer classes with a registered peak load of equal to or greater than 500 kW shall be adjusted on a monthly basis or more frequently.¹⁵ The Company's proposed hourly priced service satisfies both of these standards. Similarly, the Proposed Policy Statement provides that hourly priced or monthly priced service should be available to customers with greater than 500 kW in maximum registered peak load, and permits the default service provider to propose a fixed-price option as well for the Commission's consideration.¹⁶ However, it does not *require* the default service provider to propose a fixed price service.

Indeed, the ANOFR states the Commission's intent that default service providers have discretion to propose more frequent rate adjustments in their program filings.¹⁷ DII's Motion seeks to eliminate that discretion. Thus, DII's Motion contends that "the Company should use all flexibility that it is granted by the final default service regulations and Policy Statement to offer rate options in addition to hourly-priced service to its Large C&I customers."¹⁸ Such a qualification, however, would give Duquesne no discretion whatsoever.

Because Duquesne's Large C&I Default Service Plan is consistent with the Commission's proposed default service regulations, there is absolutely no point to postponing consideration of

¹⁴ ANOFR Annex A at 15 (Section 54.187(i)).

¹⁵ Id. (Section 54.187(j)).

¹⁶ Proposed Policy Statement Annex A at 4 (Section 69.1805(3)).

¹⁷ ANOFR at 19.

¹⁸ Motion ¶ 8.

Duquesne's Large C&I plan until those regulations have been finalized. Therefore, DII's Motion should be denied.

III. Pennsylvania Law Does Not Permit Severance of Any Portion of Duquesne's Default Service Plan

In addition to the fundamental policy and legal problems with postponement, DII's Motion does not satisfy the established legal standard for severance. While the Commission's rules of practice do not provide for severance, the Commission in at least one instance involving West Penn Power Company ("*West Penn Power*") has applied the standard used in civil cases.¹⁹ The Pennsylvania Rules of Civil Procedure allow severance only when it is "in furtherance of convenience or to avoid prejudice."²⁰ Likewise, the civil courts have recognized the inconvenience to the tribunal and the parties of litigating cases piecemeal: "[s]everance should therefore not be granted unless the prejudice to the parties or to the court so far exceeds the procedural convenience of determining all issues at one time as to justify the denial of that procedural convenience."²¹ The Commission in *West Penn Power* agreed that severance should be allowed only for good cause.²²

DII has not given any legitimate reason to sever Duquesne's Large C&I proposal, much less made a showing of good cause. DII cannot point to any harm that will result from the Commission considering Duquesne's Large C&I proposal together with the rest of its Default Service Plan. Rather, DII contends that severing and postponing consideration of Duquesne's Large C&I proposal will promote administrative efficiency, because the Commission's rulemaking proceeding will determine whether Duquesne's Large C&I Default Service Plan for

¹⁹ See, e.g., *Re West Penn Power Co.*, 83 Pa. P.U.C. 547, 549-50 (1994) ("*West Penn Power*").

²⁰ Pa.R.C.P. 213(b).

²¹ *Brillhart v. Edison Light and Power Company*, 68 Pa. D. & C. 48, 50 (C.C.P. York County 1949).

²² *West Penn Power* at 550.

Large C&I customers is permissible.²³ However, the Company has requested in its Petition that the Commission waive the applicability of its final regulations should they become effective prior to January 1, 2011, to the extent they are inconsistent with Duquesne's Default Service Plan.²⁴ Further, as explained above, the regulations clearly permit the Company's proposal for Large C&I customers.

In addition, severance and postponement will create regulatory uncertainty in Duquesne's service territory which would prejudice the Company and many Large C&I customers who await a resolution of this matter so they can make informed energy purchasing decisions for 2008. The uncertainty would also prejudice competitive electric suppliers who await a resolution of this matter so they can prepare offers for Large C&I customers in the Company's territory. The only apparent beneficiaries of postponement are the three members of DII, who do not represent the views of the entire Large C&I rate class.

No one is harmed if the Commission considers Duquesne's proposal for Large C&I customers in conjunction with the rest of its Default Service Plan. In contrast, severing and postponing consideration of the Large C&I customer portion will inconvenience and prejudice many. Therefore, the Commission should deny DII's Motion.

²³ Motion ¶ 10.

²⁴ Petition ¶ 66.

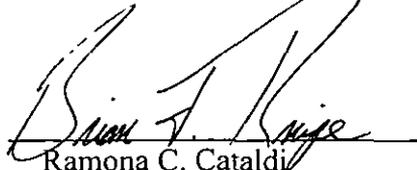
Conclusion

For all the foregoing reasons, the Commission should deny DII's Motion to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By:


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Attorneys for Reliant Energy, Inc.

Dated: April 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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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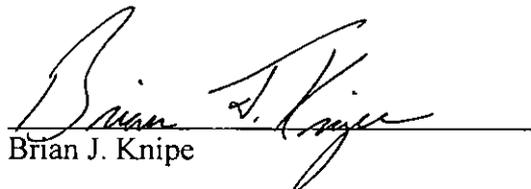
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**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 31, 2010
Docket No. P-00072247**

Dear Mr. Evrard:

Enclosed please find an original and two (2) copies of Duquesne Light Company's Interrogatories to the Office of Consumer Advocate – Set I in the above-referenced proceeding.

Pursuant to the Administrative Law Judge's Prehearing Order, Answers to these Interrogatories and Requests for Production of Documents are due in seven (7) days or on Monday, April 9, 2007.

Very truly yours,

Anthony D. Kanagy

ADK/jl
Enclosure

cc: James J. McNulty, Secretary (letter and certificate of service only)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Duquesne Light Company's Interrogatories to the Office of Consumer Advocate – Set I, Nos. 1-11 has 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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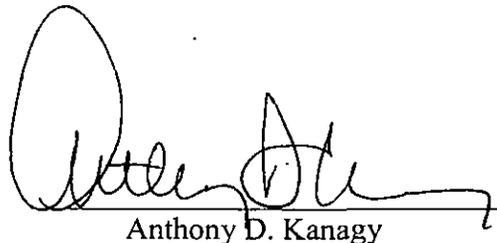
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**DOCUMENT
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**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 31, 2010
Docket No. P-00072247**

Dear Counsel:

Enclosed please find an original and two (2) copies of Duquesne Light Company's Interrogatories to the Office of Small Business Advocate – Set I in the above-referenced proceeding.

Pursuant to the Administrative Law Judge's Prehearing Order, Answers to these Interrogatories and Requests for Production of Documents are due in seven (7) days or on Monday, April 9, 2007.

Very truly yours,

Anthony D. Kanagy

ADK/jl
Enclosure

cc: James J. McNulty, Secretary (letter and certificate of service only)
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Duquesne Light Company's Interrogatories to the Office of Small Business Advocate – Set I has 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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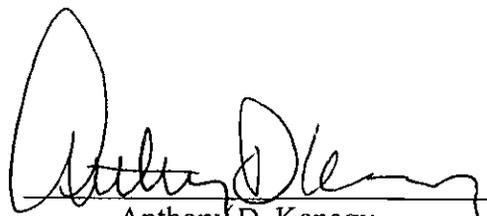
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**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 31, 2010
Docket No. P-00072247**

Dear Counsel:

Enclosed please find an original and two (2) copies of Duquesne Light Company's Interrogatories to the Strategic Energy, LLC and The retail Energy Supply Association – Set I in the above-referenced proceeding.

Pursuant to the Administrative Law Judge's Prehearing Order, Answers to these Interrogatories and Requests for Production of Documents are due in seven (7) days or on Monday, April 9, 2007.

Sincerely,


Anthony D. Kanagy

ADK:skr

Enclosures

cc: James J. McNulty, Secretary (letter and certificate of service only)
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I hereby certify that a true and correct copy of Duquesne Light Company's Interrogatories and Requests for Production of Documents to Strategic Energy, LLC and Retail Energy Supply Association – Set I has 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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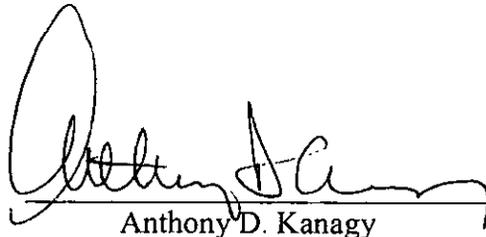
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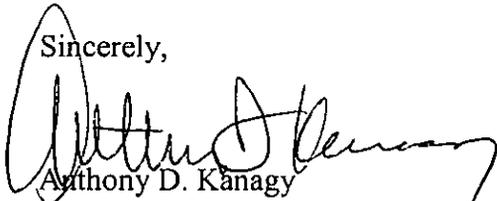
**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 31, 2010
Docket No. P-00072247**

Dear Counsel:

Enclosed please find an original and two (2) copies of Duquesne Light Company's Interrogatories to Direct Energy Services, LLC and The Retail Energy Supply Association – Set I in the above-referenced proceeding.

Pursuant to the Administrative Law Judge's Prehearing Order, Answers to these Interrogatories and Requests for Production of Documents are due in seven (7) days or on Monday, April 9, 2007.

Sincerely,



Anthony D. Kanagy

ADK:skr

Enclosures

cc: James J. McNulty, Secretary (letter and certificate of service only)
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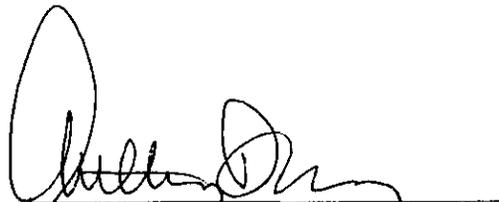
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Date: April 2, 2007



Anthony D. Kanagy



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FOLDER**

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**RE: Petition of Duquesne Light Company for Approval of Default Service
Plan for the Period January 1, 2008 through December 31, 2010
Docket No. P-00072247**

Dear Counsel:

Enclosed please find an original and two (2) copies of Duquesne Light Company's Interrogatories to Constellation NewEnergy, Inc. – Set I in the above-referenced proceeding.

Pursuant to the Administrative Law Judge's Prehearing Order, Answers to these Interrogatories and Requests for Production of Documents are due in seven (7) days or on Monday, April 9, 2007.

Very truly yours,

Anthony D. Kanagy

ADK/jl
Enclosure

cc: James J. McNulty, Secretary (letter and certificate of service only)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Duquesne Light Company's Interrogatories and Requests for Production of Documents to Constellation NewEnergy, Inc. – Set I, Nos. 1-6 has 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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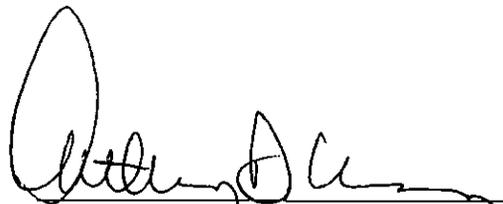
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