

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for :
approval of a Default Service Plan for : P-00072247
the period January 1, 2008 through :
December 31, 2010 :

DOCUMENT
FOLDER

FIRST INTERIM ORDER
DENYING MOTION TO SEVER

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APR 9 - 2007

On January 25, 2007, Duquesne Light Company (Duquesne Light) filed a petition for Commission approval of a plan for default service for the period from January 1, 2008 through December 31, 2010 (Default Service Plan or the Plan). The Default Service Plan is a *comprehensive plan under which Duquesne Light will provide default service to its customers for 2008 through 2010*. Duquesne Light selected this three year period to provide a three year bridge to 2011, the year generation rate caps expire for most other major Pennsylvania electric distribution companies (EDCs).

Timely motions to intervene have been filed and granted. The parties are in the midst of pre-filing their testimony and this proceeding is scheduled for hearing on April 26 and 27, 2007.

On March 12, 2007, the Duquesne Industrial Intervenors (DII) filed a Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan (Motion). The Motion requests that consideration of Duquesne Light's proposal regarding the design of the default service options for Large Commercial and Industrial customers be stayed pending Commission finalization of the Commission's action regarding its proposed final regulations issued in its Advance Notice of Final Rulemaking Order

entered at Docket No. L-00040169¹ and its proposed Policy Statement regarding default service at Docket No. L-00070183.²

On April 3, 2007, Duquesne Light and Reliant Energy, Inc. (Reliant) filed answers to the Motion. On the same date, Retail Energy Supply Association (RESA) filed a letter-answer to the Motion.

DII's Position

Arguing that Duquesne Light's proposed Default Service Plan conflicts with the Commission's proposed regulations for the design of default service, DII asserts that the delay it requests will result in a more efficient use of the resources of the parties and the Commission once the Commission finalizes the permissible structure of Duquesne Light's Default Service Plan. Duquesne Light's proposal offers only hourly-priced service for Large Commercial and Industrial (Large C&I) customers on Rate Schedules GL, GLH, L and HVPS during the default service period (January 1, 2008 through December 31, 2010). Duquesne Light's proposal conflicts with the ANOFR which proposes regulations which 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. ANOFR, p. 19. In addition, the Policy Statement authorizes the default service provider to propose to offer fixed price service for longer durations to Large C&I customers. Policy Statement, Annex A, §69.1805. Motion, pp. 1-2.

According to DII, the Commission's issuance of the ANOFR and the Policy Statement alter the backdrop against which default options for Duquesne Light's Large C&I customers must be evaluated for the three year period Duquesne Light proposes. To promote economic development and the continued viability of industry in the Pittsburgh area, Duquesne

¹ Rulemaking re Electric Distribution Companies' Obligations 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 February 9, 2007) (ANOFR).

² Default Service and Retail Electric Markets, Docket No. L-00070183, Proposed Policy Statement (entered February 9, 2007) (Policy Statement).

Light should use the flexibility which the ANOFR and Policy Statement grant to offer rate options in addition to hourly-priced service to its Large C&I customers. DII believes that, at a minimum, Duquesne Light should implement the monthly PTC option outlined in the ANOFR so that its Large C&I customers are not disadvantaged compared to customers in the rest of the state, most of which continue to pay annual, fixed and capped generation supply rates. Motion, pp. 3-4.

Under the Commission's ruling in Duquesne Light's POLR III proceeding, Large C&I customers will have hourly-priced service as their only default service option beginning on June 1, 2007. Because Duquesne Light's current proposal continues this structure, 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. Duquesne Light's Plan for Large C&I customers, therefore, is fundamentally different from its Plan for Small Commercial and Residential classes. Duquesne Light will be at little or no financial risk if consideration of the Plan for Large C&I customers is delayed until the ANOFR and Policy Statement are finalized. Motion, p. 4.

Conclusion

DII's Motion should be denied for four reasons.

First, because the Commission's proposed default service regulations are proposed, not final, they have no effect on this proceeding. The proposed regulations, therefore, cannot be used as a benchmark against which to judge the reasonableness of Duquesne Light's proposed Plan.

Second, it is quite possible that the final version of the Commission's default service regulations will be different than the regulations it has proposed. Interested parties will file comments and reply comments which can result in changes. In addition, the Commission must submit its final regulations to the applicable standing committees of the Legislature, the Attorney General and the Independent Regulatory Review Commission before they may become

effective. Regulatory Review Act, 71 P.S. §§745.1 – 745.14. Finally, if these entities disapprove the regulations, they are deemed withdrawn. 71 P.S. §745.5a.

Third, there is no guarantee that the Commission will be able to issue final regulations before January 1, 2008 when Duquesne Light's Plan is to go into effect. First, the Commission might not issue final regulations by then. Second, even if the Commission does, there is no guarantee that the review pursuant to the Regulatory Review Act will be completed before January 1, 2008, even if the review results in no changes.

Fourth, the Commission's final regulations will not apply to default service programs, such as Duquesne Light's, which are filed before the effective date of the Commission's final regulations. In the ANOFR, the Commission states as follows:

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.

ANOFR, p. 11. From this I conclude that the Commission recognizes that its final regulations cannot be applied to default service programs filed before the effective date of the regulations. When the Commission's regulations become final, therefore, they will not apply to Duquesne Light's Default Service Plan under consideration in this proceeding.

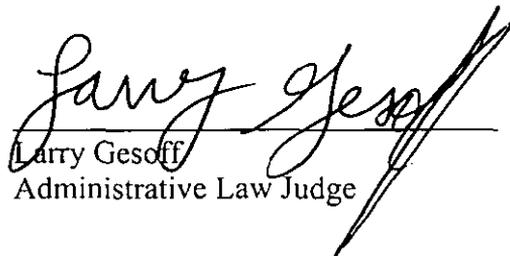
Because the Commission's proposed regulations are not relevant to this proceeding, it is not necessary to discuss or determine whether Duquesne Light's Plan regarding Large C&I customers complies with the proposed regulations.

THEREFORE:

IT IS ORDERED;

That the Motion of Duquesne Industrial Intervenors to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan filed at Docket No. P-00072247 is denied.

Dated: April 4, 2007


Larry Gesoff
Administrative Law Judge