

CAPTION SHEET

CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00 :
 2. BUREAU: FUS :
 3. SECTION(S) : :
 5. APPROVED BY: : 4. PUBLIC MEETING DATE:
 DIRECTOR: : 00/00/00
 SUPERVISOR: :
 6. PERSON IN CHARGE: : 7. DATE FILED: 06/17/05
 8. DOCKET NO: R-00050662 : 9. EFFECTIVE DATE: 08/16/05

PARTY/COMPLAINANT: PUC

RESPONDENT/APPLICANT: DUQUESNE LIGHT COMPANY

COMP/APP COUNTY: UTILITY CODE: 110150

ALLEGATION OR SUBJECT

DUQUESNE LIGHT COMPANY HAS FILED SUPPLEMENT NO 28 TO TARIFF ELECTRIC PA PUC NO 23, TO BECOME EFFECTIVE AUGUST 16, 2005, WHICH PROPOSES THE ADDITION OF RIDER NO. 7 - SECA CHARGE TO THE TARIFF. IT IS DESIGNED TO RECOVER, SUBJECT TO RECONCILIATION, THE SEAMS ELIMINATION CHARGE ADJUSTMENT (SECA) CHARGES BILLED TO THE COMPANY BY THE PJM INTERCONNECTION, INE. THE CHARGE UNDER RIDER NO. 7 IS CALCULATED AT \$0.001557 PER KWH TO BE BILLED TO ALL CUSTOMERS PURCHASING TRANSMISSION SERVICES FROM DUQUESNE.

DOCUMENT
HOLDER

DOCKETED
JUN 21 2005

DOCKET NO.: R-00050662
RESPONDENT OR APPLICANT: DUQUESNE LIGHT COMPANY
PARTY OR COMPLAINANT: PUC

ENTRY TYPE	DATE	BUREAU	PERSONNEL
1 N	06/17/05	SEC	HENRYJAMIE
DUQUESNE LIGHT CO. HAS FILED SUPP: NO 28 TO PA PUC NO 23 EFFECTIVE: 8/16/05			
2 N	07/12/05	SEC	FARNERJOYCE
OSBA/WILLIAM R LLOYD FILED FORMAL COMPLAINT & PUBLIC STATEMENT (C0001)			
3 N	07/15/05	SEC	FARNERJOYCE
NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0001)			
4 N	07/12/05	SEC	FARNERJOYCE
OSBA FLD LTR ADVISING RETAINED BRIAN KALCIC AS ITS EXPERT WITNESS (C0001)			
5 N	07/29/05	SEC	TAYLORJODI
RESPONDENT FILED ANSWER TO COMPLAINT OF THE OSBA W/CERT OF SERVICE (C0001)			
6 N	08/02/05	SEC	TAYLORJODI
RESP FLD ANSWER/NEW MATTER TO STRATEGIC ENERGY'S COMPLAINT W/CERT (C0002)			
7 N	08/02/05	SEC	MOTTER
RESP FILED AFFIDAVIT OF FRED EICHENMILLER OMITTED FROM ANSWER TO COMPLT(C0001)			
8 N	08/02/05	SEC	MOTTER
RESPONDENT FILED ANSWER TO OCA'S COMPLAINT WITH CERTIFICATE OF SERVICE (C0003)			
9 N	08/05/05	SEC	SHUTTLESWORTH
RESPONDENT FILED ANSWER TO PETITION OF DOMINION RETAIL INC TO INTERVENE			
10 N	08/05/05	SEC	TAYLORJODI
STRATEGIC ENERGY FLD MOTION FOR INTERIM DECISION W/CERTIFICATE OF SVC (C0002)			
11 N	07/28/05	SEC	SHUTTLESWORTH
DOMINION RETAIL INC FLD PETITION TO INTERVENE IN OPPOSITION W/CERT SERVICE			
12 N	07/28/05	SEC	FARNERJOYCE
STRATEGIC ENERGY FILED FORMAL COMPLAINT (C0002)			
13 N	08/11/05	SEC	FARNERJOYCE
NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0002)			
14 N	07/28/05	SEC	FARNERJOYCE
OCA FILED FORMAL COMPLAINT & PUBLIC STATEMENT (C0003)			
15 N	08/11/05	SEC	FARNERJOYCE
NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0003)			
16 N	08/12/05	SEC	TAYLORJODI
DUQSNE INDSTR L INTRVRS FLD ANS-STRATEGIC ENRGY MOT FOR INTERM DECISN(C0001-3)			
17 N	08/12/05	SEC	TAYLORJODI
RESP FILED ANSWER TO STRATEGIC ENERGY MOTION FOR INTERIM DECISION (C0002)			
18 N	08/12/05	SEC	SHUTTLESWORTH
DUQUESNE INDUSTRIAL INTERVENORS FILED PETITION TO INTERVENE W/CERT SVC (C1-3)			
19 N	08/15/05	SEC	TAYLORJODI
DOMINION RETAIL FLD ANS IN SUPPORT-STRATEGIC ENRGY'S MOT INTERM DECISN(C0002)			
20 N	08/24/05	SEC	TAYLORJODI
STRATEGIC ENRGY FLD ANS TO DUQUESNE INDUSTRIAL INTERVRS PET TO INTRVENE(C1-C3)			
21 N	08/25/05	SEC	FARNERJOYCE
RECOM ADOPTED - ORDER ADOPTED; CHAIRMAN J H CAWLEY'S STATEMENT ATTACHED			
22 N	08/26/05	SEC	JACOBDIANE
OALJ SIGNED ACKNOWLEDGEMENT FORM OF ASSIGNMENT OF ORDER 8/25/05			
23 N	08/26/05	SEC	TAYLORJODI
DUQUESNE LIGHT FLD REPLCMNT TRF PG TO SUPP #28 TO PA PUC #23 EFF 8/16/05			
24 N	08/09/05	SEC	MOTTER
DUQUESNE LHT FLD SUPP #31 TO PA PUC #23 POSTPONES SUPP #28 EFF DATE TO 8/26/05			
25 HS	01/12/06	ALJ	NENE
INIT PRE-HRG CONF;11TH FL HRG RM STATE OFFICE BUILDING, PITTSBURGH 10:00 A.M.			
26 N	09/16/05	SEC	FARNERJOYCE
JOHNNIE E SIMMS ESQ FLD NOTICE OF APPEARANCE OF C D SHIELDS ESQ/SELF FOR OTS			
27 N	09/14/05	SEC	FARNERJOYCE
CORRECTED HEARING NOTICE SENT TO PARTIES			

ENTRY TYPE	DATE	BUREAU	PERSONNEL
28 N SERVICE LIST FILED	09/23/05	SEC	FARNERJOYCE
29 HS INIT PREHRG CONF HRG ROOM 3 PLAZA LEVEL	10/13/05	ALJ	NENE
30 HS INITIAL PREHRG CONFERENCE AVLB HRG RM STATE OFFICE	10/13/05	ALJ	NENE
31 N DAVE J ROMESBURG FILED FORMAL COMPLAINT (C0004)	09/26/05	SEC	FARNERJOYCE
32 N NOTICE OF COMPLAINT SENT TO RESPONDENT (C0004)	09/30/05	SEC	FARNERJOYCE
33 N MR & MRS CARL WALSACK FLD LTR COMPLT DEEMED PUBLIC COMMENT(SEE PUBLIC COMMENTS	09/19/05	SEC	ZEIDERS
34 N ORDER ADOPTED 8/25/05 ISSUED (SEE DOCS 553739 FOR CONTENTS OF ORDER)	08/25/05	SEC	MOTTER
35 N V-CHM CAWLEY'S STATEMENT ATTACHED (SEE DOCS 562164 FOR CONTENTS OF STATEMENT)	08/25/05	SEC	MOTTER
36 N SERVICE LIST FILED	10/14/05	SEC	FARNERJOYCE
37 N JOAN C BARLOW FILED FORMAL COMPLAINT (C0005)	10/11/05	SEC	FARNERJOYCE
38 N NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0005)	10/13/05	SEC	FARNERJOYCE
39 N DANIEL R STEPNIK FILED FORMAL COMPLAINT (C0006)	10/05/05	SEC	FARNERJOYCE
40 N NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0006)	10/14/05	SEC	FARNERJOYCE
41 N RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0004)	10/14/05	SEC	SHUTTLESWORTH
42 N INITIAL PRE-HEARING CONFERENCE SCHED 10/13/05 RESCHEDULED TO 1/12/06	10/14/05	SEC	FARNERJOYCE
43 N NANCY & DALE CHAMBERS FILED FORMAL COMPLAINT (C0007)	10/19/05	SEC	FARNERJOYCE
44 N NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0007)	10/20/05	SEC	FARNERJOYCE
45 N RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0005)	10/20/05	SEC	FARNERJOYCE
46 N RESPONDENT FILED ANSWER TO COMPLAINT W/CERTIFICATE OF SERVICE (C0006)	10/19/05	SEC	FARNERJOYCE
47 N EDWARD SCHNEIDER FILED FORMAL COMPLAINT (C0008)	10/11/05	SEC	FARNERJOYCE
48 N NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0008)	10/25/05	SEC	FARNERJOYCE
49 N NOT OF APPRNC FLD OF J ISOM D MACGREGOR & M GANG FOR DUQUESNE LIGHT COMPANY	10/25/05	SEC	SHUTTLESWORTH
50 N RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0007)	10/26/05	SEC	JACOBDIANE
51 N RATE PROTESTS FILED BY VARIOUS INDIVIDUALS	10/28/05	SEC	TAYLORJODI
52 N JAMES A & LINDA S MCFADDEN FILED FORMAL COMPLAINT (C0009)	10/21/05	SEC	JACOBDIANE
53 N NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0009)	10/26/05	SEC	JACOBDIANE
54 N RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0008)	11/01/05	SEC	JACOBDIANE
55 N RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0009)	11/01/05	SEC	JACOBDIANE

ENTRY TYPE	DATE	BUREAU	PERSONNEL
56 N	11/07/05	SEC	JACOBDIANE
AIMEE-MARIE DORSTEN FILED FORMAL COMPLAINT (C0010)			
57 N	11/09/05	SEC	JACOBDIANE
NOTICE OF COMPLAINT SERVED TO RESPONDENT (C0010)			
58 N	11/17/05	SEC	TAYLORJODI
RESPONDENT FILED ANSWER TO COMPLAINT WITH CERTIFICATE OF SERVICE (C0010)			



Duquesne Light

A DQE Company

Rates and Regulatory Affairs Unit
411 Seventh Avenue 8-6
Pittsburgh, PA 15219

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JUN 17 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA

June 17, 2005

ORIGINAL

VIA OVERNIGHT MAIL DELIVERY:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Supplement No. 28 to Tariff Electric – PA. P.U.C. No. 23

Dear Mr. McNulty:

R-00050662

Enclosed for filing, please find an original and eight (8) copies of Supplement No. 28 to Duquesne Light Company's Tariff Electric, PA. P.U.C. No. 23 issued June 17, 2005, to become effective August 16, 2005. Also enclosed are an original and eight (8) copies of Duquesne's Statement in Support of Supplement No. 28, which includes the information required by 52 Pa. Code § 53.52 to accompany a tariff revision.

Supplement No. 28 proposes the addition of Rider No. 7 – SECA Charge to the Tariff. It is designed to recover, subject to reconciliation, the Seams Elimination Charge Adjustment (SECA) Charges billed to the Company by the PJM Interconnection, Inc. The Charge under Rider No. 7 is calculated at \$0.001557 per kWh to be billed to all customers purchasing transmission services from Duquesne. The nature of the PJM SECA Charges as well as the proposed recovery mechanism and calculation of revenues to be collected are discussed more fully in the Supporting Statement enclosed.

Please return a date-stamped copy of this letter in the enclosed self-addressed, stamped envelope.

If you have any questions regarding the information contained in this filing, please contact one of the following persons:

David B. MacGregor
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 17103-2921
Voice: 215.963.5448
Fax: 215.963.5001
E-mail: dmacgregor@morganlewis.com

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JUN 17 2005

PUBLIC UTILITY COMMISSION

Michael W. Gang
John H. Isom
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Richard Herskovitz
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Nancy Krajovic
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Sincerely,



Nancy J. D. Krajovic
Manager
Regulatory Affairs

Enclosures

c: Mr. R. A. Rosenthal, Director, Bureau of FUS w/ enclosures
Mr. R. F. Young, Deputy Chief Counsel, Law Bureau w/ enclosures
Mr. R. A. Wilson, Manager – Tariffs and Finance, Bureau of FUS w/ enclosures
Mr. D. M. Kleppinger, Duquesne Industrial Intervenors (DII) w/ enclosures

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JUN 17 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION
500 N. SECOND ST. HARRISBURG, PA 17101

CERTIFICATE OF SERVICE

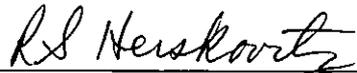
I hereby certify that I have this day served true and correct copies of the foregoing document upon the individuals listed, in accordance with the requirements of 52 Pa. Code § 5.41.

Via First Class Mail

Irwin A. Popowsky, Esquire
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

Johnnie E. Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Fl.
400 North Street
Harrisburg, PA 17120

William R. Lloyd, Jr., Esquire
Office of Small Business Advocate
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Richard S. Herskovitz, Esquire
Assistant General Counsel
Duquesne Light Company
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Email: rherskovitz@duqlight.com

Dated: June 17, 2005

R-00050662

SUPPLEMENT NO. 28
TO ELECTRIC - PA-P.U.C. NO. 23
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JUN 17 2005

DUQUESNE LIGHT COMPANY

ORIGINAL

SCHEDULE OF RATES

For Electric Service in Allegheny and Beaver Counties

(For List of Communities Served, see Page No. 4)

Issued By

DUQUESNE LIGHT COMPANY

411 Seventh Avenue
Pittsburgh, PA 15219

Morgan K. O'Brien
President and Chief Executive Officer

ISSUED: June 17, 2005

EFFECTIVE: August 16, 2005

DOCKETED
JUN 21 2005

NOTICE

DOCUMENT
FOLDER

THIS TARIFF SUPPLEMENT INTRODUCES AND INCREASES A RIDER

See Page Two

LIST OF MODIFICATIONS MADE BY THIS TARIFF

CHANGE AND INCREASE

Rider No. 7 - SECA Charge

**Third Revised Page No. 91
Cancelling Second Revised Page No. 91**

Rider No. 7 - SECA Charge, applicable to all customers purchasing transmission services from the Company, is introduced into the Tariff to effect the recovery, subject to reconciliation, of actual SECA (Seams Elimination Charge Adjustment) transmission charges imposed by the PJM Interconnection, Inc. The SECA Charge billed under this Rider is set at \$0.001557 per kWh.

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JUN 17 2005

PA PUBLIC UTILITY COMMISSION
SEVENTH FLOOR

TABLE OF CONTENTS

	Page Number
List of Modifications	2-2F
Table of Contents	3
List of Communities Served.....	4-5
RULES AND REGULATIONS	6-33
RATES:	
RS Residential Service.....	34-35
RH Residential Service Heating	36-38
RA Residential Service Add-on Heat Pump	39-41
GS/GM General Service Small and Medium	42-44
GMH General Service Medium Heating	45-48
GL General Service Large	49-51
GLH General Service Large Heating	52-54
L Large Power Service	55-58
HVPS High Voltage Power Service	59-64
AL Architectural Lighting Service.....	65-67
SE Street Lighting Energy	68-71
SM Street Lighting Municipal	72-74
SH Street Lighting Highway	75-77
MTS Municipal Traffic Signals.....	78-79
PAL Private Area Lighting.....	80-82
STANDARD CONTRACT RIDERS:	
General	83
No. 1 PJM West Surcharge	84
No. 2 Untransformed Service	85
No. 3 School and Government Service Discount Period	86
No. 4 Budget Billing HUD Finance Multi-Family Housing.....	87
No. 5 Time of Day Discounts	88-89
No. 6 Temporary Service.....	90
No. 7 SECA Charge	91
This Page Intentionally Left Blank	92-93
No. 8 Fixed Price Service	94-97
This Page Intentionally Left Blank	98-99
No. 9 Hourly Price Service	100-104
No. 10 State Tax Adjustment Surcharge	105
No. 11 Street Railway Service	106
No. 12 Billing Option - Volunteer Fire Companies and Nonprofit Senior Citizen Centers	107
No. 13 General Service Separately Metered Electric Space Heating	108
No. 14 Residential Service Separately Metered Space and Water Heating	109-110
This Page Intentionally Left Blank	111
No. 16 Service to Non-Utility Generating Facilities	112-116
This Page Intentionally Left Blank	117-118
No. 17 Emergency Energy Conservation	119-120
No. 18 Rates for Purchase of Electric Energy from Customer-Owned Renewable Resources Generating Facilities.....	121
No. 19 Off-Peak Water Heating Service.....	122-123
This Page Intentionally Left Blank	124-127
No. 21 Universal Service Charge	128-129
No. 22 Renewable Energy Service	130
No. 23 Generation Rate Adjustment.....	131-134

(C) - Indicates Change

(C)

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 7 - SECA CHARGE

(I)(C)

(Applicable to the Transmission Charges in All Rate Schedules)

The Seams Elimination Charge Adjustment ("SECA") Charge billed under this Rider is a pass-through of all charges incurred by the Company that are imposed by the PJM Interconnection, Inc. ("PJM") under its Open Access Transmission Tariff related to the elimination of Regional Through and Out Rates ("RTORs") for transmission service within PJM as it is presently constituted, including the Duquesne zone, and for transmission service between PJM and the Midwest Independent Transmission System Operator ("SECA Charges"). SECA Charges include all costs associated with the elimination of RTORs, including any related increases in transmission rates imposed by PJM on the Company.

The SECA Charge billed under this Rider shall be \$0.001557 per kWh, and it shall apply to all customers who purchase their electric transmission requirements from the Company.

The SECA Charge billed under this Rider shall be subject to reconciliation. Amounts billed to customers under the SECA Charge will be reconciled against actual SECA Charges paid by the Company.

The SECA Charge billed under this Rider will remain in effect until the level of SECA Charges paid by the Company has been fully recovered, at which time the SECA Charge billed under this Rider will terminate, subject to any final reconciliation required due to final resolutions of litigation. If the SECA Charge billed under this Rider recovers more than the level of SECA Charges actually incurred by the Company, the Company will terminate the SECA Charge billed under this Rider and submit a plan of refund to the Commission for its approval.

(I) - Indicates Increase
(C) - Indicates Change

JUN 17 2005

**STATEMENT OF DUQUESNE LIGHT COMPANY,
IN SUPPORT OF SUPPLEMENT NO. 28 TO
TARIFF ELECTRIC – PA . P.U.C. NO. 23**

Duquesne Light Company (“Duquesne” or the “Company”) hereby submits to the Pennsylvania Public Utility Commission (“Commission”) this Statement in Support of Supplement No. 28 to Tariff Electric – Pa. P.U.C. No. 23 (“Tariff 23”). Supplement No. 28 proposes Rider No. 7, which will establish for Duquesne a retail SECA Charge (“Rider 7”). This Charge will enable Duquesne to recover, on a dollar-for-dollar basis, Seams Elimination Charge Adjustments/Assignment charges (“SECA Charges”) implemented by the PJM Interconnection, Inc. (“PJM”)¹ under its Open Access Transmission Tariff (“OATT”). SECA Charges have been authorized by the Federal Energy Regulatory Commission (“FERC”) on a temporary basis as a transition mechanism which FERC believes will lead to a more efficient market for electric generation in the territory served by the expanded PJM and the MISO.

Rider 7 is a pass-through of all charges incurred by Duquesne that are imposed by PJM under its OATT related to the elimination of Regional Through and Out Rates (“RTORs”) for transmission service within PJM and for transmission service between PJM and the Midwest Independent Transmission System Operator (“MISO”). SECA Charges include all costs associated with the elimination of RTORs, including any related increases in transmission rates imposed by PJM on the Company.

As explained more fully below, Duquesne is proposing Supplement No. 28 to establish Rider No. 7 to Tariff 23 to permit it to recover, pursuant to Section 1307(a) of the Public Utility Code, 66 Pa.C.S. § 1307(a), the amount of SECA Charges that Duquesne actually incurs on a reconcilable, dollar-for-dollar basis. Below, Duquesne will respond to the applicable

¹ References to PJM herein are to PJM as it is presently constituted, including the Duquesne zone.

Commission filing requirements at 52 Pa. Code § 53.52. Each filing requirement will be reproduced below, with Duquesne's response set forth immediately thereafter.

“Section 53.52. Applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies.”

“(a) Whenever a public utility, other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement effecting changes in the terms and conditions of service rendered or to be rendered, it shall submit to the Commission, with the tariff, revision or supplement, statements showing all of the following:

“(1) The specific reasons for each change.”

RESPONSE: Duquesne proposes Rider No. 7 to its Tariff 23 in order to permit recovery of new transmission charges imposed on Duquesne under the PJM OATT. The SECA Charges are intended by FERC to compensate transmission facility owners for use of their facilities on an interim basis until a more permanent rate mechanism is established. The SECA Charges are to be paid by Duquesne as a load-serving entity (“LSE”) with regard to its provider of last resort (“POLR”) service customers.

SEAMS ELIMINATION CHARGE ADJUSTMENTS/ASSIGNMENT

Implementation of SECA Charges by FERC and their eventual elimination are part of FERC-mandated migration process to regional markets with broad geographic scope. FERC's goal is to establish sound regional transmission organizations (“RTOs”) and minimize or eliminate any barriers to wholesale commerce between or within those RTOs. The process is designed to open markets to competition and improve reliability.

SECA Charges are a transitional measure authorized by the FERC to compensate transmission facility owners for the loss of RTORs. FERC generally is directing SECA Charges to be effective for approximately 16 months, from December 1, 2004 through March 31, 2006.²

The SECA Charges differ from the RTORs, which have now been eliminated by FERC. RTORs were transaction-based charges applied by independent transmission system operators or transmission owners to transmit electricity across transmission boundaries or seams to LSEs. The independent transmission system operators then used the revenues from the RTORs to compensate transmission facility owners or revenues were collected directly by the transmission owners prior to their becoming members of an RTO. Seams were eliminated when new transmission owning members were integrated into RTOs. The FERC eliminated RTORs and seams based upon its determination that they inhibited the creation of an efficient market for electric generation services across large geographic areas.

STATUS OF SEAMS ELIMINATION CHARGE ADJUSTMENTS/ASSIGNMENT

SECA Charges became effective as of December 1, 2004. *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶61,168, p. 61 (2004). Duquesne received its first bill for SECA Charges from PJM on June 8, 2005.³ This bill includes SECA Charges for January, April and May, 2005. It is anticipated that the next bill from PJM will include SECA Charges for February, March and June, 2005.

There is significant uncertainty with regard to the amount of SECA Charges that ultimately will apply to market participants in the PJM and MISO regions, including Duquesne.

² Because Duquesne did not join PJM until January 1, 2005, SECA Charges should not be applied to it for periods prior to January 1, 2005. PJM OATT language currently states that Duquesne will be billed for SECA Charges for the 16 months commencing January 1, 2005.

³ Duquesne will be billed for all SECA Charges by PJM, in whose expanded territory Duquesne is now situated.

Parties in the FERC proceeding addressing SECA Charges have raised numerous issues related to virtually every aspect of the SECA methodology and how that methodology has been implemented by transmission owners. These issues relate both to the level of lost revenues that each transmission owner is entitled to collect and to the allocation of responsibility for those lost revenues among LSEs. Duquesne has been an active participant in the FERC proceedings, having participated in more than ten separate filings at the FERC addressing SECA Charges.

FERC set certain SECA Charges that will apply for the period December 1, 2004, through March 31, 2005, for hearing before a FERC administrative law judge (“ALJ”). *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,107 (2005). Duquesne expects that FERC also will set all other proposed SECA Charges, including those for the period April 1, 2005, through March 31, 2006, for hearing, and may consolidate that hearing with the on-going proceeding before the ALJ.⁴

AMOUNT OF SECA CHARGES

Based upon Duquesne’s calculations and the PJM filings to date, without any adjustment, the Duquesne zone of PJM would incur approximately \$39.0 million of SECA Charges over the 16-month transition period. To more accurately allocate these lost revenues among the LSEs that caused them, Duquesne has proposed sub-zones within the Duquesne zone. Under these sub-zones, each LSE is allocated lost transmission revenue responsibility based on the LSE’s contribution to the total lost revenues allocated to the Duquesne zone by the other PJM transmission owners and MISO. Also, adjustments are made to the sub-zonal allocations to reflect movements in retail load, *i.e.*, customers that switch from one LSE to another. Under the

⁴ Charges for the transition period ending March 31, 2005 are based on 2002 data (as may be adjusted for known and measurable changes). Charges for the transition period ending March 31, 2006 are based on 2003 data (again as may be adjusted for known and measurable changes). Different SECA Charges thus likely will apply to these different periods.

sub-zonal approach, Duquesne forecasts that it will be responsible for approximately \$11.0 million⁵ in SECA Charges over the 16-month period associated with its POLR load obligations.⁶ Other LSEs in the Duquesne zone will be assigned the responsibility for the remainder of the lost revenues allocated to the Duquesne zone.

Based on issues raised by Duquesne and others before the FERC, including issues related to Duquesne's sub-zonal proposal, the amount allocated to the Duquesne zone of the PJM and specifically to Duquesne could vary substantially from the amounts based on the filings made by MISO and PJM transmission owners (including Duquesne) to date.

Several conclusions can be drawn from the above discussion. First and foremost, Duquesne has played an active role in representing the interests of its POLR customers to reduce to the extent practical the amount of SECA Charges that they will be required to bear, consistent with the principles FERC has established in the SECA Charge proceedings. Second, the SECA Charges are federally-imposed and are associated with the transmission of electricity in interstate commerce. Third, the amount of SECA Charges remains subject to substantial variation, depending on how FERC resolves issues pending before it. Fourth, because the issues affecting the amount of SECA Charges that Duquesne's ratepayers will be required to bear will be determined by FERC, the level of SECA Charges that Duquesne will incur on behalf of its POLR customers is beyond Duquesne's control, although Duquesne will continue its efforts to minimize that responsibility.

⁵ In developing retail POLR rates for recovering SECA Charges, this amount will be grossed up for Pennsylvania gross receipts tax.

⁶ POLR I, POLR III, HPS and FPS.

RATE DESIGN

Duquesne's Rider 7 will apply to all retail customers who obtain their electric transmission service from Duquesne as a POLR customer.

As explained above, transmission facilities owners' lost revenues are being allocated to the Duquesne zone based upon historic transmission usage on a kWh basis during 2002-2003. Consequently, Duquesne proposes to recover SECA Charges from customers based on a uniform charge per kWh as a rider to retail transmission rates for its POLR customers. Duquesne believes that it is appropriate to recover SECA Charges from these customers in the same manner that SECA Charges are imposed upon Duquesne.

Duquesne also believes that recovery of the SECA Charges is necessary to maintain an accurate price to compare vis-à-vis the electric generation suppliers ("EGSs") serving Duquesne's distribution customers. As LSEs, EGSs will incur SECA Charges in the same manner as Duquesne. If Duquesne is permitted to increase its retail transmission rates in order to recover these SECA Charges, such costs will be reflected in the price to compare, thereby providing EGSs an opportunity to increase the prices that they charge to their customers to recover SECA Charges that EGSs will pay under the PJM OATT.

The reconciliation provisions of Rider 7 are intended to be simple to understand and easy to administer. Rider 7 will be reconcilable. The amount of SECA Charges billed to Duquesne by PJM will be reconciled against the amount billed to retail POLR customers under Rider 7. Duquesne is proposing that the Rider 7 charge per kWh will remain fixed for approximately a 16-month period. Under the proposal, Rider 7 will cease when Duquesne has recovered all of its SECA Charges, subject to a final reconciliation required due to final resolution of litigation. If Duquesne's SECA Charges are greater than presently estimated, Rider 7 will be extended for a

period of time sufficient to recover actual SECA Charges. If Duquesne recovers more than its SECA Charges, as a result of FERC's sustaining all or part of Duquesne's protests or for any other reason, Duquesne will cease charging Rider 7 and submit to the Commission a proposed method of refund.

LEGAL BASIS FOR RECOVERY

It is appropriate for Duquesne to recover SECA Charges pursuant to an automatic adjustment clause as authorized under Section 1307(a) of the Public Utility Code, 66 Pa.C.S. § 1307(a). An automatic adjustment clause is appropriate because SECA Charges are substantial, subject to substantial variation, readily identifiable and are beyond Duquesne's control.

The Commission and Pennsylvania appellate courts have recognized that an automatic adjustment clause may be appropriate under such circumstances. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, 2004 WL 1592809, Docket No. P-00042090, p. 6 (July 8, 2004); *Pennsylvania Industrial Energy Coalition v. Pa. P.U.C.*, 653 A.2d 1336 (Pa. Cmwlth. 1995); *Masthope Rapids Property Owners Council v. Pa. P.U.C.*, 581 A.2d 994 (Pa. Cmwlth. 1990); *Allegheny Ludlum Steel Corp. v. Pa. P.U.C.*, 501 Pa. 71, 459 A.2d 1218 (1993).

The SECA Charges that Duquesne will incur are expected to be substantial. Based on the filings by MISO and PJM transmission owners to date, Duquesne's SECA liability will be approximately \$11.0 million. Duquesne proposes to recover this amount over 16 months, subject to the reconciliation explained previously, a length of time equal to the period for which PJM will bill the Duquesne zone under the OATT. In comparison, Duquesne's annual transmission revenue requirement, as established in Duquesne's restructuring proceeding in 1998, is \$30,898,366.

It is equally clear that Duquesne's SECA Charges are subject to substantial variation, depending upon how the FERC resolves issues pending before it as well as the proportion of retail load that reverts to POLR supply over the transition period. For the same reason, it is also clear that the level of SECA Charges that Duquesne will be required to pay is beyond its control. Duquesne has protested the SECA filings by PJM and MISO transmission owners, in order to minimize its POLR customers' exposure to SECA Charges. All issues related to SECA Charges, Duquesne's protest and protests of others, however, will be resolved by the FERC.

The SECA Charges that Duquesne will incur from PJM should be recovered for the additional reason that they are very similar to transition costs incurred by natural gas distribution companies under FERC Order 636 mandating open access for all natural gas companies in order to create a national wellhead open market. The Commission allowed natural gas distribution companies to recover these FERC mandated transition costs as that industry moved to a more competitive marketplace. *Statement of Policy Regarding the Recovery of FERC Order 636 Transition Costs*, Docket No. M-00930389 (Pa. P.U.C. October 15, 1993); 52 Pa. Code §§ 69.341 – 69.343.

Before it determined to seek recovery of Rider SECA Charges under Section 1307(a) of the Public Utility Code, Duquesne considered alternative forms of relief. For example, Duquesne considered a rate filing under Section 1308 of the Public Utility Code, but Duquesne determined that such a filing would be inappropriate because SECA Charges are temporary. Rate changes under Section 1308 of the Public Utility Code are effective indefinitely until modified in a future proceeding. A Section 1308 proceeding is not well-suited to recovery of a temporary expense.

Duquesne understands that others may contend that the Commission should consider rate of return prior to approving Rider 7. As shown at page 1 of Attachment F hereto, Duquesne clearly will not be achieving a fair rate of return even if it does recover SECA Charges. Duquesne's return on equity for the twelve-month period ended March 31, 2005, was 8.44 percent. This rate of return is significantly less than 10.70 return allowed in the Commission's most recent electric distribution base rate case. *Pa. P.U.C. v. PPL Electric Utilities Corp.*, Docket No. R00049255, p. 72 (December 22, 2004). If Duquesne is not permitted to recover SECA Charges, its return on equity will decline even further. If Duquesne is allowed to recover SECA Charges, its rate of return will not increase because Rider 7 provides for only a dollar-for-dollar recover of a new expense.

Duquesne notes that it intends to file a proposed general increase in base rates under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), in the first half of 2006 based upon an historic test year ending December 31, 2005, and a future test year ending December 31, 2006. Duquesne would not have that intention if it was earning a rate of return greater than a fair rate of return while it was recovering SECA Charges.

“(2) The total number of customers served by the utility.”

RESPONSE: See Attachment A hereto.

“(3) A calculation of the number of customers, by tariff subdivision, whose bills will be affected by the change.”

RESPONSE: See Attachment B hereto.

“(4) The effect of the change on the utility's customers.”

RESPONSE: Duquesne proposes that Rider 7 charge be set at \$0.001557 per kWh. For a calculation of this rate, see Attachment C hereto.

For an average residential POLR customer consuming 587 kWh of electricity, the average monthly consumption in 2004, the effect of Rider 7 would be an increase of approximately \$0.91 per month. As indicated above, it is estimated that the SECA would be in effect for approximately 16 months, based upon PJM's OATT.

“(5) The direct or indirect effect of the proposed change on the utility’s revenue and expenses.”

RESPONSE: Rider 7 is designed to produce approximately \$11 million of additional operating revenues for Duquesne, a dollar-for-dollar recovery of SECA Charges that Duquesne will incur under currently filed rates, exclusive of the provision for recovery of Pennsylvania gross receipts tax. Rider 7 is designed to recover this amount over 16 months, the same period of time currently included in the PJM OATT. However, the actual period during which Duquesne will collect SECA Charges under Rider 7 could be more or less than 16 months, depending on the finally-approved amount of SECA Charges that Duquesne is required by FERC to pay to PJM.

Rider 7 is intended to recover only the amount of SECA Charges that Duquesne is required to pay under PJM's OATT plus gross receipts tax. Thus, Rider 7 is designed to have no net effect on Duquesne's income.

“(6) The effect of the change on the service rendered by the utility.”

RESPONSE: Rider 7 will have no effect on service furnished by Duquesne.

“(7) A list of factors considered by the utility in its determination to make the change. The list shall

include a comprehensive statement about why these factors were chosen and the relative importance of each. This subsection does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308 (relating to voluntary changes in rates.)”

RESPONSE: See the answer to filing requirement (1) above.

“(8) Studies undertaken by the utility in order to draft its proposed change. This paragraph does not apply to a portion of a tariff change seeking a general rate increase as defined in 66 Pa.C.S. § 1308.”

RESPONSE: See the response to filing requirement (1), above.

“(9) Customer polls taken in other documents which indicate customer acceptance and desire for the proposed change. If the poll or other documents reveal discernable public opposition, an explanation of why the change is in the public interest shall be provided.”

RESPONSE: Duquesne has not undertaken any customer polls with regard to Rider 7, and Duquesne has no other documents which indicate customer acceptance or desire for the proposed change.

“(10) Plans the utility has for introducing or implementing the changes with respect to its ratepayers.”

RESPONSE: As indicated by the enclosed certificate of service, Duquesne has served copies of this filing on the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate. Duquesne will notify customers of Rider 7 as directed by the Commission, pursuant to 52 Pa. Code § 53.45(g). Duquesne suggests that notice to customers await the Commission’s determination with regard to Rider 7 so that customers can be informed of Rider 7 as approved by the Commission. Duquesne suggests further that any notice to customers be included in a bill insert. Duquesne is willing to work with interested parties with

regard to the precise text of the notice. In addition, Duquesne intends to notify its ratepayers of Rider 7 by maintaining a complete copy of the tariff, including Supplement 28 to Tariff No. 23 and copies of this Statement in Support of Supplement No. 28 at its offices in compliance with 52 Pa. Code § 53.4.

Duquesne intends to reflect Rider 7 in bills to customers as an increase in the Transmission Charge without separate identification on bills to customers.

“(11) FCC, FERC or Commission Orders are rulings applicable to the filing.”

RESPONSE: See the response to filing requirement (a)(1), above.

“(b) Whenever a public utility other than a canal, turnpike, tunnel, bridge or wharf company files a tariff, revision or supplement which will increase or decrease the bills to its customers, it shall submit in addition to the requirements of subsection (a), to the Commission, with the tariff, revision or supplement, statements showing the following:”

“(1) The specific reasons for each increase or decrease”

RESPONSE: See the response to filing requirement (a)(1), above.

(2) The operating income statement of the utility for a 12-month period, the end of which may not be more than 120 days prior to the filing. Water and wastewater utilities with annual revenues under \$100,000 and municipal corporation subject to Commission jurisdiction may provide operating income statements for a 12-month period, the end of which may not be more than 180 days prior to the filing.

RESPONSE: See Attachment D hereto.

“(3) A calculation of the number of customers, by tariff subdivision, whose bills will be increased.”

RESPONSE: See Attachment B hereto.

“(4) A calculation of the total increases, in dollars, by tariff subdivision projected on an annual basis.”

RESPONSE: See Attachment E hereto.

“(5) A calculation of the number of customers, by tariff subdivision, whose bills will be decreased.”

RESPONSE: No bills to customers will be decreased as a result of Supplement No. 28 to Tariff 23.

“(6) A calculation of the total decreases, in dollars, by tariff subdivision projected to an annual basis.”

RESPONSE: There will be no decreases in revenues as a result of Supplement No. 28 to Tariff 23.

“(c) If a public utility files a tariff, revision or supplement which it is calculated will increase the bills of a customer or a group of customers by an amount, when projected to an annual basis, exceeding 3% of the operating revenues of the utility – subsection (b)(4) divided by the operating revenues of the utility for a 12-month period as defined in subsection (b)(2) – or which it is calculated will increase the bills of 5% or more of the number of customers served by the utility – subsection (b)(3) divided by subsection (a)(2) – it shall submit to the Commission with the tariff, revision or supplement, in addition to the statements required by subsections (a) and (b), all of the following information:

“(1) A statement showing the utility’s calculation of the rate of return or operating ratio (if the utility qualified to use an operating ratio under § 53.54 (relating to small water and wastewater utilities)) earned in the 12-month period referred to in subsection (b)(2), and the anticipated rate of return or operating ratio to be earned when the tariff, revision or supplement become effective. The rate base used in this calculation shall be supported by summaries of original cost for the rate of return calculation. When an operating ratio is used in this calculation, it shall be supported by studies of

margin above operation and maintenance expense plus depreciation as referred to in § 53.54(b)(2)(B).

RESPONSE: See Attachment F.

“(2) A detailed balance sheet of the utility as of the close of the period referred to in subsection (b)(2).”

RESPONSE: Provided as Attachment G hereto is a detailed balance sheet of Duquesne as of March 31, 2005.

“(3) A summary, by detailed plant accounts, of the book value of the property of the utility at the date of the balance sheet required in paragraph (2).”

RESPONSE: Provided as Attachment H hereto is a statement of the book value of the property of Duquesne as of March 31, 2005, by detailed plant accounts.

“(4) A statement showing the amount of the depreciation reserve, at the date of the balance sheet required by paragraph (2), applicable to the property, summarized as required by paragraph (3).”

RESPONSE: Provided as Attachment H hereto is a statement showing the depreciation reserve of Duquesne as of March 31, 2005.

“(5) A statement of operating income, setting forth the operating revenues and expenses by detailed accounts for the 12-month period ending on the date of the balance sheet required by paragraph (2).”

RESPONSE: Provided as Attachment D hereto is a statement of operating income for the 12-month period ended March 31, 2005.

“(6) A brief description of a major change in the operating or financial condition of the utility occurring between the date of the balance sheet required by paragraph (2) and the date of transmittal of the tariff, revision or supplement. As used in this paragraph, a

major change is one which materially alters the operating or financial condition of the utility from that reflected in paragraph (1) – (5).”

RESPONSE: There have been no major changes in the operating or financial condition of Duquesne since March 31, 2005.

DUQUESNE LIGHT COMPANY
CUSTOMERS SERVED BY THE COMPANY AS OF 05/31/05

Attachment A

<u>Rate Schedule</u>	<u>Customers</u>
RA	3,060
RS	496,639
RH	24,475
GMH	3,378
GS/GM	54,572
GL	735
GLH	118
L	24
HVPS	2
AL	3
SH	14
SM	612
SE	1
MTS	1,743
<u>PAL</u>	<u>264</u>
Total	<u>585,640</u>

**DUQUESNE LIGHT COMPANY
CUSTOMERS AFFECTED BY SUPPLEMENT NO. 28
RELATIVE TO 05/31/05 CUSTOMER COUNTS**

Attachment B

<u>Rate Schedule</u>	<u>Customers (1)</u>
RA	2,337
RS	376,966
RH	24,261
GS/GM	43,471
GMH	2,944
GL	75
GLH	16
L	3
HVPS	2
AL	2
SH	14
SM	592
SE	1
MTS	895
PAL	<u>260</u>
Total	<u>451,839</u>

(1) This data reflects POLR customers served as of May 31, 2005. Forecasted sales and calculated revenues by rate class shown on Attachment E reflect the Company's current expectations regarding customer shopping during the proposed recovery period.

DUQUESNE LIGHT COMPANY
SECA CHARGE
CALCULATION OF RIDER NO. 7 - SECA CHARGE

Attachment C

Estimated SECA Charges for Duquesne Sub-Zone (for the 16 month period January 2005 to April 2006)	\$11,047,249
Forecast Duquesne Light Company POLR Retail Sales in kWh (for the 16 month period August 2005 to November 2006)	7,539,969,395
\$/kWh without Pennsylvania Gross Receipts Tax (GRT)	\$0.001465
Cents per kWh without GRT	0.1465
Pennsylvania Gross Receipts Tax	5.90%
Rider No. 7 - SECA Charge cents per kWh (with GRT)	0.1557
Rider No. 7 - SECA Charge \$ per kWh (with GRT)	\$0.001557

Duquesne Light Company
Statement of Income
For the Twelve Months ended March 31, 2005

Attachment D

SALES OF ELECTRICITY	
440.0 Residential Sales	\$ 320,456,810
442.0 Commercial and Industrial Sales	
Small (or Comm.)	285,014,366
Large (or Ind.)	109,434,129
444.0 Public Street and Highway Lighting	13,569,190
Total Sales Of Electricity To Ultimate Consumers	<u>728,474,495</u>
447.0 Sales for Resale	10,694,962
Total Sales Of Electricity	<u>739,169,457</u>
(Less) 449.1 Provision for Rate Refunds	-
Total Revenues Net Of Prov. For Refunds	<u>739,169,457</u>
OTHER OPERATING REVENUES	
450.0 Forfeited Discounts	3,260,366
451.0 Miscellaneous Service Revenues	1,869,866
454.0 Rent from Electric Property	8,440,324
456.0 Other Electric Revenues	19,836,906
Total Other Operating Revenues	<u>33,407,462</u>
Total Revenues	<u>772,576,919</u>
OPERATING EXPENSES	
401.0 Operation Expenses	494,750,114
402.0 Maintenance Expenses	25,675,179
403.0 Depreciation Expenses	56,669,626
404.1 Amort. Of Limited-Term Electric Plant	3,152,079
407.3 Regulatory Debits	1,049,725
408.1 Taxes Other Than Income Taxes, Utility Opr. Income	47,097,753
409.1 Income Taxes, Utility Operating Income	25,323,750
410.1 Provision for Deferred Income Taxes, Ut. Opr. Income	3,505,089
411.9 Losses from Disposition of Allowances	-
Total Utility Operating Expenses	<u>657,223,315</u>
OTHER INCOME	
418.1 Equity in Earnings of Subsidiary Companies	19,943,090
419.0 Interest & Dividend Income	16,356,737
419.1 Allowance for Other Funds Used During Construction	1,302,541
421.0 Miscellaneous Non Operating Income	2,718,377
421.1 Gain on Disposition of Property	17,651
Total Other Income	<u>40,338,396</u>
OTHER INCOME DEDUCTIONS	
421.2 Loss on Disposition of Property	182,381
426.1 Donations	872,843
426.4 Exp. for Certain Civic, Political & Related Activities	308,423
426.5 Other Deductions	2,127,394
Total Other Income Deductions	<u>3,491,041</u>
TAXES APPLICABLE TO OTHER INCOME & DED.	
409.2 Income Taxes, Other Income & Deductions	6,274,068
Total Taxes on Other Income and Deductions	<u>6,274,068</u>
Net Other Income and Deductions	<u>30,573,287</u>
INTEREST CHARGES	
427.0 Interest on Long-Term Debt	42,640,482
428.0 Amortization of Debt Discount and Expense	3,611,498
429.1 Amortization of Gain on Reacquired Debt-Credit	(119,668)
430.0 Interest on Debt to Associated Companies	27,767,403
431.0 Other Interest Expense	962,058
432.0 Allowance for Borrowed Funds Used During Construction-Cr	(833,241)
Net Interest Charges	<u>74,028,532</u>
Net Income	<u>\$ 71,898,359</u>

**DUQUESNE LIGHT COMPANY
SECA CHARGE
CALCULATION OF TOTAL DOLLARS BY RATE CLASS**

Attachment E

Rate	Annual kWh (1)	SECA Surcharge	Annual Increase
RA	32,204,906	\$0.001557	\$50,143
RS	2,694,430,509	\$0.001557	\$4,195,228
RH	326,673,181	\$0.001557	\$508,630
GS/GM	2,164,145,767	\$0.001557	\$3,369,575
GMH	271,245,228	\$0.001557	\$422,329
GL	48,265,727	\$0.001557	\$75,150
GLH	0	\$0.001557	\$0
L	100,937,322	\$0.001557	\$157,159
HVPS	0	\$0.001557	\$0
AL	22,019	\$0.001557	\$34
SH	878,352	\$0.001557	\$1,368
SM	27,845,584	\$0.001557	\$43,356
SE	28,816,452	\$0.001557	\$44,867
MTS	6,200,485	\$0.001557	\$9,654
PAL	879,110	\$0.001557	\$1,369
Total	5,702,544,642		\$8,878,862

(1) Forecast POLR sales for period from August 2005 to July 2006.

SCHEDULE D-1

COMPANY NAME: Duquesne Light Company
 Intrastate Per Books
 Calculation of Return on Common Equity
 for the 12 Months Ended 03/31/05

(Thousands of Dollars)

	Capital Ratios (a)		Rate Base (b)		Totals		Embedded Cost Rates(c)		Total Rate Base Related Cost of Debt and Preferred & Preference
	(1)	x	(2)	=	(3)	x	(4)	=	(5)
	Sch. E Col. 2		Sch. A. Col. 3 Line 16				Sch. F Col. 7		
1) Debt	57.08%		\$1,297,156		\$740,369		5.11%		\$37,802
2) Preferred	9.04%		\$1,297,156		117,208		5.74%		6,730
3) Common Equity	<u>33.89%</u>		\$1,297,156		<u>439,579</u>				
4) Total	<u>100.00%</u>				<u>\$1,297,156</u>				<u>\$44,532</u>

12 Months ended 03/31/05

	Intrastate Per Books
5) Income Available for Return (from Sch. A, Col. 3, Line 26)	\$89,047
6) Less: Total Rate Base Related Cost of Debt and Preferred (Col 5, Line 4)	<u>\$44,532</u>
7) Income Available for Common Equity (Line 5 Less Line 6)	<u>\$44,515</u>
8) Debt Cost (Col 5., Line 1)	\$37,802
9) Less: Interest Expense used to compute State and Federal Income Taxes	<u>55,724</u>
10) Difference (Line 8 Less Line 9)	(17,922)
11) Times: Composite State and Federal Income Tax Rate	<u>.4149%</u>
12) Net Addition or (Deduction) (Line 10 x Line 11)	<u>(\$7,436)</u>
13) Income Available for Common Equity, including Income Tax Effect of using Debt Cost (Line 7 plus Line 12)	<u>\$37,079</u>
14) Return on Common Equity (Line 7/Line 3, Col. 3)	<u>10.13%</u>
15) Return on Common Equity, including Income Tax Effect of using Debt Cost (Line 13/Line 3, Col. 3)	<u>8.44%</u>

Notes> The difference between interest cost on lines 8 and 9 of this schedule relates primarily to intercompany loans to Duquesne Light Holdings, Inc. (formerly DQE, Inc.)
 This statement is adjusted to exclude all POLR revenue and expenses and other non-regulatory items.

Company Name: Duquesne Light Company
 Financial Report for Twelve Months Ended
March 31, 2005

(Thousands of Dollars)

	Actual per <u>Books</u> (1)	Intrastate <u>Percent</u> (2)	Intrastate per books (3)
(1) Original Cost of Plant In Service	2,096,560	1.0000	\$2,096,560
(2) Less: Depreciation Reserve	714,139	1.0000	714,139
(3) Net Plant in Service	1,382,421		1,382,421
<u>Additions:</u>			
(4) Land/Plant Held for Future Use	174	1.0000	174
(5) Materials & Supplies & Fuel Stocks	14,888	1.0000	14,888
(6) Cash Working Capital (b)	-	1.0000	-
(7) Other	-	1.0000	-
<u>Deductions:</u>			
(8) Accumulated Deferred Income Taxes	-	1.0000	-
(9) Liberalized Depreciation	98,178	1.0000	98,178
(10) Investment Tax Credit	-	1.0000	-
(11) Other	-	1.0000	-
(12) Customer Deposits	2,149	1.0000	2,149
(13) Customer Advances	-	1.0000	-
(14) Contributions in Aid of Construction	-	1.0000	-
(15) Other	-	1.0000	-
(16) RATE BASE	\$1,297,156		\$1,297,156
(17) <u>Operating Revenues</u>	<u>\$340,636</u>	<u>1.0000</u>	<u>340,636</u>
<u>Operating Expenses</u>			
(18) Operation & Maintenance	137,902	1.0000	137,902
(19) Annual Depreciation	61,953	1.0000	61,953
(20) Taxes - Other than Income	27,174	1.0000	27,174
(21) State Income Tax - Current	14,707	1.0000	14,707
(22) Federal Income Tax - Current	3,387	1.0000	3,387
(23) Deferred Income Taxes	6,466	1.0000	6,466
(24) Investment Tax Credit (Net)	0	1.0000	-
(25) Total Operating Expenses	251,589		251,589
(26) INCOME AVAILABLE FOR RETURN	\$89,047		\$89,047
RATE OF RETURN - OVERALL	6.86%		6.86%

(a) Schedule B and Schedule C

(b) As adjudicated in last rate case
or as currently calculated

Duquesne Light Company
Balance Sheet
As of March 31, 2005

ASSETS AND OTHER DEBITS

UTILITY PLANT

101.0	Electric Plant in Service	\$ 1,984,724,624
101.1	Property Under Capital Leases	1,681,494
105.0	Electric Plant Held for Future Use	174,110
106.0	Completed Construction Not Classified-Electric	53,513,320
107.0	Construction Work in Progress-Electric	48,227,735
108.0	Accumulated Provision for Depreciation of Electric Utility Plant	(684,607,542)
111.0	Accum. Prov. For Amortization & Depletion of Electric Utility Pl.	(21,118,313)
	Total Utility Plant	<u>1,382,595,428</u>

OTHER PROPERTY AND INVESTMENTS

121.0	Non-Utility Property	2,542,996
122.0	Accumulated Depreciation & Amortization of Non-Utility Property	(1,090,663)
123.0	Investments in Associated Companies	274,576,950
123.1	Investment in Subsidiary Companies	573,935,586
124.0	Other Investments	(1,315,118)
	Total Other Property And Investments	<u>848,649,751</u>

CURRENT AND ACCRUED ASSETS

134.0	Other Special Deposits	1,732,895
135.0	Working Funds	69,319
142.0	Customer Accounts Receivable	98,888,809
143.0	Other Accounts Receivable	8,375,132
144.0	Accumulated Provision for Uncollectible Accounts-Cr.	(16,477,772)
146.0	Accounts Receivable for Associated Companies	98,126,893
154.0	Plant Materials and Operating Supplies	14,888,818
165.0	Prepayments	34,443,580
171.0	Interest and Dividends Receivable	534,022
174.0	Miscellaneous Current and Accrued Assets	1,434,834
	Total Current & Accrued Assets	<u>242,016,530</u>

DEFERRED DEBITS

181.0	Unamortized Debt Expense	8,539,426
182.3	Other Regulatory Assets	242,733,152
184.0	Clearing Accounts	(72)
186.0	Miscellaneous Deferred Debits	14,429,211
189.0	Unamortized Loss on Reacquired Debt	48,673,278
190.0	Accumulated Deferred Income Taxes	71,090,013
	Total Deferred Debits	<u>385,465,008</u>

Total Assets and Other Debits	<u><u>\$ 2,858,726,717</u></u>
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Duquesne Light Company
Balance Sheet
As of March 31, 2005

Attachment G
Page 2 of 2

LIABILITIES AND OTHER CREDITS

PROPRIETARY CAPITAL

201.0	Common Stock Issued	\$	10
204.0	Preferred Stock Issued		135,785,903
207.0	Premium on Capital Stock		10,342,537
208.0	Donations Received from Stockholders		99,090,350
210.0	Gain on Resale or Cancellation of Reacquired Capital Stock		384,539,987
211.0	Miscellaneous Paid-In Capital		4,986,674
214.0	Capital Stock Expense		(2,173,772)
215.0	Appropriated Retained Earnings		(175,175,982)
216.1	Unappropriated Undistributed Subsidiary Earnings		228,050,075
219.0	Accumulated Other Comprehensive Income		(1,696,102)
	Total Proprietary Capital		<u>683,749,680</u>

LONG-TERM DEBT

221.0	Bonds		540,000,000
223.0	Advances from Associated Companies		297,817,000
224.0	Other Long-term Debt		417,985,000
226.0	Unamortized Discount on Long-Term Debt-Debit		(1,540,550)
	Total Long Term Debt		<u>1,254,261,450</u>

OTHER NONCURRENT LIABILITIES

227.0	Obligation Under Capital Leases-NonCurrent		1,705,742
228.2	Accumulated Provision for Injuries and Damages		3,515,212
228.3	Accumulated Provision for Pensions and Benefits		38,558,730
228.4	Accumulated Miscellaneous Operating Provisions		1,600,000
	Total Other Noncurrent Liabilities		<u>45,379,684</u>

CURRENT AND ACCRUED LIABILITIES

232.0	Accounts Payable		30,486,363
233.0	Notes Payable to Associated Companies		17,716,000
234.0	Accounts Payable to Affiliated Companies		278,359,070
235.0	Customers' Deposits-Billing		2,149,208
236.1	Accrued Taxes, Taxes Other Than Income		3,679,850
236.2	Accrued Taxes, Income Taxes		3,478,047
237.1	Accrued Interest on Long-term Debt		20,605,382
237.2	Accrued Interest on Other Liabilities		76,729
238.0	Dividends Declared		15,115,328
241.0	Tax Collections Payable		1,970,230
242.0	Miscellaneous Current and Accrued Liabilities		21,914,475
	Total Current And Accrued Liabilities		<u>395,550,682</u>

DEFERRED CREDITS

252.0	Customer Advances for Construction		25,167
253.0	Other Deferred Credits		86,114,576
254.0	Other Regulatory Liabilities		5,321,328
257.0	Unamortized Gain on Reacquired Debt		588,175
282.0	Accum. Deferred Income Taxes-Other Property		154,655,698
283.0	Accum. Deferred Income Taxes-Other		233,080,277
	Total Deferred Credits		<u>479,785,221</u>

Total Liabilities & Other Credits	<u>\$ 2,858,726,717</u>
-----------------------------------	-------------------------

DUQUESNE LIGHT COMPANY
BOOK VALUE OF UTILITY PLANT IN SERVICE AND DEPRECIATION RESERVE
AS OF MARCH 31, 2005

Attachment H

Line No.	Account Number and Title (a)	Acct. #101 & #106 Balance @ 3/31/05 (b)	Accum. Depreciation (c)	Net Plant Balance (d)
1	INTANGIBLE PLANT	XXX	XXX	XXX
2	301 Organization	100,275		100,275
3	302 Franchises & Consents	6,830		6,830
4	303 Miscellaneous Intangible Plant	23,441,407	18,543,899	4,897,508
5	Total Intangible Plant	23,548,512	18,543,899	5,004,613
6	STEAM PRODUCTION PLANT	XXX	XXX	XXX
7	310 Land and Land Rights			
8	311 Structures and Improvements			
9	312 Boiler Plant Equipment			
10	313 Engines and Engine-Driven Generators			
11	314 Turbogenerator Units			
12	315 Accessory Electric Equipment			
13	316 Miscellaneous Power Plant Equipment			
14	Total Steam Production Plant	0	0	0
14	NUCLEAR PRODUCTION	XXX	XXX	XXX
15	320 Land and Land Rights			
16	321 Structures and Improvements			
17	322 Reactor Plant Equipment			
18	323 Turbogenerator Units			
19	324 Accessory Electric Equipment			
20	325 Miscellaneous Power Plant Equipment			
21	Total Nuclear Production	0	0	0
21	HYDRAULIC PRODUCTION	XXX	XXX	XXX
22	330 Land and Land Rights			
23	331 Structures and Improvements			
24	332 Reservoirs, Dams and Waterways			
25	333 Water Wheels, Turbines and Generators			
25	334 Accessory Electric Equipment			
26	335 Miscellaneous Power Plant Equipment			
27	336 Roads, Railroads and Bridges			
28	Total Hydraulic Production	0	0	0
28	OTHER PRODUCTION	XXX	XXX	XXX
29	340.0 Land and Land Rights			
30	341.0 Structures and Improvements			
31	342.0 Fuel Holders, Producers and Accessories			
32	343.0 Prime Movers			
33	344.0 Generators			
34	345 Accessory Electric Equipment			
35	346 Miscellaneous Power Train Equipment			
36	Total Other Production	0	0	0
36	TRANSMISSION PLANT	XXX	XXX	XXX
37	350 Land and Land Rights	11,034,484		11,034,484
38	352 Structures and Improvements	7,034,589	3,238,996	3,795,593
39	353 Station Equipment	90,854,850	34,767,385	56,087,465
40	354 Towers and Fixtures	60,610,595	20,498,708	40,111,887
41	355 Poles and Fixtures	7,189,086	2,595,589	4,593,497
42	356 Overhead Conductors and Devices	40,873,639	19,133,613	21,740,026
43	357 Underground Conduit	37,207,886	12,958,450	24,249,436
44	358 Underground Conductors and Devices	20,053,187	10,096,382	9,956,805
45	359 Roads and Trails	4,354	1,277	3,077
46	Total Transmission Plant	274,862,670	103,290,400	171,572,270
46	DISTRIBUTION PLANT	XXX	XXX	XXX
47	360 Land and Land Rights	9,839,391		9,839,391
43	361 Structures and Improvements	46,505,185	21,227,441	25,277,744
44	362 Station Equipment	317,707,460	100,356,666	217,350,794
45	363 Storage Battery Equipment			0
46	364 Poles, Towers and Fixtures	272,303,612	100,188,031	172,115,581
47	365 Overhead Conductors and Devices	258,820,209	84,972,666	173,847,543
48	366 Underground Conduit	89,067,381	25,226,887	63,840,494
49	367 Underground Conductors and Devices	175,470,978	58,175,015	117,295,961
50	368 Line Transformers	198,113,708	52,421,419	145,692,289
51	369 Services	72,361,927	28,222,199	43,139,728
52	370 Meters	78,621,369	38,091,385	40,529,984
53	371 Installations on Customers' Premises			0
54	372 Leased Property on Customers' Premises			0
55	373 Street Lighting and Signal Systems	30,423,637	21,048,639	9,374,998
56	Total Distribution Plant	1,549,234,855	530,930,348	1,018,304,507
56	GENERAL PLANT	XXX	XXX	XXX
57	389 Land and Land Rights	5,858,895		5,858,895
58	390 Structures and Improvements	66,298,430	17,766,784	48,531,646
59	391 Office Furniture and Equipment	19,836,941	3,893,575	15,943,366
60	392 Transportation Equipment	33,003,833	14,215,646	18,788,187
61	393 Stores Equipment	1,993,406	685,066	1,308,340
62	394 Tools, Shop and Garage Equipment	9,780,343	2,896,886	6,883,457
63	395 Laboratory Equipment	5,182,140	1,215,762	3,966,378
64	396 Power Operated Equipment	818,573	591,113	227,460
65	397 Communication Equipment	47,303,648	11,607,972	35,695,676
66	398 Miscellaneous Equipment	515,698	88,404	427,294
67	399 Other Tangible Property			0
68	Total General Plant	190,591,907	52,961,208	137,630,699
69	Total Plant in Service	2,038,237,944	705,725,855	1,332,512,089

FOOTNOTE:

Line No. 69 Column b: Total does not include Net Property under Capital Lease of \$1,681,494.

ORIGINAL

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

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100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

July 28, 2005

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

DOCUMENT
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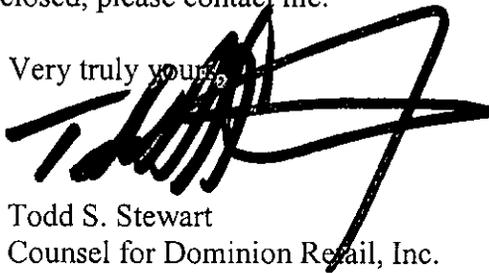
Re: Pennsylvania Public Utility Commission v. Duquesne Light Company;
Docket No. R-00050662__ ; **PETITION TO INTERVENE IN OPPOSITION
OF DOMINION RETAIL, INC.**

Dear Secretary McNulty:

Enclosed for filing with the Court, please find the original and nine (9) copies of Dominion Retail, Inc.'s Petition to Intervene in Opposition regarding the above-captioned proceeding.

If you have questions, concerning enclosed, please contact me.

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail, Inc.

TSS/tar
Enclosure

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2005 JUL 28 PM 2:53
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05

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
:
v. :
:
Duquesne Light Company :

Docket No. R-00050662

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SECRETARY'S BUREAU

PETITION TO INTERVENE
IN OPPOSITION OF
DOMINION RETAIL, INC.

DOCKETED
AUG 12 2005

Dominion Retail, Inc. ("Dominion Retail") respectfully submits this Petition to Intervene in Opposition, seeking to participate in the above-captioned matter pursuant to 52 Pa. Code Section 5.71 *et seq.* This matter was initiated by Duquesne Light Company ("Duquesne") on June 28, 2005, by the filing of its Tariff Supplement 28, which proposes to add "Rider 7 – SECA Charge." By doing so, Duquesne is seeking authority to recover Seams Elimination Charge Adjustments charges ("SECA Charges") billed to Duquesne by PJM Interconnection ("PJM"). In support of its Petition to Intervene in Opposition, Dominion Retail states specifically as follows:

1. Dominion Retail is a licensed electric generation supplier ("EGS") that serves approximately 115,000 electric retail customers in Duquesne's service territory.

2. The authorized representatives of Dominion Retail in this proceeding are:

Gary A. Jeffries, Senior Counsel
Dominion Resources Services, Inc.
1201 Pitt Street
Pittsburgh, PA 15221
(412) 473-4129
(412) 473-4170
gjeffries@dom.com

Todd S. Stewart, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
(717) 236-4841
tsstewart@hmsk-law.com

All correspondence with regard to this proceeding should be directed to the above-noted counsel.

3. On June 28, 2005, Duquesne filed Tariff Supplement No. 28 to its Electric Tariff, to become effective in sixty (60) days, or on August 16, 2005. Supplement No. 28 proposes to add "Rider 7 – SECA Charge," which would authorize Duquesne to recover SECA Charges incurred from PJM pursuant to Duquesne's Open Access Transmission Tariff ("OATT").

4. Duquesne represents in its filing that the SECA Charges for the Duquesne Zone total approximately \$39 million, yet it proposes to collect only \$11 million of that amount from its provider of last resort ("POLR") customers while allocating the remainder to competitor EGSs, including Dominion Retail, serving POLR customers in the Duquesne Zone. In order to recover the \$11 million in SECA Charges, Duquesne's POLR customers will see a rate increase of \$ 0.015/kWh while competitor EGSs will experience SECA Charge increases as high at \$0.05/kWh.

5. Dominion Retail alleges that Duquesne's method of allocating SECA Charges among load serving entities ("LSEs") is arbitrary and designed to shift SECA Charges away from Duquesne to the detriment of Dominion Retail and other EGSs. This arbitrary and inappropriate allocation of SECA Charges will restrict the competitive environment in Duquesne's service territory, as evidenced by the fact that Duquesne has proposed that the price to compare for current POLR customers would be increased by the proposed \$0.015/kWh in Rider 7 but if any of its POLR

customers switched to an EGS, Duquesne's SECA allocations would result in the EGS being charged at a rate much higher than the proposed \$0.015/kWh.

6. In fact, Duquesne states in its filing that it "has played an active role in representing the interests of its POLR customers to reduce to the extent practical the amount of SECA Charges that they will be required to bear." *Statement of Duquesne Light Company in Support of Supplement No. 28 to Tariff Electric – PA. P.U.C. No. 23.* at 5.

7. Should the Commission approve Duquesne's filing, it would be providing an advantage to Duquesne that is not available to other EGSs. Duquesne should not be afforded any more favorable treatment by the Commission than other retail suppliers.

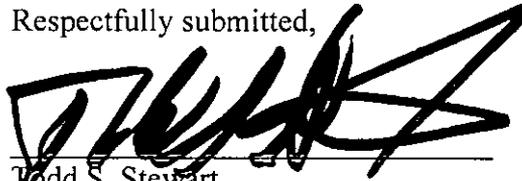
8. The Commission's regulations at 52 Pa. Code Section 5.72(a) state that a person is eligible for intervention that has "an interest which may be directly affected and which is not adequately represented by existing participants and as to which the petitioner may be bound by the action of the Commission in the proceeding."

9. Dominion Retail has a direct and material interest in the outcome of the proceeding, which may approve anticompetitive SECA Charge allocation. As stated previously, Dominion Retail serves approximately 115,000 retail customers in the Duquesne control area -- most of whom are residential. Not only will Dominion Retail's interest be directly and materially affected by the outcome of this proceeding, but also Dominion Retail's interest is unique in the Duquesne service territory, because it serves primarily residential customers in that market and is unique in that respect, as well. Any rate increases for residential customers will have a direct impact on the level of competition in the Duquesne service territory. Dominion Retail believes that its interest is unique, material and direct and therefore it has satisfied the requirements for intervention in this proceeding.

10. Dominion Retail has not yet determined its final position on many of the issues raised by Duquesne's filing. However, it supports many of the issues raised by Strategic Energy L.L.C. in its Complaint against Duquesne's filing and reserves the right to amend this pleading after it has had a further opportunity to engage in a more thorough analysis of Duquesne's filing.

WHEREFORE, Dominion Retail, Inc., for all the foregoing reasons, respectfully requests that the Pennsylvania Public Utility Commission grant its Petition to Intervene in Opposition in the above-captioned proceeding, suspend Duquesne's Tariff filing and require hearings on the issues raised in this Intervention in Opposition.

Respectfully submitted,



Todd S. Stewart
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for Dominion Retail Inc.

DATED: July 28, 2005

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SECRETARY'S OFFICE

CERTIFICATE OF SERVICE

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

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Todd S. Stewart

DATED: July 28, 2005

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COUNSELORS AT LAW

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Of Counsel
717.237.4022
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ORIGINAL

August 2, 2005

VIA HAND DELIVERY

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Harrisburg, PA 17105-3265

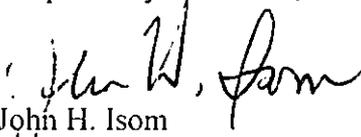
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Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket No. R-00050662
Strategic Energy, L.L.C. v. Duquesne Light Company
Docket No. R-00050662C0003

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Answer and New Matter of Duquesne Light Company to the Complaint of Strategic Energy, L.L.C. against Duquesne Light Company's proposed Rider 7 - SECA Charge 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,


John H. Isom

JHI/jl

Enclosures

c: Certificate of Service

SECRET
BUREAU

09/05/05 10:00 AM

ORIGINAL

RECEIVED
AUG 11 2005
SECRETARY'S OFFICE
BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-00050662
	:	
Duquesne Light Company	:	
	:	
Strategic Energy, L.L.C.	:	
	:	Docket No. R-00050662C0002
v.	:	
	:	
Duquesne Light Company	:	

DOCUMENT
FOLDER

**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE COMPLAINT OF STRATEGIC ENERGY, L.L.C. AGAINST
DUQUESNE LIGHT COMPANY'S PROPOSED RIDER 7 - SECA CHARGE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Duquesne Light Company ("Duquesne") hereby answers the Complaint of Strategic Energy, L.L.C. ("Strategic") against Supplement No. 28 to Duquesne's Tariff Electric - Pa. P.U.C. No. 23 ("Supplement No. 28"). Supplement No. 28 was filed with the Pennsylvania Public Utility Commission ("Commission") on June 17, 2005, to become effective for service rendered on, and after, August 16, 2005. In Supplement No. 28, Duquesne proposed Rider 7, in which Duquesne seeks to recover, on a dollar-for-dollar basis, the actual Seams Elimination Charge Adjustment ("SECA") charges that are presently being billed to Duquesne by PJM Interconnection, Inc. ("PJM") in accordance with PJM's current, Federal Energy Regulatory Commission ("FERC") approved, Open Access Transmission Tariff ("OATT"). Rider 7 would apply to all of Duquesne's customers who obtain transmission services from Duquesne in conjunction with its Provider of Last Resort ("POLR") electric generation services.

DOCKETED
AUG 04 2005

As noted by Strategic in its Complaint, PJM is billing SECA charges to all load serving entities in Duquesne's service territory, including Duquesne and all Electric Generation Suppliers ("EGSs") under the PJM OATT. One such EGS is Strategic.

In its Complaint, Strategic proposes modifications to Duquesne's Rider 7. Under Strategic's proposal, Duquesne will be burdened with the obligation to collect from all of Duquesne's distribution service customers the total amount of SECA charges imposed on all load serving entities in the Duquesne zone by PJM, and to remit to EGSs the amounts of money equal to the SECAs charged to them by PJM.

In general, Strategic has proposed to expand Duquesne's Rider 7 to apply to all of Duquesne's distribution customers, including not only customers who receive POLR service from Duquesne but also customers who receive electric generation and transmission services from EGSs. Under Strategic's proposal, Duquesne would apply Rider 7 to all distribution customers to recover an amount equal to all SECA charges imposed by PJM on all load-serving entities in the Duquesne zone, including Duquesne and EGSs. Duquesne would then remit to EGSs, either directly or through PJM, amounts of money sufficient to reimburse the EGSs for the SECA charges imposed on them by PJM.

For the many reasons explained below, Strategic's proposal should be rejected. Strategic's proposal, if implemented, would reallocate SECA charges among load serving entities in Duquesne's service territory in a manner inconsistent with the allocation in the current FERC approved PJM OATT, which is a matter within the exclusive jurisdiction of the FERC.

FERC, in an order that was affirmed by the United States Supreme Court, determined that unbundled transmission charges are subject to the exclusive jurisdiction of the FERC under the Federal Power Act. *FERC Order No. 888, aff'd, New York v. Federal Energy Regulatory*

Commission, 535 U.S. 1 (2002).¹ In order to accomplish Strategic's goals, the Commission would have to assert jurisdiction over the SECA transmission cost increases imposed by PJM on EGSs which, under the federal authority cited above, are subject to exclusive federal regulation. The Commission does not have the authority to grant this relief.

There is no authority and no precedent for the Commission to require a fixed public utility like Duquesne, over its objection, to impose charges on its customers to recover costs incurred by EGSs and to remit such recoveries to EGSs. Certainly, Strategic has offered no such authority or precedent.

Strategic's Complaint also argues that Rider 7 is discriminatory because the FERC allocation results in higher costs to Strategic. That costs may differ, however, is not a basis for claims of discrimination. Further, such issues are exclusively within the jurisdiction of FERC. Duquesne is not discriminatory in its charges under Rider 7. If there is any discrimination it is in the charges under the PJM OATT, it is a matter which must be taken up with FERC.²

Further, Strategic's proposal would be contrary to the manner in which Duquesne's services have been restructured under the Electricity Generation Customer Choice and

¹ Specifically, the United States Supreme Court stated:

"It is true that FERC's jurisdiction over the *sale* of power has been specifically confined to the wholesale market. However, FERC's jurisdiction over electricity *transmissions* contains no such limitation. Because the FPA [Federal Power Act] authorizes FERC's jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC's exercise of this power is valid."

New York v. F.E.R.C., 535 U.S., *supra* at 20 (Emphasis in original.)

² Duquesne further notes that if Strategic prevails in its contentions at FERC concerning allocation between Duquesne and the EGSs, Strategic would receive refunds of any overcharges from PJM and Duquesne would receive additional charges, which Duquesne would recover by extending the period of collection of Rider 7. Accordingly, the effects of any further action by FERC on these and other allocation issues can be addressed under Rider 7 without adding transmission costs to unbundled distribution rates in violation of the Competition Act.

Competition Act, 66 Pa.C.S. Ch. 28 (“Competition Act”), and would violate the specific strictures in the Competition Act that the rates of Electric Distribution Companies (“EDCs”) like Duquesne be unbundled into separate rates for generation, transmission and distribution service. See, 66 Pa.C.S. § 2804(3). Strategic’s proposal would require Duquesne’s distribution charges to be bundled with Strategic’s transmission costs.

Under the Competition Act, an EDC such as Duquesne charges unbundled rates. One of these rates recovers the costs of operating the distribution system. In addition, EDCs presently are required to offer POLR service. For those customers who use POLR service from an EDC, the EDC charges those customers rates for recovery of costs of transmission services and electric energy.

In order to implement these principles, Duquesne has unbundled its rates into components for distribution, transmission and generation services in compliance with Section 2804(3) of the Public Utility Code, 66 Pa.C.S. § 2804(3). The unbundling of Duquesne’s rates is reflected in Duquesne’s Tariff. See, for example, Duquesne’s Rate RS – Residential Service, pp. 34 – 35 of Duquesne’s Tariff. There, rates for distribution, transmission and generation energy charges are separately stated. The tariff also states:

“Customers who elect to purchase their electric generation requirements from the Company will be charged according to the above charges. Customers who elect to purchase their electric energy requirements from an EGS will be charged the Distribution Charge by the Company, and must purchase their transmission and generation requirements from their selected EGS. . . .”

These provisions are typical of Duquesne’s rate schedules. Thus, under Duquesne’s Tariff, Duquesne recovers distribution, transmission and generation charges from POLR

customers. Customers who obtain service from an EGS, however, must obtain both generation and transmission services from the EGS at unregulated prices.

Consequently, EGSs must develop prices that provide for recovery of the EGSs' cost of providing services, including transmission services that they obtain from PJM at federally-regulated rates and generation services.

In contracts between EGSs and their customers, prices related to federally-regulated transmission service can be addressed only by either of two alternatives. First, the contract may permit the EGS to change its price to reflect changes in amounts charged by PJM for transmission services ("Adjustable Price Contract"). Second, the contract between the EGS and its customers may set a fixed, stated price for a stated period of time ("Fixed Price Contract"). The Commission has no authority under the Competition Act to interfere with such contracts and the Commission cannot, as Strategic proposes, direct recovery of PJM transmission charges as a distribution charge.³

Duquesne responds to the specific averments in Strategic's Complaint as follows:

ANSWER

1. In response to Paragraph No. 1 of the Complaint, it is admitted that Strategic is an EGS, which is licensed to provide electric generation services to Duquesne's distribution customers. Information concerning the details of Strategic's operations, however, is not

³ Strategic's proposal would require the Commission to rebundle a portion of transmission prices charged by EGSs into distribution costs to be recovered by Duquesne for the benefit of EGSs. This proposal is thus directly contrary to the mandate of the Competition Act that generation, transmission and distribution charges be unbundled. See Section 2804(3) of the Public Utility Code, 66 Pa.C.S. § 2804(3), which states: "The Commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. . . ." Contrary to Strategic's proposal, the Commission may not "rebundle" transmission and distribution rates.

reasonably available to Duquesne. Therefore, the remaining averments of Paragraph No. 1 of the Complaint are denied.

2. The averments of Paragraph No. 2 of the Complaint are admitted.

3. The averments of Paragraph No. 3 of the Complaint are admitted.

4. In response to Paragraph No. 4 of the Complaint, it is admitted that on June 17, 2005, Duquesne filed Supplement No. 28 to its Tariff to become effective on August 16, 2005. In Supplement No. 28, Duquesne proposed Rider 7, under which Duquesne would recover, subject to reconciliation, actual SECA charges billed to Duquesne by PJM under its federal jurisdictional OATT, and related gross receipts tax. Duquesne estimates at this time that it will be billed a total of approximately \$11 million by PJM. Under Rider 7, Duquesne would charge each POLR customer \$0.001557/kWh until Duquesne recovers the actual amount of SECA charges billed to its by PJM, at which time Duquesne will cease imposing charges under Rider 7 upon its POLR customers.

It is admitted further that the amount of SECA charges to be imposed upon Duquesne by PJM has been determined in proceedings before FERC, and that the total amount of SECA charges to be imposed by PJM upon load serving entities in the Duquesne zone has been allocated among such load serving entities based upon a sub-zone allocation methodology accepted by FERC.

The remaining averments of Paragraph No. 4 of the Complaint are denied. Specifically, Strategic avers that this Commission is free to reallocate SECA charges specifically billed by PJM under compliance filings that have been accepted by the FERC. That is, Strategic believes that this Commission has the authority to cause Duquesne, through retail rates, to reallocate charges imposed by PJM on EGSs in the Duquesne zone to Duquesne and its POLR customers.

Any such action by this Commission would clearly “undo” and violate the allocation of SECA charges imposed by PJM that are subject to the exclusive jurisdiction of the FERC. Strategic’s proposal in this regard is as improper as it would be for the Commission to order Metropolitan Edison Company to recover from its customers charges incurred by PECO Energy or visa versa.⁴

5. In response to Paragraph No. 5 of the Complaint, it is admitted that Duquesne estimates that the PJM will bill load serving entities in the Duquesne zone a total of approximately \$39 million in SECA charges. It is admitted further that Strategic proposes that the Commission should modify Duquesne’s Rider 7 to recover SECAs from all distribution service customers on a per kilowatt hour basis. For the reasons explained herein, however, Strategic’s proposal is unfair and unlawful and should be rejected.

6. In response to Paragraph No. 6 of the Complaint, it is admitted that Duquesne has proposed Rider 7 to recover SECA charges that are being imposed upon it by PJM under its federal jurisdictional OATT. The remaining averments of Paragraph No. 6 of the Complaint are denied. To the contrary, Strategic seeks from this Commission relief from the level of SECA charges being imposed upon it by PJM, which could result in higher SECA charges for POLR customers. In essence, Strategic seeks assurance from this Commission that Strategic’s costs of service, will not exceed those incurred by Duquesne. The allocation of SECA charges, however,

⁴ In footnote number 3 to Paragraph No. 4 of the Complaint, Strategic embarks on a lengthy discussion of the length of time that Duquesne’s proposed Rider 7 would be in effect and the rate produced assuming that it will be in effect for 16 months. Strategic’s discussion misses a major point of Duquesne’s proposed Rider 7. Duquesne proposes that Rider 7 become effective in August, 2005, and continue in effect until Duquesne has recovered all SECA charges imposed upon it by PJM. That is, depending upon a number of variables, it is possible that Rider 7 will be in effect for 15, 16 or 17 months. For this reason, it is not necessary for Duquesne to recalculate the amount of the charge because any difference between estimated levels of recovery and actual levels of recovery will be allowed for by adjusting the length of time that the SECA charges are imposed. It is noted further that, if Duquesne were to recalculate the charge proposed in Rider 7, based upon an assumed 15 month effective period instead of a 16-month effective period, the result would be an increase, not a decrease, in the rates to customers.

is within the exclusive jurisdiction of the FERC. This Commission cannot “undo” through retail rates allocations among wholesale customers determined by the FERC.

The point of competition is not to require that all costs of service remain identical for all competitors. It is inevitable that costs of service will be different for each competitor. The point of competition is to create incentives for competitors to be efficient and not to require customers of efficient competitors to compensate inefficient competitors.

Strategic’s averments concerning allocations of SECAs by other utilities in other portions of the PJM footprint are irrelevant. Such determinations result from FERC’s allocation methodology and are for the FERC to determine and not for this Commission.⁵

7. The averments of Paragraph No. 7 of the Complaint are denied. To the contrary, any averments concerning discriminatory effects of the allocation of SECA charges imposed by PJM among the load serving entities in the Duquesne zone should be submitted to the FERC, which accepted the allocations in PJM’s OATT. Indeed, Strategic has raised these same issues before the FERC, and such claims are presently pending before the FERC. See pages 6-7 of Attachment A hereto. It is admitted that the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone have different affects on different load serving entities. As

⁵ *New York v. F.E.R.C.*, 535 U.S. 1 (2002); *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988). In *Mississippi*, the United States Supreme Court stated:

“[In *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 961 (1986), t]he state court emphasized that its order did not require Nantahala to violate the FERC order and that it was not expressly contradicting a FERC finding. We rejected these arguments. The reasoning that led to our decision in *Nantahala* applies with equal force here and compels the same conclusion — States may not alter FERC-ordered allocations of power by substituting their own determinations of what would be just and fair. FERC-mandated allocations of power are binding of the States, and States must treat those allocations as fair and reasonable when determining retail rates.”

explained above, however, such matters are within the exclusive jurisdiction of the FERC, which is considering such allegations in proceedings pending before it presently.

Duquesne, at this time, is without sufficient information to form a belief as to the specific calculations by Strategic of the relative effects of the sub-zonal allocation of SECAs from PJM that have been accepted by FERC upon Strategic and upon Duquesne. Therefore, such averments are denied. It is admitted, however, that the sub-zonal allocation may affect different load serving entities within the Duquesne zone differently.

Strategic asserts also that Duquesne submitted the compliance filings to FERC. That is not correct. The compliance filings were submitted by PJM. Duquesne itself has protested certain aspects of those compliance filings in the FERC proceeding.

In fact, because the Commission has no authority to require Duquesne to recover SECA charges imposed by PJM on Strategic, the best means for this Commission to be as fair as possible to EGSs on Duquesne's system such as Strategic is to permit Duquesne's Rider 7 to become effective. The Rider will increase Duquesne's charges for transmission service for approximately a 16-month period, which will give Strategic and other EGSs an opportunity to raise their prices and remain competitive.

8. Duquesne, at this time, is without information sufficient to form a belief as to the accuracy of Strategic's computations of prices that it would have to charge to recover SECA charges imposed by PJM under its OATT. As explained above, however, Strategic's averments concerning discrimination resulting from the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone and accepted by FERC, should be submitted to the FERC. Indeed, in footnote number 8 to Strategic's Complaint, Strategic admits that it is raising these precise "discrimination and anticompetitive issues" at the FERC. More specifically, Strategic

has raised before the FERC the same contentions related to the level of charges that it would have to impose in order to recover SECA charges. See pages 7-8 of Attachment B hereto.

Strategic's contentions concerning the anticompetitive and discriminatory effects of the sub-zonal allocation of SECAs imposed by PJM within the Duquesne zone are within the exclusive jurisdiction of the FERC, and this Commission is preempted from considering them.

9. As explained above, to the extent that Strategic, in Paragraph No. 9 of the Complaint, raises issues concerning alleged discriminatory and anticompetitive effects of the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone, such charges are within the exclusive jurisdiction of the FERC. It is further denied that this Commission has jurisdiction over the recovery by Strategic of its SECA charges. To the contrary, Strategic's rates are unregulated and are strictly a matter of private contract between Strategic and its customers. Under the Competition Act, the Commission has no jurisdiction over prices charged by Strategic. Further, contrary to Strategic's contentions, there is no basis for this Commission to require Duquesne to recover SECA charges imposed on Strategic by PJM for the benefit of Strategic and at the expense of Duquesne's POLR customers. Strategic's recovery of costs is unregulated under the Competition Act.

10. The averments of Paragraph No. 10 of the Complaint are conclusions of law to which no response is required. By way of further response, however, Duquesne's proposed Rider 7 is not unreasonably discriminatory and does not violate Section 1304 of the Public Utility Code. To the contrary, Rider 7 would impose on all POLR customers a flat per kWh charge for all kWh received by such customers for approximately a 16-month period. In no way does Rider 7 discriminate against Strategic, other EGSs or their customers. To the extent that the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone affect

different EGSs differently, such matters are within the exclusive jurisdiction of the FERC. It is noted further that Strategic has raised such averments before the FERC, and such claims are presently pending before the FERC. See pages 6-7 of Attachment A hereto and pages 5-6 of Attachment B hereto.

11. The averments of Paragraph No. 11 of the Complaint are denied. To the extent that the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone affect different EGSs differently, such matters are within the exclusive jurisdiction of the FERC. It is noted further that such averments are pending presently before the FERC. See pages 10-11 of Attachment A hereto and page 8 of Attachment B hereto.

12. The averments of Paragraph No. 12 of the Complaint are denied. To the extent that the sub-zonal allocation of SECA charges imposed by PJM within the Duquesne zone affect different EGSs differently, such matters are within the exclusive jurisdiction of the FERC. It is noted further that such averments are pending presently before the FERC. See pages 8-9 of Attachment B hereto.

13. The averments of Paragraph No. 13 of the Complaint are conclusions of law to which no response is required. By way of further response, however, the averments of Paragraph No. 13 of the Complaint are erroneous. Duquesne's transmission system is available to all customers and EGSs on a non-discriminatory basis on terms and conditions that are governed by the PJM's OATT. Nothing in Rider 7 affects access to Duquesne's distribution system or transmission system. Rider 7 merely compensates Duquesne for charges Duquesne incurs as a result of using its transmission system. Rider 7 applies in the same amount and in the same manner to all POLR customers of Duquesne, so it is not discriminatory. Further, service under Duquesne's rates for generation and transmission services, including Rider 7, are available to all

of Duquesne's distribution customers who choose to use them, on an equal basis. There simply is no discrimination in Rider 7.

14. The averments of Paragraph No. 14 of the Complaint are denied. Rider 7 is not anticompetitive for the reasons explained above. Any averments concerning the effects of the sub-zonal allocation of SECA charges imposed by PJM among load serving entities in the Duquesne zone arise under the PJM OATT, which is within the exclusive jurisdiction of the FERC.

15. The averments of Paragraph No. 15 of the Complaint are denied. Rider 7 is not anticompetitive for the reasons explained above. Any averments concerning the effects of the sub-zonal allocation of SECA charges imposed by PJM among load serving entities in the Duquesne zone arise under the PJM OATT, which is within the exclusive jurisdiction of the FERC.

16. The averments of Paragraph No. 16 of the Complaint are denied. Rider 7 is not anticompetitive for the reasons explained above. Any averments concerning the effects of the sub-zonal allocation of SECA charges imposed by PJM among load serving entities in the Duquesne zone arise under the PJM OATT, which is within the exclusive jurisdiction of the FERC.

17. The averments of Paragraph No. 17 of the Complaint are statements of Strategic's litigation position. As such, they are not averments of fact, and therefore, no response is required.

18. The averments of Paragraph No. 18 of the Complaint are denied. To the contrary, this Commission does not have authority to "undo" allocations of SECA charges among wholesale, load serving entities in the Duquesne zone. Further, the Commission does not have

authority to require Duquesne to recover from its distribution customers federal SECA charges being imposed by the PJM upon Strategic. To the contrary, Strategic's costs and recovery of costs are unregulated and are strictly a matter of contract between Strategic and its customers.

19. The averments of Paragraph No. 19 of the Complaint repeat Strategic's earlier contentions that the allocation of SECA charges imposed by PJM among load serving entities in the Duquesne zone under the PJM OATT, which has been accepted by FERC, is discriminatory and anticompetitive. As indicated previously, such matters are within the exclusive regulatory jurisdiction of the FERC and are not the subject of this Commission's jurisdiction.

In further answer, Duquesne denies that customers of EGSs obtain transmission service from Duquesne. Although Duquesne operates the transmission system that delivers energy to the EGSs' customers, these customers purchase transmission service from the EGSs, not Duquesne. The EGSs purchase transmission service from PJM under the PJM OATT, which is subject to the exclusive regulatory jurisdiction of FERC. Therefore, the proposed application of charges under Rider 7 to customers who ". . . purchase electric transmission requirements from the company. . ." properly excludes customers who purchase transmission from EGSs like Strategic.

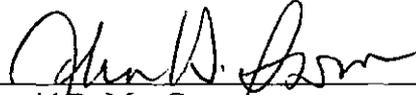
20. The averments of Paragraph No. 20 of the Complaint are a description of Strategic's proposal in its Complaint. Such proposal should be rejected for the reasons explained above and in the New Matter below.

21. The remaining averments of the Complaint are requests for relief to which no response is required.

WHEREFORE, for all the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission deny the Complaint of Strategic

Energy, L.L.C. and permit Supplement No. 28 to Tariff Electric – Pa. P.U.C. No. 23 to become effective at the earliest practical and lawful date.

Respectfully submitted,



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Of Counsel:

Morgan, Lewis & Bockius LLP

Date: August 2, 2005

AFFIDAVIT

STATE OF PENNSYLVANIA :
 : SS.
COUNTY OF DAUPHIN :

Fred J. Eichenmiller, being duly sworn according to law, deposes and states that he is General Manager-Rates & Regulatory Affairs for Duquesne Light Company, that he is authorized to make this affidavit on behalf of Duquesne Light Company, that the facts set forth in the foregoing Answer to Complaint are true and correct to the best of his knowledge, information and belief; and that he expects Duquesne Light Company to be able to prove the same at any hearing hereof.

Fred J. Eichenmiller
Fred J. Eichenmiller

SWORN TO AND SUBSCRIBED
before me this 1st day of August, 2005

Cynthia A. Rosborough
Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Cynthia A. Rosborough, Notary Public
City Of Harrisburg, Dauphin County
My Commission Expires Aug. 5, 2007
Member, Pennsylvania Association Of Notaries

SECRETARY'S BUREAU
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May 13, 2005

Via Electronic and U.S. Mail

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

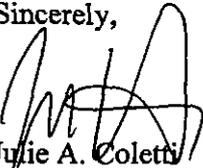
Re: Midwest Independent Transmission System Operator, Inc. and
PJM Interconnection, L.L.C. Docket Nos. ER-05-6-000, et al.
EL02-111-010, 011, 014, 015, 016, 019
EL03-212-005, 006, 007, 009, 011, 013, 016
EL04-135-000

Dear Ms. Salas:

Enclosed for filing in the above captioned proceeding is a copy of the Strategic Energy, L.L.C.'s Motion to Intervene and Protest. An identical copy of the document was filed electronically on May 13, 2005. The e-filing, which was an identical copy of the attached, was served upon all parties included in the Commission's list via U.S. Mail.

Should you have any questions or need further information concerning this filing, please call me at the number above.

Sincerely,


Julie A. Coletti
Assistant General Counsel

JAC/cab
Enclosure

cc: Service List

SECRETARY'S BUREAU
2005 JUN -2 11:32
2005 JUN -2 11:32

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C)	Docket No. ER05-6-016
Midwest Independent Transmission System Operator, Inc., <i>et al.</i>)	Docket No. EL02-111-036
Ameren Services Company, <i>et al.</i>)	Docket No. EL03-212-031
Midwest Independent Transmission System Operator, Inc., <i>et al.</i>)	Docket No. EL04-135-018

**MOTION TO INTERVENE AND PROTEST OF STRATEGIC ENERGY
TO THE APRIL 20, 2005 COMPLIANCE FILING, AS AMENDED ON APRIL 22 2005,
TO IMPLEMENT SECAs**

PROTEST

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission), 18 C.F.R. §§ 385.211 and 385.214, and pursuant to the Commission's April 25, 2005 Notice of Filing, Strategic Energy hereby respectfully moves to intervene and protest the April 20, 2005 compliance filing (Compliance Filing) made by American Electric Power (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., Dayton Power and Light Company and Duquesne Light Company (collectively Companies) as amended on April 22, 2005 (the Compliance Filing)). The April 20 and 22 Compliance Filings allocate the Seams Elimination Charges/Cost Adjustments/Assessments (SECA) surcharges to reflect 2003 calendar year lost revenues, effective April 1, 2005, and include adjustments to the SECA surcharges for sub-zones within the Duquesne zone.

This is a clear case where a compliance filing is patently deficient and deviates from the Commission's Orders. Strategic urges the Commission to reject the Compliance Filing and set for hearing the issues related to the SECA surcharges assigned to Load Serving Entites (LSEs) for subzones within the Duquesne zone in a separate proceeding. Given the patent deficiencies in the Company's current Compliance Filing as well as the March 20 compliance filing, the Duquesne zone SECA allocations should not be consolidated for consideration with the hearings currently underway on other outstanding SECA issues. Since a final order in the pending hearing dockets will not be issued until after the end of the SECA transition period, the potential negative consequences of the SECA charges for the zones within Duquesne on retail electric competition in Pennsylvania would be devastating. Thus, it is imperative that the Duquesne zone SECAs are not implemented absent a hearing.

First, as detailed more fully below, the Compliance filing violates the Commission's earlier orders. In particular, the Compliance Filing ignores the requirements for establishing SECAs set forth in the Commission's November 17, 2003 Order. Among other things, the Compliance Filing fails to provide information sufficient to determine the reasonableness of the rate or charges that will be applied for the transition period in contravention of the November 18, 2004 and November 17, 2003 Orders. *Midwest Independent Transmission System Operator, Inc., et al.*, 109 FERC 61,168 (2004) ("November 18, 2004 Order"); *Midwest Independent Transmission System Operator, Inc., et al.*, 105 FERC 61,212 (2003) ("November 17, 2003 Order"). Indeed, the Compliance Filing fails to provide "all supporting documents containing all calculations and data, *including NERC tag data*" as required by the November 17 Order at P 97. Instead, Duquesne again elects to rely on its own internal records in contravention of this Order.

Second, the Compliance Filing unreasonably and impermissibly allocates excessive lost revenues to Strategic Energy. In fact, in 2003, Strategic served 12.55% of the total load in Duquesne while Duquesne served 72.28% of the total load as the provider of last resort (POLR). Remarkably, the compliance filing allocates 35.58% of SECA to Strategic and only 40.12% to Duquesne as the POLR.

Third, FERC has already acknowledged that "as part of the compliance filing process, we will allow LSEs under existing contracts for delivered power that continue into the transition period to demonstrate that the supplier is the shipper for such transactions and to propose that the supplier be required to pay the SECA for that portion of the LSE's load served by the contract." November 2003 Order, P 45. Given the FERC's acknowledgement that a supplier should be required to pay the SECA under contracts for delivered power, it would work an injustice of incalculable magnitude for the FERC to accept the Compliance Filing that allocates supplier SECA responsibility to LSEs.

Fourth, the Compliance Filing suffers from other defects not the least of which is retroactive ratemaking.

Finally, Strategic will suffer irreparable harm if the Commission accepts the Compliance Filing.

BACKGROUND

Strategic will not recount all of the details of these proceedings as numerous parties have already done so and the Commission is well versed. In its November 18, 2004 "Order on Transmission Rate Proposals" and its November 30, 2004 "Order Granting Clarification",¹ the

¹ *Midwest Independent Transmission System Operator, Inc. et al.*, 109 FERC 61,243 (2004) (November 30, 2004 Order).

Commission approved the filing of surcharges to reflect revenues lost from the elimination of through and out transmission rates in the combined PJ M and MISO regions. In an order issued February 10, 2005,² the Commission set for hearing the initial SECA proposals filed by the Companies and the MISO transmission owners. In March 2005, the Companies sought to amend Attachments X and R to the PJM Open Access Transmission Tariff ("PJM OATT") to reflect proposed changes and updates to the SECAs that were set for hearing in the February 10, 2005 Order. That filing contained a SECA allocation for the Duquesne zone based on 2002 lost revenues. On April 12, 2005, Strategic filed a motion to intervene and protest of the Companies' March Compliance filings. Protests were also filed by: Green Mountain Energy Company; Wisconsin Electric Power Company and Edison Sault Electric Company; Hoosier Energy Rural Electric Cooperative, Inc.; Ormet Primary Aluminum corporation; First Energy Service Company; The PJM Regional Group; Duquesne Light Company; and Dominion Retail, Inc.

On April 20, as amended on April 22, 2005, the Companies made filing allocating SECA to reflect 2003 lost revenues. As explained further below, the Companies' current Compliance Filing suffers from many of the same flaws that caused the Commission to set the initial SECA proposals for hearing. Moreover and perhaps more importantly, as shown in Strategic's April 12, 2005 Protest, which is incorporated by reference herein, additional concerns exist with respect to the Duquesne zone SECAs making it imperative that the Duquesne zone SECAs be imposed on LSEs absent a hearing.

ARGUMENT

a. The Compliance Filing Must be Rejected as Beyond the Commission's Orders

² Midwest Independent Transmission System Operator, Inc. et al., 110 FERC 61,107 (2005)(February 10, 2005 Order).

The Compliance Filing must be rejected because it is patently deficient and deviates from the Commission's Orders. In its November 18, 2004 Order, the Commission directed transmission owners to submit compliance filings implementing the SECA methodology as set forth in the Commission's November 17, 2003 Order. In the November 17, 2003 Order, the Commission approves the use of the 2002 North American Electric Reliability Council (NERC) e-tag data for the first year of the transition period and unambiguously "require[s] that the SECA be based on a calendar year 2002 test period in the first year of the transition period and a calendar year 2003 test period for the second year of the transition period." November 17, 2003 Order at p. 66. Both the March Compliance Filing and the current Compliance Filing ignore this clear Commission directive. Instead of using the NERC tags, the Compliance Filing is impermissibly based on data that Duquesne claims it independently maintained.

The Compliance Filing also unacceptably modifies the data to reflect movement of load among the sub-zones between 2003 and 2005. This is in direct contravention of the Commission's orders that do not permit SECA allocations based on 2004 and 2005 data. It is well settled that the Commission should reject a compliance filing that goes beyond the scope of what the Commission ordered.³

In addition, as was the case with the March filing, the current Compliance filing fails to provide "all supporting documents containing all calculations and data, including NERC tag data" as required by the Original Order adopting the SECA. November 2003 Order, P. 97. We still have not seen the in house Duquesne data relied upon in making this allocation. Consequently, the Compliance Filing should be rejected.

³ See *Central Hudson Gas & Elec. Co., et al.*, 90 FERC 61,045 at 61,206 (2000) (noting the addition regarding operating reserves for exports was not required by the Commission's orders and is therefore beyond the scope of the compliance filing); *El Paso Elec. Co.*, 89 FERC 61,181 at 61,564 (1999) (rejecting El Paso's addition of language that goes beyond the scope of compliance).

b. The Compliance Filing Unreasonably Allocates Excess Lost Revenues to Strategic Energy

As was the case with the March compliance filing, the current Compliance Filing adds sub-zonal monthly SECA charges for the Duquesne zone. The proposed SECA charges would apply to Electric Generation Suppliers (EGS) under the retail choice program in the Duquesne territory and to Duquesne itself as the Provider of Last Resort (POLR) supplier for retail customers in the Duquesne territory that do not elect a competitive supplier.

The statistics show the unfairness of the allocation. As noted above, in 2003, Strategic serve 12.55% or 1,803,790 Mwh in the Duquesne system while Duquesne as POLR served 72.28% or 10,385,995. In its Compliance Filing, Duquesne allocates \$9,290,701 to Strategic and only slightly more, \$10,475,454, to itself. With a total SECA for the Duquesne zone of \$26,110,805, Duquesne is saddling Strategic with 35.58% and Duquesne itself has an allocation of 40.12% even though its load share was nearly 73%. This discriminatory and improper allocation cannot be permitted to go into effect and must be set for hearing to establish a fair and equitable allocation of such obligations among the parties.

Beyond this, as noted in Strategic's April 12, 2005 Protest, Duquesne relies on incorrect assumptions to calculate the SECA allocation. Among other things, Duquesne improperly reallocates the lost revenue initially allocated to Orion Power MidWest, LP associated with energy that was subsequently resold to EGSs. Duquesne relies on the assumption that Orion's generating units were used primarily to serve Orion's POLR contracts with Duquesne. However, other EGSs purchased from Orion. The net result of this assumption is that the large majority of

lost transmission revenues (and associated SECAs) stemming from the elimination of through and out charges for Orion were improperly assigned to EGSs and not Duquesne.

The Compliance Filing also fails to address the impact of the transfer of the 1630 MW First Energy Beaver Valley nuclear facility to the First Energy control area from the Duquesne Control area. Such movement will have a significant impact on the imports of energy into and the exports of energy out of Duquesne. Such impacts must be addressed before any just and reasonable SECA allocation can be established for the Duquesne zone.

Finally, Section 19 of Mr. Thomas' affidavit discusses that the transmission owners seek to collect lost revenues from a PECO Energy transaction that is being viewed as a "hubbing" transaction since it sinks outside of Duquesne's zone. Mr. Thomas determined that since there is no specific EGS to which these costs can be allocated, the lost revenues needed to be charged to all EGS' (including POLR load) on a load ratio share basis. However, Exhibit RGT-8 clearly shows that POLR load is assigned no portion of these costs. In fact, Strategic Energy is assigned \$511,427 of the total \$1,135,109; over 45% of the entire amount. On the basis of this inappropriate allocation alone, the Compliance Filing should be rejected and the Duquesne zone SECAs must be set for a hearing.

c. The FERC has already acknowledged that the supplier is the shipper and should pay the SECA in the case of LSEs under contracts for delivered power.

Given the FERC's acknowledgement that a supplier should be required to pay the SECA under contracts for delivered power and given the mandates of the Federal Power Act, it would work an injustice of incalculable magnitude for the FERC to accept a Compliance Filing that allocates supplier SECA responsibility to LSE's. There is no dispute that SECA charges are

over-stated because they include revenues associated with "seller as shipper" contracts pursuant to which through and out rates have and continue to be paid.⁴

In recognition of the possible inequity that could be created when SECA charges were assigned to entities holding existing supply contracts, FERC, in its November 17, 2003 Order, stated:

...we will allow LSEs under existing contracts for delivered power that continue into the transition period to demonstrate that the supplier is the shipper for such transactions and to propose that the supplier be required to pay the SECA for that portion of the LSE's load served by the contract.⁵

It is an undisputable fact that Strategic is a load serving entity having existing "Into" contracts signed prior to the transition period and the elimination of RTORs, and continuing past December 1, 2004. As explained previously, delivery of the contracted power always has been the responsibility of the shipper and continues to be.

Although the compliance filing acknowledges that there are cases where the supplier as shipper should be assigned the SECA charge and where the RTO should bill the supplier directly, the compliance filing nonetheless ignores this and assigns the SECA charges to the LSEs even where the supplier as shipper should bear the charge. These charges should simply not be assigned by default on the LSE.

⁴ Strategic Energy purchases power to deliver to its retail customers located in the Duquesne zone from a number of sources located within and outside the PJM region. Some of these purchases are long-term arrangements that have been in place for several years and continue through this transitional period.

Generally, Strategic purchases delivered or "into" power contracts to serve load. Strategic pays for the Network Transmission from the point of delivery to its load, but it is the supplier's decision whether to reserve and pay for transmission to either move the power from another location, or to deliver from generation internal to the sink control area. Thus, the cost of Point to Point transmission – the RTORs in place at the time - has always been included in the price paid by Strategic to the supplier of the "into" contract.

Assessing SECA charges on the load serving entity (LSE) purchasing power under the circumstances described above, even if subject to adjustment, would be tantamount to double charging the LSE for transmission service. At the same time, the supplier would avoid a cost for which it has collected revenue in its deal for delivered power. Penalizing one side of the supply-demand equation while offering a windfall to the other is completely unacceptable in a competitive market. Moreover, forcing the LSE to prove that these costs should be shifted to the supplier or otherwise imposing any burden of proof on the LSE is equally untenable under the circumstances.

⁵ November 17 Order at ¶45.

Because it is essential that LSEs should not be double charged and saddled with the burden of proving that the cost allocation should be shifted and because the Compliance Filing fails to take into account any shifting to suppliers, the compliance filing should be rejected. No SECA bills should be sent until a hearing is held and these essential adjustments are made.

d. The Compliance Filing Suffers from Other Fatal Defects

As was the case with the December 13, 2004 and March 22, 2005 filings, the current Compliance Filing is defective and should be rejected because:

- The Compliance Filing bases the SECA on transactions that took place in 2002 and 2003 and thus constitutes unlawful retroactive ratemaking;
- The Compliance Filing fails to demonstrate that the Companies are entitled to intra-PJM lost revenue recovery from other PJM stakeholders;
- The Compliance Filing fails to demonstrate the Companies are entitled to the amount of lost revenues they seek to recover through an intra-PJM SECA;
- The Compliance Filing Proposes SECAs that are subject to the same flaws, inconsistencies and errors that have still not been addressed by SECA proponents or the Commission;
- The record before the Commission is inadequate to support the imposition of over \$10 million dollars of SECA charges on Strategic.

e. If the Commission Enters an Order Approving the Compliance Filing, Strategic will be Harmed.

In the event the Commission enters an order approving the Compliance Filing, Strategic may be placed in a position where it may have no alternative but to seek extraordinary relief. As a retail supplier, Strategic has been serving customers in Duquesne Light's territory since 1998. Strategic has supplied its customers with purchases from wholesale counter-parties sourcing power from within PJM as well as within control areas that are now inside MISO's footprint. Because of this market flexibility customers have received the benefit of competitive pricing and

reliable service, however, the proposed SECA costs to be collected from Strategic in Duquesne Light's territory is so excessive that any benefit gained Strategic's retail customers could be unfairly eliminated. Surely, this was not FERC's intent when the removal of RTORs was contemplated.

Many of Strategic's current competitors, having entered the competitive retail market more recently, faced zero or de minimus SECA obligations based on historical period imports. Thus, many of Strategic's competitors, in general, are not burdened with a SECA. These LSEs entered the market when it was more mature and after the 2002 historical period for SECA calculations. Thus, Strategic, which was a trailblazer in retail access in Pennsylvania, is being penalized and subject to unfair discrimination solely because it participated in the early Duquesne market. If Strategic tries to recover this charge from its current or future customers, it would put Strategic at a competitive disadvantage. All market participants must have the opportunity to compete on a level playing field, not one in which an older and more successful competitive retail supplier is discriminated against solely because it was an early market entrant.

Retail marketers rely on price certainty in their business dealings. Unlike traditional utilities, retail marketers have no deferral mechanisms and retail marketers must rely on cash flow on a current basis. The Commission, by imposing a SECA, is imposing a significant financial burden on Strategic – based on its use of the transmission system in 2002 – more than three years ago. Strategic should not be forced to control and respond to wild fluctuations in charges and assessments that should be imposed on other market-participants. Strategic's customers change frequently. Moreover, load served in a historical period (especially one three years ago) is not representative of the loads served today. Similarly, generation sources used in power contracts in a historical period are not representative of generation sources today.

This is an impossible situation – Strategic is being asked to pay a charge to replace a RTOR, yet it was never responsible for the RTOR except as a component of its bundled delivery contracts. Without mitigation, upon elimination of the RTOR, the supplier, who was responsible for the now-eliminated RTOR, will receive a windfall and Strategic will be responsible for not only the total price of the delivered supply, but also the new SECA charge. The Commission addressed this issue in its November 2003 Order and recognized this – the shift of the SECA to the supplier.⁶ In its March 4, 2005 procedural Order, the Commission set the shift to shipper issue for hearing but not until 2006. By so doing, the Commission ignored its own findings of who should bear these charges and as to the devastating effects this charge will have on the business of the LSEs with bundled delivery contracts for which the shipper was the supplier. Given this record, the Commission must reject the Compliance Filing and refuse to allocate these charges to LSEs until the parties can present evidence on the proper allocation. LSEs should not and cannot be forced to pay the way for other responsible parties on an interim basis. This is unfair and discriminatory and will have serious consequences to Strategic. Strategic should not be forced to subsidize the SECA.

The fact that Strategic may obtain a refund of monies paid at the conclusion of this process is of little comfort. Strategic should not be required to make these payments in the interim. In short, imposition of the SECA on Strategic is plainly discriminatory in that Strategic is unfairly penalized and stripped of due process solely for participating early in the newly developing Pennsylvania retail markets. Allocation of the SECA subject to refund at some unknown point in the future, without providing the mechanism to shift the SECA to the supplier now when clearly justified, is fundamentally unfair in a competitive in the market, especially when Strategic is burdened not only with the SECA but with the RTOR bundled into the price in

⁶ See November 17 Order at ¶45.

its supply contracts. Clearly, the facts presented illustrate that the Compliance Filing should be rejected.

CONCLUSION

Acceptance of the Compliance Filing would work an injustice of Constitutional magnitude on Strategic Energy. Strategic would be the victim of unfair discrimination because it is being assessed SECAs simply because it was an LSE in the Duquesne sub-zone in 2003 when the FERC has acknowledged that responsibility for those charges should be shifted to the shipper. In addition, Strategic would be stripped of all due process not only because the FERC has acknowledged this cost shifting must occur but because it would be allocated over \$800,000 a month in the Duquesne zone alone based on an unreliable, self-serving filing that deviates from the Commission's Orders and that does not establish a just and reasonable rate. The Commission should reject the Compliance Filings for the Duquesne Zone and immediately set a hearing on the issue of SECA allocations for that zone.

MOTION TO INTERVENE

COMMUNICATIONS

All correspondence, communications, pleadings and other documents related to this proceeding should be addressed to the following individual:

Julie A. Coletti
Assistant General Counsel
Strategic Energy, L.L.C.
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Phone: (412) 394-4356
Fax: (412) 394-6681
e-mail: jcoletti@sel.com

Jeff Knox
Strategic Energy, L.L.C.
Two Gateway Center, 9th Floor

Pittsburgh, PA 15222
Phone: (412) 394-5652
Fax: (412) 394-6681
e-mail: jknox@sel.com

Strategic requests that the individuals identified above be placed on the Commission's official service list in this proceeding.

INTEREST OF STRATEGIC

Strategic Energy, L.L.C. has its principal place of business at Two Gateway Center in Pittsburgh, Pennsylvania. Strategic was licensed as a power marketer in November 1996. Strategic is a competitive retail supplier serving customers in certain parts of the PJM and MISO control areas. Strategic serves retail customers in Pennsylvania, Ohio, Michigan and other states. As demonstrated in the protest included in this filing, Strategic has a direct and substantial interest in these proceedings, it may be adversely affected by the Commission's action in this proceeding and its interest cannot adequately be represented by any other party.

Rule 214(d) sets for the criteria to be considered in determining whether a movant should be permitted leave to intervene out of time. To the extent Strategic's Motion is deemed to be out of time, Strategic submits that its motion meets those requirements.⁷ As a load serving entity subject to SECA payment obligations under the PJM OATT, Strategic has a direct and substantial interest in these proceedings. Given that the Commission has not yet acted on the Companies' Compliance Filing, this proceeding will not be disrupted if Strategic's motion for leave to intervene is granted and there will be no prejudice to or burden upon the existing parties as result. Accordingly, it is in the public interest for the commission to grant Strategic's motion for leave to intervene.

⁷ There has been considerable confusion over comment dates for Compliance Filings in this proceeding.

WHEREFORE, Strategic Energy respectfully requests that the Commission reject the Compliance Filing.

Respectfully submitted,

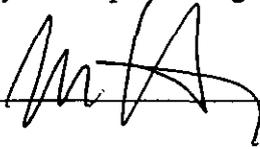


STRATEGIC ENERGY L.L.C.

Julie Coletti
Assistant General Counsel
Strategic Energy L. L. C.
Two Gateway Center
Pittsburgh, PA 15222
Phone: (412) 394-4356
E-mail: jcoletti@sel.com

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2005, I served the foregoing document upon each person designated on the official service list compiled by the secretary in this proceeding.



A handwritten signature in black ink, appearing to be 'M.A.', is written over a horizontal line.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System Operator, Inc.)	Docket No. ER05-6-026
)	
Midwest Independent Transmission System Operator, Inc.)	Docket No. EL04-135-028
)	
Midwest Independent Transmission System Operator, Inc.)	Docket No. EL02-111-046
)	
Ameren Services Co., et al.)	Docket No. EL03-212-042

REC'D
2005 JUN 2 11:31
SECRETARY'S BUREAU

PROTEST OF STRATEGIC ENERGY L.L.C.

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission's") regulations, 18 C.F.R. § 385.211, and the notice issued by the Commission on June 2, 2005, Strategic Energy, L.L.C. ("Strategic") hereby files this Protest of the May 26, 2005 amendment filed by Duquesne Light Company ("Duquesne") to the compliance filings made initially on April 20, 2005, as amended on April 22 and April 29, 2005 purportedly in response to the Commission's November 18, 2004 Order.¹

Like the other compliance filings made to date involving allocation of the SECA to the Duquesne sub-zone, this compliance filing must be rejected. Duquesne continues to make its own unsupported and unverified "adjustments" to the SECA amounts assessed by the PJM and MISO Transmission Owners. These "adjustments" purposely skew SECA amounts properly allocable to Duquesne to the load serving entities ("LSEs") in the Duquesne sub-zone. Rather than submitting supporting information for these "adjustments" Duquesne continues to describe its methodology in nothing but general terms, basing its calculations on its internal information.

¹ *Midwest Independent Transmission System Operator, Inc. et al.*, 109 FERC ¶ 61, 168 (2004) *reh'g pending* ("November 18 Order").

Like the prior compliance filings, this filing must be rejected. In support of this Protest, Strategic submits as follows:

BACKGROUND

As relevant to the issues that are the subject of the compliance filings, each RTO and the associated transmission owners have made the following filings to implement the SECA for April 1, 2005 through March 31, 2006 (the "Second Transition Period") in purported compliance with the Commission's November 17, 2003² and November 18 Orders. MISO made compliance filings on: (1) March 31, 2005; (2) April 27, 2005; (3) May 4, 2005; (4) May 5, 2005; and (5) May 23, 2005. In its March 31 filing, MISO proposed rates for the collection of MISO TO lost revenues from the PJM customers. Because the PJM transmission owners had not provided their lost revenues to MISO for collection from MISO customers, MISO did not include in Schedule 22 rates applicable to MISO customers in that March 31 filing. After the PJM TOs finally filed their lost revenues to be collected from MISO customers on April 20, 2005, MISO made its May 4 and May 5 compliance filings incorporating those rates into Rate Schedule 22. On May 23, 2005, MISO filed to modify the SECA charges to reflect the addition of Virginia Electric & Power Company, d.b.a. Virginia Dominion Power ("Dominion") to PJM.

AEP, ComEd and Dayton made the following compliance filings on behalf of the PJM TOs: (1) April 20, 2005; (2) April 22, 2005; and (3) April 29, 2005. On May 26, 2005, Duquesne (not, apparently, on behalf of the PJM TOs) made the filing that is the subject of this protest.

Strategic is a retail LSE that serves load throughout the PJM/MISO footprint, including Pennsylvania, Ohio, Maryland, and Michigan. As a result of its size and business platform,

² *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61, 212 (2003) ("November 17 Order").

Strategic faces SECA obligations in both MISO and PJM. Strategic's overall SECA liability is approximately \$16 million. Strategic's largest SECA obligation in PJM arises in the Duquesne subzone and is in excess of \$12 million under the proposed allocation methodology.

On April 12, 2005, Strategic filed a protest of the PJM TO's filing to allocate the SECA to the Duquesne subzone for the First Transition Period showing that the compliance filing was patently deficient. On May 26, 2005, Strategic supplemented that protest.

On May 13, 2005, Strategic also filed a Protest of the PJM TO compliance filing for the Second Transition Period. On May 26, 2005, Strategic filed a protest to supplement its May 13 protest. Issues raised in its prior protests are just as relevant to Duquesne's May 26 compliance filing and Strategic hereby incorporates by reference all of its prior protests made to date in these proceedings.

ARGUMENT

I.

THE COMMISSION MUST REJECT THE SECA METHODOLOGY

The SECA charge has significant consequences to LSEs supplying customers in retail access states. Strategic will not repeat in detail all of the arguments made to date against the charge and in support of the fact that the implementation of the SECA is violative of the filed rate doctrine and the prohibition against retroactive ratemaking. The methodology and the costs underlying the charge clearly yield unjust and unreasonable rates. Strategic has articulated other deficiencies in the compliance filings which are listed below.

- Collection of the SECA for the beginning of the Second Transition Period is impermissible because the PJM TOs did not make a timely filing to collect the charges.

- The Commission must promptly issue an order on rehearing of the November 17 Order and subsequent orders now pending. On May 27, 2005, Strategic, along with Quest Energy, L.L.C. and WPS Energy Services, Inc. ("Quest/ESI") filed a Petition for Writ of Mandamus with the U.S. Court of Appeals for the D.C. Circuit, Case No. 05-1179, seeking this very action.
- There is no record to support the SECA charges. Information submitted to date is unverified and subject to interpretation. Adjustments made have not been adequately explained or justified. In fact, the TOs will substantially over-recover their "lost revenues" (to say nothing of the over-recovery of their revenue requirements).
- Transmission Owners especially AEP and ComEd, have already collected more revenue than they are entitled to as a result of their delays in joining PJM.
- The Commission must order PJM and MISO to permit LSEs to shift the SECA to the supplier up front, without having to wait two years until the hearing concludes.
- Transmission owners with merchant affiliates or intra-corporate merchant functions should not be permitted to treat as "lost" amounts attributed to their merchant affiliates or functions.

II.

THE SUBZONE ALLOCATION IN THE DUQUESNE ZONE IS PATENTLY DEFICIENT, INCONSISTENT WITH THE COMMISSION'S ORDERS AND MUST BE REJECTED

As was the case with the prior compliance filings, Duquesne continues to allocate improperly the SECA in its zone. Relying on the Affidavit of Robert G. Thomson, a consultant with The Northbridge Group, Duquesne continues to replicate the patently discriminatory allocation methodology. What is so shocking and disturbing here is that, despite the numerous

protests and calls for support for the methodology and back-up data, Duquesne continues to submit filings without this support and back-up information. Duquesne has made adjustments and allocations to retail LSEs based on its own information and data without filing the data. Adding to the substantial harm inflicted upon Strategic and other LSEs in the Duquesne zone, is that this charge keeps increasing and remains a moving target. There is no certainty. Strategic must not only devise a plan for trying to ride out the storm, but is doing it in a small boat on an ocean created by Duquesne that is pulling Strategic out to sea.

Mr. Thomson's allocation methodology is not only complicated, but is skewed such that costs properly allocable to Duquesne as a provider of last resort ("POLR") are shifted to retail access suppliers such as Strategic. Mr. Thomson undertakes the five steps in deriving this skewed and improper allocation. He then makes additional adjustments to the figures to further skew the cost responsibility away from itself and onto the LSEs. Strategic will not re-state its arguments as to why the underlying methodology used to calculate the sub-zone allocations is improper and departs from the Commission's orders. What is clear is that Duquesne is using its position as a Transmission Owner to unfairly and unjustly burden LSEs with additional costs based on adjustments that Duquesne self-servingly determines are to its benefit. While Duquesne is free to propose whatever changes to the SECA methodology it desires, those changes cannot be made in a compliance filing to implement the methodology previously adopted by the Commission in its earlier orders.

Not only is the methodology improper, Duquesne's "adjustments" have been made solely for the benefit of Duquesne and at the expense of LSEs. In addition to adjustment for Orion Generation, the adjustment for the purchase of balancing energy, the improper lost revenue adjustment and the re-allocation of lost revenues to reflect load movements, Duquesne has

identified what it believes to be improper transactions that have been allocated to it by other transmission owners. In turn, Duquesne re-allocates transactions that it believes are not attributable to the Duquesne zone at all to other suppliers within the zone.

None of these adjustments have any basis in any of the prior Commission orders approving the SECA methodology and seem clearly intended to shift to Duquesne's *competing* retail suppliers a substantial portion of the SECA liability originally allocated to Duquesne and as to which Duquesne is protesting. Under these circumstances, it is obvious that Duquesne has come up with a methodology not to comply with the Commission's prior orders, but simply to minimize its own exposure to SECA payments.

The impact of Duquesne's sub-zonal SECA allocation methodology on retail service providers competing in its service territory is significant. Strategic Energy served approximately 12.53% of the retail load during 2003 and yet has been allocated more than 33.84% percent of the total SECA obligation for the second transition period. In contrast, Duquesne's SECA obligation is reduced to 42.01% percent for the second transition period despite it having served approximately 72.04% percent of the total load as the Provider of Last Resort during 2003.

Duquesne is obviously using its status as a transmission owner and its obligation to make compliance filings in response to the prior Commission orders in these proceedings to effectively *make its competing suppliers finance its SECA obligations until the Commission ultimately rules* on all of the issues raised by the many compliance filings to date. Thus, not only are retail suppliers faced with a prospect of significant SECA liability based on the general methodology that has been implemented by Dr. Henderson and Mr. Heintz, but also they are now being allocated additional SECA liability to back-stop Duquesne. The Commission should not countenance this abuse of the process even on a temporary basis.

It is the recommendation of Strategic Energy that the Commission reject Duquesne's proposed sub-zonal SECA allocation methodology at least during the pendency of the proceedings before Judge Young (assuming the second transition period issues are consolidated into the ongoing hearing). In its place, the zonal SECA liability should be allocated based on each retail supplier's load served in the zone during each of the two test years, subject to refund. That allocation methodology should track more closely the methodology being utilized by the other transmission owners. Duquesne would be free to pursue its proposed changes to the methodology and various adjustments before Judge Young and, if Duquesne prevails, adjustments can be made at the end of the proceeding to compensate Duquesne for any over-payments that might be caused by the interim methodology.

III.

THE COMMISSION SHOULD ORDER MITIGATION FOR RETAIL ACCESS LSEs

As is clear from pleas from numerous LSEs, including Quest/ESI, Nordic, Strategic and Green Mountain Power, the SECA has a disproportionately adverse affect on LSEs who are participants in retail access programs, including those programs in Michigan, Pennsylvania and Ohio. Retail access suppliers participate in highly competitive markets, serving customers who were formerly customers of incumbent utilities.

Strategic has supplied its customers with purchases from wholesale counter-parties sourcing power from within PJM as well as within control areas that are now inside MISO's footprint. Because of this market flexibility customers have received the benefits of competitive pricing and reliable service. However, the proposed SECA costs to be collected from Strategic in the MISO and PJM area where it serves load are so excessive that any benefit gained by Strategic's retail customers could be unfairly eliminated. The proposed SECA allocation for

Strategic in the Duquesne zone amounts to a charge of nearly \$5.00 MWh for the three months in the first transition period and nearly \$6 for the twelve months in the second transition period. Surely, this was not FERC's intent when the removal of RTORs was contemplated.

Many of Strategic's current competitors, having entered the competitive retail market more recently, faced zero or de minimis SECA obligations based on historical period imports. Thus, many of Strategic's competitors, in general, are not burdened with a SECA. These LSEs entered the market when it was more mature and after the 2002 historical period for SECA calculations. Thus, Strategic, which was a trailblazer in retail access in Pennsylvania is being penalized and subject to unfair discrimination solely because it participated in these early markets. At the time it began to develop a retail electricity supply business in Pennsylvania, Strategic had no notice that its purchase of power from sources outside the Duquesne service territory would be the basis of millions of dollars in additional charges to be collected in 2005 and 2006. If Strategic tries to recover this charge from its current or future customers, it would put Strategic at a competitive disadvantage. All market participants must have the opportunity to compete on a level playing field, not one in which an older and more successful competitive retail supplier is discriminated against solely because it was an early market entrant.

Retail marketers rely on price certainly in their business dealings. Unlike traditional utilities, retail marketers have no deferral mechanisms and retail marketers must rely on cash flow on a current basis. The Commission, by imposing a SECA, is imposing a significant financial burden on Strategic – based on its use of the transmission system in 2003 – more than two years ago. Strategic should not be forced to control and respond to wild fluctuations in charges and assessments that should be imposed on other market-participants. Strategic's mix of customers changes frequently, therefore, load served in a historical period (especially three

years ago) is not representative of the loads served today. Similarly, generation sources used in power contracts in a historical period are not representative of generation sources today.

This is an impossible situation – Strategic is being asked to pay a charge to replace a RTOR, yet it was never responsible for the RTOR except as a component of its bundled delivery contracts. In other words, it has already paid this charge and now is being subject to double collection. Without mitigation, upon elimination of the RTOR, the supplier responsible for the now-eliminated RTOR will receive a windfall, and Strategic will be responsible for not only the total price of the delivered supply, but also the new SECA charge. The Commission addressed this issue in its November 2003 Order and recognized this – the shift of the SECA to the supplier.³ In its February 10, 2005 Order, the Commission set the shift to shipper issue for hearing, but the hearing on this issue will not commence until 2006 - - well after both transition periods end. By doing so, the Commission ignored its own findings both as to who should bear these charges and the devastating effects these charges will have on the LSEs with bundled delivery contracts for which the shipper was the wholesale supplier. Given this record, the Commission must reject the Compliance Filing and refuse to allocate these charges to LSEs until the parties can present evidence on the proper allocation. In the alternative, as a mitigation measure, the Commission should reduce the SECA liability of retail access suppliers to the same level on a unit basis as the incumbent utility operating in the relevant control area.

The fact that Strategic may obtain a refund of monies paid at the conclusion of this process is of little comfort. Strategic should not be required to make interim payments totaling millions of dollars. In short, imposition of the SECA on Strategic is plainly discriminatory in that Strategic is unfairly penalized and stripped of due process solely for participating early in

³ See November 17 Order at ¶ 45.

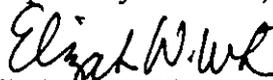
the newly developing Pennsylvania retail markets. Allocation of the SECA subject to refund at some unknown point in the future, without providing the mechanism to shift the SECA to the supplier now when clearly justified, is fundamentally unfair in a competitive market, especially when Strategic is burdened not only with the SECA but with the RTOR bundled into the price in its supply contracts.

V.
CONCLUSION

The SECA results in an unjust and unreasonable rate that is plainly violative of the filed rate doctrine and the Federal Power Act. Duquesne's May 26 compliance filing must be rejected as patently non-compliant with the Commission's orders. The Commission should order mitigation measures for the Retail LSEs as indicated in this protest. The compliance filings should be adjusted and modified as described in this Protest.

WHEREFORE, Strategic respectfully request that the May 26, 2005 compliance filing be rejected or, at a minimum be re-filed to comport with the Commission's prior orders.

Respectfully submitted,



Elizabeth W. Whittle
Attorney for
Strategic Energy, L.L.C.

Of Counsel:

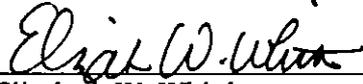
Nixon Peabody LLP
401 Ninth Street, N.W.
Suite 900
Washington, DC 20004
202-585-8338
202-585-8080 (fax)
ewhittle@nixonpeabody.com

Dated: June 7, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing protest on the parties listed on the Service List and on the List Serv maintained in this proceeding.

DATED in Washington, DC this 7th day of June, 2005.


Elizabeth W. Whittle

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Answer of Duquesne Light Company to the Complaint of Strategic Energy, L.L.C. Against Duquesne Light Company's Proposed Rider 7 – SECA Charge" 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).

VIA FEDERAL EXPRESS

Julie Coletti
Assistant General Counsel
Strategic Energy, L.L.C.
Two Gateway Center
Pittsburgh, PA 15222

Brian Vayda
Manager, Regulatory Affairs
Strategic Energy, L.L.C.
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VIA HAND DELIVERY

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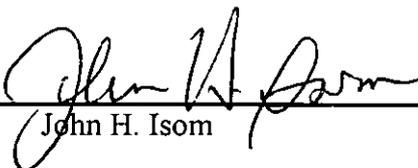
Daniel Clearfield
Kevin J. Moody
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212 Locust Street
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Harrisburg, PA 17101

SECRETARIAT'S BUREAU

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Date: August 2, 2005



John H. Isom



Duquesne Light

A DQE Company

Rates and Regulatory Affairs Unit
411 Seventh Avenue 8-6
Pittsburgh, Pennsylvania 15219

ORIGINAL

August 9, 2005

VIA OVERNIGHT MAIL DELIVERY:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17105-3265

**DOCUMENT
FOLDER**

RECEIVED

AUG 8 2005

PA PUBLIC UTILITY COMMISSION
REGULATORY BUREAU

Supplement No. 31 to Tariff Electric – PA. P.U.C. No. 23

Dear Mr. McNulty:

On June 17, 2005, Duquesne Light Company issued and filed with the Commission Supplement No. 28 to Duquesne's Tariff Electric – PA P.U.C. No. 23 to become effective August 16, 2005. Supplement No. 28 was docketed at R-00050662.

In order to provide the Commission staff with additional time to review the recent filings at this docket, the Company voluntarily postpones the effective date of Supplement No. 28 to August 26, 2005.

Accordingly, enclosed for filing, please find an original and eight (8) copies of Supplement No. 31 to Duquesne Light Company's Tariff Electric, PA. P.U.C. No. 23, which postpones the effective date of Supplement No. 28 until August 26, 2005.

Please return a date-stamped copy of this letter in the enclosed self-addressed, stamped envelope.

If you have any questions regarding the information contained in this filing, please contact me at 412.393.6334 or nkrajovic@duqlight.com.

Sincerely,

Nancy J. D. Krajovic
Manager
Regulatory Affairs

Enclosures

- c: Mr. R. A. Rosenthal, Bureau of Fixed Utility Services w/ enclosure
- Mr. R. F. Wilson, Bureau of Fixed Utility Services "
- Mr. J. E. Simms, Office of Trial Staff "
- Mr. I. A. Popowsky, Consumer Advocate "
- Mr. W. R. Lloyd, Jr., Small Business Advocate "

36

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies of the foregoing document upon the individuals listed, in accordance with the requirements of 52 Pa. Code § 5.41.

Via First Class Mail

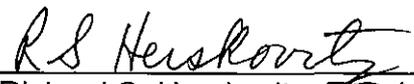
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Dated: August 9, 2005

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

ORIGINAL

SUPPLEMENT NO. 31
TO ELECTRIC - PA. P.U.C. NO. 23

DUQUESNE LIGHT COMPANY
SCHEDULE OF RATES

For Electric Service in Allegheny and Beaver Counties

(For List of Communities Served, see Page No. 4)

Issued By

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SEP 06 2005

DUQUESNE LIGHT COMPANY

411 Seventh Avenue
Pittsburgh, PA 15219

**DOCUMENT
FOLDER**

Morgan K. O'Brien
President and Chief Executive Officer

ISSUED: June 17, 2005

EFFECTIVE: August 16, 2005

The effective date of Supplement No. 28 to Duquesne Light Company's Tariff Electric - PA. P.U.C. No. 23, filed at R-00050662 to become effective August 16, 2005, is hereby voluntarily postponed until August 26, 2005.

NOTICE

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THIS TARIFF SUPPLEMENT INTRODUCES AND INCREASES A RIDER 9 2005

See Page Two

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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August 5, 2005

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

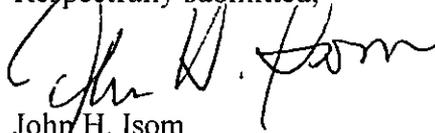
**DOCUMENT
FOLDER**

Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket No. R-00050662

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Answer of Duquesne Light Company to the Petition of Dominion Retail, Inc. to Intervene 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,


John H. Isom
JHI/jl

Enclosures

c: Certificate of Service

56

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL
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Pennsylvania Public Utility Commission :
v. :
Duquesne Light Company :

Docket No. R-00050662

**DOCUMENT
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**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE PETITION OF DOMINION RETAIL, INC. TO INTERVENE**

Duquesne Light Company ("Duquesne") hereby answers the "Petition to Intervene in Opposition of Dominion Retail, Inc." ("Petition"), in the above-captioned proceeding. There, Dominion Retail, Inc. ("Dominion") seeks to intervene in the above-captioned proceeding in opposition to Supplement No. 28 to Duquesne's Tariff Electric - Pa. P.U.C. No. 23 ("Supplement No. 28") which was filed with the Commission on June 17, 2005. In Supplement No. 28, Duquesne proposed "Rider 7 - SECA Charge."

The purpose of Rider 7 is to permit Duquesne to recover from its provider of last resort ("POLR") customers Seams Elimination Charge Adjustment ("SECA") transmission charges that are being billed to Duquesne by PJM Interconnection ("PJM") pursuant to compliance filings to the PJM Open Access Transmission Tariff ("OATT") that have been accepted by the Federal Energy Regulatory Commission ("FERC").

In Supplement No. 28, Duquesne proposes a reconcilable charge that will permit Duquesne to recover on a dollar-for-dollar basis, the actual level of SECA charges that are imposed upon it by PJM, pursuant to orders of the FERC. Duquesne estimates that PJM will bill approximately \$39 million of SECA charges to load serving entities in the Duquesne zone. Duquesne estimates further that, of this total, PJM will bill Duquesne approximately \$11 million. The remainder will be billed to other load serving entities in the Duquesne zone, which include

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Electric Generation Suppliers (“EGSs”) such as Dominion. Through Rider 7, Duquesne seeks to recover from its POLR customers approximately \$11 million of SECA transmission charges plus related Pennsylvania gross receipts tax.

In the Petition, Dominion openly seeks to “undo” FERC’s allocations of SECA charges among load serving entities in the Duquesne zone which are reflected in charges from PJM under OATT compliance filings that the FERC has accepted. Thus, Dominion’s contentions are simply an invitation for this Commission to usurp those powers that have been reserved by the Congress of the United States to FERC. This Commission cannot grant the relief sought by Dominion, reallocation of SECA charges among load serving entities in the Duquesne zone, without exerting jurisdiction over unbundled transmission charges in interstate commerce. On this subject, the United States Supreme Court has stated:

“It is true that FERC’s jurisdiction over the *sale* of power has been specifically confined to the wholesale market. However, FERC’s jurisdiction over electricity *transmissions* contains no such limitation. Because the FPA [Federal Power Act] authorizes FERC’s jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC’s exercise of this power is valid.”

New York v. F.E.R.C., 535 U.S. 1, 20 (2002).

With regard to reallocations by states of costs allocated by the FERC, the Supreme Court has stated:

“[In *Nantahala Power & Light Co. v. Thornburg*, 476 US 953, 961 (1986), t]he state court emphasized that its order did not require *Nantahala* to violate the FERC Order and that it was not expressly contradicting a FERC finding. We rejected these arguments. The reasoning that lead us to our decision in *Nantahala* applies with equal force and compels the same conclusion – States may not alter FERC-ordered allocations of power by substituting their own determinations of what would be just and fair. FERC-mandated allocations of power are binding on the States, and States must

treat those allocations as fair and reasonable when determining retail rates.”

Mississippi Power & Light Co. v. Mississippi, 487 US 354, 371 (1981). Thus, the Commission is preempted from granting the relief requested by Dominion.

Further, the relief sought by Dominion could only be accomplished through some transfer of funds from Duquesne’s POLR customers to EGSs such as Dominion to offset, at least in part, the SECA charges imposed on Dominion by PJM through OATT compliance filings that have been accepted by the FERC. There is no authority and no precedent for the Commission to require a fixed public utility like Duquesne to impose charges on its customers to recover costs incurred by EGSs and to remit such recoveries to EGSs. Requiring Duquesne’s POLR customers to pay for costs incurred by Dominion would be as improper as requiring customers of Metropolitan Edison Company to pay for costs incurred by PECO Energy or vice versa. Certainly, Dominion has offered no such authority or precedent.¹

Further, granting the relief sought by Dominion would be contrary to the manner in which Duquesne’s services have been restructured under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Ch. 28 (“Competition Act”). Specifically, granting the relief sought by Dominion would violate strictures in the Competition Act that the rates of Electric Distribution Companies (“EDCs”) like Duquesne be unbundled into separate rates for generation, transmission and distribution services. 66 Pa.C.S. § 2804(3). Dominion would have

¹ Duquesne further notes that certain parties at the FERC have contended that the allocation of the SECA charges among load serving entities in the Duquesne zone is discriminatory and anticompetitive – the same issues that Dominion has sought to raise here. If such contentions are successful at the FERC, Dominion would receive refunds of any overcharges from PJM and Duquesne would receive additional charges, which Duquesne would recover by extending the period of collection of Rider 7. Accordingly, the effects of any further action by FERC on these and other allocation issues can be addressed under Rider 7 without adding transmission costs to unbundled distribution rates in violation of the Competition Act.

this Commission require Dominion's transmission costs to be bundled into Duquesne's distribution charges.

In order to implement these statutory principles, Duquesne has unbundled its rates into components for distribution, transmission and generation services in compliance with Section 2804(3) of the Public Utility Code, 66 Pa.C.S. § 2804(3). Distribution rates recover the costs of operating the distribution system. In addition, EDCs presently are required to offer POLR service. For those customers who use POLR service from an EDC, the EDC charges those customers rates for recovery of costs for transmission services and electric energy.

The unbundling of Duquesne's rates is reflected in Duquesne's Tariff. See, for example, Duquesne's rate RS – Residential Service, pp. 34-35 of Duquesne's Tariff. There, rates for distribution, transmission and generation services are separately stated. The Tariff also states:

“Customers who elect to purchase their electric generation requirements from the Company will be charged according to the above charges. Customers who elect to purchase their electric energy requirements from an EGS will be charged the Distribution Charge by the Company and must purchase their transmission and generation requirements from their selected EGS”

Thus, under Duquesne's Tariff, Duquesne recovers distribution, transmission and generation charges from POLR customers. Customers who obtain service from EGSs, however, must obtain both generation and transmission services from the EGS at unregulated prices.

Apparently, Dominion would have the Commission isolate one portion of its transmission costs, the SECA transmission cost increase, and have Duquesne recover such transmission costs, for the benefit of EGSs including Dominion, through its distribution charges. Such relief for Dominion and other EGSs would violate the requirements of the Competition Act that rates of EDCs be unbundled.

Duquesne responds to these specific averments in Dominion's Petition as follows:

1. The averments of Paragraph No. 1 of the Petition are admitted.

2. The averments of Paragraph No. 2 of the Petition are admitted.

3. The averments of Paragraph No. 3 of the Petition are denied as stated. It is admitted that, on June 17, 2005, Duquesne filed with the Commission Supplement No. 28 to Tariff Electric – Pa. P.U.C. No. 23, to become effective for service on, and after, August 16, 2005. In Supplement No. 28, Duquesne proposed Rider 7 – SECA Charge. Under Rider 7, Duquesne will recover SECA charges imposed upon it by PJM pursuant to compliance filings under PJM’s OATT, which compliance filings have been accepted by the FERC.

4. The averments of Paragraph No. 4 of the Petition are denied as stated. Duquesne estimates that total SECA charges from PJM for all load serving entities in the Duquesne zone will be approximately \$39 million. Of this total, under PJM’s compliance filing that has been accepted by the FERC, approximately \$11 million have been allocated to Duquesne. Duquesne proposes to recover the actual amount of SECA charges from PJM that are allocated to Duquesne from its POLR customers. The remaining approximately \$28 million have been allocated to other entities serving load in the Duquesne zone. One such load serving entity is Dominion.

In order to recover the approximately \$11 million that has been allocated to it in proceedings before the FERC, plus the related Pennsylvania gross receipts tax, Duquesne has proposed a charge for all POLR customers of \$0.001557 per kWh.

Duquesne is without information sufficient to form a belief as to the accuracy of Dominion’s estimates of the level of costs that it will incur per kWh of generation sold to its customers. Therefore, such averments are denied.

5. Paragraph No. 5 of the Dominion's Petition contains averments to the general effect that the allocation of SECA charges from PJM to load serving entities in the Duquesne zone pursuant to PJM's OATT is discriminatory and anticompetitive. Such allocations are reflected in compliance filings by PJM that are portions of the PJM OATT, which have been accepted by the FERC. Therefore, any contentions that FERC's allocation of SECA charges is improper should be made to the FERC and not to this Commission. As explained previously, FERC jurisdiction over the allocation is exclusive.

Duquesne notes that Dominion's averments concerning its SECA charge are incorrect. In Rider 7, Duquesne has proposed a SECA charge of \$0.001557 per all kWh delivered to POLR customers until Duquesne has recovered in full all SECA charges imposed upon it by PJM under its OATT. Duquesne is without knowledge sufficient to form a belief as to the accuracy of Dominion's averments concerning SECA charges allocated to it by PJM per kWh of sales to Dominion's customers. Therefore, such averments are denied. More importantly, however, prices charged by Dominion, an EGS, to its customers for generation and transmission services are matters of private contract far beyond the jurisdiction of this Commission.

6. In response to Paragraph No. 6 of the Petition, it is admitted that Duquesne has been active in proceedings before the FERC representing the interests of Duquesne's customers in order to reduce to the extent practical the amount of SECA charges that Duquesne's POLR customers will be required to bear.

7. The averments of Paragraph No. 7 of the Petition are denied. An approval by the Commission of Duquesne's Rider 7 would not provide any advantage to Duquesne or disadvantage to EGSs. To the contrary, Duquesne's Rider 7 is merely designed to permit Duquesne to recover on a dollar-for-dollar basis the actual level of SECA charges imposed upon

Duquesne by PJM pursuant to its OATT. Rider 7 imposes no charge on Dominion or its customers. Further, recovery by EGSs of SECA charges allocated to them in OATT compliance filings by the PJM that have been accepted by the FERC are matters of private contract between the EGSs and their customers. Further, any complaints by EGSs about the allocation of SECA charges among load serving entities in the Duquesne zone are properly made before the FERC and not this Commission.

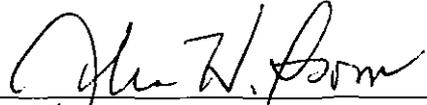
8. In response to Paragraph No. 8 of the Petition, it is admitted that Dominion has quoted correctly a portion of the Commission's regulations at 52 Pa. Code § 5.72(a). For the reasons explained above, however, Dominion has no interest in this proceeding.

9. The averments of Paragraph No. 9 of the Petition are denied. As explained above, Dominion has no interest in this proceeding because Duquesne's proposed Rider 7 merely permits Duquesne to recover on a dollar-for-dollar basis SECA charges actually imposed upon it by PJM under its OATT. Rider 7 applies only to Duquesne's POLR customers. Rider 7 does not apply to Dominion or its customers. Any complaints about the level of SECA charges imposed upon Dominion by PJM under its OATT are properly made before the FERC and not this Commission. Further, prices charged by Dominion for generation and transmission services are matters of private contract between Dominion and its customers. Such matters are beyond the jurisdiction of this Commission.

10. In Paragraph No. 10 of the Petition, Dominion explains that "it supports many of the issues raised by Strategic Energy, L.L.C. in its Complaint" In response, Duquesne incorporates its Answer to the Complaint of Strategic Energy, L.L.C. by reference.

WHEREFORE, for all the foregoing reasons, Duquesne Light Company respectfully requests that the Petition of Dominion Retail, Inc. to intervene in the above-captioned proceeding be denied.

Respectfully submitted,



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Of Counsel:

Morgan, Lewis & Bockius LLP

Date: August 5, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "**Answer of Duquesne Light Company to the Petition of Dominion Retail Inc. to Intervene**" 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).

VIA FIRST CLASS MAIL

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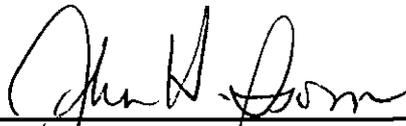
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Date: August 5, 2005



John H. Isom

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ORIGINAL

August 5, 2005

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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Harrisburg, PA 17105-3265

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2005 AUG -5 PM 4: 08
PA PUC
SECRETARY'S BUREAU

Re: PA Public Utility Commission v. Duquesne Light
Company; Docket No. R-00050662
Strategic Energy, L.L.C. v. Duquesne Light Company;
Docket No. R-00050662C0002

Dear Secretary McNulty:

Enclosed please find the original and three copies of Strategic Energy L.L.C.'s Motion for Interim Decision for filing in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/jls

Enclosures

cc: Certificate of Service (w/enc)
Hon. Wendell Holland, Chairman
Hon. Joseph Cawley, Vice-Chairman
Hon. William Shane, Commissioner
Hon. Kim Pizzigrilli, Commissioner
Hon. Terrance Fitzpatrick, Commissioner
Bohdan Pankiw, Esquire
Robert A. Rosenthal, Director, FUS

HAR:60481.1/STR163-230273

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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P.A. PUC
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Pennsylvania Public Utility Commission :

v. :

Docket No. R-00050662

Duquesne Light Company :

Strategic Energy, L.L.C. :

v. :

Docket No. R-00050662C0002

Duquesne Light Company :

DOCUMENT
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MOTION OF STRATEGIC ENERGY, L.L.C.
FOR INTERIM DECISION

As explained in Strategic Energy, L.L.C.'s ("Strategic") complaint in this matter, if permitted to become effective as filed, Duquesne Light Company's ("Duquesne") proposed "Rider 7 – SECA Charge" is unreasonably discriminatory and inconsistent with the Electric Choice Act¹ and would seriously threaten the continued viability of retail competition in the Duquesne Zone. It must not be permitted to be put into effect – even on an interim basis. At the same time, in order to avoid Duquesne and other LSEs from being prejudiced by a delay in recovery from end users of the PJM-billed Seams Elimination Charge Adjustment ("SECA") charges, Strategic proposes that the PUC give Duquesne the option of withdrawing proposed Rider 7 and filing a tariff supplement designed to recover, subject to hearings and reconciliation, the full amount of the SECA liabilities attributable to the Duquesne Zone through a nonbypassable charge to distribution customers for the 15-month period that the SECA charges are imposed. This approach would avoid the adverse anticompetitive effects of Duquesne's proposal and allow for any necessary investigation of Strategic's "nonbypassable distribution charge" approach to collecting the SECA obligations without increasing the total SECA liability

¹ 66 Pa. C.S. Chapter 28, §§ 2801-2812.

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for customers. Strategic's distribution recovery approach is similar to the approach Duquesne proposed for recovering its costs of procuring available capacity ("ACAP") "on behalf of its customers," both POLR and shopping load, when Duquesne proposed to join PJM West in May 2002 and is thus fully authorized and reasonable.

Need For Interim Order

Duquesne's proposed Rider 7 will become effective as filed on August 16, 2005, unless otherwise ordered by the Commission. The Commission's regulations provide that a request for relief not otherwise expressly provided for in the regulations may be made by motion, which may be made in writing at any time.² As the Commission's next Public Meeting (August 11, 2005) is scheduled before Duquesne's proposed Rider 7 is to become effective, Strategic suggests that it is necessary and appropriate for the Commission to consider this motion at its August 11, 2005 Public Meeting rather than assigning the motion to a presiding officer for an initial ruling.

Strategic's Complaint Establishes A Prima Facie Case That Duquesne's Proposal is Unlawful and Unreasonable.

As stated above, Strategic's complaint pointed out the serious questions raised by Duquesne's proposal concerning retail rate discrimination and competitive unfairness for retail shopping customers in violation of the Public Utility Code,³ and expressly disclaimed any challenge in this proceeding to FERC's SECA allocations.⁴ Nonetheless, Duquesne's answer to

² 52 Pa. Code § 103(a),(b).

³ Strategic Complaint at ¶s 6-16.

⁴ *Id.* at 2 ("Strategic does not challenge or seek to change that [sub-zone] allocation methodology in this proceeding because that is a matter under FERC's jurisdiction."); ¶ 8, n.8 ("Strategic is addressing these discrimination and anticompetitive issues at FERC."); and ¶ 9 ("[T]he determination of wholesale rate responsibility is clearly a matter within FERC's jurisdiction . . .").

Strategic's complaint argues that "to accomplish Strategic's goals, the Commission would have to assert jurisdiction over the SECA transmission cost increases imposed by PJM on EGSs which, under the federal authority cited above, are subject to exclusive federal regulation. The Commission does not have the authority to grant this relief."⁵

There is no merit to Duquesne's preemption argument. The jurisdictional line of demarcation is bright and clear: federal law does not preempt a state's powers to regulate the manner in which FERC-authorized costs are recovered in retail rates. Strategic's proposal for the retail recovery of the total SECA liabilities for the Duquesne Zone is squarely within the Commission's authority over retail rate structure and design. Even when dealing with FERC approved charges which must be permitted to be recovered in an EDC's retail rates, this Commission retains jurisdiction to determine the rate structure or rate design issues raised by the recovery of such charges in retail rates. In *Arkansas Power & Light Company v. Missouri Public Service Commission*, the Eighth Circuit Court of Appeals stated that the question of rate design (what classes of customers shall bear FERC-ordered wholesale costs and in what proportion) is beyond the jurisdiction of FERC.⁶ Relying on this rule, the Commonwealth Court stated that "[o]f course, although FERC has authority to regulate pipelines, . . . federal law has not preempted the states' power to regulate the recovery of costs arising out of FERC proceedings."⁷

⁵ Duquesne Answer at 3. Duquesne also misrepresents Strategic's proposal as requiring "Duquesne distribution charges to be bundled with Strategic's transmission costs" (*Id.* at 4) and requiring this Commission to exercise "jurisdiction over the recovery by Strategic of its SECA charges." *Id.* at ¶ 9 (p.100. Strategic's proposal neither requests nor requires such things. Strategic's proposal is that Duquesne's "SECA Charge" be expanded to include all distribution service customers rather than just POLR generation customers.

⁶ *Arkansas Power & Light Company v. Missouri Public Service Commission*, 839 F.2d 1444, 1452 (8th Cir. 1987).

⁷ *National Fuel Gas Distribution Corp. v. Pennsylvania Public Utility Com.*, 587 A.2d 54, 60 (Pa.Cmwlt. 1991).

In addition, the Third Circuit relied upon this rule in holding that "[a] state agency . . . does not violate the supremacy clause if it maintains retail rate procedures that have the effect of delaying recovery of unavoidable, FERC-approved wholesale costs actually incurred until a later point in time."⁸

In addition, the Commission clearly has the authority under the Public Utility Code to correct the serious problems of retail rate discrimination and competitive unfairness created by Duquesne's proposal. Duquesne's retail charges to its customers are fully subject to the requirements of the Public Utility Code and Section 501 of the Code gives the Commission "full power and authority" to carry out the provisions of the Code.⁹

However, Duquesne's answer to Strategic's complaint argues that "[t]here is no authority and no precedent for the Commission to require a fixed public utility like Duquesne...to impose charges on its customers to recover costs incurred by EGSs" ¹⁰ Duquesne's "no authority or precedent" argument is contrary to the legal discussion above as well as Duquesne's May 2002 proposal to join PJM West. As part of that proposal, Duquesne asked the Commission to approve recovery through a nonbypassable "RTO Surcharge" of Duquesne's payments to Orion Power MidWest, L.P. ("Orion") for providing "qualifying capacity on behalf of its customers," capacity that LSEs (including EGSs) would otherwise have been required to provide pursuant to the PJM OATT provisions applicable to PJM West.¹¹ Thus, Duquesne was proposing that it

⁸ *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Com.*, 862 F.2d 69, 74 (3rd Cir. 1988).

⁹ 66 Pa. C.S. § 501(a).

¹⁰ Duquesne Answer at 3 (emphasis added).

¹¹ *Duquesne Light Company Petition for Approval of Plan for Post-Transition Period POLR Service ("PJM WEST Petition")*, Docket No. R-00974104, at 24; 10-11 ("The [PJM] West RAA sets forth the reliability standards for the PJM West Control Area that

would not only bill EGS customers for the ACAP obligation of the EGSs, it would actually procure the obligation for the EGS's customers.¹² If the PUC had authority to approve that proposal in 2002 – which, presumably, Duquesne believed the PUC did or it would not have suggested the approach in the first place – the Commission similarly has authority to modify Duquesne's SECA recovery mechanism so that the SECA retail rate will recover the SECA obligation of all LSEs in the Duquesne Zone, including the SECA liability of EGSs.

However, Duquesne claims in its answer that the Commission can approve a proposal such as Strategic's **only if the utility (Duquesne) makes the proposal**. This is nonsense. Either the Commission has the authority to approve such a retail rate design or it doesn't – the answer to that question **cannot** depend upon who makes the proposal.

Duquesne's answer also demonstrates the need for the interim decision requested herein. Duquesne admits that "the sub-zonal allocation may affect different load serving entities within the Duquesne zone differently,"¹³ yet Duquesne states, incredibly, that it "is without sufficient information to form a belief as to the specific calculations by Strategic of the relative effects of the sub-zonal allocation of SECAs from PJM that have been accepted by FERC upon Strategic

each load serving entity must follow. **The most important standard, for purposes here, is the requirement to maintain "available capacity" (or "ACAP")**"; 14 (the Orion Capacity Agreement requires Orion "to provide, on a daily basis, the difference between the amount of capacity supplied by FirstEnergy and **Duquesne's total capacity requirements (including both switching and non-switching load)** . . . [for] a fixed annual fee of \$43.7 million"); and 22 ("If the Commission approves this Petition, **Duquesne will procure capacity for all of its load, including both POLR and shopping load, or a non-discriminatory basis. The cost of this capacity will be recovered in a non-bypassable surcharge from all customer classes whose CTC has expired**") (emphasis added).

¹² *PJM WEST Petition* at 25.

¹³ Duquesne Answer at ¶ 7 (p. 9).

and upon Duquesne."¹⁴ Nonetheless, Duquesne asserts that "the best means for this Commission to be as fair as possible to EGSs on Duquesne's system such as Strategic is to permit Duquesne's Rider 7 to become effective."¹⁵ Nothing could be further from the truth.

Duquesne's Rider 7 would permit customer gaming and threaten the continued viability of the competitive retail market in the Duquesne Zone because the "SECA obligation follows the load." As stated in Strategic's complaint,¹⁶ this means that a shopping customer of an EGS that has a larger SECA liability than Duquesne's could avoid the higher EGS SECA liability by switching to Duquesne's POLR service.¹⁷ In addition, because the "SECA obligation follows the load," the widely varying EGS SECA liabilities would make it extremely difficult, if not impossible, for an EGS to price customers of other EGSs if Rider 7 was implemented as proposed. This, in turn, would create a clear disincentive for new EGSs to enter the Duquesne market until Duquesne's Rider 7 charge expired, further and unnecessarily obstructing the continued development of the competitive market.

Requested Relief

Strategic's allegations are clearly sufficient to justify the Commission suspending Duquesne's tariff and setting the matter down for hearings and recommended decision by an ALJ. The problem with this approach is that, both Duquesne and the other LSEs in the

¹⁴ *Id.* Of course, FERC accepted the sub-zonal allocations, *subject to further proceedings and refund.*

¹⁵ *Id.* at 9.

¹⁶ Strategic Complaint at ¶ 14 (pp. 9-10).

¹⁷ Under Duquesne's reconciliation process, the higher EGS SECA charge would be socialized as part of Duquesne's lower SECA Charge to the larger group of Duquesne's POLR customers. Proposed Rider 7's incentive for shopping customers to switch to Duquesne's POLR service is clear.

Duquesne Zone, including Strategic, are and will continue to be required to remit SECA charges to PJM as billed, with a failure to pay threatening the LSE's status with PJM. Accordingly, the better course is to offer Duquesne two alternatives:

- 1) Continue to press its current proposal (Rider 7) in which case the Rider should be suspended and set down for hearings; or
- 2) File a new Interim Rider calculated to collect the total SECA liability of all LSEs in the Duquesne Zone through a nonbypassable charge to all retail customers added to their existing distribution charges. Duquesne would, in turn, remit to EGSs or other LSEs any amounts collected to cover SECA charges associated with their generation customers. The option order rider would be subject to hearings in which both this interim proposal and Duquesne's original proposal could be fully explored. If the Commission ultimately determines to modify the interim proposal (or to accept the approach set forth in Rider 7), Duquesne can credit or refund to customers any overpayments (or recover any underpayments) and EGSs would provide corresponding refunds or credits to Duquesne.

This approach has several obvious advantages. First, it avoids allowing Duquesne's unlawful and unreasonable Rider to be placed into effect, causing the discrimination and anticompetitive effect detailed in Strategic's complaint. Second, this approach assures that neither Duquesne nor any EGS subject to SECA charges for the Duquesne Zone will be forced to absorb the substantial SECA charges for which they are currently being billed by PJM and which they must pay in order to maintain their status as LSEs. Finally, a full hearing and investigation can occur without seriously harming the single successful competitive market in Pennsylvania.

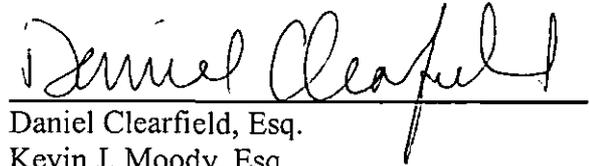
The proposal also will not harm customers – total customer charges from Duquesne will not be substantially different under Strategic's proposal compared to Duquesne's "Duquesne

only" rate. Strategic has preliminarily calculated that a distribution rate collection approach to collecting the total Duquesne Zone SECA obligation would increase the total SECA rate slightly – from 1.57 mils/kWh to 2.72 mils /kWh or a little over 1 mil. Importantly, the total SECA liability for all customers will not increase; the Strategic proposal merely evenly distributes an obligation for which EGS customers would be disproportionately liable under Duquesne's Rider 7 as proposed.

RELIEF REQUESTED

WHEREFORE, Strategic Energy, L.L.C. respectfully requests the Commission to issue an order suspending Duquesne's proposed Rider 7 pending further investigation and hearings, unless Duquesne withdraws proposed Rider 7 and files an interim tariff supplement designed to recover the total PJM-billed SECA liabilities for the Duquesne Zone through a nonbypassable charge on all retail distribution customers for the 15-month period the transitional SECA liabilities are to be imposed, subject to further investigation, hearings and reconciliation to accommodate the uncertainties and potential changes in the FERC allocations of SECA liabilities for the Duquesne Zone.

Respectfully submitted,



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Dated: August 5, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion of Strategic Energy L.L.C. for Interim Decision upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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August 12, 2005

VIA HAND DELIVERY

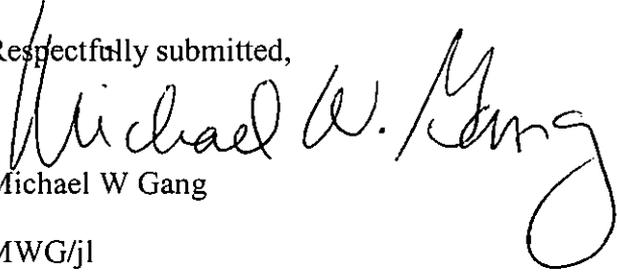
James J. McNulty, Secretary
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Commonwealth Keystone Building
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Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Duquesne Light Company - Docket No. R-00050662
Strategic Energy, L.L.C. v. Duquesne Light Company - Docket No. R-00050662C002

Dear Secretary McNulty:

Enclosed, for filing, are an original and three (3) copies of the Answer of Duquesne Light Company to the Motion of Strategic Energy, L.L.C. for Interim Decision in the above-referenced proceeding. Since Strategic Energy, L.L.C.'s Motion was served on each of the Commissioners, we are also providing a copy of the Answer to each Commissioner.

Respectfully submitted,


Michael W Gang

MWG/jl

Enclosures

c: Certificate of Service
Honorable Wendall Holland, Chairman
Honorable James H. Cawley, Vice-Chairman
Honorable William Shane, Commissioner
Honorable Kim Pizzingrilli, Commissioner
Honorable Terrance J. Fitzpatrick, Commissioner
Bohdan Pankiw, Esquire
Robert A. Rosenthal, Director, FUS

Harrisburg Philadelphia Washington New York Los Angeles San Francisco Miami Pittsburgh
Princeton Chicago Palo Alto Dallas Irvine Boston London Paris Brussels Frankfurt Tokyo

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission :
v. : Docket No. R-00050662

Duquesne Light Company

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Strategic Energy, L.L.C.

Docket No. R-00050662C0002

v.

Duquesne Light Company

DOCKETED
AUG 15 2005

**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE MOTION OF STRATEGIC ENERGY, L.L.C. FOR INTERIM DECISION**

Duquesne Light Company ("Duquesne"), by its undersigned counsel, files this Answer to Motion of Strategic Energy, L.L.C. ("Strategic") for Interim Decision ("Motion for Interim Decision" or "Motion"). Duquesne also requests that the Commission make an Interim Decision concerning charges to Duquesne's customers for recovery of SECA charges billed by PJM.

However, for the reasons expressed herein and in Duquesne's previously filed Answer to Strategic's Complaint, Duquesne requests that the Commission: (1) permit Duquesne's Rider 7 to become effective, subject to refund, to recover SECA charges received by Duquesne from PJM; and (2) reject Strategic's proposal to have Duquesne recover all SECA transmission charges imposed by PJM on both Duquesne and the electric generation suppliers ("EGSs") via a rider to Duquesne's distribution rates.

Under Strategic's proposal Duquesne would impose an equal charge per kWh to all Duquesne's distribution customers, including both those who receive POLR supply and related transmission services from Duquesne and those who obtain electric supply and transmission services from EGSs. Under the Strategic proposal, Duquesne would reimburse EGSs for SECA costs being billed to them by the PJM Interconnection, Inc. ("PJM"), the FERC-approved

regional transmission operator. It is to be emphasized that the sole source of concern for Strategic in this proceeding is the allocation of SECA charges by PJM among load serving entities in the Duquesne zone. The critical errors of Strategic's proposal are: (1) that the SECA charges, including the allocations of these charges among load serving entities, are set forth in compliance filings of PJM for its open access transmission tariff ("OATT") that have been accepted by the FERC; (2) that all of the transmission charges imposed under PJM's OATT are subject to the exclusive jurisdiction of the FERC. This Commission is preempted from reallocating SECA transmission charges from PJM among load serving entities in the Duquesne zone.

The relief which Strategic seeks from the allegedly discriminatory and anticompetitive allocation of SECA charges within the Duquesne zone can be granted by the FERC and, indeed, Strategic has acknowledged in its complaint that it has challenged the allocation before the FERC. In this regard it is critical to note that, if Strategic is successful before the FERC in challenging the sub-zonal allocation of SECA charges from PJM, Duquesne's proposed Rider 7 will insure that *Duquesne's POLR customers* pay no more and no less than the level of SECA charges that Duquesne incurs on their behalf. If, following reallocation, a greater amount of SECA charges are allocated to Duquesne, then Rider 7 will be applied for a longer period of time until Duquesne fully recovers SECA charges imposed upon it by PJM under its OATT, and, under these circumstances, the EGSs will receive refunds from PJM. If, on the other hand, following any reallocation by the FERC, Duquesne is billed a lesser amount than anticipated by PJM, Duquesne will cease charging Rider 7 earlier than anticipated or will make refunds to customers, as provided for in Rider 7. The fact that Rider 7 is fully reconcilable means that Duquesne's POLR customers will be treated fairly and in a manner consistent with the FERC

allocation of sub-zonal SECA charges within the Duquesne zone, either as presently accepted by the FERC or as subsequently amended by the FERC. Since Strategic can obtain the relief it requests at FERC, Strategic's attempts to have Duquesne's ratepayers pay Strategic's SECA transmission charges as a Rider to Duquesne's distribution rates is nothing more than an invitation for the Commission to attempt to override the allocation decision of FERC. The Commission is preempted by the exclusive federal jurisdiction of FERC from granting this relief.

Strategic attempts to avoid the preemption issue by citing certain cases where appellate courts have stated that allocation and recovery of costs imposed by entities subject to FERC's jurisdiction from a utility's customers is a matter of state law. The difference between those cases and this case, however, which Strategic does not acknowledge, much less address, is that those cases relate to allocations and recovery of federal costs among classes of retail customers of a particular utility. They do not involve reallocations of costs from one wholesale customer of a FERC jurisdictional entity to another. The costs which Strategic would have Duquesne recover for Strategic's benefit are costs being billed to Strategic by PJM under federal authority. They are not costs being billed to Duquesne. Duquesne acknowledges that the question of allocation and recovery of *costs billed to Duquesne* from Duquesne's customers is a matter subject to this Commission's jurisdiction. However, this Commission cannot require Duquesne to recover costs charged to another entity for the purpose of overturning FERC's allocation of costs between Duquesne and the EGSs. Reallocations of costs between Strategic and Duquesne are federal matters and are not subject to this Commission's jurisdiction.¹

¹ For example, *Arkansas Power & Light Co. v. Missouri P.S.C.*, 829 F.2d 1444 (8th Cir. 1978), dealt solely with the timing of retail rate recovery of FERC-approved costs. No party challenged the right to recover FERC-approved costs or sought to reallocate those costs. Similarly, in *National Fuel Gas Distribution Corporation v. Pa. P.U.C.*, 587 A.2d 54 (Pa. Cmwlth. 1991), the issue was retail rate recovery of FERC-approved take-or-pay costs

This distinction also applies to Duquesne's proposed RTO surcharge to which Strategic refers at pages 4-5 of its Motion. The charges which Duquesne sought to recover in that proceeding were charges that were being incurred by Duquesne, not charges that were being incurred by other load serving entities such as Strategic. That is, Duquesne merely sought to recover its own costs from its customers in a manner that was fair and appropriate.²

Strategic also tries to avoid holdings that federal allocations of costs are preempted from state authority by blurring the bright lines of unbundling under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Ch. 28. As explained in Duquesne's Answer to Strategic's Complaint, the rates of electric distribution companies ("EDCs"), like Duquesne, must be unbundled into three separate categories: (1) generation supply, (2) transmission and (3) distribution. As set forth in Duquesne's tariff, as unbundling has been implemented in Pennsylvania, Duquesne charges POLR customers rates for generation, transmission and distribution services. Other customers, however, must purchase both generation and transmission services from EGSs. Duquesne provides only distribution services to customers of EGSs and charges only distribution rates to those customers.³

Strategic's proposal would alter this fundamental approach to unbundling of rates and restructuring of electric services in Pennsylvania. Strategic would isolate one subcomponent of transmission costs, SECA charges, and make Duquesne responsible for recovering all SECA

charged to National Fuel. The PUC held, and the Commonwealth Court affirmed, that these costs were not gas costs and could not be recovered under Section 1307(f), but instead could only be recovered through a base rate mechanism. Neither of these cases involved any effort to second guess FERC-approved rates or cost allocations.

² Duquesne also notes that such proposal was ultimately withdrawn by Duquesne because it was no longer appropriate given changes in federal regulation of market rules. The Commission never made any final decision concerning Duquesne's proposed RTO surcharge. For these reasons, the situation related to Duquesne's RTO surcharge are significantly different than the present circumstances. Further, Duquesne's proposed RTO surcharge produced no precedent.

³ Although Duquesne's transmission facilities provide services to the EGSs, charges to the EGSs are pursuant to PJM OATT and subject to the exclusive jurisdiction of FERC.

charges to all load serving entities in the Duquesne zone from all distribution customers of Duquesne, regardless of whether they obtain generation and transmission services from Duquesne. This approach is fundamentally contrary to unbundling in Pennsylvania in which electric distribution companies like Duquesne recover only distribution costs from customers who obtain generation and transmission services from EGSs. Further, Strategic would make its recovery of one component of transmission costs, SECA charges, subject to regulation. The entire approach to restructuring, however, has been that generation and transmission services provided to customers by EGSs are not subject to regulation and are subject, instead, to private contracts.

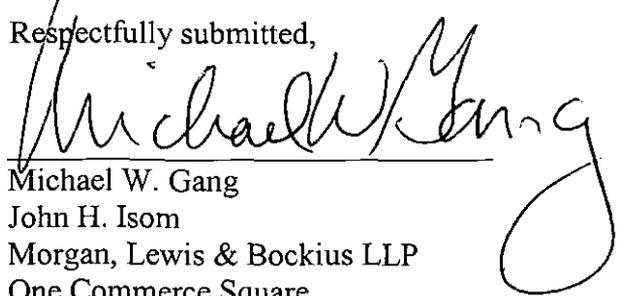
The recovery of transmission charges to EGSs via Duquesne's distribution rate is more than a technical violation of the unbundling provisions of the Competition Act. It would violate the very heart of the Competition Act. Customers and EGSs have made contracts which place the risk of changes in transmission rates on one party or the other or share those risks. If the Commission were to direct recovery of the EGS's SECA costs via Duquesne's distribution rates, the Commission would be interfering with those contractual arrangements in a manner not intended, and arguably contrary to, the Competition Act.

The sole reason offered by Strategic for such extraordinary abandonment of fundamental approaches to unbundling and restructuring is that the federal allocation of SECA charges within the Duquesne zone is "unlawful and unreasonable." See Strategic's Motion, pp. 2-6. Strategic claims that it has established a prima facie case that Duquesne's Rider 7 is "unlawful and unreasonable." Such contention is without basis. Strategic's conclusion is based upon contentions in its Complaint that the allocation of SECA charges within the Duquesne zone affects different load serving entities differently. That much is true. Strategic has failed,

however, to give any explanation that the allocation is in any way improper, flawed or unreasonably discriminatory as those terms are used in the law. Clearly, mere differences in allocations are not necessarily unreasonably discriminatory. Otherwise, each utility would have only one set of rates which would apply to all customers. Further, although these are issues to be decided solely by the FERC, the allocation of SECA charges within the Duquesne zone merely implement and carry out principles that FERC has established in its various orders governing SECAs among load serving entities on the PJM.

WHEREFORE, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission issue an interim decision and permit Duquesne Light Company's Rider 7, as set forth in Supplement No. 28 to Tariff Electric – Pa. P.U.C. No. 23 to become effective, subject to refund, at the earliest practical date.

Respectfully submitted,



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Date: August 12, 2005

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Answer Duquesne Light Company to the Motion of Strategic Energy, L.L.C. for Interim Decision" 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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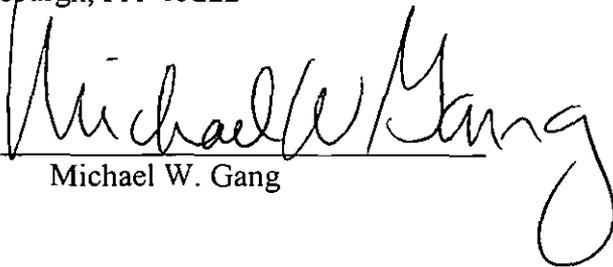
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Date: August 12, 2005



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August 15, 2005

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DOCUMENT
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Re: Pennsylvania Public Utility Commission v. Duquesne Light Company; Docket No. R-00050662; Strategic Energy LLC v. Duquesne Light Company; Docket No. R-00050662C0002; **ANSWER OF DOMINION RETAIL INC. IN SUPPORT OF MOTION FOR INTERIM DECISION**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Answer of Dominion Retail Inc. in Support of Motion for Interim Decision regarding the above-captioned matter.

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

Very truly yours,



Todd S. Stewart
Counsel for Dominion Retail Inc.

TSS/tar
Enclosures

cc: Honorable Wendell F. Holland, Chairman
Honorable James H. Cawley, Vice Chairman
Honorable William R. Shane, Commissioner
Honorable Kim Pizzingrilli, Commissioner
Honorable Terence J. Fitzpatrick, Commissioner

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission	:	
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Complainant	:	Docket No. R-00050662
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v.	:	
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Duquesne Light Company	:	
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Complainant	:	Docket No. R-00050662C0002
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v.	:	
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Duquesne Light Company	:	

DOCUMENT
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ANSWER OF
DOMINION RETAIL INC.
IN SUPPORT OF MOTION FOR
INTERIM DECISION

DOCKETED
AUG 22 2005

Pursuant to 52 Pa. Code § 103(c), Dominion Retail Inc. ("Dominion") hereby answers the Motion of Strategic Energy, LLC ("Strategic") for Interim Decision in the above-captioned matter.

Background

On or about June 17, 2005, Duquesne Light Company ("Duquesne") filed Tariff Supplement No. 28, which proposes to add "Rider 7-SECA Charge." By this filing, Duquesne seeks authority to recover Seams Elimination Charge Adjustments ("SECA") billed to Duquesne by PJM Interconnection, Inc. ("PJM").

On or about July 28, 2005, Strategic filed a Complaint in this matter alleging that Duquesne's proposed SECA charge is unreasonably discriminatory in violation of 66 Pa. C.S. §

1304 and inconsistent with the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 *et seq.*, and that if permitted to become effective, Rider 7 would seriously threaten the “continued viability of the retail competition in the Duquesne zone.” Also on July 28, 2005, Dominion filed a Petition to Intervene in this matter in opposition to Duquesne’s Tariff filing.

On August 2, 2005, Duquesne filed an Answer to Strategic’s Complaint, in which it argues, among other things, that the Public Utility Commission (“Commission”) does not have jurisdiction to consider Strategic’s proposed collection mechanism for collection of the SECA charges. This position appears to be contrary to the Position taken by Duquesne in its own filing seeking Commission approval of its proposed collection mechanism. The main thrust of Duquesne’s argument appears to be that the Commission cannot require Duquesne to collect the SECA charges from all customers if Duquesne does not “agree” to do so.

On August 5, 2005, Duquesne filed an Answer to the Petition of Dominion to Intervene in this matter. Duquesne’s Answer opposes Dominion’s intervention for the same reasons it opposes Strategic’s Complaint. Also on August 5, 2005, Strategic filed a Motion for Interim Decision. Strategic’s Motion states emphatically that Duquesne’s Rider 7 should not be permitted to become effective on even an interim basis. Nonetheless, Strategic recognizes Duquesne may be prejudiced by any delay in the recovery of seams charges from end users and, therefore, proposes a tariff supplement designed to recover, subject to reconciliation the full amount of SECA liabilities through a non-bypassable charge to all distribution customers for the 15 month period that SECA charges were proposed to be imposed. Strategic contends that such an approach would avoid the adverse anti-competitive affects of Duquesne’s proposal. For many

of the same reasons stated by Strategic in support of its Motion, Duquesne's argument that these actions before the Commission are impermissible are incorrect.

On August 9, 2005, Duquesne filed Supplement 31 to its Tariff, which postpones the effective date of Rider 7 until August 26, 2005.

Answer

1. Need for Interim Order

Dominion agrees with Strategic's statement that, unless the Commission affirmatively acts before August 26, 2005 to reject or suspend Rider 7, the Rider will become effective to the detriment of all EGSs operating on Duquesne's system. Dominion believes that the contentions raised in this matter are far too serious, and potentially negative for the only arguably competitive electricity market in Pennsylvania, to allow Duquesne the presumption that its proposed Rider 7 is a legal, or even rational, means of collecting SECA charges. Accordingly, Dominion agrees that an Interim Order allowing for what is clearly the only fair and presumptively legal means of collecting those charges is needed until the Commission has had an opportunity to review and decide upon a fully developed record in this matter.

2. Duquesne's Proposal is Unlawful and Unreasonable.

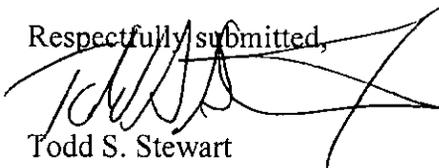
Dominion agrees with Strategic's view that this Commission has the authority to examine retail rate discrimination complaints and competitive unfairness claims. Dominion likewise DENIES Duquesne's contention that any examination of the collection of these rates necessarily involves taking jurisdiction over FERC's SECA allocation. Rather, Dominion submits that this Commission can determine an appropriate collection mechanism for customers in the Duquesne Zone as a whole, without adjudicating the appropriate level of such allocation to the individual market participants. This Commission clearly is not preempted from examining the manner in

which FERC allocated costs are recovered in retail rates. Moreover, the Commission is neither preempted from preventing retail rate discrimination,¹ which would be but one certain negative effect of Rider 7, nor is it preempted from preventing competitive unfairness of the sort that Rider 7 will allow.² Finally, Duquesne's contention that the Commission cannot order Duquesne to implement the relief sought by Strategic's Motion unless Duquesne "agrees" to it is without merit. The Commission has the clear authority under the Public Utility Code to fix just and reasonable rates, regardless of utility agreement.³ In short, Duquesne's contentions, raised in almost identical fashion in response to both Strategic's Complaint and Dominion's Petition to Intervene, are without merit and must be rejected.

Conclusion

Dominion supports the suspension of Rider 7 and the holding of hearings to develop a complete record, which it is confident will show that the negative impacts of Rider 7 far outweigh any harms that would be caused by its immediate suspension. However, so as not to prejudice to the expeditious recovery of SECA related charges, Dominion believes that some interim mechanism may be appropriate, and therefore supports the implementation of a mechanism such as the one proposed by Strategic.

Respectfully submitted,


Todd S. Stewart
Counsel for Dominion Retail Inc.

Dated: August 15, 2005

¹ 66 Pa. C.S. § 1304.

² 66 Pa. C.S. § 2804(6).

³ 66 Pa. C.S. §§ 1308, 1309.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons named:

Service By First Class Mail:

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Assistant General Counsel
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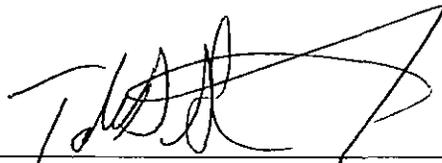
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ORIGINAL

August 24, 2005

VIA HAND DELIVERY

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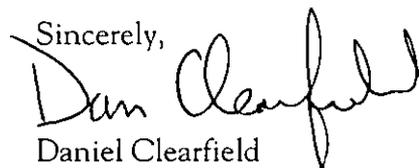
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SECRETARY'S BUREAU

Re: PA Public Utility Commission v. Duquesne Light
Company; Docket No. R-00050662C001-C003

Dear Secretary McNulty:

Enclosed please find the original and three copies of Strategic Energy L.L.C.'s Answer to Duquesne Industrial Intervenors' Petition to Intervene for filing in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

Sincerely,

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/jls

Enclosures

cc: Certificate of Service (w/enc)
Hon. Wendell Holland, Chairman
Hon. James Cawley, Vice-Chairman
Hon. William Shane, Commissioner
Hon. Kim Pizingrilli, Commissioner
Hon. Terrance Fitzpatrick, Commissioner
Bohdan Pankiw, Esquire
Robert A. Rosenthal, Director, FUS

HAR:60756.1/STR163-230273

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Strategic Energy L.L.C.'s Answer to Duquesne Industrial Intervenors' Petition to Intervene upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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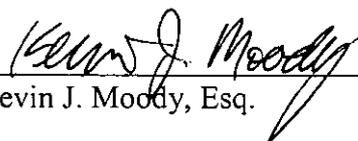
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Date: August 24, 2005


Kevin J. Moody, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Duquesne Light Company

Docket No. R-00050662C001-C003

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ANSWER OF STRATEGIC ENERGY, L.L.C. TO DUQUESNE INDUSTRIAL
INTERVENORS' PETITION TO INTERVENE

Strategic Energy, L.L.C. ("Strategic") hereby responds to the Petition to Intervene filed by Duquesne Industrial Intervenors ("DII"). While Strategic does not oppose DII's intervention *per se*, it takes strong issue with DII's suggestion that Strategic's proposal to permit the collection of FERC allocated Seams Elimination Charge Adjustment ("SECA") charges associated with 2002-03 delivered power in the Duquesne Zone to be collected through a levelized charge to all distribution/transmission customers is somehow illegal, unauthorized or unfair. DII's filing, and this answer, further supports the need to either reject the Duquesne approach in favor of Strategic's interim proposal or, at minimum, convene workshops or another mechanism to attempt to find a fair, reasonable and pro-competitive solution to an issue that threatens the entire Duquesne competitive market.

As to DII's opposition, as set forth in its petition, DII has apparently overlooked provisions of the Electric Competition Act that specifically require the Commission to:

require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution services to all retail electric customers in their service territory into electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated on rates, terms of

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access and conditions that are comparable to the utility's own use of its system.¹

Regardless of the manner in which FERC has mandated the Duquesne Zone SECA charges to be assigned, state law requires that the use of distribution and transmission facilities be charged on an equal basis to all users. Thus, far from being consistent with the Electric Competition Act, Strategic's proposal is the only one that follows the requirements of the Act as established by the General Assembly. The Commission recently concluded that a uniform, levelized rate on all distribution/transmission customers to recover PJM charges is consistent with Section 2804(6) and appropriate to avoid the significant volatility in rates that would have resulted from the alternative proposals.² The Commission concluded that the uniform rate would be easier for customers to understand and would promote the competitive retail market, as Strategic's interim proposal in this matter would.³ The Commission specifically rejected the argument that Section 2804(6) required the Commission to specifically track PJM wholesale transmission rates for particular customers into retail rate design, as Duquesne's proposed Rider 7 would.⁴

Strategic's interim proposal is also fully consistent with Duquesne's proposal in 2003 to recover ACAP charges for all EGSs in PJM West,⁵ and is particularly appropriate as a retail

¹ 66 Pa. C.S. § 2804(6).

² *Pa.P.U.C., et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, R-00049255C0001-20, Order entered December 22, 2004 at 76, 78 at 76-78, Reconsideration Order entered April 1, 2005 at 11-12.

³ *Id.*, Order entered December 22, 2004 at 76, 78.

⁴ *Id.*, Reconsideration Order entered April 1, 2005 at 8, 11-12.

⁵ Strategic Motion for Interim Decision at 4-5 (citing *Duquesne Light Company Petition for Approval of Plan for Post-Transition Period POLR Service*, Docket No. R-00974104, Duquesne Petition at 24; 10-11. The fact that the Commission did not approve

recovery mechanism at this time given the widely varying SECA liabilities among EGSs under the current sub-zonal allocation and the uncertainty surrounding the ultimate SECA allocations to be determined by FERC. The customer dislocations and disruptions of the competitive retail market that would result from all Duquesne Zone LSEs recovering very different interim SECA liabilities from their current customers when their ultimate SECA liabilities (and Duquesne's as well) may not be finally determined for years is obvious and should not be permitted to occur.

DII's suggestions that Strategic is seeking to avoid the result that is mandated by the "competitive market" is way off the mark. The SECA charges at issue are completely removed from any charge that could be found in a competitive market. The SECA charges are being retroactively applied years after the triggering events – the use of transmission facilities to deliver power into the Duquesne Zone – have occurred. None of the subject EGSs or their customers ever knew that such charges were a potential at the time of entering into their contracts. Thus, the key element of a competitive market solution – knowing choices made by parties in an attempt to further their own economic best interests – is completely missing.⁶ Strategic's interim proposal seeks to put all retail customers in Duquesne's service territory on

Duquesne's proposal because Duquesne withdrew it does not negate the fact that Duquesne believed its proposal was consistent with and authorized by the Public Utility Code.

⁶ However, it must be made absolutely clear that this matter has nothing to do with whether a particular EGS may recover SECA charges from its customers. Generally, such charges are recoverable, but that is not the issue here.

equal footing for payment of the total Duquesne Zone SECA liability as ultimately determined, and is not a request for the Commission to assist Strategic in recovering its current, interim SECA liability from its current customers.

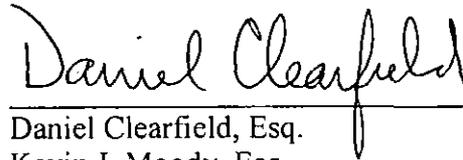
At bottom, it appears that DII does not like Strategic's proposal because its members are either on Duquesne's POLR service, hope to move back to POLR service⁷ and/or are with a new EGS currently using the transmission system but not being disproportionately penalized by the sub-zonal SECA allocation for being a trailblazer EGS. DII's attempt to avoid a fair and equitable allocation of the overall SECA liability of Duquesne Zone retail customers should not dissuade the Commission from taking action today to preserve the competitive retail market in Duquesne's service territory. The recovery of these SECA charges from Duquesne's distribution customers under Strategic's interim proposal does not transform the retail recovery mechanism into a "distribution charge" for the recovery of "distribution costs."

At the very least, the Commission should suspend Duquesne's filing and order workshops to determine whether a fair and amicable resolution is possible.

⁷ DII's petition does not state whether its members are on Duquesne's POLR supply or EGS supply.

WHEREFORE, Strategic Energy, L.L.C. respectfully request the Commission grant Duquesne Industrial Intervenors' intervention in the above captioned proceeding but dismiss its objections to Strategic's SECA recovery proposal and adopt Strategic's interim rate recovery proposal instead.

Respectfully submitted,



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213 Market Street, 9th Floor
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Date: August 24, 2005

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

Pennsylvania Public Utility
Commission, Office of Small
Business Advocate, Office of Small
Business Advocated, Strategic
Energy, LLC

PUBLIC MEETING August 25, 2005

AUG-2005-FUS-1035

R R-00050662

v.

Duquesne Light Company

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STATEMENT OF
VICE CHAIRMAN JAMES H. CAWLEY

Before us for consideration is Duquesne Light Company's ("Duquesne") file Supplement No. 28 to Tariff Electric - Pa. P.U.C. No. 23 that seeks to allow Duquesne to charge customers for the PJM Interconnect, LLC ("PJM") charges associated with the Seams Elimination Charge Adjustment ("SECA").

While Duquesne's proposal to collect its PJM SECA charges from its default service customers is reasonable, the concerns raised by Strategic Energy LLC and Dominion Retail Inc. relative to the allocation mechanism filed at FERC in Docket ER05-06-026 cannot be ignored. Specifically, the allocation methodology, apparently uniquely proposed by Duquesne, for the allocation of SECA charges to Load Serving Entities in the Duquesne control area, may negatively impact the developing competitive retail market in Duquesne's service territory. It is imperative that this Commission closely monitor proceedings before the FERC to ensure that competitive retail markets are not unnecessarily negatively affected by proceedings before the FERC.

Because this Commission has an active interest in the outcome of this FERC proceeding, it has intervened in this FERC docket.

August 25, 2005
DATE


James H. Cawley, Vice Chairman

FD
