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File #: 161587

July 21, 2015

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Dear Secretary Chiavetta:

Enclosed please find the Answer of Duquesne Light Company to the Motion of Whemco-Steel Castings, Inc. for Summary Judgment in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr  
Enclosure

cc: Honorable Jeffrey Watson  
Certificate of Service

**CERTIFICATE OF SERVICE  
(Docket No. C-2014-2459527)**

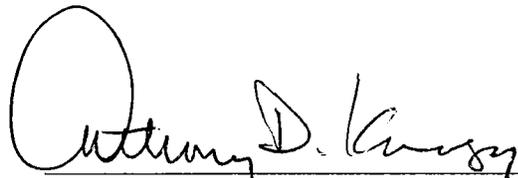
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL and FIRST CLASS MAIL**

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Date: July 21, 2015

  
Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whemco-Steel Castings, Inc.	:	
	:	
v.	:	Docket No. C-2014-2459527
	:	
Duquesne Light Company	:	

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**ANSWER OF DUQUESNE LIGHT COMPANY TO  
MOTION OF WHEMCO-STEEL CASTINGS, INC.  
FOR SUMMARY JUDGMENT**

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**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

**I. INTRODUCTION**

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files this Answer to the Motion of Whemco-Steel Castings, Inc. (“Whemco”) for Summary Judgment pursuant to Section 5.102(b) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102(b). Whemco is not entitled to Summary Judgment because there are material facts in dispute regarding the sufficiency of notice provided by Duquesne Light regarding the elimination of Rider No. 5 – Time of Day Discounts. Whemco has provided an Affidavit of Pamela C. Polacek in support of its Motion. The Polacek Affidavit raises substantial factual questions regarding why Ms. Polacek, an attorney who has represented Whemco, did not discern from her review of the tariff provided with Duquesne Light’s default service filing at Docket No. P-20072247 as Exhibit NJDK-3 that Duquesne Light was proposing to eliminate Rider No. 5 – Time of Day Discounts for all customers. Duquesne Light has outstanding discovery questions to Whemco regarding the averments contained in the Polacek

Affidavit and should be permitted to cross-examine Ms. Polacek and present evidence with regard to these factual issues.

There are also material disputed factual issues regarding whether it was appropriate to make a distribution rate change in a default service proceeding. Ms. Polacek and Whemco argue that retail electric customers would not expect that changes to distribution rates would be made in a default service proceeding. However, parties have proposed and the Commission has approved non-generation rate changes in default service proceedings and other non-base rate proceedings. This is a disputed factual issue, and Duquesne Light should be permitted to cross-examine Ms. Polacek and present evidence regarding this disputed issue.

In addition, as explained herein, Duquesne Light's notice regarding the elimination of Rider No. 5 was sufficient, such that even if there was a question as to the extent of the elimination of Rider No. 5, Whemco and its attorneys should have investigated this issue. It must be emphasized that a utility is not required to provide actual notice of tariff changes to customers. Constructive notice is sufficient where a party has the opportunity to review the tariff changes. Whemco and its attorneys clearly had the opportunity to review both the pro forma tariff that was filed with the DSP IV proceeding and the tariff that was included in the DSP IV Compliance Filing, which both provided for the complete elimination of Rider No. 5 – Time of Day Discounts for all customer classes. These matters also raise factual issues and Duquesne Light must be permitted to cross examine the assertions of Ms. Polacek and Mr. Slingluff in their affidavits in support of Whemco's Motion which Duquesne Light disputes, and present evidence on these matters.

Moreover, even if it is determined that notice of the elimination of Rider No. 5 for all customer classes was insufficient, which Duquesne Light denies, Whemco is still not entitled to a

refund as a matter of law. The Commission has discretion whether to award refunds and Duquesne Light must be afforded the opportunity to present evidence that the Commission should exercise that discretion to deny Whemco's request for a refund for several reasons, including Whemco's substantial delay in filing its complaint and because Rider No. 5 – Time of Day Discounts for distribution service was properly eliminated for substantive reasons.

Finally, as explained in more detail in Duquesne Light's Motion for Partial Summary Judgment that was filed on July 1, 2015, the elimination of Rider No. 5 – Time of Day Discounts became a Commission-made rate on April 21, 2011 with the implementation of rates under Duquesne Light's 2010 base rate case at Docket No. R-2010-2179522. As explained in Duquesne's Motion, Commission-made rates are not subject to retroactive refund. The Commission-made rate doctrine limits the Commission's jurisdiction to award retroactive refunds under Section 1312 of the Public Utility Code. 66 Pa. C.S. § 1312. Therefore, Whemco is barred from receiving a refund associated with Rider No. 5 from April 21, 2011 through April 2014, which is the end of the time period which Whemco claims it is entitled to a refund. Therefore, Whemco's Motion for Summary Judgment is contrary to law and must be rejected.

For these reasons and as explained below, Whemco's Motion for Summary Judgment should be denied.

## **II. BACKGROUND**

Duquesne Light furnishes electric service to approximately 588,000 customers throughout its certificated service territory, which includes portions of Allegheny and Beaver Counties and encompasses approximately 817 square miles in western Pennsylvania. Duquesne Light is a "public utility" and an "electric distribution company" as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

Whemco is a Delaware corporation with industrial plants located in Midland and West Homestead, Pennsylvania. (Complaint ¶ 4.) Pertinent to the pending Complaint is Whemco's Midland plant ("Midland Facility"). The Midland Facility is a Large Commercial and Industrial ("Large C&I") customer located in Duquesne Light's service territory. (Complaint ¶¶ 6-11.) At all times material to the Complaint, the Midland Facility received electric distribution service from Duquesne Light. (Complaint ¶ 5.)

On December 23, 2014, Whemco filed the above-captioned Complaint. The subject of Whemco's Complaint are the rates Whemco paid for electric distribution service provided by Duquesne Light to Whemco's Midland Facility during the period of January 1, 2011 through April 2014. Specifically, Whemco alleges that it overpaid for electric distribution service provided to the Midland Facility during the period of January 1, 2011 through April 2014 as a result of the elimination of Rider No. 5 - Time of Day Discounts.

In the Complaint, Whemco alleges that the elimination of Rider No. 5 - Time of Day Discounts for all customer classes was unlawful and in violation of the Commission's DSP IV Order. *Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Docket No. P-00072247, Order approving Settlement Stipulations entered June 22, 2007 ("DSP IV Order"). Specifically, Whemco erroneously alleges that the Commission-approved elimination of Rider No. 5 was limited only to the Small Commercial and Industrial ("Small C&I") customers, and that Duquesne Light unlawfully eliminated Rider No. 5 and its distribution discounts for all customers, including for Large C&I customers such as Whemco's Midland Facility. Based on such contentions, Whemco claims that it has overpaid Duquesne Light for electric distribution service received by the

Midland Facility, and requests a refund of the amount allegedly overpaid for the period of January 1, 2011 through April 2014. (Complaint ¶¶ 34-40.)

On January 21, 2015, Duquesne Light filed an Answer and New Matter to the Complaint. In its Answer, Duquesne Light denied that the elimination of Rider No. 5 – Time of Day Discount was improper and denied that Whemco was entitled to any refunds. In its New Matter, the Company also explained that it filed a distribution rate case in 2010 and that former Rider No. 5 – Time of Day Discounts was completely eliminated for all customers in the proposed distribution rate case tariff that was filed with the Commission.

On February 10, 2015, Whemco filed a Reply to Duquesne Light’s New Matter.

A Prehearing Conference was held on May 7, 2015. At the Prehearing Conference, the Parties agreed to, and the ALJ approved, a date of July 1, 2015 for filing Motions for Summary Judgment.

On July 1, 2015, Duquesne Light filed a Motion for Partial Summary Judgment (“Duquesne Light Motion”). In the Duquesne Light Motion, Duquesne Light explained that it disagreed with all allegations that Whemco was entitled to a refund related to the elimination of Rider No. 5 – Time of Day Discounts. Duquesne Light further explained that Whemco’s request for relief was barred, in substantial part, by the Commission-made rates doctrine. The elimination and replacement of Rider No. 5 – Time of Day Discounts became a Commission-made rate effective April 21, 2011, with the effective date of rates under Duquesne Light’s 2010 base rate proceeding at Docket No. R-2010-2179522 (“2010 Base Rate Case”). Once fixed by final Commission Order, Commission-made rates may not be changed retroactively, but may only be changed prospectively. *Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 344, 338 (1942). When the Commission establishes Commission-made rates, the

Commission is acting in its quasi-legislative capacity, and it does not have jurisdiction or authority to retroactively repeal the rates. *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., et al.*, 284 U.S. 370, 387-389 (January 4, 1932). Moreover, if there is an error in setting Commission-made rates, the error can be fixed prospectively but not retroactively because the utility is entitled to rely on the quasi-legislative act of the Commission in setting the rates until they are charged prospectively. Therefore, Whemco is not entitled to a refund after April 11, 2011 under the Commission-made rates doctrine.<sup>1</sup> Duquesne Light also noted in its Motion that it disputes Whemco's request for refunds from January 1, 2011 to April 30, 2011.

On July 1, 2015, Whemco also filed a Motion for Summary Judgment ("Whemco Motion"). In the Whemco Motion, Whemco argues that it is entitled to summary judgment and a refund based upon rates it would have paid if Rider No. 5 would have existed for the period January 2011 through April 2014. The Whemco Motion is based upon Whemco's allegations that Rider No. 5 – Time of Day Discounts was improperly eliminated, allegedly without proper notice, for Large C&I customers.

As explained herein, Whemco's Motion should be denied for several reasons. First, there are material facts in dispute in this proceeding, including whether Whemco should have realized from reading the tariff that was attached to Duquesne Light's Default Service Filing that Rider No. 5 – Time of Day Discounts was being eliminated for all rate schedules. Second, while Duquesne Light's notice of the elimination of Rider No. 5 – Time of Day Discounts was arguably not perfect, it met the legal standards that have been set forth by the Commission. Third, even if Duquesne Light's notice is deemed to be insufficient, Whemco is not entitled to a

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<sup>1</sup> In its Complaint, Whemco argues that its Rider No. 5 issue was resolved on May 1, 2014 with the setting of new rates in Duquesne Light's 2013 base rate proceeding at Docket No. 2013-2372129. (Complaint ¶ 3.) Whemco filed its Complaint after the 2013 base rates became effective. Therefore, Whemco is not seeking any prospective relief for the time period after it filed its Complaint.

refund as a matter of law because the Commission has discretion not to award a refund under Section 1312 of the Public Utility Code. In such event, the Commission should exercise its discretion not to award a refund because it was unreasonable to maintain a Time of Day discount for distribution service and because of Whemco's substantial delay in filing a complaint. Whemco should not be permitted to sit on its hands and wait four years after Rider No. 5 was terminated and four years after Whemco had actual notice of such termination to file its Complaint. Finally, as explained in the Duquesne Light Motion, Whemco is barred from any refund after April 21, 2011 under the Commission-made rate doctrine.

### **III. STANDARD FOR JUDGMENT ON THE PLEADINGS**

Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for judgment on the pleadings:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answer to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to the material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1), (2).

In ruling on a Motion for Judgment on the Pleadings, the Commission must accept as true all well-pleaded facts that appear in the pleadings of the non-moving party and must examine all asserted facts in a light most favorable to the non-moving party. *McCauley v. Pennsylvania Electric Company*, Docket No. C-2010-2195962, 2011 Pa. PUC LEXIS 305, at [7] (October 17,

2011) citing *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Cmwlth. 1985) and *Monzo v. Commonwealth of PA, Dept. of Transportation*, 556 A.2d 493, 495 (Pa. Cmwlth. 1989). Judgment on the pleadings may not be granted if there are genuine issues of material fact, or if the moving party has not demonstrated it is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d); *Office of Consumer Advocate, Pennsylvania Utility Law Project, AARP Pennsylvania v. Verizon North, Inc.*, Docket No. C-20077916, 2008 Pa. PUC LEXIS 37, at [10] (May 19, 2008); *MCI WorldCom, Inc. as successor in interest to MFS Intelenet of Pennsylvania, Inc. v. Bell Atlantic-Pennsylvania, Inc.*, 2000 Pa. PUC LEXIS 68, at [12] (August 1, 2000).

As explained herein, Whemco has not met its burden to prove that it is entitled to judgment as a matter of law. Whemco has failed to show that there are no disputed issues as to material facts relevant to its Motion. In addition, Whemco's request for a refund should be denied on the merits. Therefore, Whemco's Motion for Summary Judgment should be denied.

#### IV. ARGUMENT

##### A. **Whemco Is Not Entitled To Summary Judgment Because There Are Material Facts In Dispute In This Proceeding.**

Whemco's Motion is based upon its argument that Duquesne Light failed to provide sufficient notice that Rider No. 5 – Time of Day Discounts was being eliminated for large customers in the DSP IV proceeding. (Whemco Motion, p. 2.) In support of this argument, Whemco attached to its Motion the affidavit of Pamela C. Polacek, Esquire, wherein Ms. Polacek states that she reviewed the DSP IV filing, including the supporting exhibits and testimony, and was not able to discern that Duquesne Light was seeking to terminate the Rider No. 5 distribution discount for Large C&I customers. (Whemco Motion, Appendix 2, ¶ 18.)

There are material facts in dispute in this proceeding regarding whether Ms. Polacek, or any other reviewer of the Duquesne Light's Default Service Petition, should have been able to

discern that Duquesne Light was proposing to eliminate Rider No. 5 – Time of Day Discounts for all customers. In its Motion, Whemco admits that the tariff that was attached to the DSP IV filing proposed that Rider No. 5 – Time of Day Discounts was being eliminated for all customers. (Whemco Motion, pp. 2, 19-20.) Whemco states that the tariff was the only reference to the elimination of Rider No. 5 for Large C&I customers. However, Whemco and Ms. Polacek fail to recognize that the tariff was the most important part of the DSP IV filing because, under controlling precedent, the tariff controls what rate can be charged. A utility can only charge the rates that are contained within its tariff. Section 1303 of the Public Utility Code provides as follows:

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto.

66 Pa. C.S. § 1303.

The Tariff that was provided with the DSP IV filing in Exhibit NJDK-3 indicated that Rider No. 5 was being eliminated for all customers and Whemco has admitted this fact. The first sentence of the text of Rider No. 5 stated as follows:

The availability and application of Rider No. 5 – Time of Day Discounts will terminate December 31, 2010.

See Appendix A hereto.

In addition, Rider No. 5 as provided in Exhibit NJDK-3 to the Default Service Petition did not contain any termination exclusions for any customer class or rate schedule. The termination of Rider No. 5 on December 31, 2010 applied to all rate schedules.

Because the tariff controls the rate that may be charged by a utility, review of the tariff would put any reasonable person on notice that the complete elimination of Rider 5 was

proposed in the DSP IV filing. If this was not enough, the Petition stated that Duquesne Light was proposing to phase out Rider No. 5, and the Company's direct testimony that was filed with the DSP IV proceeding stated that the Company proposed to completely eliminate Rider No. 5 effective January 1, 2010. (Appendix B, Petition, ¶ 18; Appendix C, Duquesne Light St. No. 4, p. 10.) While the statements in the Petition and the testimony were under the headings for Small C&I customers, the statements coupled with the language in the tariff should have put Whemco and/or its attorneys on notice to at least investigate whether the elimination of Rider No. 5 applied to all rate schedules.

While Duquesne Light believes that the tariff itself establishes proper notice and demands rejection of Whemco's Motion, at a minimum, the facts demonstrate that there is a material issue of fact related to the sufficiency of notice of the elimination of Rider No. 5 – Time of Day Discounts. In addition, Duquesne Light currently has outstanding discovery directed to Ms. Polacek to address these factual issues. A copy of these discovery questions is attached as Appendix D. In this regard, Ms. Polacek states in her affidavit that she reviewed the Default Services Petition and Exhibits. One of those exhibits was the previously explained tariff, Exhibit NJDK-3. Duquesne Light must be permitted to cross-examine Ms. Polacek to address these factual issues, and in particular, why she was not able to discern from the tariff that Duquesne Light was proposing to eliminate Rider No. 5 – Time of Day Discounts for all customers. The ability to cross-examine witnesses is a fundamental aspect of due process. *Murphy v. Commonwealth, Dep't of Education*, 460 A.2d 398, 401 1983 Pa. Commw. LEXIS 1662, \*10 (Pa. Cmwlth. 1983). If Whemco's Motion is granted without allowing Duquesne Light to cross-examine Ms. Polacek as to the statements that she is making regarding the elimination of Rider No. 5, Duquesne Light's due process rights will be denied.

Another material issue of disputed fact involves whether it was reasonable for Duquesne Light to eliminate Rider No. 5 – Time of Day Discounts in a default service proceeding. In its Motion, Whemco argues that it seeks a determination that Duquesne Light unlawfully terminated a distribution discount in a default service proceeding. (Whemco Motion, ¶ 2.) In the Polacek Affidavit, Ms. Polacek states that default service cases generally do not address distribution related rate and other matters. (Polacek Affidavit, ¶ 21.)

Duquesne Light disputes Whemco’s implications that default service proceedings do not properly address distribution rate related matters. In PECO’s 2014 default service proceeding, the Commission adopted PECO’s proposal to recover certain transmission service charges through a non-bypassable charge for all distribution customers. *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362, Order entered December 4, 2014, pp. 41, 46. Likewise, in the FirstEnergy Companies’ 2014 default service proceeding, the Commission authorized the FirstEnergy Companies to include a non-bypassable Default Service Supply Rider that recovered certain transmission costs from all distribution customers. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2013-2391368 et al., Order approving partial settlement entered July 24, 2014, pp. 13-23. Clearly, these cases illustrate that recovery of non-generation charges can be addressed in default service proceedings. Ms. Polacek’s affidavit raises factual questions as to the appropriate scope of default service proceedings. Duquesne Light must be permitted to respond with factual evidence as to why it was appropriate to remove such discounts in a default service proceeding.

Likewise, other parties have also raised non-bypassable rate change issues in default service proceedings. In PECO's 2012 default service proceeding, RESA proposed that PECO recover certain non-market based transmission charges through a non-bypassable rider applicable to shopping and non-shopping customers. *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641, 2012 Pa. PUC LEXIS 1465, \*85, Recommended Decision dated August 27, 2012. A similar proposal was made in PPL Electric Utilities' 2012 default service proceeding. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2302074, 2012 Pa. PUC LEXIS 1741, \*127, Recommended Decision dated November 9, 2012.

In addition, distribution rate issues have been addressed in other non-base rate proceedings. For example, PPL Electric Utilities Corporation and other EDCs made distribution rate changes in their restructuring proceedings. *Application of Pennsylvania Power & Light Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket No. R-00973954, Order entered August 27, 1998. In a later proceeding, PP&L Industrial Customer Alliance ("PPLICA") challenged distribution tariff changes that were made in the restructuring proceedings. The Commission held that the tariff changes were approved as part of the Settlement Agreement in the Restructuring Proceeding. *Petition of PP&L Industrial Customer Alliance for a Declaratory Order Prohibiting Implementation of Tariff Interpretation Change for Billing PP&L Rate Schedule IS-P and IS-T Customers, or in the Alternative, Formal Complaint*, Docket No. P-00001788, Public Meeting of June 2, 2005, Order affirmed by the Commonwealth Court; *PP&L Industrial Customer Alliance v. PA PUC*, Docket No. 1881 CD 2000, Opinion filed July 10, 2001. See Appendices E and F.

Moreover, as explained in Mr. Pfrommer's Affidavit, the elimination of Rider No. 5 – Time of Day Discounts was a continuation of the Company's efforts started in its restructuring proceeding and continued in the DSP III proceeding to eliminate legacy rate designs that existed with bundled distribution, generation and transmission rates. Appendix J, ¶ 13.

Duquesne Light disputes Whemco's allegation that distribution rate issues may not be addressed in default service proceedings. In addition, Duquesne Light requests the opportunity to cross-examine Whemco's witnesses, including Ms. Polacek, regarding this issue. This is another material fact in dispute in this proceeding, and therefore, Whemco's Motion should be denied.

**B. Duquesne Light Provided Sufficient Notice Of The Elimination Of Rider No. 5 – Time Of Day Discounts In The DSP IV Proceeding.**

A tariff is the most important aspect of any utility filing. As explained above, the tariff controls the rates that are charged by a utility, and a utility cannot charge any rate that is not set forth in its tariff. 66 Pa. C.S. § 1303.

The Commission has ruled that providing constructive notice of tariff changes is sufficient notice to customers. When a customer is provided the opportunity to review a tariff, the obligation is on the customer, in this case Whemco, to review the tariff and file a complaint if the customer disagrees with the tariff change. In *Charmin Paper Products*, the Commission stated as follows:

In summary, the Commission's tariff regulations do not require that PG&W give actual notice to Charmin of changes in the rules for priority and curtailment; availability of the notice in the PG&W's local office complies with existing Commission rules and Charmin has the statutory right, at any time, to complain against PG&W's tariff.

*Charmin Paper Products Company v. Pennsylvania Gas and Water Company*, Docket No. 21494, 1976 Pa. PUC LEXIS 14, \*12 (Order entered December 1, 1976).

Duquesne Light provided notice of the DSP IV filing to customers through a press release, newspaper publication and bill insert. See Duquesne Light DSP IV filing letter, Appendix G; *Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period January 1, 2008 through December 31, 2010*, Recommended Decision issued May 16, 2007, p. 2. The Commission also published notice of Duquesne Light's Petition in the Pennsylvania Bulletin on February 10, 2007. See Appendix H. In addition, the DSP IV filing was posted on the Company's website. See the Response to Whemco Set I-9 which is provided as Appendix I. Moreover, upon request, customers are permitted to review the Company's tariff filings at the Company's office. See Paragraph 21 of the Affidavit of William V. Pfrommer which is provided as Appendix J.

Parties clearly had notice of the DSP IV filing and the ability to review the filing. This meets the notice requirements for Petitions under the Commission's regulations, and Whemco had every opportunity to review the DSP IV filing and to intervene in that proceeding. Duquesne Light's notice of the elimination of Rider No. 5 was sufficient, and Whemco should not be permitted to challenge the elimination of Rider No. 5 eight years after the DSP IV filing.

In its Motion, Whemco argues that 52 Pa. Code § 53.51 requires utilities to provide 60 days notice to the public in advance of any tariff change and that Duquesne Light violated this regulation. (Motion, ¶ 34.) Duquesne Light did not violate this regulation. This regulation provides as follows:

Unless the Commission otherwise orders, a public utility to which this subchapter applies may not change an existing and duly established tariff, except after notice of 60 days to the public.

52 Pa. Code § 53.51.

Whemco fails to recognize that Duquesne Light provided the pro forma tariff with its default service filing and all parties had the opportunity to review it in the DSP IV proceeding, which lasted well over 60 days.

In addition, on June 21, 2007, the Commission ordered Duquesne Light to make a Compliance Filing that fully reflected the terms and conditions of the DSP IV settlement. Duquesne Light made its Compliance Filing on July 12, 2007 to become effective January 1, 2008. Duquesne Light made this Compliance Filing approximately 6 months in advance of the effective date, well more than 60 days, and no party objected to the Compliance Filing. The Compliance Filing was sent to all parties in the DSP IV proceeding, including Ms. Polacek, was available for review at the Commission, was available for review on the Company's website and was available for review at the Company's offices. See Appendix J, ¶¶ 20-21; also see Appendix F to Duquesne Light's Motion that was filed on July 1, 2015. Rider No. 5 that was included in the Compliance Filing was the same Rider No. 5 that was filed with the initial default service filing and, by its own terms, terminated Rider No. 5 for all rate schedules on December 31, 2010. In addition, the Commission approved the Company's Compliance Filing by Secretarial Letter dated January 16, 2008. A copy of this Secretarial Letter is provided as Appendix K.

Further, the Commission ordered Duquesne Light to make its Compliance Filing. See DSP IV Order, pp. 2-3. The 60 day requirement in 52 Pa. Code § 53.51 does not apply if the Commission orders a tariff filing.

Whemco also argues that Duquesne Light did not file the information that is required when making a tariff change under 52 Pa. Code § 53.52. Again, Whemco misstates the Commission's regulations. Utilities file the information listed under Section 53.52 when they are filing a tariff with an issued and effective date to become effective in 60 days' notice.

Duquesne Light filed a pro forma tariff with its DSP filing, as part of its DSP Petition. Duquesne Light met all of the notice requirements for filing a Petition. The Section 53.52 information is not required when filing a pro forma tariff with a Petition because the tariff does not become effective unless specifically approved by the Commission. If a tariff is filed to become effective on 60-days notice (not a pro forma tariff), the tariff becomes effective if the Commission does not act to suspend the tariff. In addition, parties had the opportunity to request the information that would be provided under Section 53.52 in the default service proceeding. For these reasons, the data filing requirements under Section 53.52 are not applicable to a pro forma tariff filing with a Petition.

Moreover, even if Section 53.52 did apply, the regulations provide that a tariff is deemed perfected if it is not rejected within 30 days of filing. Section 53.51(c)(2) provides as follows:

(2) Notwithstanding this subsection, if the Secretary fails to notify the sender within 30 days that a tariff or tariff supplement is not perfected because it is not accompanied by the required data, with deficiencies specifically set forth in the notice, the tariff or tariff supplement will be deemed perfected for filing purposes and will be filed as of the date it was first filed with the Commission.

52 Pa. Code § 53.51(c)(2).

The Commission did not reject the Company's tariff, either in the initial DSP IV filing or the Compliance Filing. Therefore, even if the tariff filing was deficient, which Duquesne Light denies, it was deemed perfected under the Commission's regulations.

For the reasons explained above, Duquesne Light did not violate the notice requirements contained in the Commission's regulations, and Whemco's arguments to the contrary should be denied.

**C. Even If Duquesne Light's Notice Was Insufficient, Whemco Is Not Entitled To A Refund As A Matter Of Law.**

**1. Whemco Is Barred From Recovering Refunds After April 21, 2011 Under The Commission-Made Rates Doctrine.**

In Duquesne Light's New Matter, it explained that on July 23, 2010, the Company filed a distribution rate case at Docket No. R-2010-2179522. The Company also explained that in the 2010 rate case, the Company proposed a new Rider No. 5 – Universal Service Charge. The Company followed all notice requirements when filing this distribution rate case, including providing bill inserts to customers. In addition, the current Rider No. 5 at that time included the language stating that Rider No. 5 – Time of Day Discounts would terminate on December 31, 2010. (Complaint, ¶ 73.) The effect of the 2010 base rate case was to make the elimination of Rider No. 5 – Time of Day Discounts a Commission-made rate.<sup>2</sup>

In the Duquesne Light Motion for Partial Summary Judgment that was filed on July 1, 2015, Duquesne Light explained that the elimination of Rider No. 5 – Time of Day Discounts became a Commission-made rate on April 21, 2011 with the effectiveness of rates in the Company's 2010 base rate proceeding. Duquesne Light's Motion for Partial Summary Judgment is incorporated by reference.

The Commission-made rate doctrine provides, among other things, that rates and tariff provisions, once fixed by final Commission order in a rate proceeding, may not be changed retroactively. *Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 334, 338 (1942). Commission-made rates and tariff provisions may be changed only prospectively and are not subject to the retroactive imposition of refunds. *Id.*; *West Penn Power Co. v. Pa. PUC*,

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<sup>2</sup> The Commission-made rate doctrine limits the Commission's power under Section 1312, and therefore, is a matter of jurisdiction.

100 A.2d 110, 114 (Pa. Super. 1953); *Peoples Natural Gas Co. v. Pa. PUC*, 34 A.2d 375 (Pa. Super. 1943).

The Commission-made rate doctrine is a limitation on the Commission's jurisdictional power to award refunds under Section 1312 of the Public Utility Code, 66 Pa.C.S. § 1312. *See, Toll Brothers, Inc. v. Pennsylvania-American Water Company*, Docket No. C-00934742, 1994 Pa. PUC LEXIS 122, \*32-33. Commission-made rates are not subject to retroactive refund because the Commission is acting in its quasi-legislative capacity when it sets the rates. *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., et al.*, 284 U.S. 370, 387-389 (January 4, 1932).

This long-standing principle has been followed by numerous courts. In *Cheltenham*, the Supreme Court of Pennsylvania stated as follows:

In acting under that authority the commission performed a quasi legislative function and its decision, **as in all rate cases**, is in effect an enactment which remains the law until it is changed by the legislature acting directly or through its agent the commission. (emphasis provided.)

*Cheltenham*, 344 Pa. 337. See also *West Penn Power Co. v. Pa. PUC*, 100 A.2d 110 (Pa. Super. Ct. 1953); *Peoples Natural Gas Co. v. Pa. PUC*, 34 A.2d 375, 387-388 (Pa. Super. Ct. 1943); *Toll Brothers, Inc. v. Pennsylvania-American Water Company*, Docket No. C-00934742, 1994 Pa. PUC LEXIS 122, \*32-33.

As explained in Duquesne Light's Motion, the elimination of Rider No. 5 - Time of Day Discounts became a Commission-made rate as of the April 21, 2011 effective date of Supplement No. 35. Accordingly, the rates set forth in Supplement No. 35, including the elimination of Rider No. 5, may be changed only prospectively and are not subject to the retroactive imposition of refunds. *Cheltenham, supra*. Therefore, the Commission cannot, as a matter of law, grant a retroactive refund of the rates paid since the April 21, 2011 effective date

of Supplement No. 35. Stated otherwise, Whemco's request for a refund for the period of April 21, 2011 through April 2014 is barred as a matter of law. In this regard, the Commission found that the rates established in the 2010 base rate case, which did not include Rider No. 5 – Time of Day Discounts, were just and reasonable "Commission-made rates." These rates are not subject to retroactive refund. Moreover, even if Whemco alleges that there were any deficiencies in establishing the Commission-made rates, which Duquesne Light denies, these alleged deficiencies can only be addressed prospectively, not retroactively, because a utility and its customers are entitled to rely on Commission-made rates until they are changed prospectively.

**2. Whemco Is Not Entitled To A Refund As A Matter Of Law Because The Commission Has Discretion Not to Award Refunds Under Section 1312 Of The Public Utility Code.**

In its Motion, Whemco argues that it is entitled, as a matter of law, to a refund of Rider No. 5 discounts from January 2011 through April 2014 if the Commission finds that Duquesne Light's notice was insufficient. Whemco's argument is incorrect, and its Motion for Summary Judgment should be denied because the Commission has discretion whether to award refunds or not to award refunds under Section 1312 of the Public Utility Code. 66 Pa. C.S. § 1312.

The case law is clear that refunds are not mandatory. In *Pa. P.U.C. v. Pennsylvania Gas and Water Company*, Docket No. C-80031919, 1982 Pa. PUC LEXIS 48, 56 Pa. P.U.C. 433, Order entered October 29, 1982 ("PG&W"), the Commission stated as follows:

The Staff and the OCA take the position that refunds are compelled by reason of the Court's decision in the Cheltenham case, *supra*. We disagree. In our view, the Court's decision in the Cheltenham case should not be construed to interpret Section 313(a) of the Public Utility Law, 66 P.S. § 1153(a) as mandating refunds. In our view, the Legislature conferred upon the Commission authority to order refunds, without specific guidance or limitation and therefore at its sound discretion. This conclusion is amply supported by the decisions in *Equitable Gas Co. v Pennsylvania Pub. Utility Commission (1954) 174 Pa Super Ct 450, 102 A2d 235; Magee Carpet Co. v Pennsylvania Pub. Utility*

Commission (1954) 174 Pa Super Ct 438, 102 A2d 229; and, Lancaster Ice Manufacturing Co. v Pennsylvania Pub. Utility Commission (1958) 185 Pa Super Ct 615, 22 PUR3d 187, 138 A2d 262, as well as numerous decisions from other jurisdictions. More specifically in Magee the Court said (174 Pa Super Ct at p. 449):

"We find nothing in the language of section 313(a) which makes it mandatory for the Commission to award refunds [\*27] under a defective fuel adjustment clause, although it has the 'power and authority' to do so."

Similarly in Equitable Gas Co. v Pennsylvania Pub. Utility Commission, supra, the Superior Court stated (174 Pa Super Ct at pp. 456, 457):

"To adopt the interpretation of sections 308(b) and 313(a) for which the Company argues would unduly limit the Commission in exercise of its administrative discretion and reduce rate making, especially in the matter of the effect of suspension on ultimate rates and refunds, to the application of a fixed mathematical formula. It is obvious that these sections should be construed as giving the Commission certain discretionary power within the limits of the statute. See City of Pittsburgh v Pennsylvania Public Utility Commission, supra, 171 Pa Super Ct 187, 96 PUR NS 161, 90 A2(1607; Magee Carpet Co. v Pennsylvania Pub. Utility Commission (1954) 174 Pa Super Ct 438, 102 A2d 229. This discretionary power is a necessary corollary of the Commission's function as a fact-finding and administrative body. Had there been an intention to limit the discretion of the Commission it would have been expressed. Cf. section 310(e) of the Public Utility Law [\*28] of 1937; 66 PS § 1150."

In Lancaster Ice Manufacturing Co. v Pennsylvania Pub. Utility Commission, supra, the Superior Court again held that (185 Pa Super Ct at p. 627, 22 PUR3d at p. 194):

"In reparations the Commission's jurisdiction is equitable in nature; Centre County Lime Co. v Pennsylvania Pub. Service Commission (1931) 103 Pa Super Ct 179, 157 Atl 815; Chambersburg Gas Co. v Pennsylvania Pub. Service Commission (1935) 120 Pa Super Ct 206, 14 PUR NS 106, 182 Atl 94; and the Commission is not without discretion in exercising its equitable powers: Magee Carpet Co. v Pennsylvania Pub. Service Commission (1954) 174 Pa Super Ct 438, 102 A2d 229."

(Section 313 is the predecessor to Section 1312, *See* Historical and Statutory notes to 66 Pa.C.S. § 1312.)

In addition, the Commonwealth Court has held that the Commission's ability to award refunds under Section 1312 of the Public Utility Code is discretionary. In *National Fuel Gas Distribution Corporation v. Pa. P.U.C.*, 76 Pa. Cmwlth. 102, 464 A.2d 546 (1983), the Commonwealth Court stated as follows:

Whether to require a refund under Code Section 1312 of monies previously collected by a utility is a matter charged by subsection (a) of that provision to the sound discretion of the Commission.

*National Fuel*, 76 Pa. Cmwlth. 102, 121, 464 A.2d 546, 555-556.

Even if the Commission was to find that Duquesne Light's notice was deficient, which Duquesne Light disagrees, Duquesne Light should still be permitted to present evidence why the Commission should exercise its discretion to deny Whemco's request for a refund. There are several reasons why in such circumstances, the Commission should deny Whemco's request for a refund. First, as explained in the Company's Answer to Whemco's Complaint and by Mr. Pfrommer in the DSP IV proceeding and in his attached Affidavit, Rider No. 5 – Time of Day discount was a legacy of pre-restructuring rate design when the Company owned generation. See Answer, ¶ 45; Appendix J, ¶ 10. In addition, Mr. Pfrommer explains in his Affidavit that Rider No. 5 – Time of Day Discounts was properly eliminated for substantive reasons because there is no cost-based justification for having different rates for distribution service at different times of the day. The Company's costs to provide distribution service do not change based upon the time of day the distribution service is provided and cost of service studies do not rely on the time of day as a factor in allocating costs to customer classes or rate schedules. See Appendix J, ¶¶ 14-17. The Commission should consider evidence as to the substantive reasons for

eliminating Rider No. 5 – Time of Day Discounts in deciding whether to award any refund to Whemco.<sup>3</sup>

In addition, the Commission should also consider Whemco’s substantial delay in filing its Complaint in deciding whether to award any refund to Whemco. Whemco knew, at the latest, in December 2010 that Rider No. 5 – Time of Day Discounts was being eliminated, the reason it was being eliminated, as well as the effect of the elimination on its monthly service bills. However, Whemco waited until December 2014, four years later, to file its Complaint. This delay is unacceptable, and Whemco should not be rewarded for waiting four years to file its Complaint, especially when there was no substantive reason for retaining Rider No. 5 – Time of Day Discounts. Duquesne Light is prejudiced by this delay because if the Commission had

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<sup>3</sup> In Whemco’s Brief in Opposition to Certification of a Discovery Ruling For Interlocutory Review, Whemco states that Duquesne Light’s argument that the Commission should exercise its discretion not to award Whemco a refund is an affirmative defense that should have been raised in Duquesne Light’s Answer and New Matter. This argument is not an affirmative defense, but simply a counter-argument to Whemco’s argument that it is entitled to refunds as a matter of law under Section 1312. Whemco is not entitled to refunds as a matter of law under Section 1312 because the Commission has discretion not to award refunds. In addition, Duquesne Light included an explanation of why Rider No. 5 – Time of Day Discounts should have been eliminated for substantive reasons in its Answer. In Paragraph No. 45, the Company stated:

“The Time of Day Discount was a legacy of pre-restructuring rate design when the company owned generation and distribution; transmission and generation rates were bundled. The Time of Day Discount was not justified as applied to distribution rates, and the Commission appropriately approved the elimination of this pre-restructuring rate design.”

In addition, the Rules of Civil Procedure provide the following examples of Affirmative Defenses: accord and satisfaction, arbitration and award, consent, discharge in bankruptcy, duress, estoppel, failure of consideration, fair comment, fraud, illegality, immunity from suit, impossibility of performance, justification, laches, license, payment, privilege, release, res judicata, statute of frauds, statute of limitations, truth and waiver. Rule 1030. An argument that the Commission should exercise its discretion under Section 1312 is not similar to the affirmative defenses listed in Rule 1030, but is an argument in response to Whemco’s argument that it is entitled to refunds under Section 1312 as a matter of law. Moreover, the Commission’s regulations do not require that a party specifically list all defenses in a Complaint. Rather, the Commission’s regulations provide that an answer to a Complaint must advise the parties and the Commission as to the nature of the defense. 52 Pa. Code § 5.61. Duquesne Light advised the Commission and the Parties in its Complaint that it was disputing Whemco’s right to a refund and further explained the substantive reasons for eliminating Rider No. 5. This is sufficient notice of the nature of Duquesne Light’s defense under the Commission’s regulations.

determined in 2011 that notice was defective, Duquesne Light could have re-proposed eliminating Rider 5.

The Commission should also exercise its discretion not to award retroactive refunds to Whemco based upon its decision in *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-870832, 1991 Pa. PUC LEXIS 165, Order entered September 30, 1991. In *Columbia*, parties argued that the Commission should require Columbia to issue refunds for standby charges that were inappropriately applied to schools under Columbia's tariff. The parties argued that Columbia had failed to advise the Commission and customers that schools would be expected to take standby service to be eligible for transportation service. The parties further argued that Columbia should refund standby charges to schools from November 1989, which was shortly after the tariff was approved in September 1989.

The Commission found that Columbia had improperly included schools in the class of transportation customers that were required to purchase standby service. Columbia at \*13. However, the Commission did not require Columbia to issue refunds back to the date that the tariff became effective. Rather, the Commission required Columbia to issue refunds starting from the date that the Commission opened its investigation, stating as follows:

Under Section 1312 we will exercise our discretion to order refunds for the period March 23, 1990 to the present. This time period corresponds to the date on which the Order reopening the investigation into Columbia's tariff was entered. With the entry of the Order, all parties were noticed that the applicability of the tariff to non-residential schools was under review and could be subject to revision as a result of the investigation.

*Id.*

If the *Columbia* holding is applied in this case, Whemco would not be entitled to refunds until after it filed its Complaint in December 2014.<sup>4</sup> This effectively denies Whemco's request for a refund because Whemco has not requested relief after the effective date of rates in Duquesne Light's 2013 base rate proceeding. (Whemco Complaint, ¶ 3.)

**D. The Elimination Of Rider No. 5 – Time Of Day Discounts Was Authorized Under The DSP IV Settlement Stipulation.**

In its Motion, Whemco argues that the DSP IV Settlement Stipulation did not authorize the elimination of Rider No. 5 – Time of Day discounts for Rate L customers. (Whemco Motion, ¶ 39.) Whemco admits that the tariff included in the DSP IV Petition proposed to eliminate Rider No. 5 – Time of Day discounts for all customers, including Rate L. (Whemco Motion ¶ 48.) However, Whemco argues that the Rebuttal Testimony and Settlement Stipulation did not specifically reference the elimination of Rider No. 5 for Large C&I customers, and therefore, the elimination was improper. (Whemco Motion, pp. 20-21.)

Whemco's argument that the Settlement Stipulation did not authorize elimination of Rider No. 5 for all customer rate schedules is incorrect and should be denied. As an initial matter, the pro forma tariff that was included with the initial DSP IV filing as Exhibit NJDK-3 was not contested by any party in the proceeding and contained the same exact tariff that was included in the Compliance Filing. In addition, the General Stipulation provided as follows:

7. TARIFF MODIFICATIONS

Duquesne Light is authorized to implement the changes to its Tariff Electric Pa. P.U.C. No. 24 that are reflected in Exhibit NJDK-3 of Duquesne St. No. 5 except that the tariff will be further modified to reflect the changes that are required by this stipulation.

See Appendix E to Duquesne Light's Motion filed on July 1, 2015.

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<sup>4</sup> This is also consistent with the Commission-made rate doctrine which is discussed below, which bars retroactive refund of Commission-made rates.

Exhibit NJDK-3 reflected the elimination of Rider No. 5 – Time of Day Discounts for all customer rate schedules including Rate L. No party in the DSP IV proceeding challenged the elimination of Rider No. 5 – Time of Day Discounts for any rate schedule, and the Stipulation did not require any changes to Rider No. 5. See Appendix J, ¶¶ 18-19. Moreover, there were two customers that were taking service under Rate L and Rider 5 that were represented by counsel in the DSP IV proceeding, and these customers did not complain about the elimination of Rider No. 5. See Appendix K, which contains the responses to Whemco discovery, Set I, questions 1 and 3 and Appendix J, ¶¶ 18-19. For the reasons explained above, the elimination of Rider No. 5 – Time of Day Discounts was authorized by the Stipulation.

Further, Duquesne Light included the same Rider No. 5, which by its own terms eliminated Rider No. 5 – Time of Day Discounts for all customer classes, in its Compliance Filing on July 12, 2007 to become effective almost 6 months later on January 1, 2008. This tariff was served on all Parties to the DSP IV proceeding. See Appendix G to Duquesne Light's Motion that was filed on July 1, 2015. Parties and customers had nearly 6 full months to review the tariff included in the Compliance Filing and file a Complaint before the tariff became effective or to argue that the Compliance Filing tariff should not have eliminated Rider No. 5 – Time of Day Discounts for Rate L customers. No party objected to the Compliance Filing, including Duquesne Industrial Intervenors, who was represented by Ms. Polacek. The Commission approved the Compliance Filing, including the elimination of Rider No. 5 – Time of Day Discounts for all rate schedules, including Rate Schedule L, by Secretarial Letter dated January 16, 2008. See Appendix L.

The arguments made by Whemco regarding the alleged improper elimination of Rider No. 5 are similar to arguments that were rejected by the Commonwealth Court and the

Commission in a tariff interpretation case arising out of PPL Electric Utilities Corporation's ("PPL Electric") restructuring proceeding. In that case, PP&L Industrial Customer Alliance ("PPLICA") appealed from an order of the Commission dismissing PPLICA's petition for a declaratory order prohibiting the implementation of a tariff interpretation change to PPL Electric's billing method for customers who purchase generation supply from electric generation suppliers ("EGSs"). *PP&L Industrial Customer Alliance v. Pa. P.U.C.*, Docket No. 1881 C.D. 2000, Opinion filed July 10, 2001; see Appendix F.

In the PPLICA Tariff Interpretation Order, the Commonwealth Court stated as follows:

The PUC adopted the ALJ's recommended decision finding that although PPLICA argued that the ALJ failed to decide whether PP&L should have the ability to exercise control and require interruption of supply procured by an IS-P or IS-T customer from a competitive supplier, that argument was without merit because the Rate Schedules were included in PP&L's Settlement Agreement, which the PUC had previously approved and to which PPLICA was a signatory, and the language in the tariffs had not changed. The PUC also noted that "[t]he fact that PP&L adopted a modified billing approach for 1999 is of no consequence to the germane issue in this proceeding; that is, whether PP&L's interpretation of Rate Schedules IS-P and IS-T complies with the terms and conditions of the tariffs as approved by the Commission."

Appendix F, pp. 11-12.

The Commonwealth Court further stated as follows:

As the PUC correctly found, the Rate Schedules were included in PP&L's Settlement Agreement which the PUC had previously approved, PPLICA was a signatory to the Settlement Agreement, and the language in the tariffs has not changed. That means that the PUC reviewed and approved the discounts contained in the interruptible service rates when PP&L's interruptible service rate schedules were unbundled in the restructuring proceeding. Consequently, PP&L's interpretation of the tariffs was not contrary to the Settlement agreement and not in violation of the Competition Act.

Appendix F, p. 13.<sup>5</sup>

For Rider No. 5 – Time of Day Discounts, the language in the tariff related to the elimination of Rider No. 5 did not change from the pro forma tariff that was included with the initial DSP IV filing to the tariff that was included with the Compliance Filing. In addition, it was included in the Compliance Filing that was filed with the Commission and sent to all parties in the DSP IV proceeding approximately 6 months before it was approved by the Commission and became effective. No party challenged the Compliance Filing, and the elimination of Rider No. 5 – Time of Day Discounts was approved by the Commission. Whemco’s argument that the elimination of Rider No. 5 – Time of Day Discounts for all rate schedules was not authorized by the DSP IV Settlement is incorrect and should be denied.

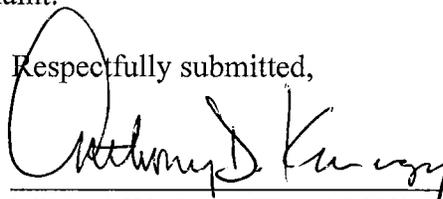
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<sup>5</sup> Duquesne Light notes that the restructuring proceedings involved changes to distribution rates outside of traditional base rate proceedings.

V. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that the Honorable Administrative Law Judge Jeffery A. Watson enter an order: (1) denying Whemco's Motion for Summary Judgment; (2) granting Duquesne Light's Motion for Partial Summary Judgment; and (3) summarily dismissing Whemco's request for refunds for the period of April 21, 2011 through April 2014 in Count Nos. 1, 2 and 3 of its Complaint.

Respectfully submitted,



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Date: July 21, 2015

*Attorneys for Duquesne Light Company*

# Appendix A

**STANDARD CONTRACT RIDERS - (Continued)**

**RIDER NO. 5 - TIME OF DAY DISCOUNTS**

(Applicable to Rates GS/GM, GL and L and to Rates GMH and GLH during the months of June, July, August and September only)

The availability and application of Rider No. 5 - Time of Day Discounts will terminate December 31, 2010. (C)

Where a customer has a separately measured demand and is supplied by any standard service voltage and where such customer so operates that the maximum demand created during any billing period occurs during off-peak hours, the bills will be calculated using the Billing Demand defined below on the applicable rate and any other applicable riders.

**CONTRACT DEMANDS**

The Contract On-Peak Demand is the maximum electrical capacity in kilowatts which the Company shall be required by the contract to make available during the on-peak hours to the customer.

The Contract Off-Peak Demand is the maximum electrical capacity in kilowatts which the Company shall be required by the contract to make available during the off-peak hours to the customer. The customer's minimum Billing Demand shall be no lower than one-third (33 1/3%) of the customer's Contract Off-Peak Demand.

The customer shall not establish a demand greater than 105 percent of the individual demands specified in the customer's contract unless written approval shall first have been obtained from the Company. If the customer establishes a repeated pattern of exceeding the Contract Demand, the Contract Demand may be raised to the highest demand established for the remaining term of the contract.

**DEMANDS AND ENERGIES**

The On-Peak Demand is the demand during on-peak hours. The Off-Peak Demand is the demand during off-peak hours.

The Billing Demand for Company charges is the On-Peak Demand except where the Off-Peak Demand is more than three (3) times the On-Peak Demand. Then the Billing Demand will be one-third (33 1/3%) of the Off-Peak Demand. In no case will the Billing Demand be lower than the Billing Demand as determined on the applicable rate.

Demands and energies will be determined on an individual demand basis and corresponding quantities will be combined to obtain demands and energies for billing purposes.

**RATES GL, GLH AND L**

For customers on Rates GL, GLH and L who purchase their electric supply requirements from the Company, the discounts available under the provisions of this rider will apply only to the demand charges billed for distribution. The demand charges billed for supply provided under Rider No. 9 will not be impacted by this rider. For customers on Rates GL, GLH and L who purchase their electric supply requirements from an EGS, the discounts available under the provisions of this rider will apply only to the demand charges billed for distribution service. (C)

(C) - Indicates Change

ISSUED: JULY 12, 2007

EFFECTIVE: JANUARY 1, 2008

## Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF DUQUESNE LIGHT COMPANY  
FOR APPROVAL OF DEFAULT SERVICE PLAN**

Pursuant to Chapter 28 of the Public Utility Code and 52 Pa. Code § 5.41, Duquesne Light Company (“Duquesne Light” or the “Company”) petitions the Pennsylvania Public Utility Commission (“Commission”) for approval of a default service plan for the period from January 1, 2008 through December 31, 2010 (“Default Service Plan” or “Plan”), and (ii) for the issuance of certain other related approvals, described in Section IV hereof, required for the implementation of the Plan. Duquesne Light’s current default service plan, commonly referred to as the POLR III Plan, expires on December 31, 2007. *Petition of Duquesne Light Company for Approval of Plan For Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Order entered August 23, 2004 (“*POLR III Order*”). Duquesne Light is filing this Petition well in advance of December 31, 2007, so that the Commission has adequate time to consider the proposals made herein. Duquesne Light respectfully requests expedited approval of the Default Service Plan on or before July 1, 2007, in order that upon approval, Duquesne Light may take the necessary actions to implement the Plan on January 1, 2008.

**I. EXECUTIVE SUMMARY**

**A. Background**

Since restructuring, Duquesne Light has implemented three very successful default service programs which have helped create the most competitive shopping environment in the Commonwealth and also have provided customers with substantial rate reductions. By this

filing, Duquesne Light seeks to build on these prior successes and proposes a three-year default service plan to serve as a transition to January 1, 2011, when the generation rate caps for most electric customers in the Commonwealth will expire. Approval of this Plan will assure that Duquesne Light's Residential customers receive default service under terms and conditions similar to that received by other Pennsylvanians. A three-year term also is consistent with the term approved by the Commission in other default service proceedings, including Duquesne Light's POLR II and POLR III proceedings.

Duquesne Light made a commitment, as part of the Settlement of its recent distribution rate proceeding, to provide stakeholders an opportunity to participate in the development of the Default Service Plan. Pursuant to that commitment, Duquesne Light solicited input from a number of interested parties. The opinions and proposals of these parties were carefully considered in the development of the Default Service Plan. As a result, Duquesne Light believes that there will be substantial support for a number of elements of the Plan from a broad cross-section of parties.

The details of Duquesne Light's Default Service Plan are set forth below and in the extensive testimony and exhibits accompanying this Petition. Before turning to these issues, however, one important matter should be addressed. The rates proposed in this filing for Residential, Small C&I and Lighting customers reflect an average increase of 10.2%, on a total bill basis, and a 17.6% increase as compared to current POLR III supply rates. These rates reflect prevailing market prices for the Default Service Plan service period and therefore should further promote retail competition in Duquesne Light's service territory. However, these increases are relatively modest, particularly when compared to the increases seen in other POLR filings which have employed an RFP or auction process. And, even with these proposed

increases, the supply rates for Residential, Small C&I and Lighting customers, on average, will still be below the regulated rate levels which were in effect under the POLR I Plan. At the same time, Duquesne continues to have, by far, the highest level of customer shopping in the Commonwealth and among the highest in the nation. These are truly remarkable results, which reflect both the extraordinary efforts of Duquesne Light and the fundamental success of electric competition, to date, in Duquesne Light's service territory. Duquesne Light's track record as a default service provider speaks for itself and fully supports approval of its proposed Default Service Plan.

**B. Proposed Default Service Rates**

The Default Service Plan consists of three plans tailored to meet the specific needs of major customer groups. For large commercial and industrial ("Large C&I") customers, Duquesne Light will offer a real time hourly market price service as the default service option. Duquesne Light does not propose to offer fixed price service to Large C&I customers. Competition for Large C&I customers in Duquesne Light's service territory is robust, with 98% of Large C&I load currently shopping. Real time hourly default service is appropriate for this mature market segment.

For small commercial and industrial ("Small C&I") customers, Duquesne Light proposes to increase rates on January 1, 2008 to reflect prevailing market prices. The average rate increase for Small C&I Rate GS/GM customers will be 9.3%, on a total bill basis. These rates will be adjusted annually, for 2009 and 2010, based upon changes in an annual forward market price index. In addition, rates will be redesigned to eliminate supply related demand charges and declining energy blocks over a three-year period. As of January 1, 2010, all Small C&I customers will pay a single energy charge for default service. These measures will promote competition by resetting rates to reflect prevailing market prices, adjusting these rates annually to

reflect changes in market conditions and by phasing out legacy rate design features. A flat usage charge also will encourage conservation.

For Residential and Lighting customers, Duquesne Light proposes to increase rates on January 1, 2008, to reflect prevailing market prices for the three-year term of the Plan (2008-2010). The average increase for Residential Rate RS customers is 9.2%, on a total bill basis; the average increase for Lighting customers is 7.4%, on a total bill basis. In addition, Duquesne Light proposes to eliminate, over a three-year period, declining energy blocks for residential heating customers. As of January 1, 2010, all Residential customers will pay a single energy charge for default service. These actions will promote retail competition by resetting rates to reflect prevailing market prices and by adopting a simplified rate structure. The Plan will also provide Residential customers rate stability, significant protection against potentially disruptive rate increases and a rate design that encourages conservation.

### **C. Power Procurement**

In order to procure power for Residential, Lighting and Small C&I customers, Duquesne Light will amend its fixed price, full requirements contract with its affiliate, Duquesne Power. Duquesne Power will rely on competitive wholesale market purchases in PJM to obtain power for Duquesne Light's customers. Duquesne Power also will assume regulatory approval, customer switching, load following and other regulatory and business related risks associated with default service supply.

Duquesne Light carefully considered obtaining default supply through a competitive procurement process, but has determined that such an approach is not appropriate at this time. There is considerable uncertainty in the outcome of a competitive procurement process, not only as to rates but as to the number of bidders. Many prior competitive procurement processes have had little or no success or have resulted in extremely high price increases. As a result, a

competitive procurement process would present considerable risks for Residential and Small C&I customers. Given that the majority of Pennsylvanians have stable generation rates through 2010, Duquesne Light believes that its Residential and Small C&I customers should not be subject to the risks associated with a competitive procurement process at this time.

**D. Determination of Prevailing Market Prices**

The rates under the Default Service Plan are based on prevailing market prices for a three-year, fixed price full requirements contract for 2008 through 2010. In order to determine prevailing market prices, Duquesne Light reviewed the results of wholesale solicitations in several states, including Pennsylvania, New Jersey, Maryland and Illinois. All of these solicitations involved full requirement default service supply to residential and/or small C&I customers, and were completed primarily within the last twelve months.

In order to compare these solicitations on an “apples to apples” basis, Duquesne Light made several adjustments to reflect the particular facts and circumstances presented in Duquesne Light’s Plan. These adjustments included stating the prices on a comparable basis, adjusting for location and timing differences and adjusting for different risk factors assumed by the various suppliers. Based upon these adjusted solicitations, Duquesne Light believes that its rates proposed under the Default Service Plan appropriately reflect prevailing market prices for a three-year, fixed price full requirements contract for 2008 through 2010.

**E. Market Enhancements**

Duquesne Light currently has the highest level of customer shopping in the Commonwealth. As of December 2006, 18% of Residential load, 19% of Small C&I load and 98% of Large C&I load in Duquesne Light’s service territory was being served by an alternative supplier. As reported by the Office of Consumer Advocate in January 2007, with regard to total shopping in the Commonwealth, the vast majority of shopping load – 95% of residential load,

81% of commercial load and 90% of industrial load – is located in Duquesne Light’s service territory.

Duquesne Light’s Default Service Plan contains several important features designed to further promote retail competition. As noted above, Duquesne Light proposes to reset rates for Residential and Small C&I customers to reflect prevailing market prices and to simplify its rate design to reflect market conditions to provide greater transparency to customers and suppliers.

In addition, Duquesne Light has agreed to a purchase of receivables (“POR”) program whereby it will purchase the accounts receivable, without recourse, associated with EGS sales of retail electricity to Residential and Small C&I customers. The POR program provides substantial benefits to marketers by eliminating their risks associated with serving credit-troubled customers and by allowing marketers to serve these customers without incurring significant costs for upfront credit analysis, collection activities or uncollectible accounts.

Duquesne Light also will be implementing several process improvements that will promote retail competition. For example, Duquesne Light proposes to improve communications with employees concerning its Code of Conduct. In addition, as part of the settlement of its last rate case, Duquesne Light agreed to convene regular meetings with EGSs to discuss retail supplier issues and to conduct an analysis to determine whether its cost allocation procedures are appropriate. This cost analysis demonstrated that Duquesne Light is properly allocating its costs and led to the adoption of several minor changes to further improve its cost allocation procedures. Both the Commission and the Federal Energy Regulatory Commission (“FERC”) have recently reviewed Duquesne Light’s cost allocation procedures and have determined that they are appropriate.

## **F. Conservation and Economic Development**

In the rate case Settlement, Duquesne Light agreed to contribute a total of \$6 million to fund renewable energy projects and/or energy efficiency and energy education projects in its service territory. In addition, Duquesne Light promotes energy conservation through several different programs, including: (1) a Load Response Program that compensates customers for reducing demand when market prices increase; (2) a Direct Load Control Pilot Program for Residential and small commercial customers that reduces air conditioning usage during hot weather; (3) offering web based tools to assist customers in conserving energy; (4) issuing New Mover's Guide's to all consumers moving into Duquesne Light's service territory that include information on how to use energy wisely; (5) presenting conservation programs to school students; and (6) promoting conservation at the Pittsburgh Home and Garden Show.

In the rate case Settlement, Duquesne Light also agreed to evaluate the proposals of other parties regarding energy conservation and education, time of use metering and economic development and to submit proposals that it deemed to be appropriate in this default service filing. Duquesne Light has evaluated these proposals and has concluded that while they may have some merit, implementation of these proposals would be premature in this proceeding. In its discussions with parties, Duquesne Light determined that there was no consensus support for implementation of these proposals at this time. Certain parties expressed an interest in advanced metering options with time-of-use and/or seasonal rates, but only if they were optional and did not impose additional costs on customers. Others believed that such proposals should be provided by the market and not by the regulated default service provider. Duquesne Light supports coordinated statewide efforts as the most efficient and effective way to address these types of issues. For example, Duquesne Light supports and actively participates in the Commission's Demand Side Response ("DSR") working group.

With regard to economic development, in its current merger proceeding, Duquesne is proposing an economic development program under which eligible customers will receive a discount of \$3 per MWh below market prices if they create new load or expand existing load and create new jobs. The offer is available for three years per project and will be in effect until March 1, 2013. This proposal will provide important incentives for economic development in Duquesne Light's service territory.

**G. Schedule**

Duquesne requests expedited approval of this Petition, with a Commission decision on or before July 1, 2007. Under the Default Service Plan, Duquesne Power is assuming all risk of market price changes during the course of this proceeding. The longer the approval process, the greater the risk. Expedited approval also is necessary to ensure that Duquesne Power has adequate time to obtain power to provide default service to Duquesne Light customers commencing on January 1, 2008, and because of the need to inform customers of the precise changes in their Price To Compare in order to facilitate retail shopping.

To support an accelerated schedule, Duquesne Light has included its direct testimony with this Petition, and Duquesne Light will endeavor to work with parties to amicably resolve any contested issues. Indeed, as explained above, Duquesne Light already has undertaken extraordinary efforts to meet with interested parties and to reflect their input in this filing. As a result, Duquesne Light believes that there will be substantial support on a number of elements of the Plan from a broad cross-section of parties, and should permit accelerated review of this case.

For these reasons, and as explained more fully below, Duquesne Light believes that its Default Service Plan is in the public interest and should be approved.

## II. DESCRIPTION OF RELEVANT PRIOR REGULATORY PROCEEDINGS

1. Duquesne Light filed its restructuring plan under the Electricity Generation Customer Choice and Competition Act (“Competition Act”) on August 1, 1997. Under its restructuring plan, Duquesne Light conducted an auction and sold its generating assets to Orion Power Midwest LP, (“Orion”)<sup>1</sup>. As part of the auction process, Duquesne Light purchased its default service requirements for the transition period from Orion at a price equal to then-existing generation rate caps. This agreement protected Duquesne Light from volatile electric markets while Duquesne Light collected competitive transition charges (“CTCs”) and provided customers fixed rates for default service (the “POLR I Agreement”). In addition, the auction was very successful in mitigating stranded costs. As a result, Duquesne Light’s transition period was the shortest of any major utility in the Commonwealth, ending in 2002 for most customers.

2. In order to procure power to provide post-transition period default service to customers, Duquesne Light entered into a subsequent agreement (commonly referred to as the “POLR II Agreement”) with Orion, under which Orion would supply power to meet Duquesne Light’s default supply requirements through December 31, 2004. *Pa. PUC v. Duquesne Light Company, Petition for Approval of Plan for Post-Transition Period POLR Service*, Docket No. R-00974104 (Order entered November 30, 2000). The agreement allowed Duquesne Light to continue to provide fixed rates to all of its customers, and when combined with termination of the CTC resulted in Residential customers receiving a rate reduction on a total bill basis of 21% under POLR II. On a system-wide basis, the average rate reduction was 17%.

3. Prior to the expiration of the POLR II Plan, Duquesne Light filed a Petition with the Commission requesting approval of its POLR III Plan for the period of January 1, 2005

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<sup>1</sup> Orion was subsequently acquired by what is currently a subsidiary of Reliant Resources, Inc. (“Reliant”).

through December 31, 2010. *POLR III Order, supra*. In its POLR III Petition, Duquesne Light proposed to offer customers default service at fixed rates for a six-year period. Duquesne Light also proposed to enter into a contract with its affiliate, Duquesne Power, under which Duquesne Power would procure power necessary to provide default service to Duquesne Light's small customers. Duquesne Light chose a six-year period for the POLR III Plan in order to align its customers with the large majority of all other default service customers in the Commonwealth who remained subject to generation rate caps until December 31, 2010.

4. On August 23, 2004, the Commission approved Duquesne Light's POLR III Plan with certain modifications. *POLR III Order, supra*. Of importance here, the Commission limited the term of the POLR III Plan to three years. While not adopting a six-year term, the Commission did find that Duquesne Light's proposed rates for the first three years were consistent with prevailing market rates. In this regard, the Commission found that testimony regarding recent supply auctions in a neighboring jurisdiction in PJM and several market price analyses established that Duquesne Light's proposed rates reasonably reflected prevailing market prices.

5. As was the case with the prior two default service plans, the POLR III Plan provided important benefits to customers. Under the POLR III Plan, customers continued to receive service at fixed rates which reflected prevailing market prices, and these market-based prices continued to provide savings compared to regulated rates in effect prior to the adoption of the Competition Act. The POLR III Plan also encouraged a competitive shopping environment, and since restructuring, Duquesne Light's service territory has been, by far, the most competitive in the Commonwealth.

6. In accordance with the requirements of the Competition Act, Duquesne Light has implemented electric restructuring and three default service programs. These actions have provided important benefits to customers, such as rate reductions and rate stability and have helped create the most competitive shopping environment in the Commonwealth. In aggregate, Duquesne Light's electric restructuring and default service programs will have saved customers over \$950 million through 2010, and **at the same time**, produced the highest level of customer shopping in the Commonwealth and among the highest in the country. These are remarkable achievements.

### **III. DUQUESNE LIGHT'S DEFAULT SERVICE PLAN**

#### **A. Introduction**

7. In developing its Default Service Plan, Duquesne Light carefully balanced many considerations, including in particular the effect of the Plan on retail competition and customers' rates. During the development of the Plan, Duquesne Light went to unprecedented lengths to solicit input from interested parties, including EGSSs, customer advocates and others. These efforts are discussed in detail in the direct testimony of Frederick J. Eichenmiller. While Duquesne Light did not reach a consensus on all issues, it carefully considered the proposals of other parties and has developed a balanced plan that, among other things, promotes competition, provides stable rates for Residential, Lighting and Small C&I customers and provides a bridge to 2011 when generation rate caps for most other electric customers in the Commonwealth will expire.

8. Section III.B describes the elements of the Plan for the major customer classes and sets forth the proposed rates under the Plan. Section III.C explains Duquesne Light's proposal to acquire power to supply default service customers pursuant to a contract with Duquesne Power, and the reasons that a competitive solicitation process was not proposed. This

section also demonstrates that the rates proposed in this proceeding reflect prevailing market prices and therefore comply with the legal standard that Duquesne Light acquire default supply at prevailing market prices. Section III.D explains how the Plan will promote retail competition. Section III.E addresses energy conservation, time of use metering and economic development issues. Section III.F summarizes the many benefits of the Plan. Section IV explains the related approvals that Duquesne Light is requesting in conjunction with the Plan. Section V sets forth how Duquesne Light proposes to notify potential parties of this filing and inform customers as to the proposed rate changes. In Section VI, Duquesne Light requests expedited approval of this Petition.

**B. Proposed Default Service Rates**

9. The Default Service Plan is not a “one size fits all” approach to default service. In developing the Plan, Duquesne Light recognized that each customer class has different characteristics, including: (1) pre-existing rate structures; (2) different abilities to accept or react to changing prices; and (3) different competitive opportunities. The Plan takes these differences into account and proposes a different solution for each of the major customer groups. A description of the principal elements of the Plan for each major customer group is provided below.

**1. Large C&I Customers<sup>2</sup>**

10. Duquesne Light proposes to offer Large C&I customers a real-time hourly market price default service with no fixed price service option. Pursuant to the Commission’s Reconsideration Order in the POLR III proceeding, Duquesne Light’s fixed price option for Large C&I customers expires on May 31, 2007, and currently, very few customers have elected

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<sup>2</sup> Large C&I customers are those customers that have a demand greater than 300 kilowatts (“kW”) and include rate classes GL, GLH, L and HVPS.

this option.<sup>3</sup> See Docket No. P-00032071, Reconsideration Order entered October 5, 2004, p. 24. The competitive market for Large C&I customers is quite robust, with approximately 98% of Large C&I load receiving service from EGSs. Therefore, Duquesne Light proposes to rely on EGSs to offer these customers fixed price service.

11. Duquesne Light's current default service tariff contains several riders applicable to Large C&I customers. Rider No. 9 contains the terms and conditions under which Duquesne Light provides hourly price default service to Large C&I customers. This Rider also contains provisions for recovery of administrative costs. Rider No. 9 currently contains separate charges for each of the four Large C&I rate classes, and the charge for each class has both a risk component and an administrative component. The Default Service Plan proposes to replace this structure with a single charge for all Large C&I customers. The new charge will not contain a risk component. In addition, Duquesne Light is updating these charges to reflect current costs and current default service sales. This proposal is explained further in the testimony of Duquesne Light's witness William V. Pfrommer.

12. Duquesne Light also proposes to eliminate Rider 23, the Generation Rate Adjustment switching rider. This Rider applies only to Large C&I customers that take fixed price service. Since Duquesne Light is eliminating the fixed price option, Rider 23 is no longer necessary.

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<sup>3</sup> As of December 31, 2006, only 6 out of 871 eligible customers were receiving fixed price default service from Duquesne Light.

## 2. Small C&I Customers<sup>4</sup>

13. The Default Service Plan proposes to establish Small C&I customer generation rates based on prevailing market prices and to phase out legacy rate design features, such as declining blocks and demand charges which do not reflect competitive market conditions.

14. Energy rates for Small C&I customers will be based on prevailing market prices, at the time of the filing, for a three-year fixed price, full requirements contract for 2008-2010. These rates will be adjusted for 2009 and 2010 to reflect changes based on an annual forward market price index. For example, Duquesne Light will determine the change in the index from when rates were initially established near the time of this filing to October 1, 2008, and then adjust Small C&I rates on January 1, 2009, based on this change in the index. The same procedure will be employed to set rates for 2010.

15. The rates for the Small C&I customers are shown on Exhibit WVP-1 of Mr. Pfrommer's testimony. Small C&I Rate GS/GM customers, on average, will experience a generation supply rate increase of 13.6% over POLR III supply rates. On a total bill basis, this constitutes an increase of 9.3%. The proposed generation supply rates for Small C&I Rate GS/GM customers, on average, are 3.4% lower than the generation rates which were in effect under the POLR I Plan.<sup>5</sup> Individual customers will experience different percentage increases

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<sup>4</sup> The Small C&I customers classes include Rate GS, Rate GM and Rate GMH. Rate GS has approximately 19,000 customers. Rate GS customers are not demand metered and their average usage is less than 1000 kilowatt-hours ("kWh") per month. Rate GM customers are demand metered and have diverse usage and load profiles. These customers are billed for demand for load in excess of 5 kW and for energy at declining block rates. There are approximately 33,000 Rate GM customers. Rate GMH customers are electric space heating customers. These customers are billed for demand for load in excess of 5 kW in the non-heating months and for energy at declining block rates. There are approximately 3,400 Rate GMH customers.

<sup>5</sup> In order to provide comparable figures, the rate comparisons include ancillary service and PJM administrative costs in the supply rates. In addition, the referenced POLR I rates include all generation-related charges including energy, capacity and CTC charges.

depending upon the individual rate under which they receive service and their individual usage patterns.

16. Duquesne Light currently has a declining block rate structure for Small C&I customers. This structure is a carryover from rates that existed prior to restructuring. Under this rate structure, customers are billed lower energy rates for usage over 1300 kWh per month.<sup>6</sup> For Rate GS customers, Duquesne Light proposes to eliminate the declining block rate structure as of January 1, 2008. This will simplify the rate structure and provide customers and EGSs with a clearer price to compare for purposes of retail shopping. Because very few Rate GS customers use more than 1300 kWh per month, there is only modest tail block usage, and eliminating the declining block structure will not cause disparate rate impacts.

17. By contrast, immediately eliminating declining block rates would result in substantial rate increases for certain Rate GM and Rate GMH customers. Therefore, second block rates for Rate GM and Rate GMH customers will be phased out over three years, so that as of January 1, 2010, these rates will consist of a single energy charge for default service. This will move rates to a more competitive platform over time but will avoid rate distortions that would occur by immediately eliminating this rate structure for these customers.

18. Duquesne Light's existing rate structure also includes supply related demand charges for certain Small C&I customers. Duquesne Light proposes to eliminate supply related demand charges for Small C&I customers over a three-year period. This will simplify the rate structure and promote competition while at the same time mitigating disparate rate increases. In addition, Duquesne Light's tariff includes a Rider which provides time of day discounts for

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<sup>6</sup> For rate GMH customers, this rate feature changes in the October to May heating months such that GMH customers are billed lower rates for usage over 1250 kWh per month plus 150 kWh for each kW of demand over 6 kW.

demand charges (“Rider No. 5”). Because Duquesne Light is proposing to phase out demand charges, Duquesne Light also proposes to phase out Rider No. 5.

19. In providing default service to customers, Duquesne Light incurs certain ancillary service and PJM Interconnection, LLC (“PJM”) administrative costs. These costs are currently recovered as part of generation supply rates for Small C&I customers. Both PJM administrative costs and ancillary service costs are transmission-related costs imposed under the PJM Open Access Transmission Tariff (“OATT”) and are properly recovered through retail transmission rates. Duquesne Light proposes to unbundle these costs from Small C&I customer supply rates and recover them through Duquesne Light’s Transmission Service Charge (“TSC”). The TSC is a reconcilable charge designed to recover Duquesne Light’s retail transmission costs and was approved in Duquesne Light’s last distribution rate proceeding, at Docket No. R-00061346.

### 3. Residential Customers<sup>7</sup>

20. Duquesne Light proposes to establish Residential customer generation rates based on prevailing market energy prices and to phase out, over three years, declining block energy rates for residential heating customers. As of January 1, 2010, Duquesne Light’s rate structure for all Residential customers will consist of a single energy rate.

21. Default service rates for Residential customers will be established based on prevailing market prices, at the time of the filing, for a three-year, fixed price full requirements contract. These rates will be fixed for a three-year period.

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<sup>7</sup> The Residential Customer group includes Rate RS – Residential Service (“Rate RS”), Rate RH – Residential Service Heating (“Rate RH”) and Rate RA – Residential Service Add-on Heat Pump (“Rate RA”). Rate RS is the Company’s standard residential service rate, and the rate structure consists of a single flat energy charge per kWh. Rate RH and Rate RA are the Company’s residential space heating rates. Both have the same rate structure as Rate RS during the non-heating season. During the heating season, Rate RH and Rate RA have a declining block rate structure and a reduced rate for usage greater than 500 kWh.

22. The rates for residential customers are shown on Exhibit WVP-1 of Mr. Pfrommer's testimony. Residential Rate RS customers, on average, will experience a generation supply rate increase of 17.6% over POLR III supply rates. On a total bill basis, this constitutes an increase of 9.2%. The proposed generation supply rates for Residential Rate RS customers, on average, are 9.1% lower than the generation rates which were in effect under the POLR I Plan.<sup>8</sup> Individual Residential customers will experience different percentage increases in rates depending upon the individual rate under which they receive service and their individual usage patterns.

23. Duquesne Light currently has a declining block rate structure for Residential heating customers. This structure is a carryover from rates that existed prior to restructuring. Under this rate structure, Residential heating customers are billed lower energy rates during the November through April heating season for usage over 500 kWh per month. Under the Default Service Plan, declining second block energy rates for Residential heating customers are being phased out over three years, to avoid rate distortions that would occur by immediately eliminating this rate structure. As of January 1, 2010, all residential customers will receive default service at a single energy charge, which will facilitate shopping for both customers and EGSs.

24. As with Small C&I customers, ancillary service and PJM administrative costs currently are bundled in supply rates for Residential customers. As explained above, Duquesne Light proposes to unbundle these costs from supply rates and recover them through the TSC.

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<sup>8</sup> In order to provide comparable figures, the rate comparisons include ancillary service and PJM administrative costs in the supply rates. In addition, the referenced POLR I rates include all generation-related charges including energy, capacity and CTC charges.

#### 4. Lighting Customers<sup>9</sup>

25. Duquesne Light is setting rates for Lighting customers based on an estimate of prevailing market prices, at the time of the filing, for a three-year fixed price, full requirements contract. These rates will be fixed for a three-year period.

26. The rates for Lighting customers are shown on Exhibit WVP-1 of Mr. Pfrommer's testimony. Lighting customers, on average, will experience a generation supply rate increase of 29.5% over POLR III supply rates. On a total bill basis, the average increase will be 7.4% over POLR III rates. The proposed supply rates for Lighting customers, on average, are 23.6% lower than generation rates which were in effect under the POLR I Plan.<sup>10</sup> Individual Lighting customers will experience different percentage increases in rates depending upon the rate under which they receive service.

27. As a result of the legacy effects of unbundling and the POLR III rate design, resetting rates for lighting customers will result in decreases for some customers and increases for others. Implementing these proposed changes to the lighting class rates will simplify the rates, eliminate inconsistencies between rate classes, and promote retail competition.

#### C. Power Procurement

##### 1. Duquesne Light Proposes To Acquire Default Supply From Duquesne Power At Prevailing Market Prices

28. Consistent with its POLR III plan, Duquesne Light proposes to amend its existing fixed price full requirements contract with its affiliate, Duquesne Power, to procure supply for Small C&I, Residential and Lighting customers. Duquesne Power will acquire the power needed

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<sup>9</sup> The classes defined as Lighting include Rate AL – Architectural Lighting Service, Rate SE – Street Lighting Energy, Rate SM – Street Lighting Municipal, Rate SH – Street Lighting Highway, Rate UMS – Unmetered Service and Rate PAL – Private Area Lighting.

<sup>10</sup> In order to provide comparable figures, the rate comparisons include ancillary service and PJM administrative costs in the supply rates. In addition, the referenced POLR I rates include all generation-related charges including energy, capacity and CTC charges.

to serve this load through purchases in the wholesale market. Duquesne Power also will procure alternative energy credits in order to comply with the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq.*

29. In order to provide increased rate certainty to customers and to provide the Commission with a concrete proposal for review, Duquesne Power has agreed to hold the proposed rates open during the regulatory review period. Duquesne Power also is assuming the risks associated with: (1) changes in sales, (2) changes in load shape during peak and off-peak periods, (3) changes in regulatory requirements, (4) supplier default, (5) shopping risks, and (6) other risks associated with providing default service supply for Duquesne Light. This commitment by Duquesne Power provides substantial benefits to customers and the Commission.

30. Duquesne Light considered obtaining default supply through a competitive procurement process, but believes that such a process should not be implemented at this time. Under a wholesale competitive solicitation process, default service customers would bear the risks that electricity prices will increase. Duquesne Light does not believe that it is appropriate to place this substantial risk on default service customers.

31. Duquesne Light's position is not mere speculation, but is supported by real life examples. For example, Pike County Light & Power conducted a single auction to set default service rates for customers, and this auction resulted in a 129% increase in generation rates. *Pa. PUC v. Pike County Light & Power Company*, Docket No. P-00052168, Order entered December 21, 2005. Also, as mentioned by the Commission in its Investigation Order entered on May 24, 2006, in *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, in Delaware, Delmarva Power Company residential customers faced a 59% rate

increase on May 1, 2006, as a result a competitive procurement process to obtain default supply. Likewise, in Maryland, residential customers of Baltimore Gas & Electric Company faced a 72% increase in electric bills on July 1, 2006, subject to deferral through a rate stabilization plan, as a result of a competitive procurement process to obtain default supply. These examples illustrate that customers bear substantial risks if default supply is obtained through a competitive procurement process. By contrast, Duquesne Light proposed Residential Rate RS supply rate increase for the period 2008 – 2010 is 17.6%.

32. In addition to the problems identified above, a competitive solicitation process may not generate many bidders. Duquesne Light conducted several competitive RFP processes – in October 2004, March 2006, and May 2006, to procure power for Large C&I customers. The first RFP process received six bids, most of which offered to supply only a limited number of tranches. The second RFP conducted in March 2006 resulted in no bids from any suppliers at any price. The Commission then made several changes to the RFP process in order to make the product more attractive to potential bidders and encourage supplier participation. Docket No. P-00032071, Order entered May 4, 2006. Even after these changes, Duquesne Light only received one bid. As this demonstrates, a competitive solicitation process may not generate many bidders.

33. Competitive solicitations also have not proven to result in higher levels of shopping. In fact, Duquesne Light has significantly higher shopping levels than other jurisdictions that have relied on competitive solicitations to establish default service.

34. The rates under the Default Service Plan are based on prevailing market prices for a three-year, fixed price full requirements contract for 2008 through 2010. A detailed analysis of how the rates were determined is included in the testimony of Neil S. Fisher. In determining prevailing market prices, Duquesne Light reviewed recent competitive solicitations in

Pennsylvania, New Jersey, Maryland and Illinois. All of the solicitations that were reviewed involve full-requirements default service supply to Residential and/or Small C&I customers and were conducted primarily in the last twelve months.

35. After reviewing the competitive solicitations, Duquesne Light adjusted the results in order to evaluate them on a comparable basis. Major adjustments included: (1) major definitional differences in the product being provided; (2) locational and timing differences; and (3) differences in risk assumption by the supplier. This analysis demonstrates that Duquesne Light's proposed default service rates appropriately reflect prevailing market prices.

**2. The Default Service Plan Satisfies The Statutory Standard Of "Acquiring Energy At Prevailing Market Prices"**

36. Duquesne Light's basic statutory obligation to provide default service is set forth in Section 2807(e)(3) of the Code, which provides as follows:

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

37. There has been some controversy regarding the meaning of this statutory provision, and in particular, the meaning of the phrase "prevailing market prices." The term is not defined by the legislature. However, in the Competition Act, the legislature has directed the Commission to "promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity" under Section 2807(e)(3). At this time, the Commission has not issued final default service regulations.

38. Based upon the plain language of Section 2807(e)(3), Duquesne Light's proposed strategy for procuring power for default service customers fully complies with the statutory requirement that electric energy shall be purchased at prevailing market prices. As stated above,

under the Default Service Plan, Duquesne Light is purchasing electricity from Duquesne Power based on prevailing market prices, at the time of the filing, for a three-year, fixed price full requirements contract. The prices were developed by reviewing recent competitive auctions for full-requirements default service supply in New Jersey, Maryland, Illinois and Pennsylvania and adjusting the results of these auctions to reflect Duquesne Light's particular circumstances.

39. In other default service proceedings, some parties and commentators have argued that the term "prevailing market prices" requires the default service provider to acquire power only in the short-term, spot market. Duquesne Light does not believe that this is a correct interpretation.

40. As noted above, the term "prevailing market prices," was not defined by the legislature, and in fact, the legislature directed the Commission to issue regulations defining how EDCs acquire electricity for default customers. Under well-established case law, the Commission has very broad discretion in issuing regulations, and its exercise of discretion will be upheld unless the regulations bear no reasonable relationship to the underlying statutory provision on which they are based. *Rohrbaugh v. Pa. PUC*, 556 Pa. 199, 727 A.2d 1080 (1999). Therefore, there is no basis to argue that the legislature intended to restrict the term "prevailing market prices" to short-term, spot market prices.

41. This is also evident by the use of the term "prevailing market prices" in the plural, rather than the singular. There are many prevailing market prices for electricity over different terms, including short-term, medium-term and long-term prices. There also are a wide variety of electricity products, including capacity, load following energy, around-the-clock energy, full-requirements service, derivatives and hedges. These products are available for different lengths of time and, in fact, the prevailing market price for the product often directly depends on the

length of time. Clearly, the existence of these products demonstrates that the prevailing market is not simply a short-term market.

42. Further, these products, including the long-term products, are available to all market participants, including EDC default providers and marketers. As such, all market participants, including default service providers, should be able to take advantage of the full range of market products.

43. In prior proceedings, the Commission has found that “prevailing market prices” are not limited to short-term prices. In Duquesne Light’s POLR III proceeding, the Commission approved a three-year term for the Plan and found that Duquesne Light’s proposed rates for this three-year period reflected prevailing market prices over this term. *POLR III Order*, entered August 23, 2004. In addition, the Commission indicated that a second three-year term may be appropriate after the POLR III term expired. *POLR III Order*, p. 17. Likewise, the Commission approved a three-year term for Duquesne Light’s POLR II Plan and also for UGI’s recent default service plan. *Petition of UGI Utilities, Inc. – Electric Division For Approval To Implement 2007-2009 Default Service Tariff Provisions On One Day’s Advance Notice*, Docket No. P-00062212 (Order entered June 23, 2006).

#### **D. Market Enhancements**

44. Duquesne Light already has implemented three very successful default service programs, and Duquesne Light’s service territory is the most competitive in the Commonwealth. By this filing, Duquesne Light seeks to build on that success and further promote retail competition in its service territory.

45. The rate and rate structure changes under the Default Service Plan will promote competition. By raising generation rates to prevailing market prices, EGSs will have a better opportunity to serve Residential, Small C&I and Lighting customers. Phasing out declining

energy blocks and supply related demand charges also will promote competition by simplifying the rate structure and making it easier for customers and EGSs to compare offers.

46. In addition to these measures, Duquesne Light proposes to implement several additional measures that are designed to promote retail competition. Duquesne Light has agreed to implement a purchase of receivables program that all of the parties involved in Duquesne Light's prior distribution rate proceeding either support or do not oppose. In addition, Duquesne Light has conducted an analysis addressing whether any portion of Duquesne Light's operations is inappropriately subsidizing its affiliate, Duquesne Light Energy ("Duquesne Energy") to ensure that Duquesne Energy is operating on a level playing field with other EGSs. Duquesne Light also is taking or has already taken substantial additional measures to enhance competition in its service territory, including improving enforcement of its Code of Conduct, committing to utilize a marketer friendly consolidated billing program, and convening regular meetings with EGSs to discuss market development issues. These issues are discussed below.

**1. Purchase of Receivables Program**

47. In the Settlement of its last distribution rate proceeding at Docket No. R-00061346, Duquesne Light agreed to meet with parties to consider the development of a Purchase of Receivables Program ("POR") for suppliers serving Residential and Small C&I customers in Duquesne Light's service territory as an alternative to full unbundling of any default service costs in distribution rates. Shortly after the Settlement was signed, Duquesne Light developed a POR proposal and presented it to the parties for review. Over the next two months, the parties developed the POR agreement that is attached to the testimony of Nancy J. D. Krajovic.

48. Under the POR program, Duquesne Light has agreed to purchase the accounts receivable, without recourse, associated with EGS sales of retail electricity to Residential and

Small C&I customers in Duquesne Light's service territory. Duquesne Light will purchase the accounts receivable at a small discount and then seek to recover EGS receivables from customers consistent with Duquesne Light's existing collection procedures. In this Petition, Duquesne Light requests a waiver of Commission regulations and guidelines that prohibit collection procedures, including termination of service, for unpaid receivables purchased from EGSs.<sup>11</sup>

49. The POR program provides considerable benefits to both customers and EGSs. The POR program will benefit customers because EGSs that participate in the program cannot reject customers based on credit-related issues. This should create increased access to competitive options for customers that might otherwise be overlooked by EGSs due to poor credit scores or past financial troubles.

50. The POR program also provides considerable benefits to EGSs. The primary benefit is that the POR program eliminates EGSs' risks of serving payment troubled customers. This will allow EGSs to expand their markets without incurring costs associated with upfront credit analysis of customers, collection activities or uncollectible accounts in the event of non-payment.

51. Given the protections provided to EGSs under the POR program, the POR program should promote competition for Residential and Small C&I customers. Additional details regarding the POR program are provided in the testimony of Ms. Krajovic.

## **2. Enhancement of Duquesne Light/EGS Communications**

52. Another market enhancement measure involves enhancing communications between Duquesne Light and EGSs. In Duquesne Light's last rate case, certain EGSs expressed concerns about the level and quality of communications between themselves and Duquesne

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<sup>11</sup> Duquesne Light will not terminate customers for failure to pay amounts in excess of what the customer would have paid under default service rates during the non-payment period.

Light. In response to these concerns, Duquesne Light agreed to conduct several meetings each year to enhance communication between Duquesne Light and EGSs. Duquesne Light will convene two meetings per year with interested EGSs to discuss current and emerging issues associated with market development and competition. Participants will include a representative from Duquesne Light's Supplier Service Center and the operational personnel of EGSs that serve in Duquesne Light's service territory. In addition, Duquesne Light will conduct an annual meeting with interested EGSs and interested C&I customers to discuss customer choice issues. This meeting is intended to enhance customer education regarding competitive issues.

53. These annual meetings will provide a specific venue for participants to present ideas or concerns about competitive market issues and should promote competition. The meetings will allow both Duquesne Light and EGSs to hear issues of concern and to present proposals to solve market problems or promote competition.

### **3. Cost Allocation Analysis**

54. In its last distribution rate case, Duquesne Light agreed to submit an analysis in this proceeding addressing whether any portion of Duquesne Light's operations is subsidizing its affiliates, including Duquesne Energy. See Paragraph 17(b) of the Rate Case Settlement filed at Docket No. R-00061346 and approved by the Commission by Order entered on December 1, 2006. Pursuant to the Settlement, Duquesne Light has carefully reviewed its cost allocations and has presented the results of that analysis in this proceeding in the Direct Testimony of Susan S. Betta. In her analysis, Ms. Betta reviewed Duquesne Light's cost allocation procedures and determined that Duquesne Light properly allocates costs out of its regulated business and has protections in place to separate regulated and unregulated business activities. Based on the analysis, the Company implemented several minor changes to its cost allocation procedures to better reflect actual costs incurred.

55. In addition to the cost allocation analysis performed by Ms. Betta, both the Federal Energy Regulatory Commission (“FERC”) and the Commission recently audited Duquesne Light’s cost allocation procedures, and both found no cross-subsidization. FERC also reviewed these issues in the Duquesne Light merger proceeding and found that there was no cross-subsidization.

56. In addition to considering cost allocation issues, Ms. Betta also reviewed Duquesne Light’s supply agreement with Duquesne Power under which Duquesne Power supplies energy to Duquesne Light for default service customers. Upon review of the supply agreement, Ms. Betta concluded that Duquesne Light is not subsidizing Duquesne Energy under the supply agreement. Moreover, in its recent audit, FERC also reviewed the supply agreement and did not find any cross-subsidization.

#### **4. Code of Conduct Review**

57. Duquesne Light is subject to a Code of Conduct set forth in the Commission’s regulations. 52 Pa. Code § 54.122. The Code of Conduct is designed, in part, to ensure that EDCs do not give undue preference to EGSs, including affiliate EGSs. The Code of Conduct also contains provisions relating to EDC and EGS advertising, dispute resolution procedures, customer information requests and independent functioning of employees.

58. In order to assure continued compliance with the Code of Conduct requirements, Duquesne Light will require employees in the Supplier Service Center and its Major Account Representatives who have relationships with larger customers to review the Code of Conduct on a yearly basis and commit in writing to its terms. This will further ensure that key employees remember and follow the Code of Conduct’s provisions, thereby ensuring that Duquesne Light does not give preferential treatment to EGSs, including its affiliate Duquesne Energy.

**E. Energy Conservation And Economic Development**

59. Duquesne Light promotes energy conservation through several different programs. In the Settlement of its last distribution rate proceeding, Duquesne Light agreed to contribute \$6.0 million to fund renewable energy projects and/or energy efficiency and energy education projects in its service territory. Through this Settlement provision, Duquesne Light provides substantial funding for energy conservation programs in its service territory. Duquesne Light also has several other programs that are designed to promote energy conservation including a Load Response Program that compensates customers for reducing demand when market prices increase and a Direct Load Control Pilot Program for Residential and small commercial customers that reduces air conditioning usage during hot weather. In addition, on its website, Duquesne Light has tools that provide valuable information for customers regarding measures they can take to improve their energy efficiency. Duquesne Light also: (1) issues New Movers Guide's to customers moving in its service territory which include information on how to use energy wisely; (2) presents energy conservation programs to school students under the "Watt Do You Know?" program; and (3) provides energy conservation materials at the Pittsburgh Home and Garden Show. Through these programs, Duquesne Light actively educates consumers about important conservation measures they can implement to reduce energy usage.

60. In the Settlement of its last distribution rate proceeding, Duquesne Light also agreed to evaluate the proposals of other parties relating to energy conservation and education, time of use metering and economic development and to make proposals deemed by Duquesne Light to be appropriate as to such matters in this filing. Duquesne Light has considered these issues and does not believe that additional proposals on these matters are appropriate for this proceeding. In discussions with parties, Duquesne Light determined that there is a lack of consensus among the parties on these issues. There was some interest in advanced metering

options with time-of-use and/or seasonal rates, but certain parties indicated that they should only be implemented if they were optional and did not impose additional costs on customers. Others believed that these types of proposals should not be provided by the default service provider, but by other market participants. In addition, the Default Service Plan is a short term, three-year plan. Given the lack of consensus and the short term of the Plan, Duquesne Light believes that these types of issues may be more appropriately considered on a statewide basis after rate caps for all EDCs have expired. In this regard, the Commission has established a Demand Side Response (“DSR”) working group to investigate reasonable, cost-effective programs that EDCs, EGSs and other stakeholders can implement to help customers conserve energy or use it more efficiently. *Investigation of Conservation, Energy Efficiency Activities, and Demand Side Response by Energy Utilities and Ratemaking Mechanisms to Promote Such Efforts*, Docket No. M-00061984, Order entered October 11, 2006. Duquesne Light is an active party in the DSR working group and supports the Commission’s efforts in this regard.

**F. Benefits of the Default Service Plan**

61. The Default Service Plan is designed to provide many benefits for customers and marketers. These benefits include promoting competition, providing stable rates for Residential, Lighting and Small C&I customers, providing a bridge to 2011 when generation rate caps for most other remaining utility customers will expire, and promoting conservation.

62. A primary benefit of the Default Service Plan is that it promotes competition for all customer classes in Duquesne Light’s service territory. The Plan promotes competition by:

- Providing POLR service to Large C&I customers at real time hourly prices.
- Completely eliminating switching restrictions other than the switching rules required by regulation.
- Setting Small C&I customers’ rates to prevailing market levels with annual adjustments to reflect changes in market conditions.

- Setting Residential customers' rates to prevailing market levels.
- Eliminating supply related demand charges and declining energy blocks for Small C&I customers.
- Eliminating declining energy blocks for Residential customers.
- Adopting the Purchase of Receivables program.
- Scheduling annual meetings with EGSs to discuss market issues.
- Reviewing cost allocation and Code of Conduct procedures to assure that services are provided on a non-discriminatory basis.

63. In addition to promoting competition, the Default Service Plan provides other substantial benefits. These benefits include:

- Providing rate stability for Residential and Small C&I customers at rates which are only modestly above current rates and are below rates in effect under the POLR I Plan.
- Ensuring Residential and Small C&I customers do not experience rate shock after the POLR III plan expires.
- Holding proposed rates open during the regulatory review period.
- Providing a bridge to 2011 when generation rate caps for most other utility customers expire.
- Promoting conservation through changes in rate design.

64. For these reasons, and as further explained in this Petition, Duquesne Light believes that its Default Service Plan is in the public interest and should be approved.

#### **IV. RELATED APPROVALS**

65. In addition to approving the Default Service Plan, Duquesne also requests several additional approvals by the Commission.

66. First, Duquesne Light requests that the Commission issue an order in this proceeding stating that if the Commission's default service regulations become effective prior to January 1, 2011, Duquesne Light will be granted a waiver of those regulations to the extent that

they conflict with the provisions of the Default Service Plan. This waiver is necessary in order for Duquesne Power to procure supply for Duquesne Light's default service customers. As indicated above, Duquesne Power is assuming considerable risks under the Default Service Plan, and Duquesne Light respectfully requests that the Commission eliminate the risk that the final default service regulations could override the terms and conditions of this Plan.

67. Second, as set forth in this Petition, Duquesne Light has agreed to purchase the receivables associated with EGS sales of electricity to Residential and Small C&I customers in Duquesne Light's service territory. The Agreement to establish the POR program permits Duquesne Light to terminate delivery and EGS commodity service to customers whose accounts receivable were purchased and who fail to make payments of amounts due on their bill. Any termination shall be consistent with the provisions of Chapter 14 of the Public Utility Code and Chapter 56 (or a successor chapter) of the Commission's regulations. However, Duquesne Light will not terminate EGS' customers for failure to pay EGS supply rates that are higher than Duquesne Light's default service rates during the non-payment period. Duquesne Light requests that the Commission approve the POR program and grant any waivers that may be necessary for Duquesne Light to terminate customers under the program including waiver of: (1) the Commission's guidelines in *Final Order Re: Guideline for Maintaining Customer Services at the Same Level of Quality pursuant to 66 Pa.C.S. § 2807(D) and Assuring Conformance with 52 Pa. Code Chapter 56 pursuant to 66 Pa.C.S. § 2809 (E) and (F)*, Docket No. M-00960890F0011, Order entered July 11, 1997; (2) any provision of Chapter 56 that would prevent Duquesne Light from terminating customers for failure to pay receivables purchased from EGSs; and (3) any other regulation, policy or guideline, to the extent necessary, for Duquesne Light to implement all of the terms and conditions of its POR program.

68. Finally, in the POLR III proceeding, the Commission approved the Duquesne – Duquesne Power supply arrangements as an affiliated interest agreement pursuant to Section 2102(b) of the Code for a six-year term, or until December 31, 2010. Under the Default Service Plan, Duquesne Light is updating its power supply contract with Duquesne Power to purchase power to supply default service to Small C&I, Residential and Lighting customers. When this agreement is finalized, Duquesne Light will submit it to the Commission for review and approval in this proceeding. Because Duquesne Light is only making minor modifications to this agreement and to update the prices, Duquesne Light does not anticipate that the modifications will be controversial.

#### **V. CUSTOMER NOTIFICATION**

69. As indicated by the enclosed certificate of service, Duquesne Light has served a copy of this Petition upon all of the parties to Duquesne Light's most recent rate proceeding at Docket No. R-00061346 and to its POLR III proceeding, at Docket No. P-00032071. In addition, Duquesne Light is providing notice of the Default Service Plan to customers through a bill insert.

#### **VI. REQUEST FOR EXPEDITED APPROVAL**

70. Duquesne Light respectfully requests expedited approval of this Petition such that the Default Service Plan is approved by July 1, 2007. To facilitate approval by this date, Duquesne Light has filed its direct testimony along with this Petition, and respectfully requests the Commission to assign this matter to the Office of ALJ for evidentiary hearings and the issuance of a Recommended Decision as soon as possible.

71. Approval by July 1, 2007 is necessary so that Duquesne Power will be able to complete, in a timely manner, the wholesale purchase of baseload energy, capacity, peaking power and other services to provide default service to Duquesne Light's Residential, Small C&I

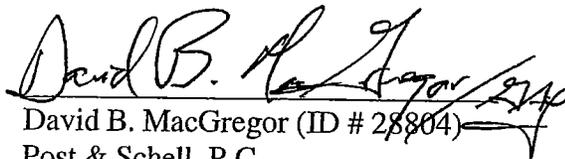
and Lighting customers and the need to provide customers notice of the precise changes in their Price To Compare in order to facilitate retail shopping.

72. In addition, as explained above, Duquesne Power has assumed considerable risk in holding proposed rates open through the regulatory review period. Expedited review by the Commission will help minimize this risk.

73. As indicated above, Duquesne Light went to unprecedented lengths to meet with parties prior to filing this Plan in order to receive their input. Duquesne Light anticipates that there will be substantial support for many elements of its Plan, which will support an expedited schedule in this proceeding.

74. WHEREFORE, for all of the foregoing reasons, Duquesne Light Company respectfully requests the that the Pennsylvania Public Utility Commission approve the Default Service Plan as proposed in this Petition by July 1, 2007, approve the tariff sheets that are provided as Exhibits to the testimony of Nancy J. D. Krajovic, issue all approvals required under the Public Utility Code, and grant any additional relief that is just and reasonable under the circumstances.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: January 25, 2007

Attorneys for Duquesne Light Company



# Appendix C

**DUQUESNE STATEMENT NO. 4**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**DIRECT TESTIMONY OF  
WILLIAM V. PFROMMER**

**Dated: January 25, 2007**



1 rates to support the implementation of electric utility restructuring and customer  
2 choice in Pennsylvania. I also worked at AquaSource, Inc., the previous water  
3 and wastewater subsidiary of DQE, Inc. While at AquaSource, I was General  
4 Manager of Rates, responsible for analyzing the adequacy of rates, providing  
5 direction to regional controllers on all regulatory matters, and maintaining the  
6 tariffs in the 12 states where AquaSource had utility operations. I testified before  
7 the Pennsylvania Public Utility Commission ("Commission") on rate design  
8 matters in the Company's Provider of Last Resort ("POLR") proceeding at Docket  
9 P-00032071. I also provided rate design testimony in the form of an affidavit  
10 before the Federal Energy Regulatory Commission ("FERC") at Docket No.  
11 ER05-85-000 for changes to the PJM Open Access Transmission Tariff ("PJM  
12 OATT") to integrate the Company into the PJM Interconnection, L.L.C. ("PJM")  
13 markets and tariff effective January 1, 2005. Most recently, I testified in the  
14 Company's distribution rate case proceeding at Docket R-00061346. I am a  
15 licensed professional engineer in the Commonwealth of Pennsylvania.

16  
17 **Q. What is the purpose of your direct testimony regarding the Company's**  
18 **request for default service supply rates?**

19 **A.** The purpose of my testimony is to address the following items regarding the  
20 Company's proposed default service plan:

- 21 1. Describe the proposed changes to Duquesne's retail rate structure and the  
22 rationale for those changes. This will include a description of the  
23 necessary changes to Duquesne's retail tariff to implement the proposed  
24 default service plan.
- 25 2. Sponsor a schedule of the supply rates for residential, small commercial  
26 and industrial ("small C&I"), and lighting customers.
- 27 3. Describe the proposed changes to the Company's transmission rates to  
28 recover ancillary services and PJM administrative costs.
- 29 4. Sponsor a schedule of class average rates and comparison to current rates.
- 30 5. Describe the proposed rate for large commercial and industrial ("large  
31 C&I") customers.

1 **Q. Are you sponsoring any exhibits as part of your direct testimony?**

2 A. Yes. I am sponsoring the following exhibits attached to my testimony:

<u>Exhibit</u>	<u>Description</u>
WVP-1	Supply Rates by Rate Schedule 2008-2010
WVP-2	Rate Class Average Rates 2008-2010
WVP-3	Supply Rate Comparison to Current Rates
WVP-4	Total Bill Comparison to Current Rates
WVP-5	Supply Rate Comparison to Restructuring Rates

3

4 **Q. Please explain how these exhibits were prepared?**

5 A. All exhibits were prepared either by me or under my direct supervision. They  
6 were prepared, to the best of my knowledge, in accordance with Commission  
7 requirements and practice.

8

9 **Q. How is your testimony organized?**

10 A. My testimony may be summarized as follows. First, I will discuss the proposed  
11 rate design for the small customer classes, i.e., residential, small C&I and lighting  
12 classes. Second, I will discuss the proposed supply rates for the small customer  
13 classes including the Company's proposal to adjust retail transmission rates to  
14 recover the costs for ancillary services and PJM administrative costs. Third, I will  
15 discuss the proposed class average rate impact by rate schedule for the small  
16 customer classes. Finally, I will describe the Company's rate proposal for large  
17 C&I customers.

18

19

### **I. SMALL CUSTOMER RATE DESIGN**

20

21 **Q. What rate classes are affected by the small customer rate design?**

22 A. The small customer classes include residential rates RS, RH and RA; small C&I  
23 rates include GS/GM and GMH and all of the lighting classes including AL, SE,  
24 SM, SH, UMS and PAL.

25

26 **Q. What were your overall objectives in designing the proposed supply rates for  
27 these customer classes?**

1 A. There were five objectives in designing the proposed supply rates. The first  
2 objective was to reset the rates to reflect prevailing market prices. This was  
3 necessary to eliminate below market rates that discourage conservation and do not  
4 provide customers with an opportunity to shop. This will promote competition  
5 and will ensure the Company is moving forward to develop retail rates that better  
6 reflect market prices.

7 The second objective was to move to a single, flat energy charge for each  
8 rate class by 2010. The current rate structure for supply includes demand charges  
9 and declining energy block rates. These supply charges are not indicative of  
10 competitive market prices and can make it more difficult for customers to  
11 compare offers from alternative electric suppliers. This objective will establish a  
12 simple price comparison with electric generation supplier (“EGS”) offers.

13 Third, the Company wanted to address instances of inconsistent rates  
14 among rate classes that resulted from the restructuring of the Company in  
15 accordance with the Electricity Generation Customer Choice and Competition Act  
16 (“Competition Act”). Part of this objective is to achieve more inter-class and  
17 intra-class consistency among rate classes and customer classes through rational  
18 rates consistent with market prices and specific to the characteristics of each class.

19 The fourth objective was to evaluate the rate class and monthly bill  
20 impacts associated with the first three objectives and mitigate significant bill  
21 impacts. The Company recognizes that eliminating demand charges and  
22 declining block rates to move toward a single energy-based charge in one step  
23 could result in disparate impacts on certain individual customers. Therefore, the  
24 Company proposes to phase-in the proposed rate design for several rate classes  
25 over a three-year period (2008-2010). This is an important consideration for  
26 heating class customers who currently have rates that are below market prices and  
27 may experience above average increases in their rates as declining blocks are  
28 eliminated.

29 Fifth, the Company wanted to align Duquesne’s retail transmission rates  
30 more closely with PJM’s transmission charges to all load serving entities  
31 (including Duquesne and EGSs). To accomplish this objective, the Company

1 recently filed and obtained Commission approval for a transmission service  
2 charge (“TSC”) that will adjust annually. As part of this initiative, the Company  
3 proposes to move the charges for PJM administrative costs and ancillary services  
4 from supply rates to the TSC so that these costs also will more closely follow  
5 PJM charges.

6 This approach to rate design, as a whole, enables the Company to balance  
7 its objectives of reflecting market prices, simplifying rates for customers and  
8 EGSs, and mitigating disparate rate impacts. Combined, they should promote  
9 retail competition and better enable retail customers to understand the charges and  
10 prices of the market.

11  
12 **Q. What was the starting point for developing supply rates for residential, small  
13 C&I and lighting customers?**

14 A. I used the average energy supply rates by customer class (residential, small C&I  
15 and lighting) described by Mr. Fisher and summarized in Table No. 1 as the  
16 starting point for rate design. These average supply rates include adjustments for  
17 rate class specific line losses and load profiles. This enabled me to analyze the  
18 class and monthly impacts of implementing a single energy price and determine  
19 what, if any, rate changes should be phased-in over time.

20  
21 **Table No. 1 Average Supply Rates**

Customer Class	Applicable Rate Classes	Average Rate Cents/kWh
Residential	RS, RH, RA	7.156
Small C&I	GS/GM, GMH	7.083
Unmetered Service	UMS	6.718
Lighting	AL, SE, SM, SH, PAL	5.923

22  
23 **Q. What changes are you proposing to the rate design of the residential rate  
24 classes?**

25 A. Rate RS, with about 500,000 customers, is the Company’s standard residential  
26 service rate. This rate is currently a single flat energy charge per kilowatt-hour

1 ("kWh"). The rate will be reset to the supply rate in Table No. 1 with no changes  
2 in rate design.

3 Rate RH and rate RA (with approximately 25,000 and 3,300 customers,  
4 respectively) are the Company's residential space heating rates. Both have the  
5 same rate structure as rate RS during the May through October non-heating  
6 season, but have a declining block rate structure and a reduced rate for usage  
7 greater than 500 kWh during the November through April heating season. These  
8 rates for usage greater than 500 kWh (2.6133 ¢/kWh for RH and 2.702 ¢/kWh for  
9 RA) are currently below current market prices, and as expected, customer  
10 shopping for these classes is very low. For example, less than 1% of rate RH  
11 customers are shopping with an EGS.

12 For the proposed supply rates, the same rate RS energy charge will apply  
13 during the non-heating season for rate RH and RA customers since customers in  
14 these three rate classes, in general, have similar usage characteristics during these  
15 months. The two-step declining block rate design will be retained to mitigate rate  
16 impacts during the heating season, but will be phased-out over three years. The  
17 supply rate for usage up to 500 kWh per month during the heating season will be  
18 the same rate applicable during the May to October non-heating season. The  
19 current tail block rates for usage in excess of 500 kWh per month for RH and RA  
20 will be increased on January 1, 2008, 2009 and 2010 so that the declining block  
21 structure is eliminated by 2010 and all residential customers are charged the same  
22 supply rate.

23 The proposed rate structures for RH and RA are consistent with  
24 simplification of the rate design, inter-class consistency, improving economic  
25 price signals, and understandability by customers.

26  
27 **Q. Why do you propose to phase-in the supply rate increases for rate classes RH  
28 and RA?**

29 **A.** The Company believes that it is important to phase-in significant changes in rate  
30 structure to mitigate rate impacts, especially for rates that have been in place for  
31 over 20 years. The average rate a customer will be charged on these rate classes

1 will depend on their individual monthly usage and should be considered on an  
2 annual basis. As proposed, all residential customers will pay the same rate during  
3 the non-heating season and for the first 500 kWh during the heating season. The  
4 Company is proposing a modest increase to the rate for usage in excess of 500  
5 kWh in 2008. Therefore, the effect on the average rate on an annual basis will  
6 depend on the customer's actual usage during the heating season. While not  
7 moving all the way to a single energy price in 2008, this proposal provides a  
8 measured approach that achieves the Company's objective in 2010.

9  
10 **Q. Please describe the current rate structure applicable to small C&I rate**  
11 **classes.**

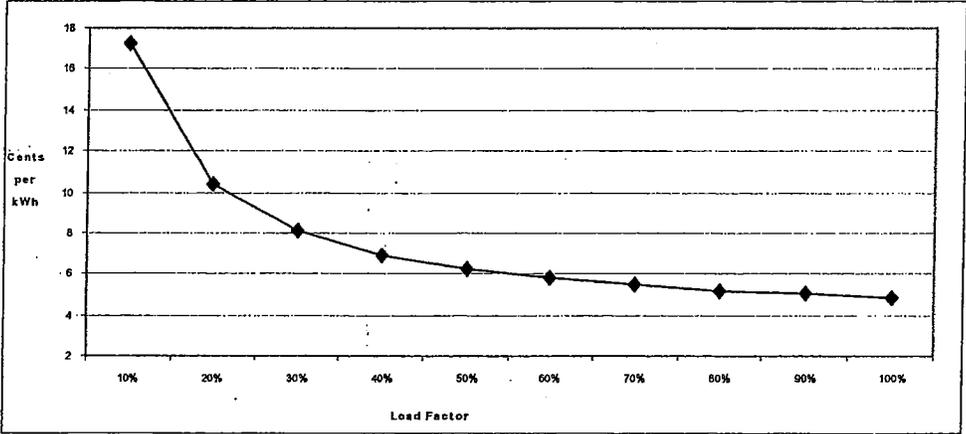
12 A. General service small and medium rates (GS/GM) and the general service  
13 medium heating rate (GMH) constitute the small C&I rate class. Rate GS/GM,  
14 with approximately 52,000 customers, has the second largest number of  
15 customers of all rate schedules. Within this rate class, there are approximately  
16 19,000 rate GS customers. These customers are not demand metered and their  
17 average usage is less than 1,000 kWh per month. There are approximately 33,000  
18 rate GM customers, all of whom are demand metered with diverse usage and load  
19 profiles. Rate GM customers are billed for metered demand in excess of 5  
20 kilowatts ("kW") at \$9.28/kW and for energy at a declining block energy rate of  
21 3.4824 ¢/kWh, neither of which reflect current market prices.

22 Rate GMH is the complementary electric space-heating rate to general  
23 service rate GM. There are approximately 3,400 customers on rate GMH. During  
24 the non-heating season, these customers are billed according to the same rate  
25 structure as rate GM though at different rates. During the heating season, these  
26 customers are billed using a variable, two-step declining block energy rate  
27 structure, the legacy of pre-restructuring rates. The current energy rate for the  
28 second block (3.0442 ¢/kWh) is also below current market prices.

29  
30 **Q. What changes are you proposing to the rate design of the small C&I rate**  
31 **classes?**

1 A. Duquesne proposes to simplify the existing rate structure for both rate classes by  
2 implementing a single energy rate for all small C&I customers. This will simplify  
3 price comparisons with competitive EGS offers. By 2010, Duquesne will  
4 eliminate existing demand charges that do not reflect current market prices and  
5 eliminate declining energy block rates that are below market levels and  
6 discourage conservation. Demand charges of the current magnitude are not  
7 reflective of market prices and produce significant diversity in a customer's  
8 average supply charge within rate GM depending on the customer's monthly load  
9 factor. Load factor is defined as the kWh consumed by the customer divided by  
10 their monthly-metered demand in kW divided by the number of hours in the  
11 month. Graph No. 1 shows the average supply charge in cents per kWh for a rate  
12 GM customer with a 20 kW billed meter demand at current supply rates at various  
13 load factors under the current rate structure.

14  
15 **Graph No. 1 Rate GM Average Supply Rate at Various Load Factors**



16  
17 As shown, the average supply charge varies from just below 5 cents per kWh to  
18 over 17 cents per kWh depending on load factor. This is the result of using the  
19 non-coincident peak demand to determine a customer's supply-related demand  
20 charge and the high level of current demand charges in today's retail rates.  
21 Market capacity costs represent a relatively small component of total supply costs,  
22 and there is little economic justification for this variation.

1 Combined, this proposed rate design reduces class diversity of supply  
2 rates over time while mitigating rate impacts to the smallest customers,  
3 simplifying the rate structure, and implementing a rate structure consistent with  
4 market price structures.

5  
6 **Q. Please describe how you have redesigned the small C&I rates to eliminate**  
7 **demand charges and declining block rates.**

8 A. Similar to the residential rate design, I used the energy charge for rates GS/GM  
9 and GMH in Table No. 1 as the basis for rate design.

10 Rate GS customers on average use 300 kWh/month and the majority use  
11 less than 1,000 kWh/month. They are billed according to the rate GS/GM rate  
12 structure which is a flat energy charge up to 1300 kWh per month. Therefore,  
13 rate GS customers will continue to be charged a single rate for all usage equal to  
14 the supply rate in Table No. 1.

15 For rate GM, however, a different approach was used because of the  
16 diversity of the customers, as noted above. Fully eliminating demand charges and  
17 declining block rates for rate GM will impact monthly bills differently depending  
18 on the individual customer's load factor (i.e. their consumption relative to their  
19 monthly metered demand). By fully eliminating demand charges, low load factor  
20 customers would see a decrease in their monthly bill and high load factor  
21 customers would see an increase. Whether a customer would see an increase or  
22 decrease in their supply charges would depend on their load factor and the  
23 proposed supply rate in Table No. 1. To allow customers to adjust to this change  
24 in the supply charge rate structure, the Company proposes to phase-out the  
25 demand charges and declining block rates to transition all customers to a flat  
26 energy supply rate. The demand charges will be reduced equally each year until  
27 they are completely phased-out in 2010. An offsetting increase will be made to  
28 the current tail block energy rates so that by 2010 only a flat energy rate per kWh  
29 will be in place. Therefore, customers will be affected based on their specific  
30 load and usage characteristics while the rate class average supply charge will be  
31 that shown in Table No. 1.

1

2 **Q. Please describe the proposed changes to rate GMH.**

3 A. The Company proposes to change the rate design using principles similar to those  
4 used for residential heating rates. Heating customers will be billed the same  
5 demand and energy charges as general service rate GM during the non-heating  
6 season months. For the heating season, the current variable two-block energy rate  
7 structure will be retained to mitigate customer rate impacts, but phased-out over  
8 three years. The energy-based rates for the first energy block during the heating  
9 season will be reset to equal the supply rate identified in Table No. 1. Similar to  
10 the proposed rate design for the residential space heating rates, the second block  
11 winter usage charge for rate GMH will be increased equally on January 1, 2008,  
12 2009 and 2010 so that the declining block structure is eliminated by 2010 and the  
13 supply rate equals the rate GM supply charge rate in 2010.

14

15 **Q. Will these proposed changes to the small C&I rate schedules effect any other**  
16 **charges applicable to these rate schedules?**

17 A. Yes. The minimum charges associated with these rate schedules have been  
18 modified to be consistent with the proposed POLR supply rates and elimination of  
19 demand charges. In addition, Rider 5 is the Company's Time of Day discount to  
20 demand charges that is a legacy of pre-restructuring rate design when the  
21 Company owned generation. The rider provides a discount to demand charges  
22 associated with the monthly meter read. Since the Company is proposing to phase  
23 out the demand charges for rates GM and GMH, it does not make sense to keep  
24 this rider for discounts applicable only to distribution charges. The Company  
25 proposes to completely eliminate this rider effective January 1, 2010. Phasing-out  
26 this rider over time will allow customers to modify their operation to the extent  
27 possible and enable them to become accustomed to the new rate structure.

28

29 **Q. What changes are you proposing to the rate design for the lighting classes?**

30 A. Duquesne is not proposing any changes to the rate design for the lighting classes,  
31 but will reset the average rate levels for each rate class to the supply price defined

1 in Table No. 1. As a group, the lighting classes currently consist of a diverse mix  
2 of charges and rate design. However, the majority of lighting customers pay a flat  
3 rate per fixture per month based on the lamp wattage and nominal monthly kWh  
4 usage specific to each fixture. Duquesne is not proposing to change this rate  
5 structure for lighting customers. Duquesne will calculate a new flat monthly rate  
6 per fixture using the monthly kWh consumption per fixture and the supply price  
7 defined in Table No. 1. In some cases, as a result of the legacy effects of  
8 unbundling and POLR III rate design, this will result in both average rate  
9 increases and decreases. However, the proposed rate design will result in all  
10 lighting customers paying the same supply rate on a cents per kWh basis.  
11 Implementing these proposed changes to the lighting class rates achieves the  
12 objective of simplifying the rates and eliminating inconsistencies by better  
13 aligning inter and intra-class charges with market price levels.

## 14 **II. SMALL CUSTOMER RATES**

15  
16  
17 **Q. What changes are you proposing to the rates of the small customer rate**  
18 **classes?**

19 **A.** The Company is proposing three changes to the small customer rates. First, the  
20 supply rates will be reset to prevailing market prices defined in Table No. 1.  
21 Second, using the market index adjustment factor described by Mr. Fisher,  
22 Duquesne Light will adjust the 2009 and 2010 rates up or down based on changes  
23 in market prices prior to the start of each calendar year. Third, the Company  
24 proposes to recover ancillary services and PJM administrative expenses in  
25 transmission rates. The Company proposes to recover these costs through the  
26 recently approved TSC.

27  
28 **Q. Have you prepared an exhibit that summarizes the supply rates the**  
29 **Company proposes to include in its retail tariff?**

1 A. Yes. Exhibit WVP-1 summarizes the proposed supply rates for each rate  
2 schedule for each year for 2008-2010. These rates are also shown for each year in  
3 the proposed tariff supplement sponsored by Ms. Krajovic as Exhibit NJDK-3.

4  
5 **Q. Please describe the second change, how you will revise the small C&I rates**  
6 **annually based on a market price index.**

7 A. Mr. Fisher describes the proposed market price multiplier that will be applied to  
8 the supply rates for GS/GM and GMH shown in Exhibit WVP-1. As described by  
9 Mr. Fisher, this is a transparent market index adjustment mechanism to adjust the  
10 small C&I supply rates, upward or downward, depending on changes in market  
11 price indices. The proposed supply rates in Exhibit WVP-1 assume no changes  
12 over the 2008-2010 period (i.e., a multiplier of 1.00). The Company proposes to  
13 implement the 2008 supply rates in Exhibit WVP-1 effective January 1, 2008. No  
14 later than October 1, 2008, the Company will submit a filing to the Commission  
15 adjusting the 2009 rates in Exhibit WVP-1 by the index multiplier described by  
16 Mr. Fisher for 2009. Both the demand and energy charges will be multiplied by  
17 the index multiplier to calculate new rates that will become effective for usage on  
18 or after January 1, 2009. The same index multiplier will also be applied to the  
19 supply charges of rate GMH shown in Exhibit WVP-1 for 2009.

20 The same methodology will be used to adjust rates in 2010. The Company  
21 will apply the appropriate index multiplier for 2010 to each GS/GM and GMH  
22 supply rate component shown in Exhibit WVP-1 for 2010. No later than October  
23 1, 2009, the Company will submit a filing to the Commission establishing the  
24 revised supply rates for GS/GM and GMH. Effective January 1, 2010, demand  
25 charges, declining block energy charges, and declining block seasonal rates will  
26 be eliminated and replaced with a single flat energy rate for all small C&I  
27 customers.

28  
29 **Q. Have you prepared an example calculation showing how this market index**  
30 **adjustment will work?**

1 A. Yes. Table No. 2 provides a calculation based on a hypothetical market index  
 2 adjustment for 2009 for rate GM. The 2009 proposed rates are the same rates  
 3 identified in Exhibit WVP-1. These rates will simply be multiplied by the market  
 4 price multiplier to calculate the adjusted rates the Company would file with the  
 5 Commission on October 1, 2008.

6  
 7 **Table No.2 Market Index Adjustment Example Calculation**

		2009 Rates	2009 Index Adjusted Rates
Market Price Multiplier			0.975
Demand Charge	\$/kW/Month	\$3.09	\$3.01
First 1,300 kWh	Cents/kWh	7.0830	6.9059
Additional kWh	Cent/kWh	6.1840	6.0294

8  
 9 **Q. What changes are necessary to the tariff describing this annual adjustment?**

10 A. The Company is proposing two changes to the tariff to implement this change.  
 11 First, Rider No. 20 has been added to the tariff supplement attached as Exhibit  
 12 NJDK-3 to Ms. Krajovic's testimony. The purpose of Rider No. 20 is to describe  
 13 the process by which the Company will calculate the rate multiplier that will be  
 14 applied to the supply charges in rate schedules GS/GM and GMH for 2009 and  
 15 2010.

16 Second, the "Electric Charges" language of rate schedules GS/GM and  
 17 GMH will be revised as follows:

18  
 19 No later than October 1 of 2008, the Company will submit a filing to the  
 20 Commission adjusting the 2009 Supply Charges to reflect changes in the  
 21 market price of electricity. The 2009 Supply Charges will be multiplied by  
 22 the Annual Market Price Adjustment described in Rider 20 to establish rates  
 23 that will become effective for usage on or after January 1, 2009. No later than  
 24 October 1 of 2009, the Company will submit a filing to the Commission  
 25 adjusting the 2010 Supply Charges to reflect changes in the market price of  
 26 electricity. The revised rates will become effective for usage on or after  
 27 January 1, 2010. The 2010 Supply Charges will be multiplied by the Annual  
 28 Market Price Adjustment described in Rider 20 to establish rates that will  
 29 become effective for usage on or after January 1, 2010.

1  
2

3 **Q. Please describe your third change, how you propose to recover the costs for**  
4 **ancillary services and PJM administrative expenses.**

5 A. The Company is proposing to recover the costs of ancillary services and PJM  
6 administrative costs associated with default service for small customer classes  
7 through the retail transmission rates and TSC. (For large C&I customers,  
8 ancillary services and PJM administrative costs will continue to be recovered in  
9 Rider No. 9 and will adjust as PJM charges adjust.) The Commission approved  
10 the TSC by order entered December 1, 2006 at Docket R-00061346. This change  
11 will enable the Company to recover the expenses it incurs as a provider of  
12 transmission service to retail customers taking default service from the Company.

13

14 **Q. Do the average supply rates in Table No. 1 and the supply rates in Exhibit**  
15 **WVP-1 include the costs associated with ancillary services and PJM**  
16 **administrative expenses?**

17 A. No, they do not. However, the transmission rates in Exhibit WVP-1 have been  
18 adjusted to include recovery of the charges for ancillary services and PJM  
19 administrative costs.

20

21 **Q. How are these costs currently recovered for residential, small C&I and**  
22 **lighting customers?**

23 A. In POLR III, Duquesne fixed the PJM surcharge for residential, small C&I and  
24 lighting class customers and included the surcharge in the fixed supply rate.  
25 Similarly, ancillary service costs were fixed and bundled together in the fixed  
26 supply rate, although no separate charge was identified.

27

28 PJM administrative expenses that the Company is currently incurring are  
29 being recovered through retail tariff PJM Surcharge Rider No. 1. Rider No. 1  
30 became effective January 1, 2005 when the Company joined PJM and as defined  
31 in its POLR III order, is effective until December 31, 2007. As described in the  
Company's distribution rate case at Docket R-00061346, the Company proposed

1 to retain Rider No. 1 through December 31, 2007, at which point the Company  
2 proposed to roll those PJM expenses into the proposed transmission service  
3 charge so the default service supply rates will not reflect any such PJM costs.  
4 (Pfrommer, Direct, p. 19, l. 10)

5  
6 **Q. Why is it appropriate to recover the costs associated with ancillary services  
7 and PJM administrative expenses through the transmission rates?**

8 A. These are transmission related costs the Company incurs in accordance with the  
9 OATT, and as such they are appropriately recovered through retail transmission  
10 rates, in this case the TSC. This approach will have no effect on the price to  
11 compare ("PTC") and since it is updated annually through the TSC, will ensure  
12 there is no competitive distortion.

13  
14 **Q. How will the Company adjust the transmission rates to recover ancillary  
15 services and PJM administrative costs?**

16 A. The Company proposes to modify the definition of projected total expenses in the  
17 TSC to include these expenses for all small customer classes. Both ancillary  
18 service and PJM administrative costs will be recovered on the basis they are  
19 incurred, primarily MWh, to ensure there is no cost shifting. The revenue  
20 collected will be trued-up with expenses incurred in the subsequent TSC filing.

21  
22 **Q. Have you estimated the average costs for ancillary services?**

23 A. Yes. Based on the 12 months ending December 2006, the ancillary service  
24 expense the Company proposes to recover in the transmission expense will be set  
25 initially at \$2.175/MWh. This rate will recover the estimated ancillary service  
26 expenses for spinning reserves, operating reserves, regulation, synchronous  
27 condensing charges, schedule 1A and black start service. This rate also includes  
28 an adjustment for transmission and distribution line losses and Pennsylvania gross  
29 receipts tax ("GRT").

30  
31

1 **Q. Have you estimated the average costs for PJM administrative expenses?**

2 A. Yes. I used the stated rates in Schedules 9-1 to 9-5 and Schedule 9-FERC in the  
3 PJM OATT to calculate a rate of \$0.408/MWh to recover PJM administrative  
4 expense. Similar to derivation of the ancillary service rate, the PJM  
5 administrative rate has been adjusted for transmission and distribution line losses  
6 and GRT.

7  
8 **Q. Will you update the estimated costs for ancillary services prior to January 1,  
9 2008?**

10 A. Yes. The Company proposes to update the estimated cost for ancillary services  
11 based on the average costs for the 12 months ending November 30, 2007. This  
12 will provide an updated rate beginning January 1, 2008 using the most recent data  
13 and will reduce the potential effects of adjusting these rates in April 2008, the  
14 date of the then subsequent TSC filing.

15  
16 **Q. What changes do you propose to the retail tariff to recover these costs  
17 through the TSC?**

18 A. First, the "Electric Charges" section of each rate schedule will be revised to  
19 explain that these costs will be recovered through the TSC which is Appendix A  
20 of the tariff. Second, the Company will revise the TSC to incorporate language  
21 explaining that ancillary service expenses and PJM administrative expenses are  
22 part of the TSC for each rate schedule. Third, since the PJM administrative  
23 expenses will be recovered through the TSC, Rider No. 1 has been eliminated.  
24 Rider No. 9 has been revised to provide more discussion on the PJM surcharge.  
25 All of these changes are shown in Exhibit NJDK-3 attached to Ms. Krajovic's  
26 testimony.

27  
28  
29  
30  
31



1 **Q. How do the proposed supply rates compare to the generation rate cap**  
2 **(including the competitive transition charge) approved in Duquesne's**  
3 **restructuring case?**

4 A. Exhibit WVP-5 provides a comparison of class average POLR I generation rate  
5 caps to the proposed supply rates. For the vast majority of residential and small  
6 C&I customers, the proposed supply rates remain below Duquesne's restructuring  
7 generation rate caps. These modest changes in residential and small C&I customer  
8 rates are particularly remarkable given the significant increase in market prices in  
9 the past ten years and the relatively high levels of customer shopping in  
10 Duquesne's service area. Mr. O'Brien and Mr. Fisher provide more description  
11 regarding how the Company was able to mitigate stranded costs, reduce rates, and  
12 at the same time, promote retail competition.

13  
14  
15 **V. LARGE CUSTOMER SUPPLY RATES**

16  
17 **Q. What changes are you proposing to the supply rates of the large C&I rate**  
18 **classes?**

19 A. Rate schedules GL, GLH, L and HVPS define the large C&I rate classes and are  
20 applicable to approximately 871 customers with monthly-metered demands  
21 greater than 300 kW. Currently these customers have the option to purchase  
22 default service supply from the Company under fixed price service ("FPS") retail  
23 tariff Rider No. 8 or hourly price service ("HPS") Rider No. 9. FPS Rider No. 8  
24 is scheduled to expire May 31, 2007. As described by Mr. O'Brien, Duquesne  
25 will only offer HPS service to large C&I customers effective June 1, 2007.  
26 Duquesne will no longer offer large C&I customers a fixed price option (Rider  
27 No. 8), but rather will rely on EGS's to provide this service.

28  
29 **Q. Will this change affect many customers?**

30 A. No. As of December 31, 2006, there were only six of an eligible 871 customers  
31 on FPS service, less than 1%. Since FPS Rider No. 8 will terminate May 31,

1 2007, no customers will be on this rate when the Company implements its default  
2 service plan January 1, 2008.

3  
4 **Q. How will eliminating the fixed price option affect the retail tariff?**

5 A. Retail tariff Rider No. 8 will be eliminated. Rule 45.2 regarding switching rules  
6 will be revised to eliminate its applicability to large C&I rate schedules since  
7 Rider No. 8 is eliminated. The Generation Rate Adjustment switching rule  
8 ("GRA") described in retail tariff Rider No. 23 is applicable only to customers  
9 electing FPS Rider No. 8 and will also be eliminated. Upon elimination of Rider  
10 No. 23, Duquesne will have no switching restrictions in the retail tariff other than  
11 the protocols defined and required by the Commission.

12  
13 **Q. Are you proposing changes to HPS Rider No. 9?**

14 A. Duquesne is not proposing any changes to the formula described in Rider No. 9  
15 and will continue to offer hourly price default service to large C&I customers.  
16 Duquesne is proposing to recover the cost of ancillary services and PJM  
17 administrative costs in the same manner as it does today as defined in the Rider  
18 No. 9 formula rate. Duquesne is, however, proposing to revise the fixed retail  
19 adders defined in the rider.

20  
21 **Q. Please described the current fixed retail adders in Rider No. 9?**

22 A. Table No. 3 summarizes the adders approved in the POLR III proceeding. The  
23 adder for each rate class consists of a risk component and an administrative  
24 charge component. The administrative charge component for each rate class is  
25 \$1.35/MWh. The administrative charge adder was based on the incurred costs  
26 and annual costs for POLR III and a forecast level of sales for large C&I  
27 customers expected to remain on POLR III supply rates when they became  
28 effective January 1, 2005.

1

**Table No. 3 Current Rider No. 9 Fixed Retail Adders**

Rate	Adder \$/MWh
GL	\$4.89
GLH	\$3.52
L	\$3.41
HVPS	\$1.70

2

3 **Q. What is the revised adder you are proposing for hourly price service Rider**  
4 **No. 9?**

5 A. The Company has eliminated the risk component of the adder and seeks only to  
6 recover its administrative costs of providing the hourly price default service.  
7 Therefore, I revised the adders to reflect current annual costs and to reflect actual  
8 POLR sales on the hourly price service. The annual cost to provide HPS service  
9 is approximately \$800,000. The Company is proposing an administrative cost  
10 adder of \$3.97 per MWh based on estimated annual POLR sales of 201,736  
11 MWh. This adder will apply to POLR sales for any customer that receives hourly  
12 price service.

13

14 **Q. Does this conclude your direct testimony?**

15 A. Yes, it does.

**DUQUESNE LIGHT COMPANY  
SUPPLY RATES BY RATE SCHEDULE**

Rate Class		Billing Unit	2007	2008	2009	2010
RS	All kWh	¢/kWh	6.3031	7.1560	7.1560	7.1560
RH	May thru October	¢/kWh	7.6604	7.1560	7.1560	7.1560
	First 500 kWh - November thru April	¢/kWh	7.6604	7.1560	7.1560	7.1560
	Additional kWh - November thru April	¢/kWh	2.6133	4.1275	5.6418	7.1560
RA	May thru October	¢/kWh	7.7806	7.1560	7.1560	7.1560
	First 500 kWh - November thru April	¢/kWh	7.7806	7.1560	7.1560	7.1560
	Additional kWh - November thru April	¢/kWh	2.7020	4.1867	5.6713	7.1560
GS	First 1300 kWh	¢/kWh	7.9914	7.0830	7.0830	7.0830
	Additional kWh	¢/kWh	3.4824	7.0830	7.0830	7.0830
GM	Demand first 5 kW	\$/kW/mo.	\$0.00	\$0.00	\$0.00	\$0.00
	Demand additional kW	\$/kW/mo.	\$9.28	\$6.19	\$3.09	\$0.00
	First 1300 kWh	¢/kWh	7.9914	7.0830	7.0830	7.0830
	Additional kWh	¢/kWh	3.4824	5.2849	6.1840	7.0830
GMH	Demand first 5 kW	\$/kW/mo.	\$0.00	\$0.00	\$0.00	\$0.00
	Demand additional kW	\$/kW/mo.	\$9.66	\$6.19	\$3.09	\$0.00
	First 1300 kWh - June thru September	¢/kWh	8.2699	7.0830	7.0830	7.0830
	Additional kWh - June thru September	¢/kWh	3.0442	5.2849	6.1840	7.0830
	First block kWh - October thru May	¢/kWh	7.2685	7.0830	7.0830	7.0830
	Additional kWh - October thru May	¢/kWh	3.0442	4.3905	5.7367	7.0830
AL	Demand all kW	\$/kW/mo.	\$5.06	\$0.00	\$0.00	\$0.00
	First 300 kWh	¢/kWh	7.1574	5.9230	5.9230	5.9230
	Additional kWh	¢/kWh	1.7392	5.9230	5.9230	5.9230
SE	All kWh	¢/kWh	3.8918	5.9230	5.9230	5.9230
SM	Mercury Vapor (\$/fixture/month)	kWh/mo.				
	100 watts	44	\$1.60	\$2.61	\$2.61	\$2.61
	175 watts	74	\$2.07	\$4.38	\$4.38	\$4.38
	250 watts	102	\$2.58	\$6.04	\$6.04	\$6.04
	400 watts	161	\$3.49	\$9.54	\$9.54	\$9.54
	1000 watts	386	\$7.56	\$22.86	\$22.86	\$22.86
	Sodium Vapor (\$/fixture/month)					
	70 watts	29	\$1.62	\$1.72	\$1.72	\$1.72
	100 watts	50	\$2.07	\$2.96	\$2.96	\$2.96
	150 watts	71	\$2.46	\$4.21	\$4.21	\$4.21
	250 watts	110	\$3.59	\$6.52	\$6.52	\$6.52
	400 watts	170	\$4.68	\$10.07	\$10.07	\$10.07
	1000 watts	387	\$9.77	\$22.92	\$22.92	\$22.92
	SH	Sodium Vapor (\$/fixture/month)	kWh/mo.			
100 watts		50	\$5.72	\$2.96	\$2.96	\$2.96
150 watts		71	\$7.02	\$4.21	\$4.21	\$4.21
200 watts		95	\$8.35	\$5.63	\$5.63	\$5.63
400 watts	170	\$13.54	\$10.07	\$10.07	\$10.07	
UMS	First 1,300 kWh	¢/kWh	7.2530	6.7180	6.7180	6.7180
(Unmetered)	Additional kWh	¢/kWh	1.6954	6.7180	6.7180	6.7180
PAL	High Pressure Sodium (\$/fixture/month)	kWh/mo.				
	70 watts	29	\$1.62	\$1.72	\$1.72	\$1.72
	100 watts	50	\$2.07	\$2.96	\$2.96	\$2.96
	150 watts	71	\$2.45	\$4.21	\$4.21	\$4.21
	250 watts	110	\$3.58	\$6.52	\$6.52	\$6.52
	400 watts	170	\$4.67	\$10.07	\$10.07	\$10.07
	Flood Lighting (\$/fixture/month)					
	100 watts	46	\$1.86	\$2.72	\$2.72	\$2.72
	150 watts	67	\$2.17	\$3.97	\$3.97	\$3.97
	250 watts	100	\$2.61	\$5.92	\$5.92	\$5.92
	400 watts	155	\$3.34	\$9.18	\$9.18	\$9.18
	Unmetered (\$/fixture/month)					
	70 watts	29	\$1.27	\$1.72	\$1.72	\$1.72
	100 watts	46	\$2.02	\$2.72	\$2.72	\$2.72
	150 watts	67	\$2.93	\$3.97	\$3.97	\$3.97
	250 watts	100	\$4.37	\$5.92	\$5.92	\$5.92
	400 watts	155	\$6.78	\$9.18	\$9.18	\$9.18

**DUQUESNE LIGHT COMPANY  
RATE CLASS AVERAGE RATES (CENTS/KWH)**

**Proposed Class Average Rates 2008 (1)**

Rate Class	Distribution	Transmission	Supply	Total Average Charge
RS	5.40	0.60	7.16	13.16
RH	4.11	0.42	5.87	10.40
RA	3.14	0.59	6.32	10.04
GS/GM	2.67	0.52	7.08	10.28
GMH	2.40	0.45	6.17	9.02
AL	0.94	0.26	5.92	7.12
SE	5.50	0.26	5.92	11.68
SM	30.22	0.26	5.92	36.40
SH	13.42	0.26	5.92	19.60
UMS	5.09	0.41	6.72	12.22
PAL	12.33	0.26	5.92	18.51
Weighted Avg.	4.23	0.55	6.99	11.77
Residential	5.25	0.58	7.02	12.85
Small C&I	2.64	0.52	6.99	10.14
Lighting/UMS	14.74	0.30	6.13	21.17

**Proposed Class Average Rates 2009 (1)**

Rate Class	Distribution	Transmission	Supply	Total Average Charge
RS	5.40	0.60	7.16	13.16
RH	4.11	0.42	6.51	11.04
RA	3.14	0.59	6.74	10.46
GS/GM	2.67	0.52	7.08	10.28
GMH	2.40	0.45	6.62	9.48
AL	0.94	0.26	5.92	7.12
SE	5.50	0.26	5.92	11.68
SM	30.22	0.26	5.92	36.40
SH	13.42	0.26	5.92	19.60
UMS	5.09	0.41	6.72	12.22
PAL	12.33	0.26	5.92	18.51
Weighted Avg.	4.23	0.55	7.05	11.83
Residential	5.25	0.58	7.09	12.92
Small C&I	2.64	0.52	7.03	10.19
Lighting/UMS	14.74	0.30	6.13	21.17

**Proposed Class Average Rates 2010 (1)**

Rate Class	Distribution	Transmission	Supply	Total Average Charge
RS	5.40	0.60	7.16	13.16
RH	4.11	0.42	7.16	11.68
RA	3.14	0.59	7.16	10.88
GS/GM	2.67	0.52	7.08	10.28
GMH	2.40	0.45	7.08	9.93
AL	0.94	0.26	5.92	7.12
SE	5.50	0.26	5.92	11.68
SM	30.22	0.26	5.92	36.40
SH	13.42	0.26	5.92	19.60
UMS	5.09	0.41	6.72	12.22
PAL	12.33	0.26	5.92	18.51
Weighted Avg.	4.23	0.55	7.11	11.89
Residential	5.25	0.58	7.16	12.99
Small C&I	2.64	0.52	7.08	10.24
Lighting/UMS	14.74	0.30	6.13	21.17

1/ Assumes no increase to distribution rates 2008-2010. Transmission rates do not reflect changes resulting from annual FERC formula filings.

**DUQUESNE LIGHT COMPANY**  
**CLASS AVERAGE SUPPLY RATES**  
**CURRENT RATES VERSUS PROPOSED DEFAULT SERVICE RATES (CENTS/KWH)**

Rate Class	Current	Proposed Supply Rates					
	POLR III Supply Rates (1)	2008 (2)	Change Over POLR III	2009 (2)	Change Over POLR III	2010 (2)	Change Over POLR III
RS	6.30	7.41	17.6%	7.41	17.6%	7.41	17.6%
RH	5.53	6.13	11.0%	6.77	22.6%	7.41	34.2%
RA	6.35	6.58	3.5%	6.99	10.1%	7.41	16.7%
GS/GM	6.46	7.34	13.6%	7.34	13.6%	7.34	13.6%
GMH	5.48	6.42	17.2%	6.88	25.5%	7.34	33.9%
AL	6.43	6.18	-3.9%	6.18	-3.9%	6.18	-3.9%
SE	3.89	6.18	58.8%	6.18	58.8%	6.18	58.8%
SM	4.38	6.18	41.1%	6.18	41.1%	6.18	41.1%
SH	8.72	6.18	-29.1%	6.18	-29.1%	6.18	-29.1%
UMS	7.03	6.98	-0.7%	6.98	-0.7%	6.98	-0.7%
PAL	2.87	6.18	115.5%	6.18	115.5%	6.18	115.5%
Weighted Avg.	6.27	7.25	15.7%	7.31	16.6%	7.37	17.6%
Residential	6.23	7.28	16.9%	7.35	18.0%	7.41	19.1%
Small C&I	6.36	7.24	13.9%	7.29	14.7%	7.34	15.4%
Lighting/UMS	4.93	6.39	29.5%	6.39	29.5%	6.39	29.5%

1/ Current supply rates include ancillary services and the PJM surcharge of .0708 cents per kWh per retail tariff Rider No. 1.

2/ For equivalent comparison, proposed supply rates include ancillary service costs (.2175 cents per kWh) and PJM administrative costs (.0408 cents per kWh). However, these costs will be recovered through the Company's transmission rates. Proposed supply rates also include the costs and risks with PJM RPM capacity requirements and new renewable energy supply requirements.

**DUQUESNE LIGHT COMPANY**  
**TOTAL BILL COMPARISON AT CLASS AVERAGE RATES**  
**CURRENT RATES VERSUS PROPOSED DEFAULT SERVICE RATES (CENTS/KWH)**

Rate Class	Current Rates (POLR III)				Proposed Total Average Charges (1)					
	D	T	S	Total	2008	Change Over POLR III	2009	Change Over POLR III	2010	Change Over POLR III
RS	5.40	0.34	6.30	12.05	13.16	9.2%	13.16	9.2%	13.16	9.2%
RH	4.11	0.16	5.53	9.79	10.40	6.2%	11.04	12.7%	11.68	19.3%
RA	3.14	0.33	6.35	9.82	10.04	2.3%	10.46	6.6%	10.88	10.8%
GS/GM	2.67	0.27	6.46	9.40	10.28	9.3%	10.28	9.3%	10.28	9.3%
GMH	2.40	0.19	5.48	8.07	9.02	11.7%	9.48	17.3%	9.93	23.0%
AL	0.94	0.00	6.43	7.37	7.12	-3.4%	7.12	-3.4%	7.12	-3.4%
SE	5.50	0.00	3.89	9.39	11.68	24.4%	11.68	24.4%	11.68	24.4%
SM	30.22	0.00	4.38	34.60	36.40	5.2%	36.40	5.2%	36.40	5.2%
SH	13.42	0.00	8.72	22.14	19.60	-11.5%	19.60	-11.5%	19.60	-11.5%
UMS	5.09	0.15	7.03	12.27	12.22	-0.4%	12.22	-0.4%	12.22	-0.4%
PAL	12.33	0.00	2.87	15.20	18.51	21.8%	18.51	21.8%	18.51	21.8%
Weighted Avg.	4.23	0.29	6.27	10.79	11.77	9.1%	11.83	9.7%	11.89	10.2%
Residential	5.25	0.32	6.23	11.80	12.85	8.9%	12.92	9.5%	12.99	10.1%
Small C&I	2.64	0.26	6.36	9.26	10.14	9.6%	10.19	10.1%	10.24	10.6%
Lighting/UMS	14.74	0.04	4.93	19.72	21.17	7.4%	21.17	7.4%	21.17	7.4%

1/ Assumes no increase to distribution rates 2008-2010. Proposed Total Class Average rates do not reflect changes in transmission rates resulting from annual FERC formula filings.

**DUQUESNE LIGHT COMPANY  
CLASS AVERAGE SUPPLY RATES  
POLR I RATES VERSUS PROPOSED DEFAULT SERVICE RATES (CENTS/KWH)**

Rate Class	POLR I Supply Rate (1)	Total Supply Cost					
		2008 (2)	Change Over POLR I	2009 (2)	Change Over POLR I	2010 (2)	Change Over POLR I
RS	8.16	7.41	-9.1%	7.41	-9.1%	7.41	-9.1%
RH	7.11	6.13	-13.8%	6.77	-4.7%	7.41	4.3%
RA	7.88	6.58	-16.6%	6.99	-11.3%	7.41	-6.0%
GS/GM	7.60	7.34	-3.4%	7.34	-3.4%	7.34	-3.4%
GMH	6.52	6.42	-1.4%	6.88	5.6%	7.34	12.6%
AL	6.38	6.18	-3.1%	6.18	-3.1%	6.18	-3.1%
SE	5.44	6.18	13.6%	6.18	13.6%	6.18	13.6%
SM	10.59	6.18	-41.6%	6.18	-41.6%	6.18	-41.6%
SH	10.90	6.18	-43.3%	6.18	-43.3%	6.18	-43.3%
UMS	9.00	6.98	-22.5%	6.98	-22.5%	6.98	-22.5%
PAL	6.88	6.18	-10.2%	6.18	-10.2%	6.18	-10.2%
Weighted Avg.	7.81	7.25	-7.1%	7.31	-6.4%	7.37	-5.6%
Residential	8.05	7.28	-9.6%	7.35	-8.7%	7.41	-7.9%
Small C&I	7.49	7.24	-3.2%	7.29	-2.6%	7.34	-1.9%
Lighting/UMS	8.36	6.39	-23.6%	6.39	-23.6%	6.39	-23.6%

1/ Average supply rates include class average competitive transition charges.

2/ Includes ancillary services and PJM administrative costs.

# Appendix D



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Anthony D. Kanagy

akanagy@postschell.com  
717-612-6034 Direct  
717-731-1985 Direct Fax  
File #: 161587

July 17, 2015

**VIA E-MAIL & REGULAR MAIL**

Alan M. Seltzer, Esquire  
Buchanan Ingersoll & Rooney PC  
409 N. Second Street, Suite 500  
Harrisburg, PA 17101-1357

**Re: Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Dear Counsel:

Enclosed please find Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company on Whemco-Steel Castings, Inc. – Set III. Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Anthony D. Kanagy

ADK/skr  
Enclosures

cc: Certificate of Service  
Rosemary Chiavetta, Secretary (*letter and certificate of service only*)

**CERTIFICATE OF SERVICE  
(Docket No. C-2014-2459527)**

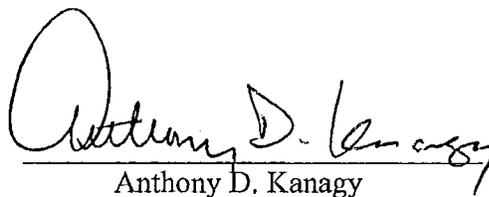
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL and FIRST CLASS MAIL**

Alan M. Seltzer, Esquire  
John F. Povilaitis, Esquire  
Buchanan Ingersoll & Rooney PC  
409 N. Second Street, Suite 500  
Harrisburg, PA 17101-1357

Ricky L. Bertram, Esquire  
General Counsel  
Park Corporation  
6200 Riverside Drive  
Cleveland, OH 44135

Date: July 17, 2015

  
Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Whemco-Steel Castings, Inc.</b>	:	
	:	
v.	:	<b>Docket No. C-2014-2459527</b>
	:	
<b>Duquesne Light Company</b>	:	

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**INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS PROPOUNDED BY  
DUQUESNE LIGHT COMPANY ON  
WHEMCO-STEEL CASTINGS, INC. – SET III**

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Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, Duquesne Light Company (“Duquesne Light”), propounds the following Interrogatories and Requests for Production of Documents on (“Whemco”) – Set III.

**INSTRUCTIONS AND DEFINITIONS**

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.
4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.
5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:
  - a. The title or other means of identification of each such document;

- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or

orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided should first restate the question asked and identify the person(s) supplying the information.

12. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

17. These interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

**INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO  
WHEMCO-STEEL CASTINGS, INC. – SET III**

1. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that a utility's tariff controls what rate the utility may charge? If no, please explain.
2. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that Duquesne Light provided a pro forma tariff that included changes to Rider No. 5 as Exhibit NJDK-3 with the initial Default Service filing at Docket No. P-00072247?
3. Re: Affidavit of Pamela C. Polacek, Esquire: Did Ms. Polacek review the pro forma tariff that was provided as Exhibit NJDK-3 with the Default Service filing at Docket No. P-00072247?
4. Re: Affidavit of Pamela C. Polacek, Esquire: Did Rider No. 5 of the pro forma tariff clearly state that it was applicable to Rate L?
5. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that Rider No. 5 in Exhibit NJDK-3 stated as follows:

“The availability and application of Rider No. 5 – Time of Day Discounts will terminate December 31, 2010.”
6. Re: Affidavit of Pamela C. Polacek, Esquire: Was there any language in Rider No. 5 in Exhibit NJDK-3 stating that Rider No. 5 would be retained for any customer class or rate schedule past December 31, 2010? If yes, please explain.
7. Re: Affidavit of Pamela C. Polacek, Esquire, Paragraph 21: Is Ms. Polacek aware of any default service proceedings where a utility or a party to the proceeding proposed a distribution rate change? If yes:
  - a. List all such proceedings, including the docket number; and
  - b. Describe the distribution rate change proposal.
8. Re: Affidavit of Pamela C. Polacek, Esquire: Please provide a copy of all communications, including but not limited to e-mails and memoranda, to and from both Whemco and Ms. Polacek (including all persons that are working with or worked with Ms. Polacek and all attorneys at Ms. Polacek's law firm) regarding:
  - a. Representation of Whemco in the DSP IV proceeding;
  - b. Whemco's complaint; and
  - c. Preparation of the Affidavit.

# Appendix E

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held June 2, 2000

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
Nora Mead Brownell  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick

Petition of PP&L Industrial Customer  
Alliance for a Declaratory Order Prohibiting  
Implementation of Tariff Interpretation  
Change for Billing PP&L Rate Schedule IS-P  
and IS-T Customers, or in the Alternative,  
Formal Complaint

P-00001788

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration and disposition are the Exceptions of PP&L Industrial Customer Alliance (PPLICA) taken to the Recommended Decision of Administrative Law Judge (ALJ) Morris J. Solomon issued on March 31, 2000. Reply Exceptions were filed by PPL Electric Utilities Corporation (PP&L) and the Commission's Office of Trial Staff (OTS) on April 24, 2000. Per Letter dated April 14, 2000, the Office of Trial Staff (OTS) indicated that it will not be filing Exceptions.

## History of the Proceeding

On January 5, 2000, PPLICA<sup>1</sup> filed with the Commission a Petition seeking a declaratory order prohibiting the implementation of a tariff interpretation change for billing PP&L Rate Schedule IS-P and IS-T customers or alternatively, the initiation of a formal complaint. On that same date, PPLICA filed a Petition for Emergency Order requesting an immediate Order preventing implementation of the proposed billing modification to the subject rate schedules.

PP&L filed Answers to the Petition for Declaratory Order and the Petition for Emergency Order.

The respective Petitions to Intervene of the Mid-Atlantic Power Supply Association (MAPSA), the Office of Consumer Advocate (OCA) and PPL EnergyPlus were granted. The OTS also participated in the proceeding.

By Order entered on January 27, 2000, the Commission denied the Petition for Emergency Order and assigned the matter to the Office of Administrative Law Judge for expedited hearing.

Evidentiary Hearings were held on February 23 and 24, 2000, before ALJ Solomon. The Parties filed Main and Reply Briefs. In a Recommended Decision issued

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<sup>1</sup> PPLICA is an ad hoc association of large commercial and industrial users of electricity service in the service territory of PP&L. In this proceeding, PPLICA refers to the following fourteen (14) companies which purchase distribution service from PP&L under Rate Schedules IS-P and IS-T: Air Products and Chemicals, Inc.; Alcoa; Armstrong World Industries, Inc.; Binkley & Ober, Inc.; Chamberlain Manufacturing Corporation; Empire Kosher Poultry, Inc.; Hercules Cement Company; Lafarge Corporation; Magee Rieter Automotive Systems; Mount Joy Wire Corporation; Praxair, Inc.; RR Donnelly & Sons Company, Inc.; and Thomson Consumer Electronics.

on March 31, 2000, ALJ Solomon recommended dismissal of PPLICA's Petition for Declaratory Order.

On April 17, 2000, PPLICA filed Exceptions to the Recommended Decision. PP&L and the OTS filed Reply Exceptions on April 24, 2000.

### Discussion

In our January 27, 2000 Order, we directed the presiding ALJ and the Parties to address the following issues of fact and law in this proceeding:

Whether tariffs IS-P and IS-T are sufficiently ambiguous to require the Commission's consideration of extrinsic evidence?

Whether PP&L altered its interpretation of tariffs IS-P and IS-T from 1999 to 2000? If the answer to this question is yes, whether this is relevant to the Commission's interpretation of the tariff.

Whether the rates, terms and conditions contained in tariffs IS-P and IS-T are based upon cost of service principles or whether they are based upon other ratemaking principles?

Whether there is any anticompetitive intent or effect with respect to PP&L's interpretation of tariffs IS-P and IS-T?

Whether and how tariffs IS-P and IS-T, as presently in force and as interpreted by the parties, enhance or detract from regional or local reliability?

How do existing contractual relationships (and proposed changes to those relationships if any are proposed) between and among PP&L, its distribution customers, their generation suppliers and PJM Interconnection, LLC govern the use of

interruptible power within the region encompassed by that ISO?

Whether tariffs IS-P and IS-T should be amended to require, as a condition of service, that the customer purchase matching interruptible service from one or more energy generation suppliers?

(Order, pp. 4-5).

The ALJ recommended dismissal of PPLICA's Petition, finding that PPLICA failed to present any evidence to show that any specific portion of the subject rate schedules text was ambiguous or susceptible to multiple meanings. The ALJ further noted that PP&L's acknowledged change in its billing procedure from 1999-2000 constituted a changed interpretation of tariffs IS-P and IS-T. PP&L's changed approach was not, in the ALJ's view, relevant to the issue of tariff interpretation. The ALJ reasoned that the primary focus in the proceeding was "whether PP&L has (or should have) any control over the interruptibility of the generation it did not sell to the industrial customer who is legally free under the Competition Act to shop for all of its energy needs with a competitive supplier under free and open market conditions." (R.D., p. 11).

The ALJ further concluded that PP&L's Rate Schedules IS-P and IS-T are based on cost of service principles. Rejecting PPLICA's contention, the ALJ found that the record evidence did not support a conclusion that PP&L's interpretation of the IS-P and IS-T tariffs results in an anticompetitive intent or effect. On the issue of reliability, the ALJ adopted the positions of PP&L and the OTS that Rate Schedules IS-P and IS-T promote the availability of interruptibility as to Electric Generation Supplier (EGS)-supplied firm energy distributed under an interruptible rate schedule, which in turn strengthens the PJM system reliability. The ALJ agreed with the positions of the Parties that the subject tariff rate schedules should not be amended to require any matching interruptible service purchases.

The ALJ also granted PP&L's Motion to Strike and directed that Tab 4 to Appendix D of PPLICA's Main Brief, Appendices A and B to the Petitioner's Reply Brief, and all references thereto in PPLICA's Main Brief and Reply Brief be stricken from the record of this proceeding.

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 86 Pa. 410, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any Exception or argument, which is not specifically addressed herein, shall be deemed to have been duly considered and denied without further discussion.

We note that PPLICA has listed eleven (11) sections in its Exceptions. Because the arguments and issues contained in the different sections are, in many instances, interrelated, we shall address them jointly, without specific reference.

Before addressing the arguments of the Parties, we believe that it is instructive to briefly describe the tariffs, which are the subject of this litigation. Rate Schedules IS-P and IS-T services are interruptible services which are available with at least 1,000 KW of year-round Interruptible Power to customers who contract to accept interruptible service for at least one (1) year, as detailed in the Rate Schedules. (PP&L M.B., p. 7, referring to PPLICA Exhibit 29, pp. 30A (IS-P) and 30C (IS-T). The tariffs also provide that "the customer's net monthly rate for the Distribution Charge, the Competitive Transition Charge (CTC), the Intangible Transition Charge (ITC), and the Capacity and Energy Charge, if applicable, is multiplied by the customer's Billing KW." (PP&L M.B., p. 7). In accordance with the provisions of the tariffs, load interruptions may be called by the Company (PP&L) as required for economic load control, for system and local emergencies, and for tests of the customer's ability and readiness to interrupt

during an emergency. While the customer is required under the provisions to interrupt during emergencies and emergency tests, the customer also has the option to interrupt or accept an additional charge for continued use, during periods of economic load control. (PP&L M.B., p. 8). The rate schedules also state that “the additional charge for not interrupting load (KW) when called for during an emergency or an emergency test interruption period is: \$24.95 per KW for all KW by which the maximum fifteen (15) minute demand (KW) for the period of requested interruption exceeds the Firm Power (KW). This penalty shall be applied separately for each requested interruption, and shall be in addition to all other charges provided for under the Rate Schedule.” (PP&L M.B., p. 8).

As a general proposition, PPLICA argues that the ALJ erred in not considering and adopting its arguments regarding the alleged illegality of PP&L’s modified tariff interpretation change. According to PPLICA, the ALJ merely addressed the questions specified in the Commission’s January 27, 2000 Order, failing to address the fundamental issue of whether PP&L should have the ability to exercise control and require interruption of supply procured by an IS-P or IS-T customer from a competitive supplier. PPLICA further asserts that the ALJ’s recommendation to uphold PP&L’s tariff interpretation of IS-P and IS-T, which in PPLICA’s view is contrary to the Electric Generation Customer Choice and Competition Act (Act), 66 Pa. C.S. §§2801 et seq. and the Restructuring Settlement, should be rejected.

PP&L disagrees with PPLICA’s contention and argues that the ALJ’s recommendation is consistent with the balancing of all relevant interests promoted by the Act and the Restructuring Settlement.<sup>2</sup> In support of its contention, PP&L contends that the Act serves to promote not only competition but also system reliability, safety, fairness to customers, and fairness to electric utilities. PP&L also notes that Rate Schedules IS-P

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<sup>2</sup> Joint Petition for Full Settlement of PP&L, Inc.’s Restructuring Proceeding and Related Court Proceedings, Docket No. R-00973954.

and IS-T resulted from a settlement which was negotiated by Parties, including PPLICA members, to fairly balance the interests of all parties affected by its restructuring plan and to foster the creation of a competitive market. PP&L also adds that PPLICA's pursuit of declaratory relief violates the terms of the Settlement Agreement, which provided that the Agreement constituted final adjudication of the matters in the Agreement. (PP&L R. Exc., pp. 21-24).

PP&L's arguments are well taken and are correct. The Rate Schedules IS-P and IS-T at issue in this proceeding were included in the Settlement Agreement, which the Commission later approved. The language of these tariffs has not changed and remains the same as that submitted in the Settlement Agreement to which PPLICA members were signatories. For this reason, PPLICA's assertion that PP&L's interpretation of the subject tariffs is contrary to the Settlement Agreement is without merit. We further find no evidence to support PPLICA's contention that PP&L's interpretation of previously Commission-approved tariffs is contrary to the Act.

PPLICA also contends that the ALJ erred in concluding that the modified language of the subject tariffs was unambiguous. The ALJ, according to PPLICA, failed to properly recognize the common meaning of "load" and "power." PPLICA maintains that the language in Rate schedules IS-P and IS-T should be construed according to the plain and common meaning of the terms, which is generation supply.

PPLICA adds that, after finding that PP&L modified its tariff interpretation, the ALJ erred in placing the burden of proof on PPLICA. PP&L's modified tariff interpretation, according to PPLICA, constitutes a tariff change requiring notice and an opportunity for customers to object to the proposed change. PPLICA argues that PP&L failed to provide proper advance notice to the Commission and customers depriving customers of the right to challenge the change. (Exc., pp. 35-36).

PP&L in its Reply Exceptions rejoins that the ALJ properly placed the burden of proof on PPLICA to establish that the terms of Rate Schedules IS-P and IS-T are unjust, unreasonable and discriminatory. PP&L explains that, as a customer challenging a Commission-approved tariff, PPLICA had the burden of proving that the tariffs were either unreasonable or discriminatory. (PP&L R. Exc., p. 20).

It is well settled that a proponent of a rule or an order has the burden of proof in proceedings before the Commission. (66 Pa. C.S. §332(a)). PPLICA filed with this Commission a Petition seeking declaratory relief, or in the alternative, a relief in the form of a formal complaint. Under both requests, PPLICA has the burden to establish that the relief requested is warranted. PPLICA seeks an order prohibiting the implementation of tariffs previously approved by this Commission. As such, PPLICA has the burden to establish that PP&L's implementation or application of the subject tariffs is unjust, unreasonable or discriminatory. The ALJ properly placed the burden of proof on PPLICA.

We agree with the ALJ's conclusion that the language of Rate Schedule IS-P and IS-T is unambiguous. We find, as did the ALJ, that there is no basis in the record to support PPLICA's assertion that the use of words "load" and "power" in the subject rate schedules should be construed to apply only to PP&L generation. We emphasize that the rate schedules were the subject of litigation and settlement negotiations and that any confusion and ambiguity with respect to any terminology was, or should have been, resolved during those processes.

PPLICA objects to the ALJ's conclusion that the PPLICA agreed to the tariff interpretation in the Restructuring Settlement. PPLICA states that it agreed to the language in Rate Schedules IS-P and IS-T as part of the Restructuring Settlement because the Parties in that proceeding acknowledged that IS-P and IS-T customers have the right to shop for competitive supply and remain on the Rate Schedules. (Exc., p. 13).

PPLICA also takes exception to the ALJ's finding that PP&L's application of the tariff rate schedules is nondiscriminatory and is applied to both PP&L generation and EGS generation. PPLICA asserts that the ALJ ignored evidence that PP&L's proposal results in the imposition of duplicative penalties for customers who receive generation from an EGS and who fail to curtail usage during a PJM emergency. PPLICA notes that a customer obtaining generation supply from PP&L would only be subject to a single penalty in the PP&L tariff and would not have to pay an additional penalty to PP&L as its generation supplier. (Exc., pp. 16-17).

PPLICA further argues that the ALJ erred in finding that no anti-competitive effect results from PP&L's tariff interpretation for the year 2000. PPLICA adds that the ALJ's conclusion that no evidence exists to support its contention is contrary to the record evidence and should be reversed. PPLICA avers that the record is replete with record testimony that PP&L's interpretation impedes the ability of a customer to obtain market alternatives for firm as well as less interruptible supply because of the penalties that may accrue for the customer's decision not to interrupt during a PJM emergency. (Exc., pp. 24-27).

PP&L responds that PPLICA's argument fails for five (5) reasons: (1) PP&L's tariff is consistent with clear and consistent with the balance struck by the Act and the Commission between the customer and system reliability; (2) it applies Rate Schedules IS-P and IS-T in a manner that treats customers buying energy from PP&L in the same manner that it treats customers buying energy from EGSs; (3) it is undisputed that a full range of choices of service options, firm, less interruptible and matching interruptible, are readily available to shopping customers; (4) the record established that there are no barrier to supply which means that alternative suppliers of generations have the ability to sell electricity; and (5) the market actually provides an economic incentive to an EGS to provide interruptible generation supply. (PP&L's R. Exc., pp. 13-15).

PP&L argues that its tariff is not anticompetitive and PPLICA's Exception on this issue should be rejected.

In its Reply Exceptions, the OTS emphasizes that, while PPLICA made numerous references to the Restructuring Settlement and the Act, PPLICA never made any reference to the actual tariff in question. The OTS suggests that this omission is not inadvertent since the plain language of the subject tariffs supports PP&L's contention that its interpretation is not anticompetitive. The OTS explains that the plain language of the tariffs, which is clear and unambiguous, means that all usage in excess of the firm power level is billed as interruptible power at a discounted rate to reflect the interruptible nature of the service.

The OTS adds that, if an interruptible service customer fails to reduce consumption to its firm power level during an interruption, due to an emergency or an emergency test interruption period, the firm power level is increased to the level actually achieved. The OTS disputes PPLICA's contention that this practice hinders competition and impedes the ability of shopping customers to select an EGS other than PP&L. The OTS remarks that, while PPLICA's members may select an alternative generation supplier, if the members are IS-P and IS-T customers, they should be cognizant that, as interruptible customers, they may be subject to an interruption due to an emergency or emergency test interruption period. For these reasons, the OTS urges the Commission to deny PPLICA's Exceptions and adopt the ALJ's recommendation. (OTS R.Exc., pp. 3-4).

Upon consideration, we find that the record is devoid of any credible evidence that PP&L's interpretation of Rate Schedules IS-P and IS-T is anticompetitive or discriminatory. There is no evidence that PP&L applies the subject tariffs differently to shopping customers than it does to PP&L distribution customers. In addition, there is no evidence that the Rate Schedules IS-P and IS-T are applied in a manner other than

what is contained in the language of the tariffs. Shopping IS-P and IS-T customers are not prevented from obtaining generation from another EGS. Merely, in order to receive the lower rates associated with interruptible service, shopping IS-P and IS-T service customers are required to fulfill their obligation, as stated in the tariffs, to curtail load during emergencies, notwithstanding the fact that they may have firm or less than interruptible generation supply from another EGS. This practice is, in our view, neither anticompetitive nor discriminatory. To adopt a contrary view and allow shopping Rate Schedule IS-P and IS-T customers to retain the benefit of lower charges, but avoid the cost of interruptions while subjecting non-shopping IS-P and IS-T customers to the costs of interruptions, would, in effect, “penalize” non-shopping customers for exercising the option not to choose an alternative supplier. This clearly circumvents the spirit of the competition. We, therefore, adopt the ALJ’s recommendation and deny PPLICA’s Exception.

PPLICA excepts to the ALJ’s conclusion that PP&L’s modified billing procedure was limited to 1999. In support of this contention, PPLICA states that IS-P and IS-T customers had no reason to suspect that their bills were inconsistent with Tariff 201 when PP&L did not ratchet the firm power level during 1999 for a failure to curtail supply from an EGS. PPLICA maintains that, as late as fall, 1999, PP&L did not explain that application of the tariffs would result in different treatment for the customer in 2000 than was experienced during 1999. PPLICA contends that the record does not support the ALJ’s conclusions on this issue and should be rejected.

In response to PPLICA’s objection, PP&L states:

PP&L’s approach to the administration of the interruptible service rate schedules during 1999 was expressly limited to the transition year of 1999 (due to billing complications that would result from having to calculate two separate Billing KWs during that transition year when most interruptible service customers still purchased some of their electric supply

from PP&L). PP&L did not waive any provision of Rate Schedules IS-P and IS-T. As the parties began to address the administration of those rate schedules for 2000, PP&L expressed its position that Rate Schedules IS-P and IS-T required shopping customers to remain subject to the terms of those rate schedules, including the obligation to interrupt during an emergency or suffer the consequences of an increased Firm power level and economic penalties if they failed to do so.

(PP&L R. Ex. 3, p. 9).

PP&L agrees with the ALJ's finding that its modified billing was limited to 1999 and was not relevant to the tariff interpretation issue.

We note at the outset that the terms and conditions of Rate Schedules IS-P and IS-T have not changed and the tariffs contain the same language as approved by the Commission in PP&L's Restructuring. Under the terms and conditions of the subject tariffs, PP&L could apply the Billing KW<sup>3</sup> to each component of service that it provides. The modified billing procedure referred to in this proceeding describes PP&L's practice during the transition period when many interruptible customers still purchased some of their electric supply from PP&L. Because of the complications occasioned from having to calculate two (2) separate Billing KWs,<sup>4</sup> PP&L "opted" not to ratchet up to Firm Power levels for shopping Rate Schedules IS-P and IS-T customers who failed to interrupt service during system emergencies. Instead, PP&L used the modified "required load level" to bill all charges during 1999. (PP&L M.B., p. 11).

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<sup>3</sup> In the Rate Schedules IS-P and IS-T, the Monthly Billing KW is calculated as the Billing KW = Firm Power + [Interruptible Power X (1-Average On-peak Load Factor)]"

<sup>4</sup> This would have required PP&L to do two different "Billing KWs", one for the energy and capacity charge and another one for the distribution, CTC and ITC charges.

The fact that PP&L adopted a modified billing approach for 1999 is of no consequence to the germane issue in this proceeding; that is, whether PP&L's interpretation of Rate Schedules IS-P and IS-T complies with the terms and conditions of the tariffs as approved by the Commission. We do not, however, encourage this type of behavior of changing the interpretation of a tariff without notice. The evidentiary record in this proceeding clearly demonstrates that no customer was harmed or otherwise disadvantaged by PP&L's 1999 modified billing.

Upon consideration, we find that PP&L's position that it may require shopping IS-P and IS-T customers to curtail load during system emergencies complies with the terms and conditions of the subject tariffs, in the manner that it has proposed for 2000. For this reason, the ALJ properly concluded that PP&L's use of a modified billing approach in 1999 is not relevant to the primary focus of this proceeding.

PPLICA also takes the position that the ALJ's conclusion to adopt PP&L's interpretation of IS-P and IS-T because it enhances PJM system reliability is in error. In support, PPLICA contends that an EGS, as the load serving entity in the PJM control area, must demonstrate to PJM that it has sufficient generation resources to address customer peak demand needs. PPLICA rejoins that, if an EGS serves an interruptible supply customer, it may request an adjustment to its capacity obligation known as an Active Load Management (ALM) credit. (Exc., pp. 28-29). According to PPLICA, if a customer is not claimed for an ALM credit, the responsibility falls on the EGS to deliver energy to fulfill the needs of the customer, and PJM will not look to the customer curtailment to ensure system reliability. PPLICA also argues that communication and interaction between PJM and the EGS ensures system reliability, and no evidence was presented to support a contention that rolling blackouts would result if PP&L IS-P and IS-T customers were to contract for firm generation supply with an EGS. (Exc., p. 31). For these reasons, PPLICA urges the Commission to reject the ALJ's conclusion on the issue of reliability.

In reply, PP&L points out that interruptible service customers contract for less firm power and agree to interrupt during emergencies in exchange for discounted rates lower than that paid by firm power supply customers. PP&L further explains that shopping Rate Schedule IS-P and IS-T customers are more likely to shop for firm supply while retaining discounted Competitive Transition Charge (CTC) and Intangible Transition Charges (ITC) charges on those rates. According to PP&L, if shopping interruptible customers are not motivated to curtail load by the application of the incentive provisions in Rate Schedules IS-P and IS-T, shopping PPLICA members will disregard PP&L's calls for interruption, leading to an erosion of the interruptible load on PP&L's system. PP&L contends that interruptible customers who are not required to interrupt during an emergency provide no reliability value to the system and merely interruptible customers in name only. PP&L maintains that the ALJ properly found that PP&L's position promotes the availability of interruptible service, strengthening PJM system reliability.

Based on our concerns about system reliability during the advent of Electric Competition, we determined that interruptible service options should be made available to shopping IS-P and IS-T customers. We agree with PP&L that the maintenance of interruptible service rate schedules for customers shopping for generation supply does not preserve system reliability or integrity unless shopping IS-P and IS-T customers remain interruptible. To allow interruptible service customers to avoid an obligation to curtail load during emergencies would, at this juncture of Electric Competition, defy our efforts to promote system reliability considerations. Accordingly, we will deny this Exception.

PPLICA notes that the ALJ correctly represented that the Parties agreed that tariffs IS-P and IS-T should not be amended to require a customer to purchase matching interruptible service from an EGS as a condition of service from PP&L. PPLICA rejoins that despite reaching this finding, the ALJ's recommended adoption of

PP&L's position is a *de facto* amendment of the Rate Schedules which imposes a requirement on IS-P and IS-T customers to purchase matching interruptible service purchases. The ALJ's bottom-line recommendation, in PPLICA's view, is inappropriate and should be rejected. (Exc., pp. 33-34).

PP&L disputes PPLICA's contention, arguing that the ALJ's adoption of PP&L's position does not eliminate the options available on the market. PP&L adds that the competitive market offers a variety of firm, less interruptible and matching interruptible generation supply. Provided the obligation to curtail load during emergency remains, in PP&L's view, there is no need to limit the nature of the products EGSs may offer. PP&L points out that while IS-P and IS-T service customers may assert that they are economically advantaged if they purchase interruptible service from PP&L or another EGS, these customers are not precluded from obtaining firm or less interruptible supply from an EGS. Contrary to PPLICA's contention, PP&L maintains that the ALJ's adoption of its position does not constitute a *de facto* matching requirement. For these reasons, PP&L rejoins that PPLICA's Exception should be denied.

PPLICA also takes the position that the ALJ erred in granting PP&L's Motion to Strike. PPLICA reiterates the arguments made in its Answer to PP&L's Motion to Strike, contending that it was unnecessary for it to enter the PJM Reliability Assurance Agreement (RAA) into the record as an exhibit or attach the RAA to its Brief. PPLICA maintains that its references to the RAA in its Main and Reply Briefs are proper and should be considered by the Commission. (Exc., pp. 36-38).

We note that, in our January 27, 2000 Order, we announced that the issue of reliability would be considered in this proceeding. Given this advance notice of the issues to be addressed in this proceeding, PPLICA was afforded ample opportunity to gather and present the documents as exhibits during the evidentiary stages of this proceeding. PPLICA does not offer any explanation why it was unable to offer the

documents as exhibits before the close of the record. Not only did PPLICA attempt to include the documents as exhibits to its Briefs, but after the close of the record, PPLICA never petitioned the Commission for leave to reopen the record for the purpose of properly presenting the documents as record evidence. Finding that PPLICA has not presented any compelling reason why we should reverse the ALJ's ruling, we will allow the ruling to stand. Accordingly, PPLICA's Exception on this issue is denied.

### **Conclusion**

Based on our view of the record as developed, we find that the ALJ properly dismissed PPLICA's Petition for Declaratory Order and for a Complaint in the alternative. We further find that the record supports the ALJ's conclusion that PP&L's interpretation of Rate Schedules IS-P and IS-T is neither anticompetitive nor discriminatory. We also agree with the ALJ's finding that PP&L's position enhances system reliability. A contrary position such as the one advanced by PPLICA would, in our view, have a negative impact on system reliability in direct contravention of our June 15, 1998 Order.

We adopt the ALJ's recommendation and deny PPLICA's Exceptions;  
**THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions of the PP&L Industrial Customer Alliance filed on April 17, 2000, are denied.
2. That the Recommended Decision of Administrative Law Judge Morris J. Solomon is adopted to the extent that it is consistent with this Opinion and Order.

3. That the Petition of the PP&L Industrial Customer Alliance is denied.

4. That the Complaint in the alternative of the PP&L Industrial Customer Alliance is dismissed.

5. That PP&L's Motion to Strike Portions of the Main Brief , Reply Brief and Appendix of the PP&L Industrial Customer Alliance is granted and the following matters are stricken from the record in this proceeding: Tab 4 to Appendix D of PPLICA's Main Brief, Appendices A and B to PPLICA's Reply Brief, and all references thereto in PPLICA's Main Brief and Reply Brief.

6. That this proceeding shall be marked closed.

**BY THE COMMISSION**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: June 2, 2000

ORDER ENTERED:

# Appendix F

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PP&L Industrial Customer Alliance, :  
Petitioner :  
v. : No. 1881 C.D. 2000  
: Argued: June 6, 2001  
Pennsylvania Public Utility :  
Commission, :  
Respondent :

BEFORE: HONORABLE JOSEPH T. DOYLE, President Judge  
HONORABLE JAMES GARDNER COLINS, Judge  
HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE DORIS A. SMITH, Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JAMES KELLEY, Judge  
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge

OPINION BY JUDGE PELLEGRINI FILED: July 10, 2001

PP&L Industrial Customer Alliance (PPLICA)<sup>1</sup> appeals from an order of the Pennsylvania Public Utility Commission (PUC) dismissing its petition requesting a declaratory order prohibiting the implementation of a tariff interpretation change to PP&L's billing method for customers who purchase

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<sup>1</sup> PPLICA is an ad hoc association of commercial and industrial customers in Pennsylvania Power & Light's (PP&L) service territory. The members of this association for purposes of this appeal are companies that purchase distribution service and/or generation supply service from PP&L and include the following: Air Products and Chemicals, Inc., Alcoa, Armstrong World Industries, Inc., Binkley & Ober, Inc., Chamberline Manufacturing Corporation, Empire Kosher Poultry, Inc., Hercules Cement Company, Lafarge Corporation, Magee Rieter Automotive Systems, Mount Joy Wire Corporation, Praxair, Inc., RR Donnelley & Sons Company, Inc., and Thomson Consumer Electronics.

generation supply from another electric generation supplier and an order denying its request for reconsideration.

Historically, electric utilities in Pennsylvania provided three services to customers: the generation, transmission and distribution of electricity. These "bundled" services were performed by one local utility that held a monopoly over its service area. However, to encourage a competitive wholesale electric market and provide cost savings to consumers, in December 1996, the Electricity Generation Customer Choice and Competition Act (Competition Act) was enacted.<sup>2</sup> This Act "unbundled" or separated the three traditional functions and allowed Pennsylvania residents to choose to purchase their electricity from other in-state or out-of-state electric generation suppliers (EGS) who would generate and sell electricity directly to the consumers. If the consumers chose to purchase their electricity from another supplier other than the local utility, the local utility, also referred to as an electric distribution company (EDC), still remained responsible for the transmission and distribution of the electricity.

Each Pennsylvania EDC was required to file a Restructuring Plan (Plan) to implement the Competition Act pursuant to 66 Pa. C.S. §2806(d).<sup>3</sup> PP&L

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<sup>2</sup> 66 Pa. C.S. §§2801-2812.

<sup>3</sup> 66 Pa. C.S. §2806(d) provides:

All electric utilities in this Commonwealth shall submit to the commission, pursuant to a schedule to be determined by the commission in consultation with the electric utilities, beginning on April 1, 1997, but in no event later than September 30, 1997, a

**(Footnote continued on next page...)**

proposed in its Plan that customers would not be able to obtain distribution service from other EGSs. PP&L filed its Plan and PPLICA filed a complaint against that Plan. After hearings on the matter, the PUC issued a final order substantially modifying the Plan by finding that it was anti-competitive and discriminated against customers who shopped for alternative supply from EGSs. PPLICA filed an action with this Court requesting us to review the Restructuring Order, but subsequent to the filing of the appeal, the parties and the PUC entered into a Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings (Settlement Agreement) to resolve the outstanding issues. Paragraph G.5.b of the Settlement Agreement, the only provision of the Settlement Agreement relevant to this action, involves Rate Schedules IS-P and IS-T pertaining to the distribution of electricity by PP&L, which were among the many tariff provisions included in the Settlement Agreement. Paragraph G.5.b provides:

G.5.b. PP&L shall unbundle the rate components of rate schedules IS-P and IS-T in a fashion that will allow a customer to obtain generation supply from a competitive supplier without penalty and in a nondiscriminatory fashion. Any discount or credit applied to the delivery service component of the rates will be portable and shall apply on a comparable basis whether or not a customer chooses to obtain generation supply from a competitive supplier.

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**(continued...)**

restructuring plan to implement direct access to a competitive market for the generation of electricity.

Rate Schedule IS-T (Interruptible Service – Transmission) and Rate Schedule IS-P (Interruptible Service – Primary) services are interruptible distribution services which are available with at least 1,000 kilowatt (kW) of year-round interruptible power to customers who contract to accept interruptible service for at least one year. Under both of these rate schedules, eligible customers can purchase interruptible distribution service which means that PP&L can request the customer to curtail electricity usage "as required for economic load control, for system and local emergencies, and for tests of the customer's ability and readiness to interrupt load during an emergency."<sup>4</sup> While the customer is required to interrupt during emergencies and emergency tests, the customer has the option to interrupt or accept an additional charge for continued use during periods of economic load control. There is an additional charge for failure to interrupt during an emergency or an emergency test interruption period of \$24.95 per kW for all kW, by which the maximum 15 minute demand for the period of requested interruption exceeds the Firm Power,<sup>5</sup> i.e., the level of kW demand which the

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<sup>4</sup> The tariff further provides:

The frequency of load interruptions shall be no more than 15 per calendar year with such interruptions being no more than 1 hour in any one day; nor more often than five days in any single month; or more than 150 hours in a calendar year. No more than 5 of these load interruptions and 50 hours of interruptions may be for economic load control.

<sup>5</sup> "Firm Power" is defined under both tariffs as:

Firm Power is the level of kW demand which the customer has no obligation to curtail during an interruption of service called by the Company. The initial level of Firm Power shall be specified in the contract. This initial level will be adjusted by the Company to the level of Firm Power actually achieved by the customer during an

**(Footnote continued on next page...)**

customer has no obligation to curtail during an interruption of service called for by the local utility. The local utility has the option of canceling the contract for interruptible service if the customer fails to interrupt during an emergency or an emergency test interruption period. Additional charges included in these Rate Schedules are Competitive Transition Charges (CTC) and Intangible Transition Charges (CTC).

In 1998, PP&L devised a billing method for Rate Schedule IS-P and IS-T customers who purchased some or all of their electric generation service from another supplier but failed to curtail usage equivalent to its provided interruptible portion of the total load during a system emergency interruption. The method was based on an allocation of the customer's prior firm power level for the portion of supply taken from PP&L.<sup>6</sup> It also specified how it would calculate penalties for

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**(continued...)**

emergency or an emergency test interruption period. The adjusted level shall become the level of Firm Power for the remaining term of the contract or until a new level of Firm Power is achieved during a subsequent emergency or an emergency test interruption period. The level of Firm Power shall not be adjusted below the initial level of Firm Power specified in the contract.

<sup>6</sup> The billing method was as follows:

In order to monitor the customer's performance *relative to that portion of its load supplied by PP&L*, PP&L will calculate for each customer a new "required load level" against which customer actions will be measured... (Emphasis added).

- Calculate the customer's on-peak demand using the PJM methodology. [PJM is the company that ensures electric system reliability and has in place procedures that it

**(Footnote continued on next page...)**

non-compliance.<sup>7</sup> PPLICA understood this to mean that PP&L would calculate penalties based only on the portion of the generation supply provided by an EGS

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**(continued...)**

implements when anticipated customer demand exceeds the available generation resources in its area. During an emergency, PJM takes various actions to attempt to ensure that firm supply customers do not experience a blackout or other types of degradation of service.] Assume that for the hypothetical customer, this value is 10,000 kW.

- Of the 10,000 kW, PP&L's supply will be the pro rata share. From the previous example, 35%, or 3,500 kW, would be PP&L's total supply, with a 700 kW firm. The supply by the EGS would be 6,5000 kW.
- At the time of an emergency interruption, PP&L would expect to see a total customer load during the period of interruption of no more than 7,2000 kW (the 6,5000 kW EGS supply plus the 700kW of firm PP&L supply). This load level would demonstrate compliance relative to PP&L's portion of the supply. If the customer purchased interruptible energy from its EGS, the customer's load during an interruption will likely be below 7,2000 kW. PP&L will use 7,2000 kW as the customer's performance for compliance purposes relative to PP&L's supply.

<sup>7</sup> Penalties were calculated as follows:

For non-compliance, the contract firm would be ratcheted pursuant to Tariff 201 and penalties would be calculated under the tariff. PP&L's pro rata firm supply kW would be increased by the same amount, as would the "required load level." Assume that our hypothetical customer reduces to only 8,000 kW. This means that the customer has failed to provide PP&L with 800 kW of interruptibility (8,000 kW – 7,2000 kW = 800 kW). PP&L's portion of the pro rata firm load is now 1,500 kW (700 kW + 800 kW), and the "required load level" is 8,000 kW (7,200 kW + 800 kW).

that the customer was obligated to interrupt for PP&L during the system emergency or that portion of the interruptible supply actually purchased from PP&L. Throughout most of 1999, this billing method was utilized; however, in October 1999, PP&L decided to modify this method as it applied to those customers who purchased all of their generation supply from an EGS and notified customers on Rate Schedules IS-P and IS-T of this modification stating the following:

The final point of discussion concerns PP&L's plans for billing customers on the IS-P and IS-T Rate Schedules who shop for the generation and transmission from an EGS in the year 2000 and thereafter. PP&L responded that it intends to bill such customers in accordance with its tariff, applying the formula for billing kW to each component of service that the Company provides. In the case of shoppers, the Company will apply formula to Distribution, Competitive Transition Charge, and Intangible Transition Charge. Because we understand that there is some confusion among customers and EGSs on this point, PP&L will, shortly, send a letter to each of its interruptible customers that calls their attention to this tariff language.

On December 23, 1999, PP&L mailed to its IS-P and IS-T customers a letter explaining its proposed implementation of changes in rate schedules for customers who obtained 100% of their generation from an EGS after January 2, 2000. In response to whether an IS-P or IS-T Rate Schedule customer could buy firm power from an EGS, PP&L explained in the letter:

Yes, customers can buy firm power from an EGS. Customers can also buy from an EGS interruptible power to a firm level that is different than your PP&L, Inc. firm

level, or interruptible power with a different number of calls or different response requirements. You should be aware, however, that PP&L's delivery service tariff requires PP&L to reflect your actual performance during emergency interruptions. For example, operating during an emergency interruption above your PP&L, Inc. contract firm (or ratcheted firm) will increase your Billing Demand and will result in higher delivery charges from PP&L, Inc. for Distribution, Competitive Transition Charge (CTC), and Intangible Transition Charge (ITC) for both shopping and non-shopping customers. Operating during an emergency will also subject both shopping and non-shopping customers to additional charges specified in PP&L's tariff.

While all of PPLICA's members purchased 100% of their distribution service from PP&L, because some of its members were currently negotiating contracts with EGSs to totally replace PP&L as their generation and transmission supplier, or they entered into contracts with EGSs for generation supply that extended beyond January 2000, PPLICA filed with the PUC a petition seeking a declaratory order or, in the alternative, a complaint prohibiting the implementation of what it perceived to be a tariff interpretation change by PP&L regarding the electric distribution service it provided to some of its customers pursuant to Rate Schedules IS-P and IS-T. It alleged that PP&L was changing the billing method so that customers on those Rate Schedules paid higher distribution rates for service that was of a lesser quality in violation of the Competition Act because it was interruptible than similar customers on firm uninterruptible rate schedules, and IS-P and IS-T customers could not use PP&L's distribution service at times when customers on the firm rate schedules were permitted to use the distribution system. Further, because PP&L was only providing distribution service to customers, it was unreasonable to apply the penalty provisions to those customers when a

generation-related emergency existed and they failed to interrupt service pursuant to PP&L's Rate Schedules. Specifically, it argued that a customer's contract with the EGS included penalties when the customer failed to curtail usage during an interruption request, but under the tariff, customers would also be penalized by PP&L so that both the supplier and distributor would penalize the customer. Thus, a customer who purchased supply from PP&L would only face one penalty as opposed to two. PPLICA argued that effective January 1, 2000, the change in PP&L's billing method resulted in the following modifications:

- Customers would no longer be permitted to freely contract for electric generation supply from a competitive EGS unless that supply was interruptible to the same extent and at the same times as electricity supply that PP&L provided to the same customer;
- PP&L could control the usage of the competitively procured supply by requiring curtailment during a PJM emergency; and
- To the extent an IS-P or IS-T customer that contracted with an EGS for competitive supply did not curtail usage during a generation emergency interruption event requested by PJM to the exact level that PP&L would require curtailment if the customer purchased supply from PP&L, PP&L could impose a five-fold penalty on the customer by increasing distribution charges, increasing competitive transition charges, increasing intangible transition charges, charging a \$24.95 per kW penalty and eviction from the rate schedule.

PPLICA also filed a petition for an emergency order requesting an immediate order preventing the implementation of the proposed billing modification to the subject Rate Schedules. The PUC denied the petition for

emergency order and assigned the matter to an Administrative Law Judge (ALJ) for hearing.

Before the ALJ, PPLICA argued that Rate Schedules IS-P and IS-T were ambiguous and required the PUC to consider extrinsic evidence because the usage of the words "load" and "power" in those Rate Schedules would only be applied if the customer received generation supply service from PP&L. More specifically, PPLICA contended that if the plain meaning of "load" was generation supply, then the tariffs provided PP&L with authority to request interruption only of generation supply from PP&L. If a customer received generation supply from an EGS, PP&L was without power to request the customer to curtail usage during an emergency interruption or to impose penalties. PPLICA also argued that PP&L changed its interpretation of the Rate Schedules and that change was relevant to the PUC's interpretation of the tariff. PPLICA further argued that the rates, terms and conditions contained in Rate Schedules IS-P and IS-T were based on PP&L's cost of distribution service allocable to customers, and that the unbundled CTC and ITC charges reflected the proper allocation of stranded costs to customers as determined by the PUC in the restructuring proceeding and Settlement Agreement. Finally, PPLICA argued that PP&L's proposed changes had an anti-competitive effect because they would detrimentally impact the ability of customers to request service from competitive suppliers and interfere with decisions between customers and EGSs regarding the level of interruptibility of service.

The ALJ recommended that the PUC deny PPLICA's request for a declaratory order and dismiss the complaint because PPLICA failed to present any

evidence to show that any specific portion of the Rate Schedules' text was ambiguous or susceptible to multiple meanings. Further, the words "load" and "power" in the Rate Schedules did not only apply to PP&L generation. Additionally, although PP&L admittedly changed its billing procedure from 1999 to 2000, and that constituted a changed interpretation of tariffs IS-P and IS-T, the change was not relevant to the issue of tariff interpretation. "After, all, the real question in this proceeding is whether PP&L has (or should have) any control over the interruptibility of the generation it did not sell to the industrial customer who is legally free under the Competition Act to shop for all of its energy needs with a competitive supplier under free and open market conditions." (ALJ's March 31, 2000 decision at p. 11). Additionally, the ALJ found that the Rate Schedules were based on costs of service principles and did not result in an anti-competitive intent or effect. Finally, the ALJ determined that the rate schedules promoted the availability of interruptibility of EGS supplied firm energy distributed under an interruptible rate schedule which, in turn, strengthened the PJM system reliability. PPLICA filed exceptions to the ALJ's recommended decision.

The PUC adopted the ALJ's recommended decision finding that although PPLICA argued that the ALJ failed to decide whether PP&L should have the ability to exercise control and require interruption of supply procured by an IS-P or IS-T customer from a competitive supplier, that argument was without merit because the Rate Schedules were included in PP&L's Settlement Agreement, which the PUC had previously approved and to which PPLICA was a signatory, and the language in the tariffs had not changed. The PUC also noted that "[t]he fact that PP&L adopted a modified billing approach for 1999 is of no consequence to the

germane issue in this proceeding; that is, whether PP&L's interpretation of Rate Schedules IS-P and IS-T complies with the terms and conditions of the tariffs as approved by the Commission." Ultimately, the PUC determined that PP&L could require IS-P and IS-T customers to curtail load during system emergencies and allowing customers to avoid an obligation to curtail load during emergencies would not promote system reliability. The PUC then dismissed the exceptions along with PPLICA's request for a declaratory order and complaint. PPLICA filed a request for reconsideration which was denied and this appeal followed.<sup>8</sup>

## I.

PPLICA contends that the PUC erred in adopting PP&L's interpretation of the tariffs because that interpretation is in violation of the Competition Act. It contends that the PUC's interpretation of the tariff allowing PP&L to impose higher charges on Interruptible Customers for Distribution, Competitive Transition Charges and Intangible Transition Charges is not in accord with Section 2804(2) of the Competition Act, 66 Pa. C.S. §2804(2), which provides that customers are allowed to choose an electric supplier through direct access and "[c]ustomers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternative generation sources . . ." It

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<sup>8</sup> Our scope of review of the PUC's decision is limited to determining whether constitutional rights have been violated, an error of law committed, or whether the PUC's findings and conclusions are supported by substantial evidence. *Montour Trail Council v. Pennsylvania Public Utility Commission*, 547 Pa. 367, 690 A.2d 703 (1997). Were PPLICA only appealing from the denial of reconsideration, our scope of review would be whether the PUC abused its discretion. *Popowsky v. Pennsylvania Public Utility Commission*, 676 A.2d 731 ft.7 (Pa. Cmwlth. 1996); *J.A.M. Cab Company, Inc. v. Pennsylvania Public Utility Commission*, 572 A.2d 1317 (Pa. Cmwlth. 1990).

also directs our attention to the Settlement Agreement in which IS-P and IS-T customers were guaranteed the ability to access competitive supply alternatives without penalty or discrimination. It then explains that in 1999, PP&L implemented the tariff provisions attached to the Settlement Agreement in a manner that did not obligate an IS-P or IS-T customer obtaining competitive supply to interrupt distribution service for that supply during a PJM emergency and did not penalize the customer for continuing usage of competitively procured supply, thereby evidencing the intent of the parties when the Settlement Agreement was entered.

As the PUC correctly found, the Rate Schedules were included in PP&L's Settlement Agreement which the PUC had previously approved, PPLICA was a signatory to the Settlement Agreement, and the language in the tariffs has not changed. That means that the PUC reviewed and approved the discounts contained in the interruptible service rates when PP&L's interruptible service rate schedules were unbundled in the restructuring proceeding. Consequently, PP&L's interpretation of the tariffs was not contrary to the Settlement Agreement and not in violation of the Competition Act.

As to PPLICA's contention that rate changes were to occur in 2000 that did not occur in 1999, PP&L explained that the method of billing was changed but was due to the fact that 1999 was a temporary transition period and that it was essentially waiving certain charges during the phase-in period of customer choice. The PUC concluded that PP&L did not waive any provisions of the Rate Schedules for periods after the 1999 transition year, and the procedures adopted by PP&L for

1999 did not allow customers on the interruptible service rate schedules to avoid emergency interruptions in the future.<sup>9</sup> Despite the fact that PPLICA believes a rate change occurred, it is the PUC's interpretation of the Rate Schedules which controls. *Jackson v. Pennsylvania Public Utility Commission*, 522 A.2d 1187 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 517 Pa. 611, 536 A.2d 1335 (1987). Here, the PUC properly found that the rate change did not affect the terms and conditions of those schedules. Because an administrative agency is entitled to substantial deference in construing documents that are within its particular expertise, such as tariffs, *Chappell v. Pennsylvania Public Utility Commission*, 425 A.2d 873 (Pa. Cmwlth. 1981), the PUC's determination will not be disturbed.

## II.

PPLICA's main argument, though, is that the PUC's tariff interpretation violates the Competition Act because PP&L is being permitted to discriminate against customers who obtain generation supply from EGSs.<sup>10</sup> It explains that an IS-P or IS-T customer that contracted with an EGS for firm or less

---

<sup>9</sup> PPLICA also argues that the PUC's order results in an impermissible shift of stranded costs responsibility between customer classes in violation of the Competition Act because application of the CTC and ITC charges will unreasonably increase the stranded cost responsibility and charges for IS-P and IS-T customers that obtain firm or less interruptible generation supply from an EGS. As we have already noted, the Settlement Agreement as part of the Restructuring Proceeding, was approved by the PUC and included in that Settlement Agreement was the provision that stranded costs were recovered through the CTC and ITC. The PUC determined that the methodology under which PP&L recovered the charges did not shift between classes. Consequently, PP&L's contention is erroneous.

<sup>10</sup> Stating this argument another way, PPLICA also argues that the PUC exceeded its jurisdiction by interfering with the unbundled generation supply function.

interruptible generation supply is now forced to make a choice between curtailing usage to the PP&L firm power level during a PJM emergency interruption or continuing usage at the level contracted with the EGS and paying additional distribution, CTC and ITC charges to PP&L, thereby being deprived of the benefits of its contract with the EGS. Because the industry has been de-regulated and its members have bought firm power from an EGS, PPLICA contends they should not be penalized if delivery of EGS power continues during a period when PP&L needs to interrupt supply because they have not caused the interruption as they have bought firm EGS power. If this is allowed to occur, PPLICA argues that there is then no reason for its members to buy "firm" EGS power because they would always be treated as "interruptible" customers by PP&L and they would have to pay higher rates when that power was delivered. In other words, it is contending that the PUC is applying pre-deregulation principles because firm and interruptible power concepts go to insufficient power being generated by the regulated utility, not that the utility is unable to deliver power, and customers are unnecessarily discriminated against because they are assessed higher rates and penalties on competitively procured supply.

The PUC did not directly address PPLICA's argument, but instead found that interruptible service was needed to preserve system reliability.<sup>11</sup> Even

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<sup>11</sup> The PUC determined that while customers who choose interruptible service may have to pay higher distribution rates and penalties if they fail to interrupt, they also pay substantially discounted rates for that service and pay lower competitive transition charges and intangible transition charges than those charged to firm customers. PP&L provided evidence that the total savings to interruptible service customers during 1999 was approximately \$41 million and the discounts realized by PPLICA members during 1999 was approximately \$25 million.

though de-regulation would not be fostered if a customer was, in effect, penalized by buying firm power on the open market, the PUC found that allowing PP&L, as the distributor, to have control over the interruptibility of its supply purchased from an EGS was needed because, "[t]o allow interruptible service customers to avoid an obligation to curtail load during emergencies would, at this juncture of Electric Competition, defy our efforts to promote system reliability considerations." In effect, what the PUC found was that all power on the grid (the PJM), no matter where bought and no matter firm or not, was always subject to interruption for system reliability.

PPLICA's argument that it should not be penalized because it has purchased firm power and should not be forced to curtail usage "encouraged" by increased distribution rates and penalties and not by any shortage of capacity to distribute the power, shows one of the seams in the de-regulatory scheme. While every customer, as envisioned under that scheme, should be able to shop for the lowest rate and highest quality of service, there has to be some mechanism so that there is overall system reliability for all customers on the grid.

Prior to de-regulation, there only existed one entity that could be charged with overseeing the interruptibility of service – the local utility that originally provided supply, transmission and distribution of service. However, since de-regulation, some mechanism has to be in place so that during periods of peak demand, there are no brownouts or blackouts on the system. While PPLICA is essentially questioning the "fairness" of allowing a distributor of supply such as PP&L to control the interruptibility of the service, only the distributor is in position

to enhance system reliability because of the myriad of generators and transmission companies that place power in a particular distribution grid. To allow shopping customers to receive discounted rates under the interruptible service rate schedules but disregard PP&L's calls for emergency interruptions would jeopardize the reliability of service because shopping customers would purchase firm electric supplies from EGSs because there would be no incentive for them of reducing power during times of peak capacity.

While it cannot, under the mantra of system reliability, re-regulate the industry by favoring the distribution company, thereby thwarting the goals of the Competition Act, the PUC can, as long it provides substantial reasons why there is no reasonable alternative so competition needs to bend to ensure overall system reliability, order customers by whatever scheme to curtail usage during abnormal peaks. Because the PUC has adequately explained its decision based on substantial evidence<sup>12</sup> and is entitled to substantial deference, *Popowsky v. Pennsylvania Public Utility Commission*, 550 Pa. 449, 706 A.2d 1197 (1997), the PUC's determination will not be disturbed.<sup>13</sup>

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<sup>12</sup> While PPLICA also contends that the PUC issued an order that lacks the necessary specificity for this Court to conduct an effective appellate review because it failed to address in detail its conclusion that the record was devoid of any credible evidence that PP&L's Rate Schedules were anti-competitive or discriminatory, in the above reasons, the PUC adequately explained its reasons for finding that PP&L's Rate Schedules were not discriminatory or anti-competitive.

<sup>13</sup> PPLICA also argues that the PUC erred by failing to base its decision on substantial evidence because the testimony of witnesses it offered stated that their competitive options will be reduced as a result of the PUC's adoption of PP&L's tariff interpretation. However, the PUC found that there was no evidence that PP&L applied the tariffs differently to shopping customers than it did to PP&L distribution customers or that the tariffs were applied in a manner  
**(Footnote continued on next page...)**

Accordingly, the decision of the PUC dismissing PPLICA's petition, complaint and exceptions is affirmed as is its order denying reconsideration.

---

DAN PELLEGRINI, JUDGE

---

**(continued...)**

inconsistent with the language in the tariffs. Because the PUC is the ultimate factfinder and makes all determinations as to the weight and credibility of evidence, *Borough of Duncannon v. Pennsylvania Public Utility Commission*, 713 A.2d 737 (Pa. Cmwlth. 1998), we will not disturb its determination.



# Appendix G

**Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Whemco-Steel Castings, Inc. – Set I  
To Duquesne Light Company

Witness: Jessica Rock

---

**Whemco I-6**

Provide the (i) press release, (ii) customer bill insert and (iii) newspaper publication referenced in the first bullet in paragraph 15 of Duquesne's Answer & New Matter.

**Response:**

(i) See attachment I-6 for the Duquesne Light Company Press Release.

(ii) The above referenced customer bill inserts were provided over seven years ago. After reasonable investigation, Duquesne Light Company has determined that due to the passage of time these customer bill inserts are no longer available. However, the Commission stated in the Order that such customer bill inserts were provided. Additionally, Duquesne Light Company notes that the Company stated in its filing notice that it provided notice to customers through a customer bill insert. See attachment I-6 for the Duquesne Light Company filing notice.

(iii) The above referenced newspaper publications were provided over seven years ago. After reasonable investigation, Duquesne Light Company has determined that due to the passage of time these newspaper publications are no longer available. However, the Commission stated in the Order that such newspaper publications were provided. Additionally, Duquesne Light Company notes that the Company stated in its filing notice that it provided notice to customers through a newspaper publication. See attachment I-6 for the Duquesne Light Company filing notice.



411 Seventh Avenue  
P.O. Box 1930  
Pittsburgh, PA 15219-1930

## News Release

**Date:** Jan. 25, 2007  
**For Release:** Upon Receipt  
**Contact:** *Media:*  
Joseph Vallarian  
412-232-6848  
**Page** 1 of 2

*Financial Community:*  
Darrin Duda, CFA  
412-393-1158

### DUQUESNE LIGHT FILES 2008-2010 ENERGY SUPPLY PLAN

#### *Proposal Fixes Residential Generation Rate Through 2010*

**PITTSBURGH** – Duquesne Light Company today filed a petition with the Pennsylvania Public Utility Commission (PUC) requesting approval of a plan that will supply a secure source of electricity for residential and small commercial customers from 2008 through 2010. The petition is being filed now because the current supply plan for customers who have not chosen a generation supplier expires at the end of this year.

Duquesne Light's proposal, which is intended to provide a bridge to the time when generation rate caps will expire for most other major electricity distribution companies in the state, seeks approval of the following elements:

- fixed-price generation service for non-electric heat residential customers through 2010;
- fixed-price generation service for non-electric heat small commercial and industrial (C&I) customers over the same period that will be adjusted annually, in 2009 and 2010, to reflect changes, up or down, in market prices; and
- continuation of hourly pricing as the default service for large C&I customers.

"Our goal is to continue to provide a reliable, secure energy source for our customers," said Morgan K. O'Brien, president and chief executive officer. "We are pleased to present a proposal that offers residential and small commercial customers a secure, supply of electricity through 2010 at a monthly cost below what they paid in 1992. Not many products have provided that degree of price stability for customers for such a long period of time."

#### **Residential Rates Remain Below 1992 Levels**

As part of the proposal, a non-electric heating residential customer using 600 kilowatt-hours per month would see an increase of just under \$7 (approximately nine percent) in the overall monthly electric bill beginning in January 2008. Generation rates then would stay fixed through the end of 2010. By way of comparison, default service customers in other parts of the state and the region have seen dramatic increases in their monthly bills: 70 percent at Pike County (Pa.) Light & Power Co.; 59 percent at Delmarva Power (Maryland); 72 percent at Baltimore (Maryland) Gas & Electric Company; and 33 percent at Penn Power.

-more-

**DUQUESNE LIGHT FILES 2008-2010 ENERGY SUPPLY PLAN**  
**Page 2**

Even with this increase, Duquesne Light customer bills still will be less than they were 15 years ago (\$78.98 compared to \$84.38 in 1992 for a non-electric heating residential customer using 600 kilowatt-hours per month). Pricing for other utilities has increased significantly since 1992. Natural gas pricing is up 139 percent; water and sewage rates have increased 76 percent; and the average cost of cable and satellite television has seen an 86-percent rise.

**Seeking Balanced Transition to Fully Competitive Statewide Market**

The PUC currently is developing default-service regulations that are expected to go into effect when rate caps at other major utilities in the state expire at the end of 2010. Because the retail market in Pennsylvania is not yet fully developed, Duquesne Light's supply proposal is designed to be an interim or transition plan.

"Duquesne Light has undertaken extensive efforts to meet with interested parties to develop an energy supply plan that provides a balanced and responsible transition to a fully competitive statewide market in 2011," O'Brien said. "We believe our filing, which builds on the success of our prior default-service plans, reflects the different circumstances, preferences and market conditions faced by different customer groups as competitive markets continue to develop."

**Market Adjustments for Small C&I Customers**

The proposed fixed rate for small C&I customers will be adjusted in 2009 and in 2010 by a market index that reflects subsequent changes in prices. These customers will benefit as energy suppliers compete and by not being exposed to short-term market price fluctuations they may not be equipped to handle.

**Large C&I Fixed Rate Options Available in Market**

As noted earlier, Duquesne Light will continue to provide hourly pricing as its default service for large C&I customers. The company is confident customers preferring a fixed-price option will be able to obtain alternative choices from energy suppliers. As of December 2006, approximately 98 percent of the large C&I customer load in Duquesne Light's service territory already is shopping for energy supply. In addition, Duquesne's previous efforts to obtain a fixed rate at attractive prices for these customers using a solicitation process have proven to be difficult.

**Communication With Customers and Suppliers Key to Plan**

The company's filing seeks approval of the petition by July 1, which will allow Duquesne Light time to communicate with customers and suppliers. It also will provide time for suppliers to communicate with customers prior to the new rates becoming effective.

**About Duquesne Light Company**

Duquesne Light Company is a leader in the transmission and distribution of electric energy, offering superior customer service and reliability to more than half a million customers in southwestern Pennsylvania.

###



**Duquesne Light**  
Our Energy... Your Power

411 Seventh Avenue  
8<sup>th</sup> Floor  
Pittsburgh, PA 15219

Tel 412-393-1541  
Fax 412-393-1418  
gjack@duqlight.com

January 25, 2007

Gary A. Jack  
Assistant General Counsel

VIA HAND DELIVERY

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

**RECEIVED**

MAY - 3 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

PA PUC  
SECRETARY'S BUREAU

2007 JAN 25 PM 1:50

RECEIVED

Re: **Petition Of Duquesne Light Company For  
Approval Of Default Service Plan For The Period  
January 1, 2008 Through December 31, 2010**  
Docket No. \_\_\_\_\_

Dear Secretary McNulty:

Enclosed for filing, on behalf of Duquesne Light Company ("Duquesne"), please find an original and three copies of the Petition Of Duquesne Light Company For Approval Of Default Service Plan For The Period January 1, 2008 through December 31, 2010 ("Default Service Plan"). Due to the risk that Duquesne Power, LLC is incurring in holding proposed rates open under the Default Service Plan during the regulatory review period and the need to provide customers notice of the precise changes in their Price To Compare in order to facilitate retail shopping, Duquesne requests expedited approval of the Default Service Plan by July 1, 2007. To facilitate approval by this date, Duquesne has filed its direct testimony herewith and respectfully requests that the Pennsylvania Public Utility Commission ("Commission") assign this matter to the Office of Administrative Law Judge for evidentiary hearings and the issuance of a Recommended Decision as soon as possible.

Pursuant to Section 5.41(b) of the Commission's regulations, 52 Pa. Code § 5.41(b), and as indicated on the certificate of service, Duquesne is serving this Petition on the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate. Duquesne is also serving all parties in Duquesne's POLR III proceeding, *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, and in Duquesne's recent distribution rate proceeding at Docket No. R-00061346. Moreover, Duquesne is providing notice of the Petition to customers through a press release, newspaper publication and a bill insert.

**DOCUMENT  
FOLDER**

**DOCKETED**  
MAY 08 2007

Page 2  
James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
January 25, 2007

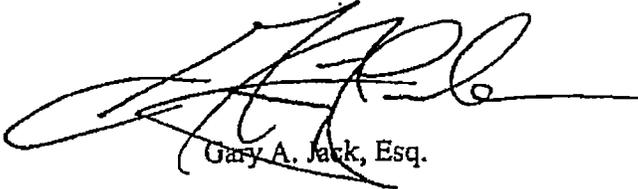
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12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

In addition, please direct any questions regarding this matter to the undersigned.

Very truly yours,



Gary A. Jack, Esq.

Enclosure

c: Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Terrance J. Fitzpatrick, Commissioner  
Kim Pizzingrilli, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Application has been served upon the following persons by first class mail on or about January 25, 2007:

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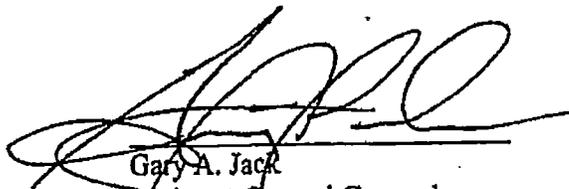
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[gjack@duqlight.com](mailto:gjack@duqlight.com)

Dated: January 25, 2007

# Appendix H

# NOTICES

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Default Service Plan

[37 Pa.B. 736]

[Saturday, February 10, 2007]

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

Formal protests, petitions to intervene and answers must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the petitioner and a copy provided to the Administrative Law Judge, on or before February 26, 2007. The documents filed in support of the petition are available for inspection and copying at the Office of the Secretary between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, and at the petitioner's business address.

*Applicant:* Duquesne Light Company

*Through and By Counsel:* Michael W. Gang, Esquire, Anthony Kanagy, Esquire, Post & Schell, P. C., 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

A prehearing conference on the previously captioned case will be held at 10 a.m., Wednesday, February 28, 2007, 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222 and Hearing Room 1--Harrisburg Parties, Plaza Level, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120

*Presiding:* Administrative Law Judge Larry Gesoff, 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222

*By the Commission*

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 07-224. Filed for public inspection February 9, 2007, 9:00 a.m.]

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# Appendix I

**Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Whemco-Steel Castings, Inc. – Set I  
To Duquesne Light Company

Witness: William Pfrommer

---

**Whemco I-9**

Provide all Documents confirming Duquesne's assertion in the 4th bullet in paragraph 15 of Duquesne's Answer & New Matter that it "published proposed tariff modification on the Company's website ...".

**Response:**

The Company has a process through which it posts all tariff changes on its website. This process applies to pending tariff changes and to approved tariff changes. The Rates and Tariff Services Department manages posting of tariff changes through the Company's IT Web Team who are part of the Information Technology Group. The Rates and Tariff Services Department sends an email to the IT Web Team requesting that the tariff supplement be posted on the Company's website. The IT Web Team posts the tariff supplement and sends a confirmation email to the Rates and Tariff Services Department after the supplement has been posted.

Attachment Whemco I-9 is a copy of the email dated July 13, 2007, requesting the IT Web Team to post the tariff supplement for the default service proceeding at Docket No. P-00032071. The confirmation email from the IT Web Team is not available since over seven years have passed since the tariff supplement was posted.

Comis, Kathleen L.

---

**From:** Kathleen L Comis [Kathleen L Comis/DLC@DLC]  
**Sent:** Friday, July 13, 2007 09:24 AM  
**To:** IT Web Team  
**Cc:** William V Pfrommer  
**Subject:** Posting for DLCo's Internet Site  
Pending Supplements - Supplement No. 10 to Tariff No. 24  
**Attachments:** Supplement No. 10 \_POLR IV Settlement\_ \_KLC 07-02-07\_.DOC.....pdf

The attached document is for posting to Duquesne Light Company's Internet site. The document should be posted under "Pending Supplements" to Duquesne's Retail Tariff.

Please let me know once the document has been published.

If you have any questions, please contact me (x6711).

Thank you!

Kathy

Kathleen L. Comis  
Rate & Tariff Professional  
External Affairs Unit  
Rates & Tariff Services Department  
Duquesne Light Company  
411 Seventh Avenue MD: 8-6  
Pittsburgh, PA 15219  
Telephone: 412.393.6711  
Facsimile: 412.393.5519  
E-mail: [kcomis@duqlight.com](mailto:kcomis@duqlight.com)

This e-mail may contain proprietary information and may be confidential. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you received this message in error, please notify the sender and delete it immediately. Thank you.

# Appendix J

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whemco Steel Castings, Inc.	:	
	:	
v.	:	Docket No. C-2014-2459527
	:	
Duquesne Light Company	:	

**AFFIDAVIT OF WILLIAM V. PFROMMER**

I, William V. Pfrommer, provide this Affidavit in the above-captioned proceeding under penalty of perjury, and in connection therewith depose and state the following:

1. My name is William V. Pfrommer, and I am employed by Duquesne Light Company (“Duquesne Light” or the “Company”) as the Senior Manager, Rates and Tariff Services.

2. My business address is 411 Seventh Avenue, Pittsburgh, PA 15219.

3. I have been employed by Duquesne Light and/or its parent company and affiliates for 33 years.

4. I am responsible for overseeing the Company’s retail rates and wholesale transmission rates, which includes supervising the preparation, development and implementation of the Company’s distribution rates.

5. I received a Bachelor of Science Degree in Mechanical Engineering from Grove City College in 1978 and a Master’s in Business Administration from the University of Pittsburgh in 1989. I was employed by Westinghouse Air Brake Company in 1978 and performed various duties as a staff engineer.

6. I began my career at the Company in 1982 as a Project Engineer in the Engineering and Construction Division at the Beaver Valley Power Station. Over the last 33

years, I have held staff, supervisory and managerial positions in engineering, nuclear construction, customer technical services, marketing and rates.

7. As a member of the Rate Department at Duquesne Light, I was responsible for the calculations to unbundle the rates to support the implementation of electric utility restructuring and customer choice in Pennsylvania. As General Manager of Rates at AquaSource, the previous water and wastewater subsidiary of DQE, Inc., I was responsible for providing direction to regional controllers on all regulatory matters, and maintaining the tariffs in the 12 states where AquaSource had utility operations.

8. I have testified on rate design matters before the Pennsylvania Public Utility Commission (“Commission”) and Federal Energy Regulatory Commission (“FERC”).

9. Rider No. 5 – Time of Day Discounts provided customers an opportunity to reduce their demand charges based upon the time of day that the customer’s monthly peak demand occurred.

10. Rider No 5 –Time of Day Discounts was a legacy of pre-restructuring rate design when the Company owned generation, and when distribution, transmission and generation rates were bundled.

11. Rates were unbundled in the restructuring proceeding, but further actions were required to make the unbundled rates reasonable and to reflect appropriate cost of service principles.

12. In the Company’s Default Service Plan (“DSP”) III proceeding at Docket No. P-00032071, the Company eliminated the Time of Day Discount for generation service for large commercial and industrial default service customers to make a more vanilla default service offering and to promote shopping.

13. The elimination of the Time of Day Discount in the DSP IV proceeding at Docket No. P-00072247 was a continuation of the Company's efforts started in the restructuring proceeding and continued in DSP III to eliminate legacy rate designs.

14. Rider No. 5 – Time of Day Discounts was not justified as applied to unbundled distribution rates.

15. The Company's costs to provide distribution service are not dependent on the time of day the distribution service is used.

16. Distribution costs are assigned to customers based upon cost of service studies. Cost of service studies do not rely on the time of day as a factor in allocating costs to customer classes or rate schedules.

17. It is unreasonable to have a distribution rate discount that is based on the time of day service is used.

18. No party in the Company's default service proceeding at Docket No. P-00072247 challenged the elimination of Rider No. 5 – Time of Day Discounts for any rate schedule.

19. Under the Settlement Stipulation in the DSP IV proceeding, the parties agreed that Duquesne Light could implement the changes to Rider No. 5 as initially proposed, which provided for the elimination of Rider No. 5 – Time of Day Discounts for all rate schedules.

20. It is the Company's practice to post all tariff filings on its website. This process applies to pending tariff changes and to approved tariff changes.

21. Upon request, customers are permitted to review the Company's tariff filings at the Company's offices.

22. The statements contained in this Affidavit are true and correct.

Dated: 7/20/15

  
William V. Pfrommer

COMMONWEALTH OF PENNSYLVANIA :

: ss.

COUNTY OF

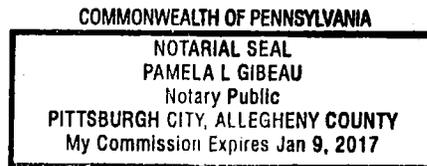
:

On this, the 20<sup>th</sup> day of July, 2015, before me, the undersigned officer, personally appeared WILLIAM V. PFROMMER, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Pamela L Gibeau*

Notary Public



# Appendix K

Duquesne Light Company  
Response to Whemco I-1

**Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Whemco-Steel Castings, Inc. – Set I  
To Duquesne Light Company

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**Whemco I-1**

Identify and provide the name, business address, and title, for all persons or entities that comprised the Duquesne Industrial Intervenors and Pennsylvania Large Energy Users Coalition referenced on page 2 of Duquesne's Answer & New Matter, in Duquesne's Default Service Plan Proceeding at Commission Docket No. P-00072247 ("DSP Proceeding").

**Response:**

See Attachment I-1, which includes members of Duquesne Industrial Intervenors and Pennsylvania Large Energy Users Coalition at the time of the Default Service Proceeding at Docket No. P-00072247.

FEB 27 2007



**McNees Wallace & Nurick** LLC  
attorneys at law

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

February 26, 2007

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

**VIA HAND DELIVERY**

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

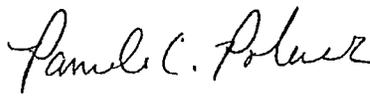
Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the  
Petition to Intervene and Answer in Opposition of Duquesne Industrial Intervenors in the above  
referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek

Counsel to Duquesne Industrial Intervenors

PCP/nk

Enclosures

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

## CERTIFICATE OF SERVICE

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

### VIA E-MAIL AND FIRST CLASS MAIL

Tanya McCloskey  
David Evrard  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)

Steven Gray  
Sharon Webb  
Office of Small Business Advocate  
Commerce Building – Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
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(Strategic Energy, LLC)  
(Retail Energy Supply Association)

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[jmccaffrey@stinsonmoheck.com](mailto:jmccaffrey@stinsonmoheck.com)  
(Citizens Power, Inc.)

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[mgruber@state.pa.us](mailto:mgruber@state.pa.us)  
[roeckenrod@state.pa.us](mailto:roeckenrod@state.pa.us)

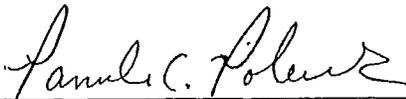
Todd S. Stewart  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmsk-law.com](mailto:tsstewart@hmsk-law.com)  
(Dominion Retail, Inc.)

Erin Creahan  
Two Gateway Center  
Pittsburgh, PA 15222-1458  
[ecreahan@sel.com](mailto:ecreahan@sel.com)

**Certificate of Service**  
**Docket No. P-00072247**  
Page 2

Michael W. Gang  
Anthony D. Kanagy  
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Harrisburg, PA 17101-1601  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
(*Duquesne Light Company; Duquesne Light  
Holdings; DQE Communication Network  
Services LLC; and DQE Holding LLC*)

Brian J. Knipe  
Klett Rooney Lieber & Scholoing  
17 North Second Street, 15 Floor  
Harrisburg, PA 17101-1503  
[bjknipe@klettrooney.com](mailto:bjknipe@klettrooney.com)  
(*Reliant Energy, Inc.*)

  
\_\_\_\_\_  
Pamela C. Polacek

Dated this 26<sup>th</sup> day of February, 2007, at Harrisburg, Pennsylvania.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

---

**PETITION TO INTERVENE AND  
ANSWER IN OPPOSITION  
OF DUQUESNE INDUSTRIAL INTERVENORS**

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Pursuant to Section 5.61(a) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code § 5.61(a), the Duquesne Industrial Intervenors ("DII") hereby file this Answer in Opposition<sup>1</sup> in response to the above-captioned Petition ("Petition") of Duquesne Light Company ("Duquesne" or "Company"). In addition, pursuant to Sections 5.71 through 5.74 of the Commission's Regulations, 52 Pa. Code §§ 5.71 - 5.74, DII hereby files this Petition to Intervene in the above-captioned proceeding.

In its Petition, Duquesne sets forth a proposed plan to provide Provider of Last Resort ("POLR") supply service (hereinafter, "POLR IV"). Beginning on January 1, 2008, this POLR IV plan would apply to all retail customers in Duquesne's service territory. Duquesne proposes three separate plans for: (1) Residential customers; (2) Small Commercial and Industrial ("Small C&I") customers; and, (3) Large Commercial and Industrial ("Large C&I") customers served under Rates GL, GLH, L or HVPS.

Under Duquesne's plan, Large C&I customers will be offered only a real-time Hourly Price Service ("HPS"). See Duquesne Petition, pp. 12-13. Among other issues, DII believes that

---

<sup>1</sup> Alternatively, DII's filing should be treated by the Commission as a Complaint against Duquesne's proposal pursuant to Section 5.22 of the Commission's Regulations, 52 Pa. Code § 5.22.

Duquesne should be required to offer a Fixed Price Service ("FPS") alternative, as well as a Monthly Price Service ("MPS") as proposed in the Commission's recently released Draft POLR Regulations. As set forth in more detail below, several aspects of Duquesne's Large C&I plan are inappropriate and may be contrary to the requirements of the Public Utility Code. As a result, DII respectfully requests that the Commission modify Duquesne's Large C&I plan as set forth herein.

In support of its Petition to Intervene and Answer in Opposition, DII asserts as follows:

**I. PETITION TO INTERVENE**

1. DII is an ad hoc association of energy-intensive commercial, industrial and institutional customers receiving electric service in Duquesne's service territory. DII has been an active participant in many PUC proceedings addressing service terms and conditions in Duquesne's territory, including Duquesne's Restructuring Proceeding filed pursuant to the Competition Act, the stakeholder process that resulted in the approval of Duquesne's first post-transition period Provider of Last Resort ("POLR") plan (i.e., POLR II), Duquesne's previous POLR proceeding ("POLR III"), and Duquesne's recent Distribution Base Rate case.

2. DII members traditionally purchase electric distribution service from Duquesne primarily under Rate Schedules GL, L, and HVPS, and associated special contracts or service riders. DII members have the option to purchase electric generation supply service from Duquesne (as the POLR) or from an Electric Generation Supplier ("EGS"). For purposes of this proceeding, DII includes the companies listed in Attachment "A" hereto. DII will update Attachment A during the course of this proceeding to reflect changes in its membership.

3. DII members are concerned with issues regarding the terms and conditions of their electricity service, including the rates and options provided by Duquesne for POLR service. The Commission's final disposition of Duquesne's Petition will directly affect the rates that

Duquesne imposes on DII members for POLR service. As Duquesne's largest customers, DII members are in a unique position to comment to the Commission on the customer impact of Duquesne's POLR plan for Large C&I customers.

4. DII members have an interest in this proceeding that is not represented by any other party of record; consequently, DII satisfies the standards for intervention under Section 5.72 of the Commission's Regulations, 52 Pa. Code § 5.72.

5. The names and address of DII's attorneys are:

Pamela C. Polacek  
Adam L. Benschhoff  
McNEES WALLACE & NURICK LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
[abenschhoff@mwn.com](mailto:abenschhoff@mwn.com)

DII requests that the names and address of its attorneys be added to the Commission's and all parties' service lists. All correspondence in this proceeding from the Commission should be directed to the attention of Pamela C. Polacek at the address listed above.

## II. ANSWER

6. As previously mentioned, DII questions whether several aspects of Duquesne's Large C&I POLR plan are appropriate and/or in compliance with Section 2807(e)(3) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3). Specifically, DII sets forth below four issues to be considered in this proceeding with regard to the Large C&I plan: (1) Duquesne's lack of a FPS alternative; (2) Duquesne's lack of a MPS alternative; (3) whether the proposed hourly rate adder is just and reasonable; and (4) Duquesne's request for exemption from any final POLR regulations issued by the Commission. DII respectfully requests the right, however, to raise and

address additional issues of concern during the course of the proceeding based on further review of the Petition and discovery.

**A. The Commission Should Require Duquesne to Provide Large C&I Customers a Fixed Price Service Alternative.**

7. Duquesne proposes to offer Large C&I customers only a real-time HPS option with no FPS alternative. Duquesne Petition, p. 12. Both the Residential and Small C&I classes, however, will receive a fixed price for three years, and one year, respectively. See Duquesne Petition, pp. 14-17. In support of the elimination of the FPS option for Large C&I customers, Duquesne states that the "competitive market" is robust, and proposes to rely on the Electric Generation Suppliers ("EGSs") to provide any FPS to Large C&I customers. See id. Duquesne also relies on the Commission's previous order in its POLR III proceeding, which permits Duquesne's current FPS option to expire on May 31, 2007. Id.

8. DII asserts that a FPS option should be available to all customers. Contrary to the unsubstantiated claims of Duquesne that Large C&I customers "do not require the same level of price stability" as other customer classes, not all Large C&I customers are able to respond to hourly market prices. See Direct Testimony of Morgan K. O'Brien, Duquesne Statement No. 1 (hereinafter, "Duquesne St. 1"), p. 18. HPS remains very complex, and subjects customers to the constantly changing, volatile market. This price volatility is simply unworkable for many Large C&I customers that may be required to rely on default service as their only supply option or an interim option while changing competitive suppliers. In addition, it is patently unfair, and unduly discriminatory to provide some classes with price stability, while others are left completely at the mercy of a market that has yet to be proven entirely competitive.

9. As evidence that a FPS alternative is unnecessary, Duquesne relies heavily on its high percentage of Large C&I customers that are currently shopping. DII questions the validity of such statistics as actual evidence that the Duquesne market is working. While DII does not

dispute that these customers are shopping, it is unclear whether these customers have shopped because of competitive pricing, or have simply been forced into the market. At a minimum, the current FPS offered by Duquesne has provided a necessary benchmark for these customers to compare offers for fixed-price service from EGSs. DII also would support redesigning FPS to produce more reasonable fixed price options for Large C&I customers.

10. Finally, Duquesne's reliance on the Commission's order in POLR III is also misplaced. While DII agrees that the Commission approved the elimination of the FPS option as of June 1, 2007, that decision was never meant to be precedential and does not prohibit Duquesne from continuing to offer a FPS alternative. See Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service, Docket No. P-00032071, p. 5, (August 5, 2004) (clarifying that until the issuance of final POLR regulations, its decisions were made only on general policy grounds). Moreover, the Proposed Policy Statement on default service recently issued by the Commission permits electric distribution companies ("EDCs") to offer fixed price contracts to Large C&I customers. See Default Service and Retail Electric Markets, Docket No. L-00070183, Proposed Policy Statement, § 69.1805, Annex A, p. 4, (February 9, 2007) (hereinafter "POLR Policy Statement"). The Commission anticipates that it will finalize the regulations and the policy statement by the end of this year (i.e., before the new Duquesne POLR plan starts). Therefore, DII respectfully requests that the Commission reject Duquesne's proposal to only offer an HPS option for Large C&I customers, and require Duquesne to provide a FPS alternative for all customer classes.

**B. A Monthly Price Service Alternative is an Appropriate Alternative Default Service Option that Should be Provided by Duquesne.**

11. In addition to a FPS alternative for Large C&I, DII respectfully requests that Duquesne be required to offer a MPS option. The Commission's recently released proposed POLR Regulations include the ability to provide a monthly Price to Compare ("PTC") rate for

Large C&I customers. See Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2), Docket No. L-00040169, Advance Notice of Final Rulemaking Order, p. 19 (February 9, 2007) (hereinafter "POLR ANOFR). For many of the reasons indicated above for a FPS, (i.e., necessary price stability, benchmark for competitive service), to a lesser extent a MPS offers many of these same benefits for Large C&I customers. The Commission should not deprive Duquesne's Large C&I customers of the benefits of the POLR structure envisioned in the recent POLR ANOFR and POLR Policy Statement.

**C. Duquesne has not Established that its Proposed Hourly Rate Adder Will Result in the Recovery of Only its Reasonable Costs to Provide POLR Service in Compliance with Section 2807(e)(3) of the Public Utility Code.**

12. The Public Utility Code specifies that Duquesne is entitled to "recover fully all reasonable costs" to provide POLR service. 66 Pa. C.S. § 2807(e)(3). Duquesne bears the burden to prove that it is recovering only its reasonable costs in compliance with the Code.

13. One cost that must be carefully analyzed and may violate Section 2807(e)(3) is the HPS retail adder of \$3.97/MWh. See Direct Testimony of William V. Pfrommer, Duquesne Statement No. 4 (hereinafter, "Duquesne St. 4"), p. 20. Duquesne states that this retail adder "seeks only to recover its administrative costs of providing the hourly price default service." See id. DII is willing to support a POLR proposal that enables Duquesne to "recover fully all reasonable costs" to provide POLR service; however, DII submits that the statute entitles Duquesne to recovery only for the Company's actual costs to provide POLR service. The Company must prove that the \$3.97/MWh adder recovers only Duquesne's actual costs to provide POLR service. Absent such proof, the retail adder violates Section 2807(e)(3) and cannot be included in POLR rates.

**D. If Duquesne's Large C&I POLR Proposal is Approved With Only an Hourly Price Service Option, then the Commission Cannot Grant Duquesne's Request That Its Plan Trump Any Future POLR Regulations or Changes to the Statute.**

14. As part of this Petition, Duquesne requests that if the Commission's POLR regulations become effective prior to January 1, 2011, that Duquesne be granted a waiver of those regulations to the extent that they would conflict with the provisions of the proposed POLR plan. Duquesne Petition, p. 31. Duquesne states that this waiver is necessary in order for Duquesne to procure supply for its default service customers because Duquesne is assuming considerable risks under the plan. Id.

15. DII does not disagree with Duquesne's assessment of risk with regard to the Residential and Small C&I proposals; however, if the Commission were to approve Duquesne's proposal and permit only an HPS alternative for Large C&I customers, the Company would be assuming absolutely no risk with respect to serving this customer class. Thus, the Company has not presented any justification for a waiver with respect to the Large C&I class. Furthermore, it would be wholly inappropriate to make DII members, who must compete with companies who continue to operate in Pennsylvania service territories with rate caps and other non-restructured states, to continue to suffer under the HPS-only POLR regime that the Commission now appears to disfavor on a state-wide basis (as indicated by the monthly PTC model in the POLR ANOFR and the acknowledgement that default service providers can offer longer fixed rates to Large C&I customers in the POLR Policy Statement). Therefore, unless Duquesne provides FPS and MPS alternatives, DII respectfully requests that the Commission deny Duquesne's request for waiver of the POLR Regulations with respect to the Large C&I product.

**III. CONCLUSION**

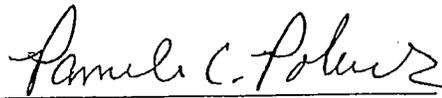
**WHEREFORE**, for the reasons stated above, DII respectfully requests that this Honorable Commission: (1) grant this Petition to Intervene and provide DII with full-party status

in this proceeding; and (2) deny Duquesne's Petition for Approval of a Default Service Plan, unless it is modified by:

- a. Providing a fixed price service alternative for Large C&I customers;
- b. Providing a monthly price service option for Large C&I customers;
- c. Rejecting any portion of the "retail adder" that exceeds Duquesne's actual costs to provide POLR service; and
- d. Rejecting Duquesne's request to have this plan waived from applicability of the upcoming final POLR Regulations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. 78276)  
Adam L. Benshoff (Pa. I.D. 200498)  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300

Counsel to the Duquesne Industrial Intervenors

Dated: February 26, 2007

**DOCKET NO. P-00072247**

**DUQUESNE INDUSTRIAL INTERVENORS**

**The Techs (GalvTech, MetalTech and NexTech)**

**ATTACHMENT "A"**  
**(February 26, 2007)**





**Fox Rothschild** LLP  
ATTORNEYS AT LAW

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997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
Tel 609.896.3600 Fax 609.896.1469  
www.foxrothschild.com

Steven S. Goldenberg  
Direct Dial: (609) 896-4586  
Email Address: sgoldenberg@foxrothschild.com

February 26, 2007

**VIA FEDERAL EXPRESS**

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

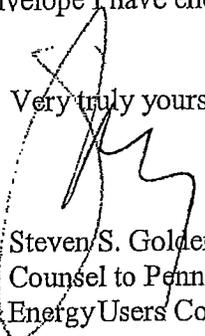
**Re: Duquesne Light Company POLR Proceeding  
Docket No. P-00072247**

Dear Secretary McNulty:

Enclosed for filing are an original and four (4) copies of the Motions of the Pennsylvania Large Energy Users Coalition to Intervene in the above matter and for the Special Admission of Counsel seeking the admission *pro hac vice* of Steven S. Goldenberg, Esquire and Paul Forshay, Esquire as co-counsel for the Pennsylvania Large Energy Users Coalition. Copies of the enclosed Motions are being served upon counsel for Duquesne and the parties or their counsel set forth on the certificate of service.

Should you have any questions regarding the above, please call me at (609) 896-4586. Please date stamp and return to me in the self-addressed envelope I have enclosed, the extra copy of this letter and the Motions. Thank you for your cooperation.

Very truly yours,

  
Steven S. Goldenberg  
Counsel to Pennsylvania Large  
Energy Users Coalition

SSG:jfp

Enclosures

cc: Honorable Larry Gesoff (w/encl.) (via electronic mail and federal express)  
All Parties of record as set forth on the Certificate of Service

A Pennsylvania Limited Liability Partnership

California

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
:

PETITION TO INTERVENE

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the provisions of 52 Pa. Code §§ 5.71 through 5.74, the Pennsylvania Large Energy Users Coalition, whose members include large volume customers serviced by Duquesne Light Company ("Duquesne"), hereby files this Petition to Intervene in the above-captioned proceeding. In support thereof, Petitioner states as follows:

1. Petitioner is the Pennsylvania Large Energy Users Coalition ("PALEUC"), a coalition whose members include large volume customers serviced by Duquesne. PALEUC's membership list is attached as an exhibit and will be updated as required during the pendency of this matter.

2. The names and addresses of Petitioner's attorneys are:

Ronald J. Shaffer, Esq.  
FOX ROTHSCHILD LLP  
2000 Market Street - 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Phone: 215-299-2000  
Fax: 215-299-2150

Steven S. Goldenberg, Esq.  
FOX ROTHSCHILD LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Bldg. 3  
Lawrenceville, NJ 08648-2311  
Phone: 609-896-4586  
Fax: 609-896-1469

Paul F. Forshay, Esq.  
SUTHERLAND, ASBILL & BRENNAN, LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Phone: 202-383-0100  
Fax: 202-637-3593

3. All correspondence should be directed to Steven S. Goldenberg and Paul F. Forshay at the addresses provided.

4. By Petition dated January 25, 2007, Duquesne seeks approval by the Pennsylvania Public Utility Commission (the "Commission") of a default service plan for the period January 1, 2008 through December 31, 2010, and certain related approvals required for implementation of the plan.

5. The Petition proposes a three year default service plan as a transition to the expiration of generation rate caps on December 31, 2010. Among other things, the Petition proposes significant rate increases above current default rates for residential and small commercial customers and real time hourly rates for commercial and industrial customers.

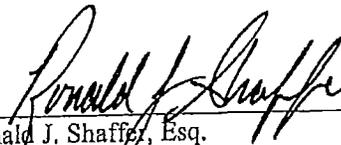
6. PALEUC formed, in part, to monitor regulatory proceedings involving Pennsylvania's electric and natural gas utilities, including Duquesne, and intervene in regulatory and rate proceedings to the extent necessary to represent its members' common interests. Members of PALEUC take service from Duquesne under Rate Schedules L and GL. PALEUC intervened with full party status in Duquesne's last base rate case and in the Duquesne/Macquarie merger proceeding. PALEUC's members will be substantially and

specifically affected by the outcome of this proceeding and have interests not represented by any other party of record.

7. Notwithstanding its unique interests, where it is possible and practical for it to do so, PALEUC will endeavor to work cooperatively with other parties in the interest of administrative efficiency and economy. Accordingly, PALEUC satisfies the standards for intervention in the Commission's Regulations. See 52 Pa. Code §5.51 through 5.76.

WHEREFORE, the Pennsylvania Large Energy Users Coalition respectfully requests that the Pennsylvania Public Utility Commission grant this Petition to Intervene and provide PALEUC with full party status in this proceeding.

Respectfully submitted,



Ronald J. Shaffer, Esq.  
FOX ROTHSCHILD LLP  
2000 Market Street – 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Phone: 215-299-2000  
Fax: 215-299-2150

And

Steven S. Goldenberg, Esq.  
FOX ROTHSCHILD LLP  
Princeton Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
Phone: 609-896-4586

Attorneys for Pennsylvania Large Energy Users  
Coalition

Dated: February 26, 2007



APPENDIX

**PENNSYLVANIA LARGE ENERGY USERS COALITION**  
**Docket No. P-00072247**

Membership List

**American Beverage Corporation**  
**Hussey Copper**  
**United States Gypsum Company**

CERTIFICATE OF SERVICE

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

VIA FIRST CLASS MAIL

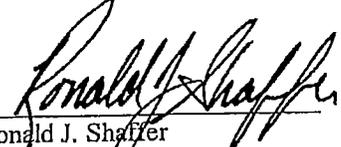
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Office of the Consumer Advocate  
555 Walnut Street  
Forum Place – 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1921

Michael W. Gang, Esq.  
Andrew S. Tubbs  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

David B. MacGregor, Esq.  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Blvd.  
Philadelphia, PA 19103-2808

  
Ronald J. Shaffer  
Counsel to Pennsylvania Large  
Energy Users Coalition

Dated this 26th day of February, 2007, in Philadelphia, Pennsylvania.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010. :

**MOTION FOR SPECIAL ADMISSION OF COUNSEL**

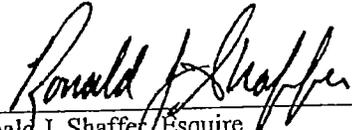
Ronald J. Shaffer, Esquire respectfully moves the Pennsylvania Public Utility Commission pursuant to 52 Pa. Code § 1.22 for the special admission *pro hac vice* of Paul F. Forshay, Esquire in this matter, and in support thereof, represents as follows:

1. I am an attorney at law duly admitted to practice before the Supreme Court of Pennsylvania, attorney number 33621, and am a member in good standing of the bar of the Commonwealth.
2. I am a partner in the law firm of Fox Rothschild LLP and am counsel of record representing the Pennsylvania Large Energy Users Coalition in this matter.
3. Paul F. Forshay, Esquire is associated with me in this matter and seeks admission *pro hac vice* on behalf of the Pennsylvania Large Energy Users Coalition.
4. Paul F. Forshay, Esquire is a partner of the law firm of Sutherland, Asbill & Brennan, LLP, practicing at the firm's Washington, DC office, and is duly qualified to practice in the District of Columbia. He is a member in good standing of the above-listed court and is not under suspension or disbarment by any court. The supporting affidavit of Paul F. Forshay, Esquire is attached hereto as "Exhibit A."

5. The admission of Paul F. Forshay, Esquire will materially advance the conduct of this matter on behalf of the Pennsylvania Large Energy Users Coalition and will prejudice no one.

WHEREFORE, Ronald J. Shaffer, Esquire respectfully requests that the Pennsylvania Public Utility Commission specially admit Paul F. Forshay, Esquire *pro hac vice* on behalf of the Pennsylvania Large Energy Users Coalition in this matter.

Respectfully submitted,



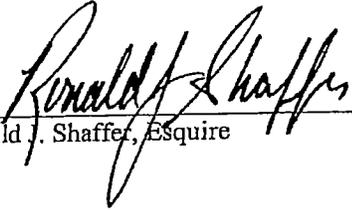
Ronald J. Shaffer, Esquire  
FOX ROTHSCHILD LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103  
(215) 299-2000

Attorney for the Pennsylvania  
Large Energy Users Coalition

Dated: February 26, 2007

VERIFICATION

I, Ronald J. Shaffer, Esquire do hereby verify and state that the factual statements contained in the foregoing Motion for Special Admission of Counsel are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Ronald J. Shaffer, Esquire

Dated: February 26, 2007

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
:

**AFFIDAVIT OF PAUL F. FORSHAY, ESQUIRE**  
**IN SUPPORT OF MOTION FOR SPECIAL ADMISSION OF COUNSEL**

I, Paul F. Forshay, duly sworn according to law, depose and say:

1. I am an attorney in good standing admitted to practice in the District of Columbia. I am not admitted to practice in Pennsylvania. I have no disciplinary proceedings pending against me in any jurisdiction and no discipline has been previously imposed on me in any jurisdiction.

2. I am a partner of the law firm of Sutherland, Asbill & Brennan, LLP, practicing at the firm's Washington, DC office located at 1275 Pennsylvania Avenue N.W., Washington, DC 20004. My telephone number is 202-383-0100.

3. I have previously represented industrial energy customers in rate proceedings and other matters and am presently associated with Ronald J. Shaffer, Esquire in this matter.

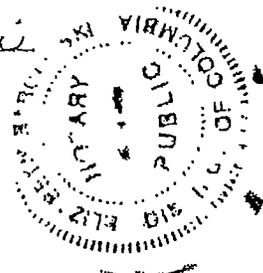
4. The Pennsylvania Large Energy Users Coalition desires that I participate in the trial and all other phases of this matter in Pennsylvania.

5. I understand that I will be bound by the Pennsylvania rules of procedure and professional conduct.

District of Columbia ) ss;  
Sworn to and subscribed before  
me this 26<sup>th</sup> day of February, 2007

Elizabeth Barzelski  
Notary Public  
My commission expires October 14, 2010.

Paul F. Forshay  
Paul F. Forshay



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
:

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of the Motion of Ronald J. Shaffer, Esquire, for Special Admission of Paul F. Forshay, Esquire in this matter, and for good cause shown, it is hereby ORDERED:

1. that Paul F. Forshay, Esquire be and hereby is admitted *pro hac vice* to the bar of the Commonwealth of Pennsylvania under 52 Pa. Code § 1.22, as co-counsel on behalf of the Pennsylvania Large Energy Users Coalition in this matter;

2. that Paul F. Forshay, Esquire shall abide by the rules of the Pennsylvania Public Utility Commission, including all disciplinary rules;

3. that Paul F. Forshay, Esquire shall immediately notify the Pennsylvania Public Utility Commission of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and

4. Ronald J. Shaffer, Esquire, the moving party herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of the Pennsylvania Large Energy Users Coalition.

\_\_\_\_\_  
A.L.J.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 26th day of February, 2007, served a true copy of the foregoing Motion for Special Admission of Counsel, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, et seq. (relating to service by a participant) upon the following:

**VIA FIRST CLASS MAIL**

Richard Herskoritz, Esq.  
Gary Jack, Esq.  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219

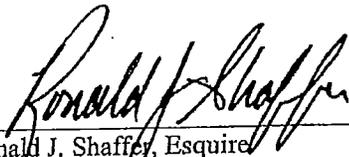
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Harrisburg, PA 17101-1921

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Commonwealth Keystone Building  
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Harrisburg, PA 17120

Michael Gang, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

David MacGregor, Esq.  
Post & Schell  
Four Penn Centre  
1600 John F. Kennedy Blvd.  
Philadelphia, PA 19103-2808

  
\_\_\_\_\_  
Ronald J. Shaffer, Esquire  
FOX/ROTHSCHILD LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103  
(215) 299-2088

Attorney for the Pennsylvania  
Large Energy Users Coalition

Dated: February 26, 2007

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
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MOTION FOR SPECIAL ADMISSION OF COUNSEL

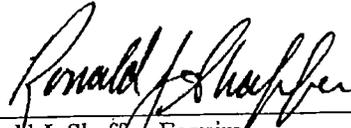
Ronald J. Shaffer, Esquire respectfully moves the Pennsylvania Public Utility Commission pursuant to 52 Pa. Code § 1.22 for the special admission *pro hac vice* of Steven S. Goldenberg, Esquire in this matter, and in support thereof, represents as follows:

1. I am an attorney at law duly admitted to practice before the Supreme Court of Pennsylvania, attorney number 33621, and am a member in good standing of the bar of the Commonwealth.
2. I am a partner in the law firm of Fox Rothschild LLP and am counsel of record representing the Pennsylvania Large Energy Users Coalition in this matter.
3. Steven S. Goldenberg, Esquire is associated with me in this matter and seeks admission *pro hac vice* on behalf of the Pennsylvania Large Energy Users Coalition.
4. Steven S. Goldenberg, Esquire is a partner of the law firm of Fox Rothschild LLP, practicing at the firm's Princeton, New Jersey office, and is duly qualified to practice in the courts of New Jersey and New York. He is a member in good standing of the above-listed court and is not under suspension or disbarment by any court. The supporting affidavit of Steven S. Goldenberg, Esquire is attached hereto as "Exhibit A."

5. The admission of Steven S. Goldenberg, Esquire will materially advance the conduct of this matter on behalf of the Pennsylvania Large Energy Users Coalition and will prejudice no one.

WHEREFORE, Ronald J. Shaffer, Esquire respectfully requests that the Pennsylvania Public Utility Commission specially admit Steven S. Goldenberg, Esquire *pro hac vice* on behalf of the Pennsylvania Large Energy Users Coalition in this matter.

Respectfully submitted,



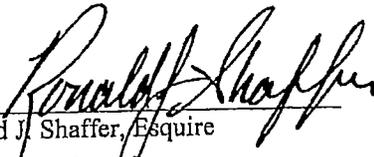
Ronald J. Shaffer, Esquire  
FOX/ROTHSCHILD LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103  
(215) 299-2000

Attorney for the Pennsylvania  
Large Energy Users Coalition

Dated: February 26, 2007

VERIFICATION

I, Ronald J. Shaffer, Esquire do hereby verify and state that the factual statements contained in the foregoing Motion for Special Admission of Counsel are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Ronald J. Shaffer, Esquire

Dated: 2/26/07

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
:

**AFFIDAVIT OF STEVEN S. GOLDENBERG, ESQUIRE**  
**IN SUPPORT OF MOTION FOR SPECIAL ADMISSION OF COUNSEL**

I, Steven S. Goldenberg, duly sworn according to law, deposes and says:

1. I am an attorney in good standing admitted to practice in the courts of New Jersey and New York, having been admitted to practice in 1981. I am not admitted to practice in Pennsylvania. I have no disciplinary proceedings pending against me in any jurisdiction and no discipline has been previously imposed on me in any jurisdiction.

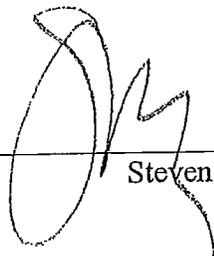
2. I am a partner of the law firm of Fox Rothschild LLP and practice at the firm's Princeton, New Jersey office located at Princeton Pike Corporate Center, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648-2311. My telephone number is 609-896-4586.

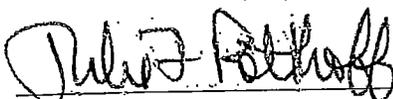
3. I have previously represented industrial energy customers in utility rate and merger proceedings and am presently associated with Ronald J. Shaffer, Esquire in this matter.

4. The Pennsylvania Large Energy Users Coalition desires that I participate in the trial and all other phases of this matter in Pennsylvania.

5. I understand that I will be bound by the Pennsylvania rules of procedure and professional conduct.

Sworn to and subscribed before  
me this 26th day of February, 2007

  
\_\_\_\_\_  
Steven S. Goldenberg

  
\_\_\_\_\_  
Notary Public

**JULIE F. POTTHOFF**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires March 17, 2009

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF DUQUESNE LIGHT COMPANY :  
FOR APPROVAL OF DEFAULT SERVICE :  
PLAN FOR THE PERIOD JANUARY 1, 2008 : Docket No. P-00072247  
THROUGH DECEMBER 31, 2010 :  
:

ORDER

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1. that Steven S. Goldenberg, Esquire be and hereby is admitted *pro hac vice* to the bar of the Commonwealth of Pennsylvania under 52 Pa. Code § 1.22, as co-counsel on behalf of the Pennsylvania Large Energy Users Coalition in this matter;
2. that Steven S. Goldenberg, Esquire shall abide by the rules of the Pennsylvania Public Utility Commission, including all disciplinary rules;
3. that Steven S. Goldenberg, Esquire shall immediately notify the Pennsylvania Public Utility Commission of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and
4. Ronald J. Shaffer, Esquire, the moving party herein, shall continue to be responsible as counsel of record for the conduct of this matter on behalf of the Pennsylvania Large Energy Users Coalition.

\_\_\_\_\_  
, A.L.J.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 26<sup>th</sup> day of February, 2007, served a true copy of the foregoing Motion for Special Admission of Counsel, in the manner indicated below, in accordance with the requirements of 52 Pa. Code § 1.54, et seq. (relating to service by a participant) upon the following:

**VIA FIRST CLASS MAIL**

Richard Herskoritz, Esq.  
Gary Jack, Esq.  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219

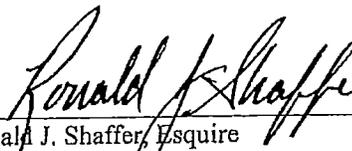
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Michael Gang, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

David MacGregor, Esq.  
Post & Schell  
Four Penn Centre  
1600 John F. Kennedy Blvd.  
Philadelphia, PA 19103-2808



Ronald J. Shaffer, Esquire  
FOX ROTHSCHILD LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103  
(215) 299-2088

Attorney for the Pennsylvania  
Large Energy Users Coalition

Dated: February 26, 2007

Duquesne Light Company  
Response to Whemco I-3

**Whemco-Steel Castings, Inc. v. Duquesne Light Company**  
**Docket No. C-2014-2459527**

Whemco-Steel Castings, Inc. – Set I  
To Duquesne Light Company

---

**Whemco I-3**

Which of the persons or entities identified in response to Interrogatory No. 1 above were at the time of the DSP Proceeding taking service under Duquesne's (i) Rate Schedule L and/or (ii) Rider No. 5 - Time of Day Discount of Duquesne's then-prevailing retail electric tariff.

**Response:**

- (i) Customer rate information is confidential and proprietary, thus Duquesne Light Company cannot disclose the identity of customers taking service under Rate L at the time of the DSP Proceeding. At the time of the DSP Proceeding, the Company believes that 2 large commercial and industrial customers were taking service taking service under Rate L and Rider 5.
- (ii) Customer rate information is confidential and proprietary, thus Duquesne Light Company cannot disclose the identity of customers taking service under Rider 5 at the time of the DSP Proceeding. At the time of the DSP Proceeding, the Company believes that 2 large commercial and industrial customers were taking service taking service under Rate L and Rider 5.

# Appendix L



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

IN REPLY PLEASE  
REFER TO OUR FILE

January 16, 2008

Docket Nos. P-00072247

GARY A JACK  
ASSISTANT GENERAL COUNSEL  
DUQUESNE LIGHT COMPANY  
411 SEVENTH AVENUE  
16<sup>TH</sup> FLOOR MAIL DROP 16-4  
PITTSBURGH PA 15219

Re: Petition for a Default Service Plan for Duquesne Light Company

Dear Mr. Jack:

At Public Meeting held June 21, 2007, the Commission authorized Duquesne Light Company (Company) to file tariff supplements consistent with the terms and conditions of the stipulations referred to in the Commission's Order entered at the above-referenced docket number. On July 12, 2007, the Company filed Supplement No. 10 to Tariff Electric-Pa. P.U.C. No. 24 and Supplement No. 7 to Tariff Electric-Pa. P.U.C. No. 3S to become effective January 1, 2008.

On December 7, 2007, the Company filed revisions to Supplement No. 10 to Tariff Electric-Pa. P.U.C. No. 24. These revisions provide the most current transmission rate figures for incorporation in the new rates beginning on January 1, 2008.

This letter is to notify you that the Company's Supplement No. 10 to Tariff Electric-Pa. P.U.C. No. 24, with revisions, and Supplement No. 7 to Tariff Electric-Pa. P.U.C. No. 3S have been permitted to become effective and that the Secretary's Bureau shall mark the dockets at P-00072247 closed. Any questions concerning this filing should be addressed to J. Elaine McDonald of the Bureau of Fixed Utility Services at 717-787-1869.

Sincerely

James J. McNulty  
Secretary

cc: J. Elaine McDonald, FUS  
Kathy Aunkst, Secretary's Bureau