



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Pamela C. Polacek
Direct Dial: 717.237.5368
Direct Fax: 717.260.1712
ppolacek@mwn.com

January 4, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of Duquesne Light Company for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan; Docket No. M-2015-2515375

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Duquesne Industrial Intervenors in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Pamela C. Polacek', is written over the printed name.

Pamela C. Polacek

Counsel to Duquesne Industrial Intervenors

Enclosures

c: Administrative Law Judge Katrina L. Dunderdale (via E-mail and First Class Mail)
Certificate of Service

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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 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Michael A. Gruin, Esq.
Stevens & Lee, P.C.
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com

Linda R. Evers, Esq.
Stevens & Lee, P.C.
111 N. Sixth Street
P.O. Box 679
Reading, PA 19601
lre@stevenslee.com

Robert Hoaglund, Esq.
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
rhoaglund@duqlight.com

Lauren M. Burge, Esq.
Darryl Lawrence, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
lburge@paoca.org
dlawrence@paoca.org

Elizabeth Rose Triscari, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
etriscari@pa.gov

Johnnie Simms, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
josimms@pa.gov

Joline Price, Esq.
Patrick M. Cicero, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
jpricepulp@palegalaid.net
emarxpulp@palegalaid.net
Counsel for CAUSE-PA

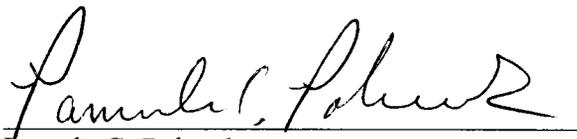
Joseph L. Vullo, Esq.
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@aol.com
Counsel to Commission on Economic Opportunity

Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Sarah C. Stoner, Esq.
Eckert Seamans Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
sstoner@eckertseamans.com
Counsel to RESA

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Theodore S. Robinson, Esq.
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com

Derrick Price Williamson, Esq.
Barry A. Naum, Esq.
Spilman, Thomas & Battle, PLLC
11200 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
*Counsel to Wal-Mart Stores
East, LP and Sam's East, Inc.*



Pamela C. Polacek

Counsel to the Duquesne Industrial Intervenor

Dated this 4th day of January, 2016, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
for Approval of its Act 129 : Docket No. M-2015-2515375
Phase III Energy Efficiency and :
Conservation Plan :

**COMMENTS OF
THE DUQUESNE INDUSTRIAL INTERVENORS**

I. INTRODUCTION

Through Act 129 of 2008 ("Act 129"), the Pennsylvania General Assembly tasked the Pennsylvania Public Utility Commission ("PUC" or "Commission") with establishing an Energy Efficiency and Conservation ("EE&C") Program. Pursuant to Act 129, the Commission ordered each Electric Distribution Company ("EDC") with at least 100,000 customers to develop and implement a tailored EE&C Plan to reduce energy demand and consumption within its service territory. Thus far, the Commission has worked with EDCs across the Commonwealth to administer two Phases of EE&C Program implementation.

On June 19, 2015, the Commission decided that a third Phase of EE&C programming was necessary and issued an Implementation Order directing EDCs to develop a third EE&C Plan.¹ Pursuant to the Commission's Order, Duquesne Light Company ("DLC" or "Company") filed its Phase III EE&C Plan ("Phase III Plan" or "Plan") for the period June 1, 2016 through May 31, 2021 on November 25, 2015. DLC's Plan proposes various EE&C Programs designed

¹ *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order Entered June 19, 2015) ("Phase III Implementation Order").

to meet its Commission-mandated energy consumption reduction target and demand reduction target.²

The Duquesne Industrial Intervenors ("DII") hereby submits these Comments in response to DLC's Phase III Plan. DII is an ad hoc association of energy-intensive commercial and industrial customers receiving electric service in DLC's service territory. DII members purchase service from DLC primarily under Rate Schedule L. Because the cost of electricity (including government-imposed costs such as EE&C surcharges) is a substantial component of DII members' operating budgets, DII is concerned about certain elements of the Company's Phase III Plan.

As the Commission is aware, many businesses independently fund and implement EE&C initiatives in order to reduce their electricity costs. When Large Commercial & Industrial ("C&I") customers in Pennsylvania purchase power from Electric Generation Suppliers ("EGSs"), they receive signals from the retail supply market regarding the value of energy efficiency efforts. Large C&I customers assess those price signals and decide whether it is beneficial to their businesses to implement energy efficiency measures. Forward-looking and cost-sensitive consumers make decisions on a daily basis to install energy-efficient lighting, replace motors, install more efficient heating, ventilating, and air conditioning systems, and explore complex industrial process enhancements to remain competitive and efficient. Large C&I enterprises have been studying the benefits of energy efficiency and incorporating energy efficiency projects into their business models for many years prior to the implementation of Act 129 in 2008.

² The demand reduction target applies only to Program Years ("PY") 9-12, there is no demand reduction target for PY 8.

Pursuant to Act 129, the Commission approves cost recovery mechanisms determining the extent to which ratepayers must support an EDC-administered EE&C Program. DLC's customers, including Large C&I customers, have financially supported DLC's EE&C Program since initial inception, including grants provided to members of the Large C&I class, administrative expenses, research and development ("R&D"), marketing and advertising, Conservation Service Provider ("CSP") compensation, Statewide Evaluator compensation, and other miscellaneous expenditures. Consequently, the Commission must determine whether DLC's programs for each customer class are cost-effective and in the public interest, because every dollar paid into DLC's EE&C Plan is a dollar taken from a customer's own energy efficiency initiatives or other business needs.

DII respectfully submits its comments on four elements of the Company's proposed Phase III Plan. First, DII stresses that if a ruling by the U.S. Supreme Court were to result in the elimination of all PJM Interconnection, L.L.C. ("PJM"), Demand Response ("DR") Programs, then the Commission must hold an expeditious and comprehensive stakeholder process to ensure that the Commonwealth can effectively and efficiently replace PJM's programs. Second, if Senate Bill 805 ("S.B. 805") passes in the Pennsylvania General Assembly, then DLC must be able to adjust its Phase III Plan to permit Large C&I customers to opt out of the Company's Plan. Third, the Company must structure its Phase III Plan to recognize and comply with PJM market rules. Specifically, as Phase III of Act 129 now requires all EDCs to rebid all CSP contracts, the Company must comply with the PJM Open Access Transmission Tariff ("Tariff") requirement that a customer location have only one PJM Curtailment Service Provider per PJM DR program. The operation of DLC's Act 129 DR Program must be transparent so the Commission and the stakeholders can evaluate DLC's implementation of the "50% rule for dual participants" and

determine the portion of the measure costs that are going to compensate customers for load reductions and the portion that is being devoted to administrative expenses. Fourth, the Company must ensure that its annual ratemaking process is transparent and just and reasonable, in order to guarantee that costs are allocated fairly among customers with little uncertainty as to what the customer charges will be.

In addition to the aforementioned structural issues, DII is continuing to evaluate the Company's Phase III Plan. DII reserves the opportunity to supplement these initial comments through testimony, cross-examination and/or briefs based on those responses and its further analysis of the Phase III Plan.

II. COMMENTS

A. **If a Ruling by The U.S. Supreme Court Were to Result in the Elimination of All PJM DR Programming and States Assume Primary Responsibility for Managing DR Initiatives, The Commission Must Hold An Expedious and Comprehensive Stakeholder Process Outside of the EE&C Plan Process To Ensure Reliability and Develop Functional Replacements for the PJM DR Programs.**

As the Commission recognized in its Phase III Implementation Order, there is uncertainty due to the pendency of *EPSA* regarding the PJM DR programs. *See* Phase III Implementation Order, p. 22. Should the U.S. Supreme Court decide to invalidate FERC Order 745 in such a manner that affects all of PJM's DR programs substantially, each state must decide whether to develop replacements for the PJM DR programs, which currently provide dual benefits by enhancing reliability during periods when the PJM grid is under stress and by impacting wholesale prices for energy and capacity (by permitting customer load to participate in the PJM markets through PJM's Curtailment Service Providers).³ In the absence of PJM's programs, the

³ *EPSA v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *pet. for cert. filed*, *FERC v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-840), *EnerNOC, Inc., et al., v. EPSA*, (U.S. Jan. 15, 2015) (No. 14-841). FERC Order 745 only pertains to the

Commission must assume the primary role for creating and managing DR programs. From DII's perspective, the Act 129 DR options are insufficient substitutes for PJM's current DR offerings.

PJM's role as the wholesale market operator enables it, subject to *EPSA*, to offer strong DR programs. Specifically, PJM's DR offerings enable demand resources to participate in a manner directly impacting energy and capacity prices. Act 129 does not provide the Commission with the necessary financing, market presence, and cost efficiencies that are critical to forming an expanded DR program capable of operating as efficiently as PJM's and with the same reliability benefits. If the Commonwealth must replace PJM's DR programs with a state DR program, the program's design and operation must be thoroughly reviewed via an expeditious and comprehensive stakeholder process. The Act 129 DR Program, as currently constituted, will not be able to manage load as capably as PJM's program – endangering reliability and risking price increases. In addition, because large customers often participate in the PJM DR programs as part of their overall energy cost management strategy, for Pennsylvania businesses to remain financially viable and competitive, any state substitute for the PJM programs should aim to provide equivalent compensation to the customers who endure the impacts of the curtailments or other load management activities. While EDCs and CSPs undoubtedly have views on how substitute programs could be structured, DII urges the Commission to view its members and other end users who are intimately familiar with the PJM DR Programs as key stakeholders in any replacement process.

energy market and not the capacity market. However, the Court's reasoning behind its decision on FERC Order 745 could be equally true with regard to the capacity market. Thus, while invalidation of FERC Order 745 would not cancel all PJM DR Programs, a subsequent FERC action based on the Court's decision on FERC Order 745 could affect PJM's capacity market DR program. If the U.S. Supreme Court invalidates FERC Order 745, there could be a future FERC decision invalidating PJM's capacity market DR program, which would then affect capacity-based DR programs under Act 129. *See First Energy Service Co. v. PJM Interconnection, LLC.*, Docket No. EL14-55-000 (filed May 23, 2014).

B. Should S.B. 805 Pass the General Assembly, The Company Must Adjust Its Phase III Plan To Permit Large C&I Customers To Opt-out of Participation in Its Phase III Plan.

S.B. 805 is currently on the legislative calendar at the Pennsylvania General Assembly. Should S.B. 805 be enacted, Section 2806.1(b)(ii) of the Public Utility Code will be amended to permit Large C&I customers to opt out of participation in an EDC's Phase III EE&C Plan. If the Pennsylvania General Assembly enacts S.B. 805, the Commonwealth would join 14 other states (out of 24 states that have EE&C Programs) who have either exempted Large C&I customers from participating in such programs or permitted Large C&I customers to voluntarily opt out.

Large C&I customers in Pennsylvania have already paid millions of dollars for EE&C Programs during Phases I and II of Act 129. More importantly, proactive Large C&I customers have responded to competitive pressures in their own industries for decades and designed internal EE&C initiatives to reduce energy costs, maximize free cash flows, minimize debt, and increase industry competitiveness. Requiring Large C&I enterprises to pay into a third Phase of EE&C funding redirects key resources that could be dedicated towards other business objectives or voluntary energy efficiency programs tailored to the customer's individual business model.

If S.B. 805 passes, some companies in the DLC's service territory may take advantage of the new opt out. Therefore, DLC must be prepared to adjust its Phase III Plan accordingly.

C. The Company Must Recognize PJM's "One Curtailment Service Provider" Rule and Be Transparent in Its Operation of the Phase III DR Program.

DLC's Phase III DR Program will span a four-year period beginning on June 1, 2017, and concluding on May 31, 2021. The Phase III DR Program will allow for dual-participation in Act 129 and PJM's Emergency Load Response Program ("ELRP"). The Implementation Order also includes a 50% discount on Act 129 DR incentives for dual-enrolled Act 129 and ELRP customer accounts. Furthermore, the Implementation Order directs EDCs to initiate a

competitive solicitation process to procure a CSP that can carry out Large C&I customer curtailment.

DII supports selection of CSPs for Phase III DR through a competitive solicitation process; however, DII stresses that the Company must work with customers using other PJM Curtailment Service Providers for the PJM DR Programs, including those who are PJM members and operate as their own Curtailment Service Provider. PJM's Tariff allows a customer to use multiple Curtailment Service Providers in emergency demand response situations but only allows one Curtailment Service Provider to manage economic demand response incidents on behalf of the customer.⁴ Some PJM Curtailment Service Providers are not Act 129 CSPs. If a CSP succeeds in the EDC's bidding process and secures a contract for managing economic demand response on behalf of the EDC, and that CSP is different from the Curtailment Service Provider that a "dual enrolled" customer uses to participate in the PJM DR Programs, then PJM market rules may be violated if the Act 129 CSP uses the customer's load reduction for a PJM DR Program. It is not clear whether the Company's Act 129 CSP will be required to bid the Act 129 demand reductions into the PJM DR Programs.⁵ Thus, the Company must take care throughout its RFP process to remain compliant with PJM's regulations.

Second, DII requests that DLC disclose CSP costs for each EE&C measure in its annual report. For the Act 129 DR measures, the Company must differentiate CSP costs from any compensation that is provided to the customers of the CSP service. In other words, the Act 129 DR measure costs should be segregated into "CSP administration" and "participant payments." The selected CSP should have an obligation to report on portions of its contract amount used to

⁴ See PJM Open Access Transmission Tariff, Section 1.5A.3.02; see also Manual 11: Energy & Ancillary Services Market Operations, Section 10.2.1.

⁵ If Act 129 DR demand reductions are used by the Act 129 CSP to participate in the PJM DR Programs, all revenues from the PJM bids must flow back to the customer class responsible for the peak load reduction.

compensate customers, including segregating that amount to confirm compliance with the "50% rule" for dual-enrolled customers. The operation of the measure should be transparent and accessible by the customers in the classes that are paying for the program. Publicly disclosing financial data promotes transparency and responsible use of ratepayer dollars. Furthermore, CSP-related costs should be included in the Company's estimates of all EE&C Program administration costs to ensure the Commission's determination of allowable costs is just and reasonable.

D. The Company's Rate Setting and Reconciliation Process Must Be Public, Prompt, and Uniform To Reduce Uncertainty and Ensure Fair Cost Allocation Among Customers.

In its Implementation Order, the Commission proposed a standardized rate reconciliation process for all EDCs. DII respectfully requests that this process be accompanied by public distribution of additional information and public hearings (with adequate prior notice to stakeholders). Specifically, the Company should disclose all EE&C Program data and assumptions including: (i) actual program costs versus budgeted costs; and (ii) the number of projects developed and proposed by customers versus those proposed to customers by Company personnel or CSPs.

Many Large C&I customers have in-house personnel (or consultants engaged directly by the customer) that are intimately aware of the unique characteristics of their businesses and can evaluate energy efficiency strategies. Accordingly, DII requests that DLC disclose the number and energy savings of customer-developed projects, and the number and energy savings of projects that are developed based on an Act 129 CSP audit or suggestion. At this stage of EE&C Plan development, it is prudent to determine the value of the "consulting" function of the Act 129-funded CSPs within the program structure. Administrative costs could be reduced by

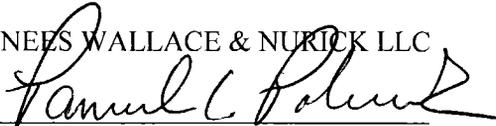
eliminating this function, and limiting the CSPs' role to evaluating the projects that are submitted by customers, rather than spending time advising Large C&I customers regarding projects that they could be pursuing. Therefore, disclosure of the customer-developed and EDC or CSP-developed projects would allow the Commission and all stakeholders to more accurately assess the actual costs of EDC-developed EE&C Programs and expose areas for improvement in the Company's EE&C Program R&D process.

A transparent and standardized ratemaking process will benefit both EDCs and ratepayers by affording all parties equal opportunity to assess and debate cost recovery of program expenses for all EDCs on the same footing. Such a process ensures that customers can better predict their rates and plan projects accordingly. It is critical for an EDC to maintain a public ratemaking and rate reconciliation process on an annual basis to ensure that costs are fairly allocated among ratepayers.

WHEREFORE, the Duquesne Industrial Intervenors respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (I.D. No. 78276)

Alessandra L. Hylander (I.D. No. 320967)

McNees Wallace & Nurick LLC

100 Pine Street

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

ppolacek@mwn.com

ahylander@mwn.com

Counsel to the Duquesne Industrial Intervenors

Dated: January 4, 2016