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September 29, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017 through May 31, 2021; Docket No. P-2016-2543140

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Noble Americas Energy Solutions LLC are its Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement in the above-referenced matter. Copies are being served on the parties to this proceeding in accordance with the attached certificate of service.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Charles E. Thomas, III

Enclosure
cc: Honorable Conrad A. Johnson
Certificate of Service
Becky Merola

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017 through May 31, 2021	: : :	Docket No. P-2016-2543140

NOBLE AMERICAS ENERGY SOLUTIONS LLC'S OBJECTIONS AND STATEMENT IN OPPOSITION TO THE JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS SETTLEMENT

AND NOW, comes Noble Americas Energy Solutions LLC ("Noble"), by its attorneys, and submits the following Objections and Statement in Opposition to the Joint Petition for Approval of Non-Unanimous Settlement ("Non-Unanimous Settlement") filed on September 23, 2016 by Duquesne Light Company ("Duquesne Light") in the above-captioned matter. Noble's Objections and Statement in Opposition are submitted pursuant to 52 Pa. Code § 5.232 and the modified procedural schedule approved by presiding Administrative Law Judge Conrad A. Johnson on September 20, 2016. In support thereof, Noble submits as follows:

I. INTRODUCTION

On May 2, 2016, Duquesne Light filed a petition seeking Pennsylvania Public Utility Commission ("Commission") approval of its eighth Default Service Plan ("DSP VIII") to establish terms and conditions under which Duquesne Light will acquire and supply default service for a four-year period, from June 1, 2017 through May 31, 2021. The petition also seeks approval of a Time-of-Use Program, Standard Offer Program, Customer Assistance Program, and other approvals required for the implementation of DSP VIII.

On June 6, 2016, Noble timely filed a Petition to Intervene in this proceeding and was granted full, active party status by Prehearing Order dated June 24, 2016. Noble is an independent non-utility or generation-affiliated competitive Electric Generation Supplier ("EGS") and PJM Interconnection, L.L.C. ("PJM") Load Serving Entity ("LSE") licensed by the Commission to offer, render, furnish or supply electricity and electric generation supplier services to large commercial (over 25kW), industrial, and governmental customers, and to residential and small commercial (25kW and under) customers (limited to mixed meters), throughout the Commonwealth of Pennsylvania, including Duquesne Light's service territory. Noble offers commodity products and services to commercial and industrial customers that specifically enable customers to successfully manage costs in volatile energy markets. Noble provides Pennsylvania customers with an integrated mix of services, including commodity supply, physical risk and portfolio management, energy information management, scheduling, settlement and billing management. In addition to its product and service offerings, Noble has built its own state of the art billing systems and uses dual billing exclusively for its Pennsylvania customers. As a licensed EGS, Noble has a direct and substantial interest in the Commission's disposition of this proceeding, as it will be bound and affected by the actions taken by the Commission with respect to DSP VIII.

On September 23, 2016, Duquesne Light filed the Non-Unanimous Settlement on behalf of itself and the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Retail Energy Supply Association ("RESA"), and Exelon Generation Company (collectively, the "Joint Petitioners"). The Non-Unanimous Settlement purports to resolve all issues among the Joint Petitioners. Noble, however, has not joined the Non-Unanimous Settlement and specifically

opposes Paragraph 22 of the Non-Unanimous Settlement, as indicated in its letter filed on September 23, 2016.

Paragraph 22 of the Non-Unanimous Settlement provides:

> 22. Effective June 1, 2017, the Company will eliminate the uncollectible accounts component of the POR discounts for EGSs. Calendar year 2015 POR discount expense of $797,900 POR uncollectible expense will be moved to the Company's Rider 1 RMES for recovery until the next base rate proceeding. The amount of $797,000 will be fixed. Recovery of other uncollectible expenses will remain in base rates. The component of the POR discount for administrative costs (0.1 %) will continue.

If approved, this provision would allow Duquesne Light to remove the uncollectible expense component of Duquesne Light's Purchase of Receivables ("POR") discount for open market, competitive EGSs that elect to participate in the POR program and, instead, would allow Duquesne Light to collect such amounts through its Rider No. 1 Retail Market Enhancement Surcharge ("RMES") – a non-bypassable delivery service surcharge – which is recoverable from all customers regardless of their chosen EGS and irrespective of the billing mechanism employed by that EGS. For the reasons discussed more fully below, Noble objects to and opposes Paragraph 22 of the Non-Unanimous Settlement because it fails to comply with Commission regulations, does not meet the public interest standard, and disregards the anti-competitive and discriminatory impact the implementation of such a provision would have on the competitive retail market.

II. LEGAL STANDARDS

While it is the Commission's policy to encourage settlements between the parties, 52 Pa. Code § 5.231, the terms and conditions of any settlement must nevertheless be within the public interest. *Pa. P.U.C. v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. P.U.C. v. C.S. Water & Sewer Assocs.*, 74 PA PUC 767 (1991). Moreover, the

Commission's standards for reviewing a non-unanimous settlement, as proposed by Joint Petitioners here, are the same as those for deciding a fully contested case. *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp.*, Docket Nos. A-2010-2176520, and A-2010-2176732 (Opinion and Order entered March 8, 2011). Accordingly, substantial evidence consistent with statutory requirements must support each provision of the proposed settlement. *Popowsky v. Pa. P.U.C.*, 805 A.2d 637 (Pa. Cmwlth. 2002); *ARIPPA v. Pa. P.U.C.*, 792 A.2d 636 (Pa. Cmwlth. 2002).

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the party seeking a rule or order from the Commission has the burden of proof in that proceeding. A party that offers a proposal not included in the original filing bears the burden of proof for that proposal. *See Brockway Glass Co. v. Pa. P.U.C.,* 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. P.U.C. v. Duquesne Light Company,* Docket Nos. R-2013-2372129 *et al.* (Opinion and Order entered April 23, 2014). In this proceeding, Duquesne Light bears the burden of proving that its proposed default service program is just and reasonable, and Joint Petitioners, together, bear the burden of proving that each proposal in the Non-Unanimous Settlement is in the public interest. *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013).

III. NOBLE'S OBJECTIONS AND OPPOSITION TO THE NON-UNANIMOUS SETTLEMENT

The Commission should not approve the Non-Unanimous Settlement as presented by Joint Petitioners because it fails on both procedural and substantive bases as it relates to the proposal set forth in Paragraph 22. Specifically, Paragraph 22 of the Non-Unanimous Settlement: (1) consists of an inappropriately raised proposal in the context of this proceeding;

(2) is unjust, unreasonable, and otherwise contrary to public interest; and (3) ignores the anti-competitive and discriminatory impact the implementation of such a provision would have on the competitive retail market in violation of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (the "Competition Act").

1. The Proposal To Eliminate The Uncollectible Expense Component From The POR Discount And Collect Such Amounts From All Customers Through Duquesne Light's Non-Bypassable Rider 1 RMES Was Not Properly Raised In This Proceeding And Must Be Rejected.

In its petition for approval of DSP VIII, Duquesne Light proposed to continue its existing POR plan for Residential, Small Commercial and Industrial ("C&I"), and Medium C&I customers, under which Duquesne Light "purchases the account receivables, without recourse, associated with EGS sales of retail electric commodity service to Residential, Small C&I, and Medium C&I customers ... at a small discount and then reimburses EGSs for their customer billings regardless of whether it receives payment from customers."[1] Duquesne Light did not propose any modifications to its existing POR program, especially with respect to the treatment of costs associated with the POR discount. As Duquesne Light witness Ogden testified, "The POR program continues to work successfully and there is no reason to change the structure of the program in this proceeding."[2]

Although RESA witness White briefly addressed the unbundling of uncollectible expense costs in his direct testimony,[3] RESA's direct and rebuttal testimony neither proposed the elimination of the uncollectible expense component from the POR discount, nor addressed the recovery of those expenses from all customers through a non-bypassable surcharge mechanism. In fact, the genesis for the proposal set forth in Paragraph 22 was not even raised until the

[1] Duquesne Light DSP VIII at 21, ¶ 61.

[2] Duquesne Light St. No. 4 at 20.

[3] RESA St. No. 1 at 9.

rebuttal phase of this proceeding, when Duquesne Light witness Fisher suggested that Duquesne Light might be willing to eliminate the current portion of the EGS discount related to the incremental EGS uncollectible costs if it were permitted to include the current recovery of POR-related uncollectible costs in its non-bypassable RMES.[4] Even then, Mr. Fisher correctly concluded that RESA's recommendation related to unbundling of uncollectible accounts should be rejected by the Commission because "it conflicts with Duquesne Light's existing POR program and the methodology used to establish the discount for purchasing EGS receivables"[5] and that the issue of unbundling of uncollectible costs is a matter "more appropriately addressed in a future base rate proceeding."[6] After Duquesne Light expressed some willingness to modify its POR program with respect to uncollectible costs, RESA attempted to modify that undefined proposal even further in its surrebuttal testimony.[7]

Duquesne Light's attempt to float a brand new proposal which would materially change the structure of its POR program *for the very first time* in rebuttal testimony, and Joint Petitioners subsequent attempt to insert that proposal into the Non-Unanimous Settlement, is wholly inappropriate. **The Commission's regulations strictly prohibit parties from raising new issues or new proposals in rebuttal testimony, which should or could have been raised in direct testimony or which substantially vary from direct testimony.** 52 Pa. Code § 5.243(e)(2) and (3) (prohibiting a party from introducing evidence during the rebuttal phase of a formal proceeding that should have been included in that party's direct testimony or which substantially varies from that party's direct testimony); *see also Pa. P.U.C. v. Equitable Gas*

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[4] Duquesne Light St. No. 3-R at 32-33.

[5] Duquesne Light St. No. 3-R at 2; *see also id.* at 24-32.

[6] Duquesne Light St. No. 3-R at 34.

[7] RESA St. No. 1-S at 9-11.

Company, Docket No. R-00050272 *et al.* (Opinion and Order entered September 28, 2005) (rejecting a proposal that could have been raised in a party's case-in-chief); *Pa. P.U.C. v. UGI Utilities*, 82 PA PUC 488 (Order entered July 27, 1994) (approving and adopting the presiding ALJ's rejection of claims introduced for the first time in a party's rebuttal testimony as opposed to the party's direct testimony).

Here, neither Duquesne Light nor any other party to this proceeding proffered in its direct case the proposal contained in Paragraph 22 – *i.e.*, the elimination of the uncollectible expense component of Duquesne Light's POR discount and recovery of those amounts through a non-bypassable retail market enhancement surcharge. Whereas Duquesne Light proposed no changes whatsoever to its POR when it filed its DSP VIII petition and accompanying direct testimony, RESA had ample opportunity in its direct testimony to explain in detail why Duquesne Light's proposal to keep the POR program the same was incorrect, provide guidance on the restructuring of the POR discount, and/or propose a specific recovery non-bypassable mechanism. RESA failed to do any of these things.

In addition to violating the Commission's regulations at 52 Pa. Code § 5.243(e)(2) and (3), failing to present the POR proposal until the rebuttable phase of this proceeding and then cramming it into a settlement unduly prejudices Noble, as it no longer has the opportunity to brief the issue or timely respond to Duquesne Light's rebuttal or RESA's surrebuttal testimony with its own testimony and/or proposal consistent with the Commission's regulations governing the presentation of evidence. Paragraph 22 reflects nothing more than a limited compromise between Duquesne Light and RESA, with no consideration for the concerns expressed by Noble. If anything, the manner in which this POR proposal was constructed, the divergent positions of

the parties on the issue of the unbundling of uncollectible accounts expense,[8] and the reservation of this issue for future litigation in the Non-Unanimous Settlement,[9] underscore that this issue should not be included as part of any settlement of this DSP VIII case and, instead, should be addressed in a future Duquesne base rate proceeding.[10]

For these reasons alone, the proposal contained in Paragraph 22 of the Non-Unanimous Settlement should be rejected, and the Commission should consequently deny the Non-Unanimous Settlement, as proposed by Joint Petitioners.

2. Paragraph 22 Of The Non-Unanimous Settlement Is Unjust, Unreasonable, And Otherwise Contrary To The Public Interest.

Even assuming *arguendo* the proposal set forth in Paragraph 22 was properly raised, Paragraph 22 is nevertheless unjust, unreasonable, and otherwise contrary to the public interest, since it contains a proposal which fails to adhere to the basic principles of cost causation. As RESA witness White explained in his direct testimony, the principle of cost causation is the "concept that ***those who benefit*** from a utility-provided service ***should pay*** the utility's costs of providing that service."[11] The implementation of Paragraph 22 would violate this fundamental ratemaking principle.

Under its current POR program, Duquesne Light "purchases the account receivables, without recourse, associated with EGS sales of retail electric commodity service to Residential,

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[8] *See, e.g.*, Duquesne Light St. No. 3-R at 24-34 (arguing for rejection of RESA's recommendation); RESA St. Nos. 1 at 9 and 1-S at 9-11. *See* OCA St. Nos. 1-R at 2-7 and 1-S at 3-4 (arguing against RESA's unbundling proposal).

[9] *See* Non-Unanimous Settlement at 5, ¶ 23 (reserving parties' rights to propose changes to the POR discount in future base rate proceedings).

[10] *See* Duquesne Light St. No. 3-R at 34 (recommending the issue is more appropriate for a future base rate case); OCA St. Nos. 1 at 14, 1-R at 4, and 1-S at 4 (explaining that this default service proceeding is not the appropriate forum to address the complex issue of default service cost unbundling and recommending that the unbundling of such costs should be addressed in Duquesne Light's next base rate proceeding to ensure the development of a comprehensive and consistent approach to the unbundling of costs).

[11] RESA St. No. 1 at 12 (emphasis added).

Small C&I, and Medium C&I customers ... at a small discount and then reimburses EGSs for their customer billings regardless of whether it receives payment from customers."[12] EGSs electing to participate in the POR program derive a clear benefit in that they are able to sell their receivables to Duquesne Light to receive immediate payment and avoid traditional business costs and risks associated with collecting delinquent amounts owed by customers. EGSs pay for this benefit through the discount rate, which includes an uncollectible component to account for the collection risk. Cost recovery clearly follows cost causation under the existing POR program.

The Non-Unanimous Settlement, however, completely disregards cost causation principles, by eliminating the uncollectible component of the POR discount and unfairly shifting recovery of those costs to Duquesne Light's Rider No. 1 RMES. The RMES is a non-bypassable recovery mechanism charged to *all* customers without regard to a particular customer's chosen EGS and irrespective of the billing mechanism employed by that EGS.[13] The proposal, if implemented, will unfairly allocate costs among customers, so that customers who have selected suppliers that do not participate in the POR program will be responsible for paying for participating EGSs' uncollectible costs. Participating EGSs, on the other hand, will continue to enjoy the benefits of the POR program – namely, the avoidance of their collection costs and risks – *without* having to pay for it. As such, Paragraph 22 violates the fundamental principles of cost causation and, as a matter of law, is unjust, unreasonable, discriminatory, and otherwise contrary to the public interest.

Furthermore, neither Duquesne Light nor RESA (or any other Joint Petitioner for that matter) has carried its burden in proving the proposed modifications to Duquesne Light's POR program are reasonable or justified. In fact, the record is devoid of any substantial evidence in

[12] Duquesne Light DSP VIII at 21, ¶ 61.

[13] *See* Duquesne Light St. No. 3-R at 32 n.60; Duquesne Light Retail Tariff, Rider No. 1.

this regard, particularly given the improper manner in which the proposal emerged in this proceeding.[14] Duquesne Light's willingness to consider such a proposal directly contradicts its own testimony which argues that EGSs should be required to pay the costs associated with functions performed by Duquesne Light for the benefit of the EGSs, so as to not violate the principles of cost causation.[15]

Accordingly, the Commission should not approve the Non-Unanimous Settlement as proposed and should only do so to the extent Paragraph 22 is removed in its entirety.

3. Paragraph 22 Further Contravenes The Public Interest By Ignoring The Anti-Competitive And Discriminatory Impact The Implementation Of Such A Provision Would Have On The Competitive Retail Electric Market In Violation Of The Competition Act.

In addition to disregarding the fundamental principle of cost causation, the proposal set forth in Paragraph 22 of the Non-Unanimous Settlement further contravenes the public interest by ignoring the anti-competitive and discriminatory impact the implementation of such a proposal would have on the competitive retail electric market. Such impacts would violate the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (the "Competition Act"), including the prohibition on anticompetitive and discriminatory conduct,[16] with which Duquesne Light's DSP VIII must comply.

The modifications proposed to Duquesne Light's POR discount, if permitted to go into effect as proposed, will unfairly subsidize participating EGSs to the detriment of non-participating EGSs, like Noble. Noble has built its own state of the art billing systems and uses dual billing exclusively for its Pennsylvania customers,[17] so it does not participate in the POR

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[14] *See* Section III.1. *supra.*

[15] Duquesne Light St. No. 4-R at 13; Duquesne Light St. No. 4-RJ at 4-5.

[16] 66 Pa.C.S. § 2811(a).

[17] Noble Petition to Intervene at 2, ¶ 4.

program. As a result, Noble is responsible for and covers its own uncollectibles with no burden to the ratepayer, properly placing the risk of collection squarely on the shoulders of Noble's shareholders.

Indeed, any EGS providing products and services at the retail level must manage costs and hedge risks, including those related to uncollectibles. These are ordinary business activities that are the responsibility of the EGS, not the customer. EGSs opting to avoid uncollectible costs and receivables risk exposure pay for that benefit through the POR discount. However, by eliminating that component from the POR discount and passing through the costs to all customers via Duquesne Light's Rider No. 1 RMES, participating EGSs will escape any and all responsibility for their uncollectibles because those costs and risks will now be subsidized on the backs of Duquesne Light ratepayers. The additional subsidies will go straight to the bottom lines of those participating EGSs, which can then be used to directly compete with Noble and other non-participating EGSs for customers in the competitive retail market within Duquesne Light's service territory. As such, implementation of the POR proposal would be discriminatory and unjust, signaling a competitive disadvantage to those suppliers declining to participate in the POR program and a discriminatory preference towards participating EGSs.

This predatory attempt to shift risk and assign costs will also harm retail choice and stagnate the competitive environment. By shifting the recovery of EGSs' uncollectible costs into Duquesne Light's Rider No. 1 RMES, the Non-Unanimous Settlement will directly and materially interfere with the ability of non-participating suppliers, including Noble, from offering competitively-priced retail market products and services and further innovations to shopping customers. Shifting costs to the Pennsylvania electric consumer will also insulate participating EGSs from their cost and risk management responsibilities, thereby discouraging these EGSs

from seeking the means to manage their costs more effectively. Non-bypassable charges on shopping customers are the antithesis of competition, employing a one-size-fits-all approach, negatively affecting the incentives of EGSs to build products and services.

The POR proposal, if implemented, would also unlawfully discriminate and unreasonably socialize uncollectible costs across *all* customers, without regard to whether that particular customer's EGS participates in Duquesne Light's POR program. It is fundamental that shopping customers contracting with EGSs that elect not to participate in the POR program should not be required to pay costs associated with the program. This is especially true when these customers are contracting with non-participating suppliers, like Noble, that handle all customer billing for generation supply service and must factor the receivables risk into the price of the commodity.

Simply put, the implementation of Paragraph 22 and the modification of Duquesne Light's existing POR program consistent therewith would be anticompetitive, discriminatory, and inconsistent with the goals of furthering electric competition under the Competition Act. Therefore, the Commission should reject the Non-Unanimous Settlement as proposed and only approve the settlement on the condition that Paragraph 22 is removed in its entirety.

IV. CONCLUSION

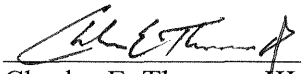
Joint Petitioners have filed a Non-Unanimous Settlement containing a proposal in Paragraph 22 which would eliminate the uncollectible expense component of Duquesne Light's POR discount for open market, competitive EGSs that elect to participate in the POR program. The proposal would authorize Duquesne Light to collect such amounts through a non-bypassable surcharge recoverable from *all* shopping customers regardless of their chosen EGS and irrespective of the billing mechanism employed by that EGS. This proposal has been improperly

raised in direct violation of the Commission's regulations.[18] It is unjust, unreasonable, and contrary to the public interest because it violates the principles of cost causation and is also anticompetitive and discriminatory. As a result, the Commission should reject the Non-Unanimous Settlement as presented by Joint Petitioners.

If the Commission is inclined to approve the Non-Unanimous Settlement, it should only do so only on the condition of striking Paragraph 22 in its entirety. To the extent any parties wish to examine the unbundling of costs of the POR discount and propose changes thereto, they may do so in the context of a future Duquesne base rate proceeding filed by Duquesne as authorized by Paragraph 23.

WHEREFORE, Noble Americas Energy Solutions LLC respectfully requests that Administrative Law Judge Conrad A. Johnson and the Pennsylvania Public Utility Commission sustain these Objections to the Joint Petition for Approval of Non-Unanimous Settlement, modify the Non-Unanimous Settlement consistent herewith, and provide any other relief that may be warranted under the circumstances.

Respectfully submitted,



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Counsel for Noble Americas Energy Solutions LLC

DATED: September 29, 2016

[18] 52 Pa. Code § 5.243(e)(2) and (3).

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of September, 2016, served a true and correct copy of the foregoing document upon the parties, listed below, via email and first class mail in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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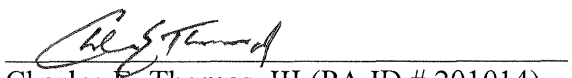

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