

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

October 14, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Petition of Duquesne Light Company
for Approval of its Electric Long-Term
Infrastructure Improvement Plan
Docket No. P-2016-2540046

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's
Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Honorable Katrina L. Dunderdale
Certificate of Service

*226499

CERTIFICATE OF SERVICE

Petition of Duquesne Light Company :
for Approval of its Electric Long-Term : P-2016-2540046
Infrastructure Improvement Plan :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14th day of October 2016

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Gina L. Lauffer
Bureau of Investigation & Enforcement
Pa Public Utility Commission
400 North Street,
Harrisburg, PA 17101

SERVICE BY EMAIL & FIRST CLASS MAIL, POSTAGE PAID

Sharon Webb
Office of Small Business Advocate
Suite 202, Commerce Building
300 N. Second Street
Harrisburg, PA 17101

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell PC
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

Tishekia Williams, Esquire
Duquesne Light Company
411 Seventh Avenue
16th Floor
Pittsburgh, PA 15219

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

/s/Erin L. Gannon
Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. #93682
Email: DLawrence@paoca.org
226500

Counsel for
Tanya McCloskey, Acting Consumer
Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Distribution System : P-2016-2540046
Improvement Charge :

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333 and the Prehearing Conference Order issued by Administrative Law Judge Katrina L. Dunderdale on October 6, 2016, the Office of Consumer Advocate (OCA) provides the following:

I. BACKGROUND

On May 26, 2016 Duquesne Light Company (Duquesne or Company) filed a Petition for Approval of a Distribution System Improvement Charge (DSIC) for its electric operations and sought permission to implement a surcharge of up to 5% on all customers under Section 1353 of the Public Utility Code, 66 Pa. C.S. §1353). On June 15, 2016, both the OCA and Bureau of Investigation and Enforcement (I&E) filed Answers to Duquesne’s Petition.

The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA submits are relevant to this proceeding.

II. ISSUES

In its June 15, 2016 Answer, the OCA identified two preliminary concerns with the proposed surcharge: Duquesne’s proposal to recover costs related to its proposed microgrid

program through the DSIC and the riders that the Company proposes to include in “distribution revenue” for purposes of calculating the DSIC rate. DLC St. 2 at 5-6; DLC St. 3 at 6. The OCA requested that the Commission deny the Petition as filed, suspend the proposed tariff and refer the matter to the Office of Administrative Law Judge for development of an evidentiary record. In its September 15, 2016 Order, the Commission directed that the following issues be assigned to the OALJ for hearing and preparation of a Recommended Decision:

- a. DSIC-recovery of costs associated with Duquesne’s Microgrid Program; and
- b. The inclusion of riders in distribution revenues when calculating the DSIC mechanism.

Order at 40.

The OCA’s Answer was timely filed by the June 15, 2016 deadline, twenty days after the May 26, 2016 filing date for the Petition. 52 Pa. Code sec 5.61(a). On August 11, 2016, Act 40 of 2016 took effect. 66 Pa. C.S. § 1301.1. Regarding the computation of utility rates, Act 40 states, in relevant part:

(A) COMPUTATION. – If an expense or investment is allowed to be included in a public utility’s rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

66 Pa. C.S. § 1301.1(a). The Act also states that its provisions apply to all cases where the final order is entered after its effective date. 66 Pa. C.S. § 1301.1(c)(2). It is the OCA’s position that Act 40 applies to DSIC rates and, therefore, the income tax deductions and credits related to costs included in the DSIC rate must be included in the DSIC calculation. Accordingly, the OCA raises the issue whether the Duquesne DSIC rate and tariff complies with Act 40.

The OCA notes that the same legal issue is currently being litigated in the First Energy companies’ base rate proceedings at Docket Nos. R-2016-2537349, R-2016-2537352, R-2016-

2537355 and R-2016-2537359. Reply Briefs in those proceedings were submitted on October 14, 2016. The Commission Order is expected prior to the end of suspension date of January 27, 2017. The OCA submits, therefore, that it may not be necessary to litigate the application of the recently Act 40 to the calculation of Duquesne's DSIC in this proceeding.

The OCA also reserves the right to raise additional issues as discovery and review of additional Company testimony continues.

III. WITNESSES

The OCA intends to present the Direct, Rebuttal and Surrebuttal testimony, as may be necessary, of Jerome D. Mierzwa regarding the accounting and policy issues identified above. Mr. Mierzwa will present testimony in written form and will also attach various exhibits, documents, and explanatory information, which will assist in the presentation of the OCA's case.

His contact information is as follows:

Jerome D. Mierzwa
Exeter Associates, Inc.
10480 Little Patuxent Parkway, Ste. 300
Columbia, MD 21044
Telephone: (410) 992-7500
Email: jmierzwa@exeterassociates.com

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify all parties of record immediately.

IV. PROPOSED SCHEDULE

The OCA will work with the parties to develop a litigation schedule that is acceptable to the ALJ and parties. The OCA's proposed litigation schedule is attached hereto as Appendix A.

V. SETTLEMENT

The OCA is willing to participate in settlement discussions, to the extent possible within the litigation timeframe.

VI. PROPOSED REVISED RULES FOR DISCOVERY

The OCA proposes that the Commission's rules and regulations, 52 Pa. Code §5.321, *et seq.*, be modified as follows:

1. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories except that service of interrogatories on a Friday shall be deemed service on the following business day;
2. Objections to interrogatories will be communicated orally within three (3) business days of service; unresolved objections shall be served on the parties in writing within five (5) business days of service of the interrogatories;
3. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of written objections;
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of such motions;
5. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days;
6. Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) business days of service;
7. Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion;

8. Any discovery or discovery related pleadings such as objections, motions, answers to motions served on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates; and

9. Due dates will be “in-hand” with electronic service on the due date satisfying the “in-hand” requirement and where such service is immediately followed by a hard copy sent by first-class mail.

VII. SERVICE ON THE OCA

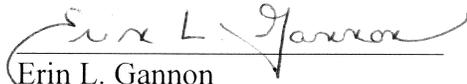
The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Erin L. Gannon. Two copies of all documents should be served on the OCA as follows:

Erin L. Gannon
Senior Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, Pa. 17101-1923
Telephone: 717-783-5048
Fax: 717-783-7152
E-mail: egannon@paoca.org

In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed directly to the expert witness(es) responsible for the area of the case, as well as mailing a copy to counsel for the OCA. The OCA also requests that emails containing any interrogatory responses be emailed directly to the expert witness(es) and to the OCA’s Legal Assistant, Valerie Hironimus.

Jerome Mierzwa jmierzwa@exeterassociates.com
Valerie Hironimus vhironimus@paoca.org.

Respectfully Submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATE: October 12, 2016

226428

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company :
for Approval of Distribution System : P-2016-2540046
Improvement Charge :

OFFICE OF CONSUMER ADVOCATE
PROPOSED LITIGATION SCHEDULE

Prehearing Conference	October 17, 2016
Non-Company Direct	November 15, 2016
Rebuttal	December 13, 2016
Surrebuttal	January 4, 2017
Written Rejoinder	January 17, 2017
Hearings in Harrisburg	January 24-25, 2017
Main Brief	February 22, 2017
Reply Brief	March 15, 2017