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May 12, 2020

Via Electronic Filing

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

**Re: Petition of the Industrial Energy Consumers of Pennsylvania to Suspend
Implementation of the Act 129 Phase IV Requirements and for Other Relief
Docket No. P-2020-3019562**

Dear Secretary Chiavetta:

Enclosed for filing, please find Duquesne Light Company's Petition to Intervene and Answer to the Petition of the Industrial Energy Consumers of Pennsylvania in the above-captioned proceeding. Copies are being served per the enclosed Certificate of Service.

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

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Michael Zimmerman".

Michael Zimmerman
Senior Counsel, Regulatory

Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

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):

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Date: May 12, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of the Industrial Energy
Consumers of Pennsylvania to Suspend
Implementation of the Act 129 Phase IV
Requirements and for Other Relief

Docket No. P-2020-3019562

**DUQUESNE LIGHT COMPANY
PETITION TO INTERVENE AND ANSWER**

Pursuant to 52 Pa. Code. §§ 5.61, 5.71-5.76, Duquesne Light Company (“Duquesne Light”) files this Petition to Intervene and Answer to the Petition of the Industrial Energy Consumers of Pennsylvania to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief (“IECPA Petition”). As discussed herein, the Commission should deny the IECPA Petition in favor of a more measured approach.

I. PROCEDURAL HISTORY AND BACKGROUND

1. On April 22, 2020, the Industrial Energy Consumers of Pennsylvania (“IECPA”) filed the IECPA Petition. IECPA requests that the Commission (i) suspend implementation of Phase IV Energy Efficiency & Conservation (“EE&C”) requirements for 270 days; (ii) extend the current EE&C Phase III for 270 days; (iii) immediately reduce the surcharges through which electric distribution companies (“EDCs”) recover Phase III EE&C costs (“EE&C Surcharges”) by 50%; (iv) require EDCs to complete, as soon as feasible, any pending or planned Phase III EE&C projects “on behalf of individual customers”; and (v) suspend all penalties applicable to EDCs for failure to achieve any energy consumption or peak demand targets during Phase III.

2. On April 28, the Pennsylvania Energy Consumer Alliance (“PECA”) filed a motion to intervene. PECA subsequently filed an Answer to the IECPA Petition on May 5, 2020.

3. On May 5, 2020, the Office of the Consumer Advocate filed an Answer to the IECPA Petition.

4. Duquesne Light is a public utility as defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Commission to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania.

5. Duquesne Light is represented in this matter by the following counsel:

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Duquesne Light requests that the Commission and all parties of record serve copies of all discovery requests and answers, correspondence, Commission Orders and any documents issued in this proceeding on counsel for Duquesne Light at the above address. Duquesne Light requests that such service be made via electronic mail where practical.

II. PETITION TO INTERVENE

6. Duquesne Light Company respectfully requests that it also be granted intervenor status in this proceeding. As discussed herein, Duquesne Light will be bound by the outcome of this proceeding, and Duquesne Light’s interest is not adequately represented by other parties.

7. The Commission’s regulations at 52 Pa. Code. § 5.72 provide in relevant part:

(a) *Persons*. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the

administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

...

8. The IECPA Petition directly affects Duquesne Light's interests in several respects, and the Commission's action on the IECPA Petition may be binding on Duquesne Light.

9. Pursuant to Act 129 of 2008 ("Act 129")¹ as implemented by the Commission,² Duquesne Light is subject to a schedule of mandatory energy conservation and peak load reduction requirements,³ and is further required to adopt and implement Commission-approved EE&C Plans describing the measures it will employ to achieve such requirements. Toward this end, on November 25, 2015, Duquesne Light filed a Petition with the Commission requesting approval of a Phase III EE&C Plan for the period from June 1, 2016 through May 31, 2021. *Petition of Duquesne Light Company for Approval of its Act 129 Phase III Energy Efficiency and Conservation Plan*, Docket No. M-2015-2515375. Duquesne Light filed a revised Phase III EE&C Plan on February 9, 2016 ("Phase III EE&C Plan"). The Commission approved the Phase III Plan on March 10, 2016.

¹ Codified in relevant part at 66 Pa.C.S. §§ 2806.1, 2806.2.

² See *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Implementation Order entered June 11, 2015) ("*Phase III Implementation Order*").

³ For Phase III, the Commission has adopted a consumption reduction target of 440,916 MWh and a demand reduction target of 42 MW for Duquesne Light. *Phase III Implementation Order* at 57.

10. Duquesne Light recovers the costs of its Phase III EE&C Plan through a non-bypassable charge (“EE&C Surcharge”), provided for in Rider No. 15A of its Commission-approved retail tariff.

11. Duquesne Light will also adopt and implement a Phase IV EE&C Plan as required by the Commission. The Commission issued its Phase IV Tentative Implementation Order on March 12, 2020, at Docket No. M-2020-3015228.⁴ The Phase IV Tentative Implementation Order is currently subject to public comment, in which Duquesne Light is actively participating.⁵ The Commission is expected to issue a final Phase IV Implementation Order in the coming months.

12. The IECPA Petition implicates each of these aspects of Duquesne Light’s Phase III and Phase IV EE&C activities.

13. IECPA’s request to extend Phase III, if granted, would require Duquesne Light to significantly revise its Phase III EE&C activities, including corresponding changes to Duquesne Light’s program budgets and contractual arrangements with service providers.

14. Whether or not the Commission extends Phase III, IECPA’s request that the Commission reduce EE&C Surcharges by 50%, if granted, would materially affect Duquesne Light’s ability to timely recover the costs of its Phase III EE&C Plan.

15. The Commission’s decision on the IECPA Petition will also affect Duquesne Light’s interests with respect to EE&C Phase IV, which would otherwise begin on June 1, 2021.

16. The IECPA Petition also raises factual issues, including the ability of EDCs to implement their Phase III EE&C Plans; the costs of EDCs’ Phase III EE&C Plans and the

⁴ *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, *Tentative Implementation Order* (entered March 12, 2020).

⁵ *See Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, Comments of Duquesne Light Company (filed April 27, 2020).

recovery of such costs; and the impacts that extensions or delays may have on EE&C Plan implementation and costs.

17. Duquesne Light reserves the right to address these issues and any others that may arise throughout the course of this proceeding.

18. Duquesne Light's interests in this proceeding differ from those of all other parties, and cannot be adequately represented by any other party to the proceeding.

19. Duquesne Light's intervention in this proceeding is in the public interest. As an EDC that is both presently implementing a Phase III EE&C Plan and actively participating in the development of EE&C Phase IV, Duquesne Light's participation will contribute to the development of the record in this matter. Duquesne Light therefore respectfully requests that the Commission grant its intervention in this proceeding.

III. ANSWER

20. IECPA argues that a postponement of Phase IV, and corresponding extension of Phase III, are warranted in light of the COVID-19 pandemic and associated closures of non-life-sustaining businesses. Duquesne Light is acutely aware of the diverse challenges that the COVID-19 pandemic continues to pose to its customers, and has taken steps beyond those required under the Commission's Emergency Orders⁶ to ease customer burdens, including by suspending late payment charges through June 1, 2020, and expanding access to Duquesne Light's Hardship Fund.⁷ However, Duquesne Light believes that the present circumstances do not justify the relief IECPA seeks.

⁶ See Docket No. M-2020-3019244, *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Emergency Order entered March 13, 2020.

⁷ Docket Nos. M-2016-2534323 and P-2020-3019460, *Petition of Duquesne Light Company (DLC) to temporarily amend its current 2017-2019 Universal Service and Energy Conservation Plan (USECP)*, Secretarial Letter entered

a. The Commission Should Not Extend EE&C Phase III.

21. IECPA's proposal to extend EE&C Phase III for 270 days is neither necessary nor proportional in response to the COVID-19 pandemic. Duquesne Light's Phase III EE&C Plan was designed with a five-year phase in mind, and for nearly four years through the present, Duquesne Light has implemented this plan under the expectation that it would conclude on May 31, 2021. Such implementation has included careful program sequencing and calibration to balance steady delivery of measures and services to customers, capacity of EE&C contractors, and management of EE&C costs.

22. Duquesne Light has not stopped implementing its Phase III EE&C Plan during the COVID-19 pandemic. Duquesne Light has temporarily curtailed in-field activities, such as its Whole House Retrofit Program, out of concern for the safety of its customers and contractors. Duquesne Light is continuing to pre-qualify customers for these affected programs to facilitate prompt delivery of services when safe to do so. Meanwhile, customer interest in Duquesne Light's other energy conservation programs has remained relatively stable or has increased. For example, Duquesne Light's Public Agency Partnership Program is currently experiencing an unprecedented level of participation from schools, many of which are using this period of unexpected vacancy to install high-efficiency lighting.

23. Extending Phase III could harm Duquesne Light and its customers by requiring Duquesne Light to pare back its EE&C programs. Even without the EE&C surcharge cuts IECPA proposes, which are addressed further in part III(b) *infra*, Duquesne Light is concerned that "stretching" its Phase III programs for an additional nine months may not be practicable for

April 17, 2020 (approving Duquesne Light's request to expand Hardship Fund income eligibility from 200% to 250% of federal poverty income guidelines through December 31, 2020).

its contractors or responsive to customer demands. This could yield gaps in EE&C programming, necessitate modifications to Duquesne Light's Phase III EE&C Plan, and complicate a smooth transition to Phase IV.

24. Extending Phase III would also be an unnecessarily blunt response to the COVID-19 pandemic. The Commission should take a more measured, incremental approach to COVID-19-related issues. For example, Duquesne Light supports the *Petition of the Energy Association of Pennsylvania to Amend the Commission's June 19, 2015 Implementation Order*, filed May 1, 2020, at Docket No. M-2014-2424864 ("EAP Petition"). The EAP Petition requests that, in recognition of the business closures and economic uncertainty occasioned by COVID-19, the Commission permit EDCs to implement their EE&C demand response programs on a voluntary basis for the fifth year of EE&C Phase III. Duquesne Light agrees with the EAP Petition as a narrowly-tailored response to an immediately-foreseeable need.

25. As the COVID-19 pandemic continues to unfold and its impacts become better-understood, the Commission will remain empowered to make further adjustments to Phase III to the extent warranted. But to preemptively add nine months to Phase III would inject more uncertainty to an already-turbulent time in the Commonwealth's energy landscape.

b. The Commission Should Not Mandate a Reduction in EE&C Surcharges.

26. IECPA's request to immediately reduce EE&C surcharges by 50% is counterproductive and should be denied. This requested reduction would impede Duquesne Light's ability to deliver energy- and money-saving measures to customers. As the Office of Consumer Advocate notes at p. 3 of its Answer to the IECPA Petition:

While rate relief at this time may be beneficial to customers, continuing with cost-effective energy efficiency and demand response that can be safely and cost-

effectively delivered could be more beneficial to customers in both the short term and the long term. Energy efficiency and demand response measures may help customers reduce their overall energy usage, and thereby their energy bills as they struggle to find ways to contain costs in these difficult economic times. In addition, being able to maintain funding may allow programs to ramp up more quickly when circumstances permit.

27. Moreover, IECPA's request is unnecessary because EE&C surcharges are reconcilable charges that only recover costs actually incurred. Pursuant to Act 129, EDCs "shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a[n EE&C Plan]." 66 Pa. C.S. 2806.1(k)(1). To the extent an EDC experiences an overcollection attributable to COVID-19 – an outcome that is speculative at this time – such overcollection will be refunded to customers through the ordinary operation of the EDC's EE&C surcharge.

28. Finally, IECPA provides no empirical support for the magnitude of its proposed surcharge reduction. The 50% surcharge reduction that IECPA proposes is not reflective of the costs Duquesne Light has already incurred, and projects to incur, to deliver its EE&C programs. It bears noting that deferring recovery of Duquesne Light's EE&C costs will ultimately *increase* the amounts billed to customers due to the interest that accrues on undercollections.

c. The Commission Should Not Delay Implementation of Phase IV.

29. IECPA's request to delay implementation of Phase IV would throw EDCs' EE&C programs into disarray, which would ultimately harm customers.

30. The Commission should not delay implementation of Phase IV because it should not extend Phase III. In general, the Commission should seek to facilitate program continuity within and between EE&C Phases, to minimize customer confusion and program inefficiencies.

Inserting a gap between Phases III and IV, and causing EDCs' EE&C programs to "go dark," would be detrimental to EDCs and customers alike.

31. IECPA argues that Phase IV should be delayed because the *Pennsylvania Act 129 Energy Efficiency and Peak Demand Reduction Market Potential Study* and the *Pennsylvania Act 129 Phase IV Demand Response Potential Study* (jointly, "Potential Studies"), which inform the Commission's Phase IV implementation orders, may no longer accurately reflect the energy efficiency landscape in light of COVID-19. While Duquesne Light also has concerns about aspects of the Potential Studies,⁸ delaying Phase IV is not the appropriate response. The Potential Studies are projections across a multi-year time horizon; they will never precisely reflect actual conditions throughout Phase IV. COVID-19 is one factor of many that could potentially affect the accuracy of those projections. But the effects of COVID-19 (or any other factor) cannot be known at this time – and likely will still not be known even following the 270-day delay IECPA requests. Therefore, the Commission should instead allow Phase IV to begin on schedule, and can consider adjusting Phase IV requirements in the future once the relevant facts become available.

d. The Commission Should Allow EDCs Flexibility to Resume Suspended EE&C Activities When Safe.

32. IECPA asks the Commission to "mandate that any current or planned energy efficiency and demand reduction projects intended for the benefit of customers continue or start as soon as reasonably possible." IECPA Petition p. 11. The import of this request is not clear – *all* of Duquesne Light's EE&C projects are "intended for the benefit of customers," and as discussed above, Duquesne Light has maintained its EE&C activities to the extent reasonably

⁸ See *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, Comments of Duquesne Light Company pp. 3-4, 7-8 (filed April 27, 2020).

practicable under the circumstances. Duquesne Light is unable to respond directly to this request in light of its ambiguity, but notes that it would object to being required to conduct any EE&C-related activity that, in Duquesne Light's judgment, poses an unreasonable risk to customers, employees, or contractors.

e. The Commission Should Consider Requests to Waive Penalties Related to Phase III Savings Targets as They Become Ripe.

33. Duquesne Light agrees with IECPA that COVID-19, and the associated governmental actions and economic impacts, may ultimately prevent EDCs from meeting certain energy or peak demand reduction targets mandated under the Commission's Phase III Implementation Order. For example, Duquesne Light agrees with the EAP Petition that COVID-19 will probably significantly impair customers' ability to participate in demand response programs during the upcoming summer, and that the Commission should modify the *Phase III Implementation Order* accordingly. Once the impacts of COVID-19 are better understood, additional modifications to Phase III may be warranted, potentially including waivers of penalties related to energy savings and/or demand reduction targets. Duquesne Light reserves the right to request such relief in the future.

IV. REQUESTED RELIEF

WHEREFORE, for all of the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission (i) grant its intervention in this proceeding; and (ii) deny IECPA's requests for relief, and/or hold such requests in abeyance until ripe, as discussed herein.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Michael Zimmerman".

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Dated: May 12, 2020

VERIFICATION

I, Michael Zimmerman, attorney for Duquesne Light Company, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief, and that I expect that Duquesne Light Company will be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S § 4904 related to unsworn falsification to authorities.



Dated: May 12, 2020