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July 25, 2022

Via Electronic Filing

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

**Re: Petition of the Office of Consumer Advocate; the Office of Small
Business Advocate, and the Pennsylvania Utility Law Project Requesting
Initiation of a Proceeding on Federal Funding Opportunities for Utilities
under the Infrastructure Investment and Jobs Act
Docket No. P-2022-3032929**

Dear Secretary Chiavetta:

Enclosed for filing please find the Answer of Duquesne Light Company ("Duquesne Light" or the "Company") to Petition of the Office of Consumer Advocate, the Office of Small Business Advocate and the Pennsylvania Utility Law Project Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities under the Infrastructure Investment and Jobs Act.

Electronic copies of this the Answer have been served on those listed on the Certificate of Service. Please contact me with any questions, comments, or concerns.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Tishekia E. Williams", with a long horizontal flourish extending to the right.

Tishekia E. Williams
Director, Regulatory Legal

Enclosure

cc: Certificate of Service (w/ encl.)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ANSWER OF DUQUESNE LIGHT COMPANY TO :
PETITION OF THE OFFICE OF CONSUMER : Docket No. P-2022-3032929
ADVOCATE, THE OFFICE OF SMALL BUSINESS :
ADVOCATE, AND THE PENNSYLVANIA UTILITY
LAW PROJECT**

CERTIFICATE OF SERVICE

I hereby certify that I have served true and correct copies of the Answer of Duquesne Light Company to Petition of the Office of Consumer Advocate, the Office of Small Business Advocate, and The Pennsylvania Utility Law Project in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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Date: July 25, 2022



Tishekia E. Williams
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Requesting Initiation of a
Proceeding on Federal Funding Opportunities
For Utilities under the Infrastructure
Investment and Jobs Act**

: Docket. No. P-2022-3032929

:

**ANSWER OF DUQUESNE LIGHT COMPANY TO PETITION OF THE OFFICE OF
CONSUMER ADVOCATE, THE OFFICE OF SMALL BUSINESS ADVOCATE, AND
THE PENNSYLVANIA UTILITY LAW PROJECT**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61(e), Duquesne Light Company (“Duquesne Light” or “Company”) submits this answer to the *Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities under the Infrastructure Investment and Jobs Act* (“Petition”) filed on June 10, 2022 by the Office of consumer Advocate (“OCA”), the Office of Small business Advocate (“OSBA”) and the Pennsylvania Utility Law Project (“PULP”) (hereinafter collectively referenced as the “Petitioners”).¹ Petitioners request that the Pennsylvania Public Utility Commission (“Commission”) require utilities to apply for IIJA grant funding and file regular status reports regarding past, present and future efforts to secure IIJA grants, the purpose of the funding and associated requirements. *Petition* at p. 5. Petitioners further request that the Commission establish a formal proceeding which would give interested parties a process to review and comment on utilities pursuit of IIJA funding. *Petition* at p. 5. For reasons discussed more

¹ Duquesne Light Company is a member of the Energy Association of Pennsylvania (EAP). The EAP filed an Answer in this proceeding responding to arguments raised by the Petitioners. Duquesne Light fully supports EAPs position and adopts the arguments advanced by the EAP as its own. In its Answer, Duquesne Light will not repeat the arguments articulated by EAP. Rather, Duquesne Light files this Answer to provide its utility specific perspective regarding the Petition.

fully below, Duquesne Light request that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) deny Petitioners’ request for a formal proceeding with public comments and reporting requirements. A formal proceeding is likely to hinder - not help – utilities’ ability to obtain IIJA funding. However, if the Commission determines it is in the public interest to grant the Petitioners any relief, the relief should be limited to quarterly post-funding award reporting. Additionally, the Commission should grant utilities permission to defer for accounting purposes only expenses related to pursuing IIJA funding, and the costs associated with any mandates imposed on utilities in this proceeding.

II. BACKGROUND

The Infrastructure Investment and Jobs Act (“IIJA”) otherwise known as the Bipartisan Infrastructure Law (“BIL”) was signed into law on November 15, 2021.² The IIJA provides a historic federal investment in infrastructure; \$1.2 trillion over 5 years with \$550 billion in incremental investment.³ More than 1000 pages long, the IIJA creates new programs and provides additional funding for several government agencies, including but not limited to, the United States Department of Transportation, the United States Department of Energy (“US DOE”), the Pennsylvania Department of Transportation and the Pennsylvania Department of Environmental Protection, to name a few. The US DOE alone states, “that over the next 5 years, the Bipartisan Infrastructure Law will stand up 60 new DOE programs, including 16 demonstrations and 32 deployment programs, and expands funding for 12 existing Research, Development, Demonstration, and Deployment (RDD&D) programs.”⁴ Dozens of funding opportunities have

² Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“IIJA”).

³ Generally, IIJA funding will be disseminated via two methods: 1) formula allocation and 2) competitive award. While the aggregate funding opportunity is enormous, the size, scope and requirements of the individual programs vary. For this reason, utilities must determine a strategy and prioritize funding opportunities to align with corporate strategic objectives such as grid modernization, customers affordability, etc.

⁴ [BIPARTISAN INFRASTRUCTURE LAW PROGRAMS, U.S. DEPARTMENT OF ENERGY](https://www.energy.gov/bil/bipartisan-infrastructure-law-programs)
<https://www.energy.gov/bil/bipartisan-infrastructure-law-programs>.

been announced, however most are early in the grant life cycle.⁵ Since the IIJA was passed roughly 8 months ago, federal and state government agencies continue to develop programs and processes to distribute IIJA funding. Likewise, utilities across the country - including Duquesne Light – are working to understand and respond to the funding opportunity based on their individual corporate strategies and priorities, as appropriate. Duquesne Light shares the Petitioners goal to ensure that Pennsylvania customers – indeed Duquesne Light customers - reap the benefits of the IIJA funding opportunities. However, the proposed formal proceeding is likely antithetical to the desired outcome.

III. A FORMAL PROCEEDING MAY PLACE PENNSYLVANIA UTILITIES AT A COMPETITIVE DISADVANTAGE BY AVERTING RESOURCES NEEDED TO PURSUE IIJA FUNDING OPPORTUNITIES AND PUBLICIZING THEIR STRATEGIC PRIORITIES TO COMPETING UTILITIES ACROSS THE COUNTRY

Petitioners state that it is “in the public interest to foster *cooperation* among the Commission, utilities, and other stakeholders to ensure that the process for pursuing and obtaining federal funds is as effective as possible” [*Emphasis added*]. *Petition* at p. 3. Petitioners further cite to the White House guidebook to the IIJA, to support a request for “*coordination* between federal government, states, tribal governments, community stakeholders, local governments, and other key partners” [*Emphasis added*]. *Petition* at p. 3. Duquesne Light agrees that cooperation and coordination between key partners is beneficial and warranted. Duquesne Light is and will continue to work with key partners in the pursue of IIJA funding opportunities. However, cooperation and coordination are not synonymous with mandates and unnecessary administrative burden.

⁵ The grant life cycle has 4 stages: 1) pre-application (Notice of Intent and Request for Information), 2) pre-award (Funding Opportunity Announcement), 3) Award, and 4) post-award.

Pursuing competitive IIJA funding is an extensive process that requires the submission of a technical volume, equity plan including quality job and community benefits, data management plan, subrecipient budget justification, environmental information, foreign entity waivers, SF-424 application, and letters of support, just to name a few requirements. If successful, awardees are also subject to substantial post-award requirements and reporting. Notably, while Petitioners claim that layering a formal proceeding onto the already onerous and time sensitive requirements would ensure an efficient process, they do not profess to have relevant expertise in securing grant funding that would make the process more efficient. Accordingly, it is unclear whether the purported benefits of the formal proceeding, i.e., efficiency and transparency, would exceed the costs to utilities and their customers.

Petitioners point to a proceeding in North Carolina as an example of a state that mandated a similar a process. *Petition* at p. 3. However, it cannot be credibly said that proceeding in Pennsylvania is in the public interest merely because a similar proceeding exists elsewhere. Since February 2022, at least eleven parties filed initial comments in the North Carolina proceeding. A review of the North Carolina docket shows dozens of documents including comments, reply comments, petitions, and orders, each providing details and insight into the states and utilities' IIJA strategic priorities.⁶ To date, there is no evidence that the proceeding in North Carolina

⁶ Notably, some North Carolina utilities did object to periodic reporting requirements due to concerns that it would jeopardize their ability to secure competitive funding opportunities. E.g., Virginia Electric and Power Company, Inc., d/b/a Dominion Energy North Carolina and Public Service Company of North Carolina, Inc., Joint Letter in Lieu of Reply Comments in response to the North Carolina Utilities Commission's February 1, 2022, Order Allowing Comments Regarding Federal Funding for Utility Service in North Carolina ("Order") Docket No. M-100, Sub 164 (stating "The Companies also specifically note CIGFUR's recommendation that utilities file a report every six months "detailing their respective efforts to obtain federal funding under the [Act] for the direct benefit of ratepayers." CIGFUR Initial Comments at 4. The Companies disagree with this recommendation and contend that such update reports could impede efforts of North Carolina utilities and agencies to obtain funding under the Act for the State given that many of the funding opportunities under the Act are competitive.)

provided substantial benefits to customers and utilities in that state, although it clearly created additional costs and administrative burden.

Finally, the Commission has a process to review and investigate the efficiency and effectiveness of Pennsylvania utility company operations and management.⁷ Stakeholders also have a process to review utility revenue and operations.⁸ These existing processes to review the efficiency and effectiveness of utility management decisions are transparent and efficient. Accordingly, it is not in the public interest to initiate an additional formal proceeding that will divert company resources and attention from pursuing IIJA funding opportunities. Like North Carolina, a formal proceeding is likely to result in volumes of filings and administrative burden without any direct tangible benefit to customer to date.

IV. THE COMMISSION SHOULD GRANT UTILITIES PERMISSION TO DEFER FOR ACCOUNTING PURPOSES ONLY ANY UNEXPECTED, NON-REOCCURRING AND SUBSTANTIAL EXPENSES ASSOCIATED WITH PURSUING IIJA TO MITIGATE ANY DISINCENTIVE TO PURSUE IIJA GRANTS.

⁷ 66 Pa. C.S. § 516 Audits of certain utilities.

(a) General rule.--The commission shall provide for audits of any electric, gas, telephone or water utility whose plant in service is valued at not less than \$10,000,000. The audits shall include an examination of management effectiveness and operating efficiency. The commission shall establish procedures for audits of the operations of utilities as provided in this section. Audits shall be conducted at least once every five years unless the commission finds that a specific audit is unnecessary, but in no event shall audits be conducted less than once every eight years. A summary of the audits mandated by this subsection shall be released to the public, and a complete copy of the audits shall be provided to the Office of Trial Staff and the Office of Consumer Advocate.

(b) Management efficiency investigations.--In addition to the audits mandated by subsection (a), the commission shall appoint a management efficiency investigator who shall periodically examine the management effectiveness and operating efficiency of all utilities required to be audited under subsection (a) and monitor the utility company responses to the audits required by subsection (a). For the purposes of carrying out the periodic audit required by this subsection and for carrying out the monitoring of audits required by subsection (a), the commission is hereby empowered to direct the management efficiency investigator to conduct such investigations through and with teams made up of commission staff and/or independent consulting firms; further, the commission may designate specific items of management effectiveness and operating efficiency to be investigated. The management efficiency investigator shall provide an annual report to the commission, the affected utility, the Office of Trial Staff and the Office of Consumer Advocate detailing the findings of such investigations.

⁸ 52 Pa. Code § 53.53. Information to be furnished with proposed general rate increase filings in excess of \$1 million.

Ensuring that IJJA funding benefits Pennsylvania customers is critically important to Duquesne Light. Since the IJJA was enacted, the Company has established a team tasked with understanding, prioritizing, and pursuing IJJA funding opportunities for Duquesne Light, its customers and community. However, pursuing these funding opportunities requires time and substantial expenses which the Company could not foresee. Utilities must balance the costs of pursuing the opportunities against the substantial resources required and likelihood of success. Permitting utilities to defer the expense associated with pursuing IJJA funding opportunities *for accounting purposes only* would not guarantee rate recovery but would mitigate the accounting impacts of having to normalize the increased expenses.

The standard a utility must meet when seeking Commission authorization for deferral accounting is "whether, based on the Commission precedent, the expense item appears to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery of past expenses." See *Petition of the Newtown Artesian Water Company for Permission to Use Deferred Cost Accounting and Amortization in Respect to Certain Well Development and Service Territory Expansion Costs*, Docket Number P-00052161, Order entered October 28, 2005.

The Commonwealth Court developed a three-prong analysis to determine the retroactive recovery of expenses alleged to be extraordinary and non-reoccurring. Specifically, the Court looked at 1) whether the costs arise from an inaccurate projection in a prior proceeding, 2) the extraordinary nature of the expenses, and 3) whether the utility took immediate and responsive action to seek timely recovery of its costs *Popowsky v. Pennsylvania Public Utility Commission*, 868 A.2d 606, 611-612 (Pa. Commw. Ct. 2004). The Commonwealth Court has defined extraordinary expenses as substantial, one-time expenses that are not continuing and otherwise

may not be recovered in rates because they would be normalized out of the test year as abnormal. See, *Popowsky v. Pa. P.U.C.*, 164 Pa. Commw. 338, 648, 652 (1994).

Moreover, it is important to note that approval of the deferral is not binding for ratemaking purposes. While the Commission's standard for granting a deferral petition is related to the ability recover the expenses, approval for deferred accounting treatment should not be construed as an approval for any specific ratemaking recognition or treatment of the costs. Thus, parties are not prejudiced by the deferral, however Pennsylvania utilities would be afforded similar opportunities to claim the associated costs like their competitors.

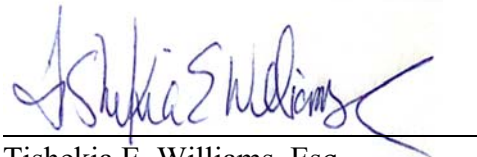
The Maryland Public Service Commission (“MD PSC”) granted Maryland public utilities a regulatory asset for expenses associated with pursuing IJJA funding.⁹ In the Order, the MD PSC states “the Commission finds that allowing each utility to establish an IJJA-specific regulatory asset to track IJJA-related incremental expenditures and savings is appropriate. To be clear, the establishment of an IJJA-specific regulatory asset is not a finding of prudence and does not provide a predetermined certainty of cost recovery for those expenses.” The Commission should ensure that Pennsylvania utilities can compete with similarly favorable regulatory conditions. Several IJJA funding opportunities require applicants to cost share and/or co-fund the proposed project. The continued ability to demonstrate that Pennsylvania is a favorable regulatory environment may help Pennsylvania utilities demonstrate a greater likelihood of securing the recovery of the utility proportion of the project costs.

⁹ Order on the Petition, Order No. 90272 Md. Public Service Comm’n (2022).

CONCLUSION

For the reasons stated above, Duquesne Light requests that the relief requested in the Petition be denied, and a blanket deferral for accounting purposes be granted for costs related to pursuing IIA funding opportunities.

Respectfully submitted,



Tishekia E. Williams, Esq.
Counsel for Duquesne Light Company

Date: July 25, 2022