COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

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

August 31, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan
Docket No. M-2009-2093217

Dear Secretary McNulty:

Enclosed for filing is the Main Brief of the Office of Consumer Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

Enclosures
cc: Honorable Fred R. Nene
Office of Special Assistants

00117312.docx

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan	:	Docket No. M-2009-2093217

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

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

Dated: August 31, 2009

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Administrative Decisions

Statutes

I. INTRODUCTION

Act 129 (Act) was signed into law by Governor Rendell on October 15, 2008 and became effective on November 14, 2008. The Act requires, among other things, that the Public Utility Commission (Commission) establish an Energy Efficiency and Conservation Program under which the larger Electric Distribution Companies (EDCs) operating in Pennsylvania are to adopt and implement Energy Efficiency and Conservation (EE&C) plans to reduce energy consumption and demand within their service territories.[1]

Under the Act, each EDC with 100,000 or more customers is required to achieve specified reductions in energy usage and peak demand. By May 31, 2011, each EDC must reduce the energy usage of its customers by 1% and by May 31, 2013, each EDC must reduce the energy usage of its retail customers by 3%. 66 Pa.C.S. § 2806.1(c)(1) and (2). These energy consumption reductions are based on the forecasted energy usage for the June 1, 2009 to May 31, 2010 base period. Also, by May 31, 2013, an EDC must reduce the weather-normalized peak demand of its retail customers by a minimum of 4.5% in the 100 hours of highest demand. 66 Pa.C.S. § 2806.1(d)(1). The peak demand reductions are based on an EDC's peak demand for the period June 1, 2001 to May 31, 2008. The Act provides for specific fines in the event an EDC fails to achieve the standards for reduction contained in the Act. 66 Pa.C.S. § 2806.1(f)(2).

The Act states that the Commission's Energy Efficiency and Conservation program must include the following: (1) procedures for the approval of plans submitted by EDCs pursuant to Act 129; (2) an evaluation process "to monitor and verify data collection, quality assurance and results" of each EDC EE&C plan; (3) a cost-benefit analysis of each EDC EE&C plan in accordance with a total resource cost test approved by the Commission; (4) analysis of how the

---

[1] The portion of Act 129 pertaining to Energy Efficiency and Conservation is codified at 66 Pa. C.S. § 2806.1.

Commission's program and each EDC EE&C plan will achieve or exceed Act 129's consumption reduction requirements; (5) standards to ensure that each EDC EE&C plan includes a variety of EE&C measures that are provided equitably to all customer classes; (6) procedures to make recommendations as to additional measures that will enable EDCs to improve their EE&C plans and exceed the Act's required reductions in consumption; (7) procedures to require EDCs to competitively bid all contracts with conservation service providers (CSPs); (8) procedures to review, and modify if the Commission deems necessary, all proposed contracts with CSPs prior to execution; (9) procedures to ensure compliance with the Act's requirements for reduction in consumption; (10) a requirement for the participation of CSPs in the implementation of all or part of their respective EDCs' EE&C plans; and (11) cost recovery to ensure that the measures approved are financed by the same customer class that will receive the direct energy and conservation benefits. See 66 Pa.C.S. § 2806.1(a). A key provision of the Act is the requirement that the total cost of any EDC's EE&C plan may not exceed 2% of the EDC's total annual revenue as of December 31, 2006. 66 Pa.C.S. § 2806.1(g).

The Act makes special provision for energy savings with respect to two particular customer segments. First, the Act requires that a minimum of 10% of the overall required energy consumption reductions in an EDC's territory come from units of federal, state and local government, including municipalities, school districts, institutions of higher education, and nonprofit entities. 66 Pa.C.S. § 2806.1(b)(1)(I)(B). Second, it provides that an EDC's EE&C plan must include specific energy efficiency measures for households with incomes at or below 150% of the Federal poverty guidelines. The plan must provide measures for these households that are proportionate to the "households' share of the total energy usage in the service territory." 66 Pa.C.S. § 2806.1(b)(1)(I)(G).

In the latter months of 2008, the Commission commenced a stakeholder process and invited written comments from the EDCs and other interested parties to develop the energy efficiency and conservation program required by Act 129. The Office of Consumer Advocate (OCA) participated by submitting Comments to the Commission on November 3, 2008, and again on December 8, 2008. The OCA also participated in a stakeholder meeting. Pursuant to the requirements of Act 129, on January 16, 2009, the Commission entered its Implementation Order. See, Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (Order entered January 16, 2009) (Implementation Order).[2]

In the Implementation Order, the Commission called for the publication of the EDC's EE&C plans in the *Pennsylvania Bulletin* and allowed for the filing of Comments on the plans. The Commission also directed evidentiary and public input hearings on each EE&C plan so that recommendations for improving the plans could be submitted by the statutory advocates and the public. See Implementation Order at 8. Further, the Commission established a specific litigation schedule to meet Act 129's requirement that it rule on each EDC's EE&C plan within 120 days of submission, and provisions were established for the re-submission of rejected EE&C plans.[3] Id. See also 66 Pa.C.S. § 2806.1(e)(2). In its Implementation Order, the Commission encouraged each EDC to conduct a collaborative process during the development of its plan to receive input from various stakeholders. As discussed below, the OCA participated in theDuquesne Light Company (Duquesne or Company) stakeholder process. Also pursuant to

2 The Implementation Order was adopted at Public Meeting on January 15, 2009.

3 Based on the established consideration period of 120 days, the schedule was broken down as follows: (1) each EE&C plan is assigned to an Administrative Law Judge (ALJ), who will establish discovery, public input hearing schedule and evidentiary hearing schedules, but all hearings must be completed by September 3, 2009; (2) all briefs are due by September 14, 2009; (3) each EDCs' reply brief and/or revised plan is due by September 24, 2009; and (4) the Commission will issue its decision regarding each EDC plan by October 29, 2009. See Implementation Order at 12. The Commission extended the opportunity to file reply briefs to all parties by Order entered June 2, 2009, at Docket Number M-2008-2069887.

this Order, each EDC was required to submit its consumption forecast with the Commission by February 9, 2009. The Commission approved the forecasts submitted by the EDCs in its order entered March 30, 2009. See, Energy Consumption and Peak Demand Reduction Targets, Docket No. M-2008-2069887 (Order entered March 30, 2009) (Reduction Targets Order).

Pursuant to the Implementation Order, on May 7, 2009, the Commission issued a Secretarial Letter, which provided EDCs with an EE&C plan template to be used in preparing and filing their EE&C plans with the Commission. Thereafter, on May 28, 2009, the Commission adopted Standards for the Participation of Demand Side Management Resources in an updated Technical Reference Manual (TRM). See, Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update, Docket No. M-00051865 (Order entered June 1, 2009) (TRM Order). The manual is to be used by EDCs as a guide in evaluating the savings impacts of the different aspects of their plans.

The Act requires each EDC to demonstrate, *inter alia*, that its EE&C plan is cost-effective using the Total Resource Cost (TRC) test[4] and that its plan provides a diverse cross section of alternatives for customers of all rate classes. See 66 Pa.C.S. § 2806.1(b)(1)(i)(I). After inviting and receiving comments from interested parties on the matter, including the OCA, the Commission adopted a TRC test. See, Order in Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test, Docket No. M-2009-2108601 (Order entered June 23, 2009) (TRC Order).

[4] A TRC test is "a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures." 66 Pa.C.S. § 2806.1(m).

Duquesne engaged in a stakeholder process both to advise stakeholders of Act 129's requirements and to seek their input regarding program development. The Company conducted a kickoff meeting with more than 50 stakeholders on April 3, 2009. Follow-up meetings with subgroups representing residential, commercial and industrial customers occurred on April 21, 22 and 23. There was also a subgroup meeting concerning demand response. As a result of the stakeholder input it received, Duquesne added or made changes to the preliminary designs of certain of its programs and made changes to its mechanism for cost recovery. The stakeholder process also facilitated the development of partnership opportunities between Duquesne and certain stakeholders. The OCA participated in the April 3 kickoff meeting, the April 23 residential subgroup meeting and the subgroup meeting on demand response.

II. PROCEDURAL HISTORY

On June 30, 2009, Duquesne Light Company filed its proposed Energy Efficiency and Conservation and Demand Response Plan (EE&C/DR Plan or Plan)[5] together with its Petition for approval of the Plan (Petition), in accordance with the Implementation Order and 66 Pa. C.S. § 2806.1. On July 7, 2009, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement. The Office of Trial Staff (OTS) filed a Notice of Appearance on July 8, and the Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Public Statement on July 17. Petitions to Intervene were filed by the Department of Environmental Protection (DEP), Duquesne Industrial Intervenors (DII), Equitable Gas Company (Equitable), Pennsylvania Association of Community Organizations for Reform Now

---

[5] For purposes of this proceeding, Duquesne's EE&C/DR Plan was entered into the record as part of Duquesne's Exhibit No. 1 (designated in the record as DLC Exh. No. 1). The Exhibit also included Duquesne's Petition for Approval of its Energy Efficiency and Conservation and Demand Response Plan and a Report from Duquesne's consultant, MCR Performance Solutions, LLC, titled Energy Efficiency and Conservation and Demand Side Response Initiatives Final Report. As noted in the text, the EE&C/DR Plan will be cited in this brief either as "EE&C/DR Plan" or simply as "Plan," and the Petition for Approval as "Petition." The consultant's Final Report will be cited as "Report."

(ACORN), ClearChoice Energy (ClearChoice), Columbia Gas of Pennsylvania, Inc. (Columbia), Field Diagnostic Services, Inc (FDSI), Direct Energy Business, LLC (Direct Energy), The Peoples Natural Gas Company d/b/a Dominion Peoples (Peoples), EnerNOC, Inc. (EnerNOC), Constellation New Energy, Inc. (Constellation) and the National Association of Energy Service Companies (NAESCO).

The matter was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Fred R. Nene. A prehearing conference was held on July 28, 2009, at which time a procedural schedule was established. Petitions to intervene were granted for all but NAESCO. Public input hearings were held on August 5, 2009 in Pittsburgh. Seven individuals testified at those hearings. On August 7, 2009, the OCA filed the Direct Testimony of its expert witness, David G. Hill, Ph.D.[6] At the same time, testimony was also filed by the following parties: OTS, OSBA, DEP, ACORN, Peoples/Equitable/Columbia (filed jointly), ClearChoice and FDSI (subsequently withdrawn). Evidentiary hearings were held in Harrisburg on August 19, 2009. Pursuant to the Prehearing Order issued by Judge Nene on July 30, 2009, parties' Briefs are to be submitted on August 31, 2009 and Reply Briefs are due on September 10, 2009.

III. DESCRIPTION OF EDC PLAN

Duquesne's EE&C/DR Plan consists of 17 voluntary programs for customers and describes an extensive portfolio of energy-efficiency, conservation, and peak load reduction

[6] Mr. Hill is employed as a Managing Consultant with the Vermont Energy Investment Corporation (VEIC) and is the manager of the firm's renewable energy consulting division. Mr. Hill holds a Masters Degree in Appropriate Technology and International Development and a Ph.D. in Energy Management and Policy Planning, both from the University of Pennsylvania. Mr. Hill has more than seventeen years of experience with planning, evaluation and implementation of energy efficiency and renewable energy programs. Mr. Hill has worked for dozens of utility and non-utility clients nationally and abroad.

measures, programs, education and communication efforts. These 17 programs (14 EE&C programs and 3 DR programs) are designed to meet the goals established by Act 129.

For residential customers, Duquesne proposes to offer the following programs: 1) Energy Efficiency Rebate Program, 2) School Energy Pledge Program, 3) Refrigerator Recycling Program, 4) Solar Photovoltaic Incentives Program and 5) Direct Load Control Program for Air Conditioners and Electric Water Heaters, a demand response program. Plan §§ 3.2-a to 3.2-e. Additionally, for low-income customers, Duquesne will offer Low-Income Energy Efficiency Program. Plan §3.2.1. Duquesne expresses a desire to launch several of the programs early, including the School Energy Pledge Program, which it would like to implement with the beginning of the 2009-10 school year in September. DLC St. 1 at 8-9.

Duquesne's portfolio of programs is designed to provide customer benefits while also meeting the energy saving and peak load reduction goals set forth in the Act within the designated expenditure cap of two percent (2%) of 2006 annual revenues ($19.5 million) for each year of the four-year plan, which equates to a total of approximately $78.2 million for the entire plan period. DLC St. 1 at 9. Specifically, Duquesne's Plan includes measures and programs to achieve the Company's calculated electricity consumption and peak load reduction targets of: a) 1% energy savings by 2011, which is 140,885 MWh; b) 3% energy savings by 2013, which is 422,565 MWh; and c) peak load reduction of 4.5% by 2013, which is 113 MW. DLC St. 1 at 4.

As permitted by Act Section 2806.1(k), 66 Pa.C.S. § 2806.1(k), the Company also proposes to implement an Energy Efficiency and Conservation and Demand Response Surcharge pursuant to Section 1307 of the Public Utility Code. 66 Pa.C.S. § 1307. Designed to recover all of its costs applicable to the Plan, Duquesne will apply the surcharge on a non-bypassable basis to charges for electricity supplied to customers who receive distribution service from the Company. DLC St. 4 at 10. The surcharge will be computed separately for Residential, Small and Medium Commercial, Small and Medium Industrial, Large Commercial and Large Industrial classes. DLC St. 4 at 5. Initially, the surcharge rates for each class are projected to be:

Customer Class	**¢/kwh**	**Fixed Charge $/Month**	**$/kw**
Residential	0.19		
Small & Medium Commercial	0.11		
Small & Medium Industrial	0.20		
Large Commercial		$257.00	$1.59
Large Industrial		$784.00	$0.45

Source: Duquesne Exh. WVP-9.

The surcharge will be included as part of the distribution rates and applied to the monthly bill of each customer receiving distribution service from the Company. DLC St. 4 at 11. With respect to Residential customers, the Company proposes to levelize its surcharge over a 42-month period and perform a one-time reconciliation for over and under-collections at the conclusion of that period. DLC St. 4 at 8. The surcharges for Large Commercial and Industrial customers will operate similarly. DLC St. 4 at 9. The surcharges for Small and Medium Commercial and Industrial customers, however, will be reconciled annually. DLC St. 4 at 8. While the proposed level of surcharges is based on the currently projected budgets for each customer class, the Company seeks the authority to move budgeted dollars within a customer class or between customer classes if it determines that the funds could be more effectively spent by such a move. DLC St. 1 at 9. In such a case, Duquesne states that "where program fund shifting is necessary across customer class sectors, adjustments will be made to cost recovery mechanisms and balancing accounts to ensure no cross-sector cost subsidization occurs." DLC St. 2 at 14.

IV. SUMMARY OF ARGUMENT

The OCA organizes the Summary of its Argument into four categories: Overall Plan Assessment and Compliance with the Requirements of the Act; Program Design; Stakeholder Process and Plan Adjustments; and Cost Recovery. It presents its summaries for each category in bullet fashion beneath the heading.

Overall Plan Assessment and Compliance with the Requirements of the Act:

- Duquesne's EE&C/DR Plan is reasonably designed to meet or exceed the requirements for energy efficiency and demand reduction set forth in Act 129 in the time period specified for compliance and within the budget limitations specified in the Act.

- Duquesne's EE&C/DR Plan is designed to meet or exceed the requirements in 66 Pa.C.S. §2806.1(b)(1)(i)(B) for savings within the government/non-profit sector.

- Duquesne's EE&C/DR Plan is designed to meet the requirements in 66 Pa.C.S. § 2806.1(b)(1)(i)(G) for providing programs and savings for low income customers.

- Duquesne's EE&C/DR Plan is designed to provide a variety of programs to all customer classes and provides the measures equitably to all customer classes as specified in 66 Pa.C.S. § 2806.1(a)(1)(5).

- Duquesne's EE&C/DR Plan satisfies the Total Resource Cost (TRC) Test as set forth by the Commission, making the Plan a cost-effective means of achieving the requirements of the Act. Every program proposed by the Company, other than the Solar Photovoltaic program, has a TRC score greater than one.

- Duquesne's EE&C/DR Budget of $78.2 million, with proper program design and delivery, should provide significant net benefits and establish a basis for continued long-term development of Pennsylvania's energy efficiency resources. The budget must, however, be adjusted to include the costs of the statewide evaluator, costs which Duquesne acknowledges are not presently accounted for as part of its budget.

- Duquesne's EE&C/DR Plan proposed should be generally approved as a sound starting point for meeting the requirements of Act 129, subject to certain modifications recommended in this Brief.

Program Design:

- Duquesne should consider working with other EDCs on measures where such coordination could achieve synergistic results. One example would be in the negotiation of "upstream" incentives to Compact Fluorescent Lightbulb (CFL) manufacturers and distributors.

- Duquesne should coordinate with other EDCs to establish similar program rebate levels.

- Duquesne should consider opportunities for collaboration with local natural gas utilities.

- Duquesne should consider adding a program targeted at the new construction/renovation market under its Commercial and Industrial programs.

- Duquesne's programs for Commercial and Industrial customers should consider more targeting of high-value market subsectors.

- Duquesne should dedicate its spending in the Commercial and Industrial sectors to achieving the consumption reductions mandated by Act 129 rather than exceeding these goals by the wide margin the Company projects. By doing so, Duquesne will ensure a greater likelihood of success in meeting its overall energy reduction goals.

- Duquesne should inquire into certain apparent anomalies in the study data that underlie its Residential Energy Efficiency Program (REEP).

Stakeholder Process And Plan Adjustments

- The stakeholder process should be further detailed by requiring meetings at least on a quarterly basis throughout the Plan period and providing for specific reports on implementation to the stakeholders as part of that process.

- A process for determining mid-course corrections and receiving approval of significant mid-course Plan modifications or cost recovery should be developed.

Cost Recovery

- The Company should eliminate its proposal to impose interest on over or undercollections as part of its cost recovery mechanism.

- The costs of the statewide evaluator must be included in the 2% spending limitation.

- The Company should be required to bid any qualifying energy efficiency and demand response measures into the PJM RPM auctions and credit customers with any benefits received limitation.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

As noted above, the Act mandates specific reductions in both consumption and peak demand. With respect to consumption, the Act requires a minimum 1% reduction by May 31, 2011, and a minimum 3% reduction by May 31, 2013. 66 Pa.C.S. § 2806.1(c)(1) and (2).

With respect to peak demand reduction, the Act requires a reduction of at least 4.5% in the 100 hours of highest demand, to be achieved by May 31, 2013. 66 Pa.C.S. § 2806.1(d)(1).

In its Implementation Order, the Commission directed EDCs to submit their load forecasts for 2009-10 by February 9, 2009. Implementation Order at 8. The Commission then reviewed the forecasts and supporting data submitted by the companies, and in the Reduction Targets Order, entered March 30, 2009, found the forecasts reasonable and suitable for setting the 2011 and 2013 reduction targets. Reduction Targets Order at 4.

1. Overall Conservation Requirements

a. 2011 Requirements

Duquesne submitted a 2009-10 consumption forecast of 14,085,512 MWH and calculated a corresponding 1% reduction equal to 140,855 MWH to be reached by May 31, 2011. Reduction Targets Order at 3, Table 1.

Duquesne's Plan is designed to achieve a reduction of 245,985 MWH by May 31, 2011, which exceeds the requirement. Plan, Table 2.

b. 2013 Requirement

Using the same 2009-10 forecast, as prescribed by the Act, Duquesne calculated its (3%) 2013 reduction target to be 422,565 MWH. Reduction Targets Order at 3, Table 1. Duquesne's Plan is designed to achieve a reduction of 576,356 MWH by May 31, 2013 which exceeds the requirement. Plan, Table 2.

2. Overall Demand Reduction Requirements

The Commission's Implementation Order also directed EDCs to submit hourly peak load data for the period June 1, 2007 through May 31, 2008, as well as the average of hourly loads for the 100 hours of highest load for the same period and for the 100 hours of highest load between June 1, 2007 and September 30, 2007. Implementation Order at 9. In that Order, the Commission determined that focusing effort on achieving reductions in the 100 hours of highest demand over the summer period (June-September) would provide the greatest benefit and be most cost effective. Implementation Order at 21. Duquesne's submission indicated an average hourly load for the 100 highest hours of demand between June and September 2007 of 2,518 MW. Reduction Targets Order at 5, Table 2. A 4.5% reduction from that figure equals 113 MW, the amount accepted by the Commission as Duquesne's peak demand reduction target. Reduction Targets Order at 5, Table 2. Duquesne's Plan is designed to achieve a peak demand reduction of 198,294 MW, which exceeds the goal. Plan, Table 2.

3. Requirements for a Variety of Programs Equitably Distributed

The Act requires that the Plan include a variety of measures and that the measures be provided equitably to all customer classes. 66 Pa.C.S. § 2806.1(a)(5). Duquesne's Plan contains 17 different programs distributed across all of its customer classes. The Company has provided at least one energy efficiency and one demand response program for each class in accordance with the Commission's Implementation Order, and in fact, offers multiple programs for each customer class. See, Plan, Table 4.

The OCA also reviewed the required Budget and Parity Analysis Summary found in Table 5 of Duquesne's EE&C/DR Plan together with the following information to evaluate whether the portfolio proposed by the Company achieved a reasonable and equitable balance in its portfolio.

Comparison of % of Program Budget to % of Customer Revenues by Class

Customer Class	Program Budget	% of Program Budget	% of Total Company Revenue
Residential	$25,735,926	32.9%	54.1%
Commercial & Industrial Small	$10,585,848	13.5%	12.1%
Commercial & Industrial Large	$31,437,626	40.2%	28.6%
Governmental	$10,424,406	13.3%	5.2%
CompanyTotal	$78,183,806	100%	100%

Source: Plan, Table 5

Comparison of % of Overall Usage and % of Consumption Reductions by Class

Customer Class	Base Period Forecast of Annual Energy Use (kWh)	% Use	Total Projected MWH Savings	% of Mandated Reductions of 422,565 MWH	% of Company-Projected MWH Savings
Residential (incl. Low Income	4,227,114,341	30.0%	165,193	39.1%	28.8%
Small C&I	3,368,552,825	23.9%	84,703	20.0%	14.8%
Large C&I	6,313,263,075	44.8%	260,549	61.7%	45.5%
Governmental & Nonprofit	Included in C&I Forecasts		62,814	14.9%	10.9%
Other	176,581,466	1.3%	N/A	N/A	N/A
Total	14,085,511,707	100%	573,259		100%

Source: Plan, Tables 2 and 5; Report, Monthly Control Area KWH Forecast at 163.

Impact of Surcharge on Monthly Rates by Class

Customer Class with Avg. Monthly Use(kwh)/Demand(kw)	Monthly Increase ($)	% Increase Over Existing Rates
Residential (600 kwh)	$ 1.14	1.4%
Small & Medium Commercial (10,000 kwh/30 kw)	$ 11.00	1.2%
Small & Medium Industrial (10,000 kwh/30 kw)	$ 20.00	2.2%
Large Commercial (200,000 kwh/750 kw)	$ 1449.50	4.6%
Large Industrial (200,000 kwh/750 kw)	$ 1121.50	4.6%

Source: OCA Cross Examination Exh. 1.

The OCA conducted this review bearing in mind the specific requirements of the Act for low income customers, government/non-profit sector and the need for the Plan to be cost-effective under the Total Resource Cost Test.

The OCA is also mindful of the Commission's statements in its Implementation Order:

> Furthermore, there is no consensus as to what denominator (per capita, usage, revenue, potential for savings, etc.) to use if one were to attempt to require a proportionate distribution.
>
> We will not require a proportionate distribution of measures among customer classes. However, we direct that each customer class be offered at least one energy efficiency and one demand response program. While we will leave the initial mix and proportion of energy efficiency and demand response programs to the EDCs, we expect the EDCs to provide a reasonable mix of energy efficiency and demand response programs for all customers.

Implementation Order at 23.

Given the Commission's determination not to require a proportionate distribution of measures, the cost effectiveness of the Plan both as a whole and for each customer class, the savings achieved for each class, and the fact that Duquesne has surpassed the requirement that there be at least one energy efficiency program for each customer class, the OCA submits that Duquesne has achieved a portfolio of programs that is balanced and cost-effective.

4. <u>10% Government/Non-Profit Requirement</u>

Section 2806.1(b)(1)(i)(B) establishes a specific requirement for achieving reductions from the government/non-profit/school sector. The section provides:

> (B) A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.

66 Pa.C.S. § 2806.1(b)(1)(i)(B).

To meet the requirement of this section of the Act, Duquesne proposes a Public Agency Partnership Program (PAPP) under which Duquesne will enter into Memoranda of Understanding (MOUs) with local government agencies to work jointly to identify, fund and implement energy efficiency projects and measures. Plan § 3.5. Duquesne projects that the reductions achieved under PAPP will actually exceed the mandated 10% level. Specifically, the Company projects consumption reductions of 26,920 MWH (19.1%) (14,085 MWH mandated) by 2011 and 62,814 MWH (14.9%) (42,257 MWH mandated) by 2013, and demand reduction within the sector of 20.2 MW (17.9%) (11.3 MW mandated). Plan § 9.1.4, Figure 49.

Duquesne notes that it has patterned the PAPP on successful programs operating in other parts of the country. Plan § 3.5. If Duquesne's program proves to be equally or nearly as successful, the OCA submits that the Company should readily satisfy the requirements of 66 Pa.C.S. § 2806.1(b)(1)(i)(B).

5. Low Income Program Requirements

Section 2806.1(b)(1)(i)(G) establishes a requirement for specific energy efficiency measures for low income households. That section reads in pertinent part:

> (G) The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to those households' share of the total energy usage in the service territory.

66 Pa.C.S. § 2806.1(b)(1)(i)(G). It is the OCA's view that the General Assembly sought to establish a set aside through this language to ensure that low income customers received the benefits that energy efficiency can deliver. This becomes even more important in light of the Commission's conclusion in its Implementation Order that all customers should be required to pay the costs associated with Act 129, including low income customers. Implementation Order at 37.

The language of the Act uses the terms "measures" within the section but also refers to "in proportion to usage." The OCA submits that the most effective way to implement this Section is to require each EDC to assure that a specific percentage of the overall savings to be achieved from the Plan are realized through programs and measures directed to the low income customer segment. This approach would parallel the set aside approach for the government/non-profit sector. See, 66 Pa.C.S § 2806.1(b)(1)(i)(B).

Duquesne witness Crooks described the Company's method of complying with the low-income household requirement as follows:

> Program planning described herein is based on an interpretation that the terms "number of energy efficiency measures" mean energy efficiency program energy savings impacts. Accordingly, low income program plans are adjusted to reflect the percentage of Act 129 mandated reductions equivalent to the low income

> segment energy use percentage of Duquesne Light's total territory energy use.

DLC St. 2 at 5.

Duquesne calculated the percentage of low income usage to total system usage and determined it to be approximately 6.1%. Plan § 9.1.3. The Company then endeavored to design programs in its Plan to achieve at least 6.1% of its energy consumption and peak load reductions from the low income sector. Plan §9.1.3. Under the Plan, the Company will seek to achieve consumption reductions of 30,055 MWH by May 31, 2013 from the low income sector, which is 7.1% of the overall required savings. Plan, § 9.1.3, Figure 48. The OCA submits that the Company's methodology for determining the low income set aside requirement, and its Plan for meeting the requirement, is reasonable and in compliance with the Act. The OCA supports the Company's efforts in this regard.

6. <u>Issues Relating to Individual Conservation and Demand Reduction Programs</u>

As noted earlier, the OCA retained as its expert witness to assist in the review of Duquesne's EE&C/DR Plan, David G. Hill, Ph.D., a Managing Consultant with the Vermont Energy Investment Corporation. In his Direct Testimony, Mr. Hill identified the following concerns with Duquesne's EE&C/DR Plan:

a. <u>Residential</u>

i. <u>Residential Fan Furnaces</u>

OCA witness Hill observed that the replacement of residential furnace fans is not included as a measure in Duquesne's Residential Energy Efficiency Program (REEP). Mr. Hill stated that the 2009 American Council for an Energy Efficient Economy (ACEEE) study of energy efficiency potential in Pennsylvania identified the savings associated with replacement of existing permanent split capacitor (PSC) furnace fans with ones that meet or exceed the minimum electronically commutated motor (ECM) standards as providing 6% of the electric energy savings potential identified for Pennsylvania. OCA St. 1 at 18.

At hearing, Duquesne indicated in oral rebuttal that it had analyzed the use of high-efficiency furnace fan as part of REEP and rejected it because the measure had a low TRC score of 0.3. Tr. at 142-143. Duquesne noted that the source of the information used to calculate the TRC test was the Pennsylvania Technical Reference Manual (TRM). Duquesne used the TRM to estimate "deemed savings" (KWH) and the avoided cost associated with the estimated useful life of the measure. Tr. at 142-143. On cross examination, Duquesne witness Crooks testified that the TRM calculated annual savings for residential furnace fan replacement at 98 KWH and incremental costs at $202. Tr. at 175.

During cross examination, OCA witness Hill, was asked about the TRM-based figures and testified:

> Typically the savings for furnace fans are higher than that, and so I think it would be worth revisiting the savings and the costs. The costs are consistent with what I am familiar with. Savings are lower than what I'm typically familiar with.

Tr. at 240-241.

Based on Mr. Hill's experience, the TRM-based estimated savings from replacement of residential furnace fans seems low. Given Mr. Hill's testimony that the ACEEE study identified greater energy savings potential from this measure, the OCA submits that Duquesne should reevaluate the inclusion of residential furnace fans as an efficiency measure using additional data sources. This measure may be particularly useful for Duquesne since it addresses furnace fans used for heating sources such as natural gas or oil, sources that are believed to be more prevalent in Duquesne's service territory than electric heat.

ii. Residential Program Savings

OCA witness Hill raised concern about certain anomalies in Duquesne's REEP program. OCA St. 1 at 13. First, he questioned the amount of savings from and the program's emphasis on residential outdoor fixtures. The Plan identifies outdoor fixtures as providing 32% of the savings of the entire REEP program. By comparison, screw-in CFL measures in REEP account for only 3% of annual savings. Second, Mr. Hill questioned whether the 4% of total residential energy savings expected to come from the provision of energy efficient torchiers is accurate, again given that CFL measures produce only 3% of annual savings. Third, Mr. Hill questioned the applicability factor assigned to CFLs given that the applicability factor assigned to the most common CFL wattage (13-17 W) is 6% while the applicability factor assigned to outdoor fixtures is 60%. OCA St. 1 at 13. The OCA recommends that Duquesne investigate these apparent anomalies in the study data supporting REEP and provide further information during its ongoing stakeholder process.

b. Commercial

i. Commercial and Industrial New Construction Programs

In his testimony, OCA witness Hill observed that Duquesne's Commercial and Industrial program does not include a program geared to new construction and renovation projects. Mr. Hill stated that such projects represent an opportunity to lock in long term and cost effective energy savings relative to retrofit or early replacement programs. OCA St. 1 at 18. Noting that the various energy efficiency measures proposed by Duquesne for existing commercial and industrial buildings would also be available to new construction and renovation projects, witness Hill stressed the importance of giving special attention to the new construction/renovation market:

> … just because the same measures are also available to the new construction market does not mean the approach to this important market is effective. Rather than simply offer customers a prescriptive rebate form for new equipment to be included in a newly constructed facility, efficiency program managers should actively engage customers (and their construction team) during the new construction design phase and continue to provide assistance throughout the construction period. By helping customers with important decisions during the initial stages of a construction project, program managers can lock in long term, cost effective savings through the appropriate integration of efficiency measures and building design. If done correctly, integrating efficiency upfront into buildings allows for reductions in the size of HVAC units and fewer lighting fixtures; both of which deliver a powerful interactive effect.

OCA St. 1 at 19-20.

In its oral rebuttal at hearing, Duquesne explained its reason for not incorporating a new construction initiative as part of its Commercial and Industrial EE&C programs. Duquesne noted that the ACEEE April 2009 study of energy efficiency potential in Pennsylvania indicated that a significant portion of the commercial efficiency gain potential lies in the retrofit of existing buildings. Duquesne further noted that its initial reduction target will have to be met in approximately 17 months from anticipated the Commission approval of its plan. Given the "aggressive" targets and the short time frame for achieving them, Duquesne elected to focus on the retrofit market. Tr. at 144-145.

On cross examination, OCA witness Hill acknowledged the importance of the retrofit market, but also advocated for incorporating new construction programs at some reasonable level:

> The bulk of savings from the portfolio as a whole will come from existing building stock, but major renovations and new construction provide the types of both complementary, synergistic savings that you can't always attain in the retrofit market and tend to be very cost effective.

> Think of it this way. If you don't capture the savings during new construction, then you may be paying to go them in a retrofit savings later on. So it's important to address them.

Tr. at 242.

Mr. Hill also stated on cross examination:

> I think a new construction program is a very important part of a balanced portfolio. And particularly as you're looking to obtain savings that will be available during the time period, not having a new construction component program leaves a gap in terms of cost effective savings that can be attained.... if you're looking at a three-year, four-year plan and portfolio, in my review I considered [the lack of a new construction component] to be a gap worthy of consideration and development.

Tr. at 241-242.

Accordingly, the OCA recommends that Duquesne give consideration to incorporating a new construction component into its Commercial and Industrial energy efficiency programs.

ii. <u>Targeting High Value Market Subsectors</u>

Mr. Hill's testimony stated that Duquesne's portfolio of programs for Commercial and Industrial customers did not include a complete strategy to target what he terms "high-value market subsectors." Mr. Hill used as examples grocery stores and data centers. According to Mr. Hill, a high-value subsector is one where there is a considerable amount of energy savings potential from technologies that are pervasive in the target market. OCA St. 1 at 21. Under its Commercial Umbrella Program, Duquesne has developed programs aimed at four commercial sectors – office buildings, retail stores, healthcare facilities, and governmental/educational facilities. This is commendable, but the OCA encourages Duquesne to make an even more in-depth review to determine if there are additional high-value subsectors for which programs should be developed.

iii. Scale-back of Projected KWH Savings in Commercial and Industrial Sectors

In his testimony, Mr. Hill expressed concern that Duquesne may not be able to attain its projected level of kilowatt-hour savings for its Commercial and Industrial programs, and if it does, the savings may not be sustainable. OCA St. 1 at 23. The projected level of savings substantially overcomplies with Act 129's requirements. Plan at 13. While the OCA recognizes the need for some overcompliance to address uncertainty or program failures along the way, attempting to reach a projected level of savings that is as ambitious as Duquense's Plan may risk spreading resources too thin, resulting in program strategies and incentives that are ineffective. Mr. Hill stated:

> I have concerns that Duquesne will not be able to reach its stated goals in the C/I sector with the stated budgets and incentive designs. If in contrast Duquesne's proposed program spending were to be applied to the required reductions, the available budget and incentive strategies make more sense. As I have said in proceeding [sic] sections, the current plan's estimated costs per annual kWh at both the administrative and incentive levels are too low to engender significant program participation.... The ability to increase spending for each kilowatthour saved without compromising compliance enables more robust program design and incentive options.

OCA St. 1 at 23-24. Consequently, Mr. Hill recommended that Duquesne dedicate its Commercial and Industrial program spending on achieving a level of reductions more closely aligned with those mandated by the Act. At hearing, on cross examination by the Company, Mr. Hill stated:

> I don't think that it's reasonable to expect the plan to far exceed, as being proposed, the mandated targets. I think we should work to provide the savings within the budgets. As has been noted, the budgets are slightly thin, if you would, by comparison, and I think

> it will require the resources that are available to achieve the mandated targets.

Tr. at 244.

Duquesne should tailor its spending on Commercial and Industrial programs to achieve energy savings more in line with the Act 129's mandated reductions. The increased spending per KWH saved will allow for such things as larger incentives to attract participation, and this will increase the likelihood of program success.

c. Industrial

(See Issues Discussed under Commercial above)

7. Proposals for Improvement of EDC Plan

Mr. Hill's testimony made several overall recommendations regarding Duquesne's Plan. These recommendations concern greater coordination among Pennsylvania's EDCs as well as greater collaboration on Duquesne's part in working with its local natural gas distribution companies. With respect to coordination among the EDCs, Mr. Hill stated that Duquesne should work with the other EDCs on measures where coordination is necessary for program optimization. OCA St. 1 at 14. Mr. Hill cited as an example, the negotiation of incentives with CFL manufacturers and distributors. He stated:

> I recommend that one of the most cost effective ways EDCs can cooperate and coordinate program delivery is in the negotiation of [Compact Fluorescent Light] incentives to manufacturers and distributors. Such "upstream" incentives packages have proven to be one of the most effective ways to drive CFL sales, and this is achieved through both marketing and price reductions.

OCA St. 1 at 14.

National retailers and manufacturers are often unwilling to negotiate incentives on a local (service territory) basis. A statewide effort by all Pennsylvania EDCs is much more likely to reach sufficient critical mass to entice these large national entities to negotiate incentive deals. Mr. Hill testified:

> I recommend that to be most cost effective, the negotiation of upstream incentive packages with retailers and manufacturers needs to be conducted on a statewide basis. Since national retail outlets and manufacturers are often not willing to work on a store by store basis for such a campaign, a unified effort among Pennsylvania's EDCs reliant upon CFL installations to meet the energy saving requirements of Act 129 in the most cost effective manner is essential.

OCA St. 1 at 15 (Footnote omitted).

Mr. Hill also testified that he compared the rebate levels being proposed as part of Duquesne's various EE&C programs with the rebate levels of other Pennsylvania EDCs and found that there did not appear to be coordination with other EDCs. He commented that Duquesne's rebates were very different from the other EDCs "in many instances." OCA St. 1 at 17-18. Mr. Hill recommended that:

> Duquesne coordinate with other EDCs to establish similar rebate structures in order to provide consistent market signals and also so that Duquesne customers feel that they are being treated equitably.

OCA St. 1 at 18.

Accordingly, the OCA recommends that Duquesne coordinate with other EDCs to negotiate upstream incentives with CFL manufacturers and distributors and that Duquesne review its program rebate levels to achieve consistency with other Pennsylvania EDCs.

As to collaboration with the natural gas utilities, OCA witness Hill testified that both electric and gas distribution companies would benefit from collaboration by being able to increase marketing and ensuring the appropriate installation of their respective program offerings. OCA St. 1 at 15. Duquesne could increase the effectiveness of its low income programs by partnering with natural gas programs to offer electric efficiency measures when a natural gas company is weatherizing a home. Mr. Hill cited as examples such measures as CFLs, replacement refrigerators or replacement air conditioners. OCA St. 1 at 16. Another fertile area of potential collaboration would be through offering energy auditing services. OCA St. 1 at 15-16. The OCA recommends that Duquesne examine the opportunities for collaborating with its local gas distribution companies as it begins Plan implementation.

a. Residential

Consistent with the issue raised in Section V.A. 6 a. i. above, regarding the replacement of residential furnace fans, the OCA recommends that Duquesne further examine the potential energy savings associated with residential furnace fan replacement. If values found by Duquesne exceed the potential savings estimated in the TRM, Duquesne should further consider incorporating such replacement as a measure in its Residential Energy Efficiency Rebate Program (REEP) and seeking a determination as to how to count or quantify these savings.

Consistent with the issue raised in Section V.A. 6. a. ii. above, regarding anomalous data underlying the Company's REEP program, specifically data pertaining to outdoor fixtures, torchiers and CFLs, the OCA recommends that Duquesne investigate these apparent anomalies in its study data, report on these efforts to its stakeholder group and make appropriate programmatic adjustments if the data prove to be in error.

b. Commercial

Consistent with the issue raised in Section V. A. 6. b. i. above, regarding the incorporation of a new construction/renovation component in Duquesne's energy efficiency programs for Commercial and Industrial customers, Duquesne should give consideration to including such a component in its portfolio of programs.

Consistent with the issue raised in Section V.A. 6. b. ii. above, regarding targeting high value subsectors among the Commercial and Industrial sectors, the OCA recommends that Duquesne look further at identifying additional high-value subsectors for targeted programming.

Consistent with the issue raised in Section V.A. 6. b. iii. above, regarding a scaleback of its projections for energy savings among Commercial and Industrial customers, the OCA recommends that Duquesne focus its spending in the Commercial and Industrial sectors on achieving levels of reduction more closely aligned with those mandated by the statute. The OCA submits that increasing the spending per KWH of savings will enable larger incentives, thereby increasing participation and ultimately improving the likelihood of success of the programs targeted to the Commercial and Industrial sectors.

c. Industrial

(See proposals for improvement under Commercial above)

B. Cost Issues

1. Plan Cost Issues

Section 2806.1(G) provides that the total cost of any EE&C/DR plan shall not exceed 2% of an EDC's total annual revenue as of December 31, 2006. Duquesne's revenue as of the end of 2006 was $723,299,451. In its Implementation Order, however, the Commission, recognizing that there was a significant level of retail shopping in Duquesne's territory, determined that it would be appropriate for Duquesne and other EDCs to include in their annual revenues the amount collected by EDCs on behalf of alternative electric generation suppliers through consolidated billing. Implementation Order at 35. In Duquesne's case, the amount collected on behalf of such suppliers in 2006 totaled $253,998,128. DLC St. 1 at 8. Therefore, for purposes of calculating Duquesne's 2% spending cap, its total revenue as of December 31, 2006 equaled

$977,297,579. Two percent of this amount equals $19,545,952. As further determined in the Implementation Order, this amount is to be considered an annual limitation, not a limitation applicable to the full implementation period of the plan. Implementation Order at 34. Thus for the four-year period of Duquesne's plan, its spending cap is $78,183,806.

In its testimony, Duquesne indicates that it did not include the costs of the statewide evaluator within the 2% cost cap. DLC St. 1 at 10. Duquesne states that if the Commission finds that the statewide evaluator should be included within the EDCs' budgets, it will scale back its program budgets and make appropriate adjustments. Id.

The OCA submits that the statewide evaluator costs must be within the 2% spending cap. The OCA will discuss this issue in Section V.B.4.b. below.

2. Cost Effectiveness/Cost-Benefit Issues

Not Applicable.

3. Cost Allocation Issues

Not Applicable.

4. Cost Recovery Issues

The Company's Direct Testimony sets forth its proposed cost recovery mechanism for EE&C/DR Plan expenses. Specifically, Company witness William V. Pfrommer describes Duquesne's intention to implement five separate surcharges, one applicable to each of the following customer classes: (1) residential, (2) small and medium commercial, (3) small and medium industrial, (4) large commercial and (5) large industrial. DLC St. 4 at 5. Each of the surcharges will be reconcilable and will accrue interest for any over or undercollections. Id. at 10. However, the Company proposes different reconciliation periods for the various surcharges. The surcharges applicable to residential, large commercial and large industrial customers will be subject to a one-time reconciliation in June 2013, at the conclusion of the 42-month implementation period of Act 129. Id. at 8-9. The surcharges applicable to small and medium commercial and small and medium industrial customers, by contrast, will be subject to annual reconciliation over the same time period. Id. Because the EE&C/DR Plan is expected to benefit both shopping and non-shopping customers, each of the surcharges will be non-bypassable. Id. at 10. It appears from witness Pfrommer's testimony that the surcharges will be included as part of the distribution rates for each customer class and will not appear as a separate line item on customers' bills. Id. at 11. Absent significant inter-class program fund shifting, Duquesne proposes to recover the costs of the EE&C/DR Plan on a levelized basis. In keeping with the requirement of Act 129, the Company states that it will implement its surcharges so as to recover costs as close as reasonably possible from the customer class receiving the benefit of a particular EE&C/DR program. Id. at 5.

The residential, small and medium commercial and small and medium industrial surcharges are designed to recover applicable program costs on a levelized cents per kWh basis. Id. at 8. The large commercial and large industrial surcharges, however, will recover applicable costs through the combination of a fixed monthly amount and a levelized dollar per kW charge. Id. at 9.

Duquesne has indicated that its Program Budget will vary over the 4-year course of the EE&C/DR Plan. In some program years, expenditures may exceed the annual 2% cost cap, while in other program years, expenditures may be less than the cap. DLC St. 1 at 9. Over the four program years, however, the total cost of the EE&C/DR Plan for all customer classes will not exceed $78.2 million.[7] Id.

a. The OCA Supports A Levelized Cost Recovery Mechanism, But it Should Be Without Interest on Over or Undercollections.

The OCA anticipates that Plan expenditures will vary, perhaps significantly, on a year by year basis. To provide more stability in customer rates, the Company is proposing to recover the same levelized amount each year from customers. This will allow the Company the flexibility to spend each year based on program ramp up needs, program success and market conditions (within the total spending cap) to maximize Plan implementation without undue volatility in customer rates. On this point, OCA witness Hill stated:

> Program expenditures are not uniform over the years, particularly as programs ramp up. This can create volatility in rates if rates change each year to reflect actual spending. To provide more stability for customer rates, the Company is proposing to recover the same amount each month from customers. I would recommend adoption of this approach, particularly for residential customers.

OCA St. 1 at 29-30. The OCA supports the levelized approach to cost recovery, particularly for residential customers. This will contribute to avoiding any undue volatility and confusion in rates.[8]

The OCA, however, does not support the Company's proposal to charge interest on any under or overcollection that may occur as a result of this levelization. DLC St. 4 at 10; Exh. WPV-10(Proposed Tariff) at Second Revised Page No. 100, Original Page Nos. 100A-100C.

---

[7] Duquesne witness Sandoe testified that the costs for the statewide Act 129 evaluator are not included within the Company's 2% cost cap calculation. See, DLC St. No. 1 at 10. However, the statewide evaluator costs, as estimated by Duquesne, are included in the calculation of each of the five surcharges. DLC St. 4 at 6-7.

[8] While the OCA generally favors a one-time reconciliation for residential customers as proposed by the Company, the OCA would caution that if a significant over or undercollection develops during the course of the program, the Company should discuss that development in the stakeholder process and seek a collaborative solution to the situation. It is the OCA's view that mid-course corrections should be considered if there are large deviations from the expected in order to avoid significant adjustments near the end of the Plan.

The spending constraint contained in the Act does not contemplate interest charges. In other words, the OCA submits that Duquesne has a four-year amount of $78.2 million that it can spend, not $78.2 million plus interest. Duquesne should not impose interest on the over and undercollections of its cost recovery mechanism, particularly if such interest would result in customers paying more than $78.2 million. Rather, Duquesne should ensure that all funds are used for program implementation and administration.

b. <u>The Costs of the Statewide Evaluator Must be Included Within the 2% Spending Cap.</u>

Section 2806.1 (g) of the Act, 66 Pa.C.S. § 2806.1(g), states that the *total cost of any [EE&C/DR] plan* is not to exceed the 2% cap. The OCA submits that the cost of the statewide evaluator represents a necessary cost of the EE&C/DR Plan and must be included under the cap. On this point, OCA witness Hill testified:

> The costs of evaluating the Company's approved energy efficiency plans are core costs required to meet the energy efficiency goals of Act 129. Each utility will incur a variety of costs in order to meet their usage and load reduction obligations under the Act. While recognizing that there would be considerable costs to meet these goals, the Act capped the costs of the program at 2% of 2006 revenues. I see no reason to exclude the costs of evaluating the effectiveness of the plan, from the general cost recovery scheme detailed in the Act.

OCA St. 1 at 30.

As an essential cost of carrying out the Plan, the OCA submits that Duquesne's EE&C/DR Plan budget must accommodate the costs of the statewide evaluator and Duquesne should include these costs within the $78.2 million capped spending level.

c. The Company Should Be Required To Bid Qualifying Energy Efficiency and Demand Response Resources Into The PJM RPM Auction And Credit Customers For The Value Received In The Cost Recovery Mechanism.

Beginning with the Auction conducted in May 2009, PJM has modified its Reliability Pricing Model (RPM) auction process to allow for the inclusion of energy efficiency and demand response resources. Qualifying energy efficiency and demand response resources can now bid into the PJM auctions as a capacity resource and if cleared, receive capacity payments. OCA witness Hill testified that Duquesne should bid its qualified resources into the RPM auction:

> I would like to encourage the company to consider bidding qualifying efficiency resources from their programs into the PJM Reliability Pricing Model (RPM), PJM's wholesale capacity market, which as of 2009 allows demand-side resources to participate. Efficiency programs that bid to provide peak demand reductions produced by their programs at prices that clear in the RPM auction will receive a commitment to be paid each month that those savings are available. Such capacity payments can then be returned to ratepayers though rate reductions, reducing the costs that customers must bear.

OCA St. 1 at 32-33. Accordingly, the OCA submits that Duquesne should be directed to explore this option and to bid its qualifying resources into the auctions. Capacity payments can provide a significant value that should be credited to all customers through the cost recovery mechanism to offset the costs they must bear under the Act.

C. CSP Issues

Not Applicable.

D. Implementation and Evaluation Issues

Not Applicable.

1. Implementation Issues

Not Applicable.

2. QA Issues

Not Applicable.

3. Monitoring and Reporting Issues

Not Applicable.

4. Evaluation Issues

Not Applicable.

E. Other Issues

1. On-Going Stakeholder Process

In its filing, Duquesne expresses its intention to continue the stakeholder process during the implementation of its EE&C/DR Plan. DLC St. 1 at 12. The OCA welcomes this expression and intends to participate in the on-going stakeholder process as its time and resources permit. The OCA found the initial stakeholder process to be useful in developing a more fully informed Plan and in resolving a number of issues presented by the requirements of the Act in a beneficial manner. The OCA submits, however, that the Commission should include some additional detail regarding the stakeholder process in Duquesne's Plan and its Order to ensure that the process continues on a regular basis and provides a reasonable means of addressing Plan implementation and any needed Plan modifications. With respect to an ongoing stakeholder process OCA witness Hill stated:

> …the plan did not adequately discuss establishment of a robust and on-going stakeholder engagement process. The benefits of this [such a process] can include transparency, collaboration and information sharing, leading to improvements program design, development, implementation, reporting and evaluation.

OCA St. 1 at 25.

The OCA submits that the stakeholder process should include meetings, at a minimum, on a quarterly basis during the Plan implementation. The Company should provide the stakeholders with necessary information regarding Plan implementation, including reports on the progress of selecting Conservation Service Providers, the expected costs, the progress toward implementation, penetration rates and savings levels achieved to date, and cost recovery to date. The OCA would also expect that the Company would work with the stakeholder group to review implementation issues, program issues that arise, educational or promotional materials that are being developed so that the stakeholders can provide their input. Other information and exchanges would also be included within the process, such as information regarding American Recovery and Reinvestment Act (ARRA) funding or any new legislation that impacts the EE&C/DR Plan. The OCA recommends that as with the initial stakeholder process, the process remain an open exchange of ideas and information.

The OCA commends Duquesne for its stakeholder efforts and its willingness to continue this process. Given the significance of the effort needed to implement the EE&C/DR Plan in a cost-effective manner for all customers, the OCA urges that the commitment to the process be formalized so that all stakeholders can count on continuing to make contributions to the EE&C/DR Plan.

2. Mid-Course Corrections

Duquesne witness Sandoe states that the Company will monitor the implementation of the EE&C/DR Plan to determine whether programs are achieving results in line with Company expectations. Based on its review, the Company may modify individual programs or projects, as needed, to better achieve the Plan's goals. DLC St. 1 at 9.

Similarly, Duquesne anticipates moving budgeted dollars within a customer class, or between customer classes, if it finds that the resources would provide a better benefit and return as a result of the move. DLC St. 2 at 14. If interclass fund shifting occurs, Duquesne acknowledges that adjustments to the surcharge rates may be needed. DLC St. 1 at 9. Duquesne will make appropriate adjustments to the reconciliations and balancing accounts to ensure that no cross-class subsidization occurs. DLC St. 2 at 14.

The OCA agrees with Duquesne that such mid-course corrections should be considered so that large changes in cost recovery or program participation are not required near the end of the process. The OCA recommends that the need for any mid-course corrections be considered through the stakeholder process in the first instance. This process should assist the Company in determining whether program changes are needed either within a class or between classes and can assist in determining whether any mismatch between spending and collection is becoming unduly large.

The Company has indicated that minor changes to programs or projects will be ongoing and will be reported to the Commission in the agreed upon reporting period for Duquesne's Plan. Major changes, however, will be presented formally to the Commission for review and approval. Tr. at 119. The OCA does not object to such a process.

VI. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission approve Duquesne's EE&C/DR Plan subject to the recommendations set forth in this Main Brief.

VII. PROPOSED ORDERING PARAGRAPH

THEREFORE, IT IS ORDERED:

1. That Duquesne implement its EE&C/DR Plan with the following modifications:

   a. Duquesne is directed to examine the rebate levels established for its energy efficiency programs to determine if there could be greater consistency with other Pennsylvania EDCs;

   b. Duquesne is directed to further examine the energy savings potential associated with residential furnace fan replacement;

   c. Duquesne is directed to investigate the anomalies in the data underlying its Residential Energy Efficiency Rebate Program that have been specified in this Order and make appropriate programmatic changes if the data prove to be in error;

   d. Duquesne is directed to consider adding a new construction/renovation component to its Commercial and Industrial energy efficiency and conservation programs;

   e. Duquesne is directed to examine the potential for identifying and adding other high-value subsectors to its targeted Commercial and Industrial energy efficiency programs.

   f. Duquesne is directed to focus its spending for its Commercial and Industrial energy efficiency programs on achieving the energy savings levels in line with those mandated by Act 129.

   g. Duquesne is directed to explore opportunities for greater collaboration with local natural gas distribution companies to maximize the effectiveness of its energy efficiency and conservation programs.

2. That Duquesne work with other Pennsylvania EDCs to negotiate incentives with Compact Fluorescent Lightbulb manufacturers and distributors;

3. That Duquesne not charge interest on over or undercollections of its EE&C/DR Cost Recovery Mechanism.

4. That Duquesne include the cost of the statewide evaluator within its $78.2 million spending cap.

5. That Duquesne bid any qualifying energy efficiency and demand response resources into the PJM RPM auction and credit customers, through the cost recovery mechanism, for the value received for such resources;

6. That Duquesne continue its stakeholder process and conduct at least quarterly meetings during the EE&C/DR Plan implementation period.

Respectfully Submitted,

David T. Evrard

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

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

Dated: August 31, 2009

CERTIFICATE OF SERVICE

Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Response Plan	:	Docket No. M-2009-2093217

I hereby certify that I have this day served a true copy of the foregoing document, Enclosed for filing is the Main Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 31st day of August 2009.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Charles Daniel Shields, Esquire
Adeolu Bakare, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for: *Office of Trial Staff*

SERVICE BY E-MAIL and FIRST CLASS MAIL

Gary A. Jack
Assistant General Counsel
Duquesne Light
16th Floor
411 Seventh Avenue
Pittsburgh, PA 15219
Counsel for: *Duquesne Light Company*

Sharon E. Webb
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for: *Office of Small Business Advocate*

Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17108-1248
Counsel for: *Direct Energy Business, LLC*

Pamela Polacek, Esquire
Shelby A. Linton-Keddie, Esquire
Barry A. Naum, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Counsel for: *Duquesne Industrial Intervenors*

Scott Perry, Assistant Counsel
Aspassia V. Staevska, Assistant Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
Counsel for: *Department of Environmental Protection*

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie J. Tambolas, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
Counsel for: *Field Diagnostic Services, Inc and Constellation NewEnergy, Inc.*

Pamela Polacek, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Counsel for: *ClearChoice Energy*

George Jugovic, Assistant Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Counsel for: *Department of Environmental Protection*

Harry S. Geller, Esquire
John C. Gerhard, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
Counsel for: *Pennsylvania Association of Community Organizations for Reform Now*

Theodore J. Gallagher
Senior Counsel
NiSource Corporate Services Company
501 Technology Drive
Canonsburg, PA 15317
Counsel for: *Columbia Gas of Pennsylvania, Inc.*

Daniel L. Frutchey
Chief Regulatory Officer
Equitable Distribution
225 North Shore Drive
Pittsburgh, PA 15212-5861
Counsel for: *Equitable Gas Company*

Lillian S. Harris
Thomas J. Sniscak
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17101
Counsel for: *The Peoples Natural Gas Company d/b/a Dominion Peoples*

Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500
Counsel for: *Equitable Gas Company.*

Scott H. DeBroff, Esquire
Rhoads & Sinon, LLP
Twelfth Floor
One south Market Square
Harrisburg, PA 17108-1146
Counsel for: *EnerNOC, Inc*

David T. Evrard

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

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

00114542.docx