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August 31, 2009

Via Electronic Filing

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
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 Duquesne Light Company in the above-referenced proceeding.

Sincerely yours,

Gary A. Jack

Enclosure

cc: All parties listed on the Certificate of Service
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**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Duquesne Light Company | : | |
| Energy Efficiency and Conservation | : | Docket No. M-2009-2093217 |
| Program | : | |

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**MAIN BRIEF ON BEHALF OF DUQUESNE LIGHT COMPANY**

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Dated August 31, 2009

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**BEFORE THE**

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**MAIN BRIEF OF APPLICANT/RESPONDENT**
**DUQUESNE LIGHT COMPANY**

AND NOW comes Applicant Duquesne Light Company ("Duquesne," "DLC" or "Company"), and files its Main Brief in accordance with Administrative Law Judge Fred R. Nene's Prehearing Order Scheduling the Filing of Briefs, dated July 30, 2009:

## I. Introduction

On June 30, 2009, Duquesne filed a petition seeking Commission approval of its Energy Efficiency and Conservation Program. Specifically, Duquesne requested the Commission to approve its Energy Efficiency and Conservation and Demand Response Plan, approval of the plan budget as well as customer surcharges for recovery of the plan costs to be effective December 1, 2009.

## II. Procedural History

On October 15, 2008, Governor Rendell signed into law Act 129 of 2008 ("Act 129"), which took effect on November 14, 2008, and, inter alia, established an energy efficiency and conservation program. Act 129 provides that each Pennsylvania electric distribution company ("EDC") with at least 100,000 customers is required to adopt a Commission approved plan to reduce electric consumption by at least one percent (1%) as of May 31, 2011, and a minimum of three percent (3%) by May 31, 2013, of its expected consumption for June 1, 2009 through May 31, 2012, with adjustments for weather and extraordinary loads. Additionally, each Commission approved EDC plan shall result in a minimum reduction of four-and-a-half percent (4.5%) of annual system peak demand on the 100 hours of highest demand for that EDC, measured against the EDC's peak demand for June 1, 2007 through May 31, 2008.

Act 129 required the Commission to adopt an energy efficiency and conservation program by January 15, 2009. To meet that goal, the Commission issued a Secretarial Letter on October 21, 2008, seeking comments on each of the program components as set forth at 66 Pa. C.S. §2806.1(a)(1)-(11). The Commission further scheduled a special en banc hearing on November 19, 2008 to gather additional testimony and comments related to the energy efficiency and conservation program established by law, as well as general information on alternative energy, energy conservation and efficiency and demand side response. Comments and testimony were provided by numerous stakeholders. A draft staff proposal coupled with further questions concerning implementation of Act 129 was circulated by the Commission on November 26, 2008, with a response date of December 8th in preparation for a working group meeting held on December 10, 2008. Reply comments were solicited by December 19th, following the working group meeting.

The Commission timely adopted its Implementation Order at Docket No. M-2008-2069887 ("Implementation Order") on January 15, 2009. The Implementation Order outlined the Energy Efficiency and Conservation program pursuant to Act 129, so as to enable EDCs to file individual Energy Efficiency and Conservation plans by July 1, 2009. The Implementation Order also encouraged EDCs to conduct a collaborative process during the development of their plans in order to receive input from stakeholders. Duquesne held an initial meeting on April 3, 2009, in Pittsburgh, PA, where it presented a detailed overview of the Act 129 requirements as well as the Company's work to date. Additionally, Duquesne held follow-up meetings with subgroups representing residential, commercial and industrial customers on April 21, 22, and 23, in order to continue the dialogue as the Company developed programs for each customer class. Duquesne also held a subgroup meeting concerning demand response on April 21.

Pursuant to the Implementation Order, Duquesne submitted its consumption forecast with the Commission on February 9, 2009. The Commission approved the forecasts submitted by each EDC in its Order entered March 30, 2009, at Docket No. M-2008-2069887 ("Forecast Order"). On May 7, 2009, the Commission issued a Secretarial Letter which provided an EE&C plan template to be used in preparing and filing each EDC plan. Thereafter, on May 28, 2009, the Commission adopted Standards for the Participation of Demand Side Management Resources in an updated Technical Reference Manual ("TRM") at Docket No. M-00051865 ("TRM Order"). The manual was to be used by EDCs as a guide in evaluating the savings impacts of the different aspects of their plans. On June 18, 2009, the Commission adopted a Total Resource Cost ("TRC") test at Docket No. M-2009-2108601 ("TRC Order") in adherence to 66 Pa. C.S. 2806.1(b)(1)(i)(I), which provides that EDCs must demonstrate that their plans are cost-effective using the TRC test and the plans provide a diverse cross section of alternatives for customers in all rate classes.

On June 30, 2009 Duquesne submitted a Petition (the "Petition") for Approval of its Energy Efficiency and Conservation and Demand Response Plan ("EEC&DR Plan" or "Plan"). This filing is voluminous detailing much of the research and analysis of the possible programs analyzed and those ultimately selected. It is broken into parts as follows: (1) PUC Template for PA EDC EE&C Plans completed by Duquesne,[1] (2) the Direct Testimony of Michele Sandoe, Thomas Crooks, Larry Barrett and William Pfrommer, and (3) Energy Efficiency and Demand Side Response Study by MCR Performance Solutions, LLC.[2]

On July 2, 2009, Administrative Law Judge Fred R. Nene (the "ALJ") issued a Notice scheduling a Prehearing Conference for July 28, 2009. On July 30, 2009, the ALJ issued a Prehearing Order adopting a litigation schedule. On August 5, 2009, Public Input Hearings were held in Pittsburgh, Pennsylvania, at 2:00 and 7:00 p.m. On August 7, 2009, the ALJ issued a second Prehearing Order, declaring that no written rebuttal or surrebuttal testimony would be permitted in this matter. An Evidentiary Hearing was held in Harrisburg on August 19, 2009.

## III. Description of EDC Plan

Duquesne's EEC&DR plan combines both energy efficiency and conservation measures with demand response measures in programs that reduce consumption and demand for each customer class. Duquesne researched information about target markets and technology applications capable of producing cost-effective impacts at customer locations throughout Duquesne's service territory. Duquesne analyzed this detailed information about customer populations in the residential, commercial and industrial sectors. This included actual residential dwelling types, commercial building stock floor space and industrial market segment energy

[1] For citation purposes in this Main Brief, this document is referred to as the "Plan"
[2] For citation purposes in this Main Brief, this document is referred to as the "Study"

end-use in order to assess which programs would work best within each customer segment. In addition to this extensive research, Duquesne solicited input from stakeholders in each of the three customer segments. With this research and customer input, Duquesne developed programs that it believes will achieve Act 129's goals.

Duquesne is proposing a portfolio of programs structured under three broad "umbrella" programs: residential, commercial and industrial. The umbrella programs provide incentives for a full range of measures to assist residential, commercial and industrial energy customers of all sizes and in all key market segments. The umbrella programs put in place a baseline program design, with set incentive levels and forecasted conservation levels. The umbrella programs are designed as an overarching programmatic structure, with calculated incentives for customized projects or itemized incentives for standard measures. For example, in the industrial sector, Duquesne will provide specialized services for primary metals and chemical customer segments while for residential customers it will offer more standardized programs.

Based on the analysis, Duquesne is recommending Commission approval of the following Energy Efficiency/Conservation Programs:

- Residential Energy Efficiency Rebate Program
- Residential School Energy Pledge Program
- Residential Refrigerator Recycling Program
- Residential Solar Photovoltaic Program
- Commercial Umbrella Program and Subprograms, including:
    - Office Buildings
    - Retail
    - Healthcare
    - Governmental/Non-profit including education
        - Public Agency Partnership Program
- Industrial Umbrella Program and Subprograms, including:
    - Primary Metals
    - Chemical
    - Mixed Segments

Based on the analysis, Duquesne is recommending Commission approval of the following demand reduction programs:

- Residential Direct Load Control for Air Conditioners and Electric Water Heaters Program
- Commercial and Industrial Direct Load Control Program for Small and Mid-sized Accounts (<300 kW)
- Commercial and Industrial Curtailable Load Program for Large Accounts (>300 kW)

The Company believes its plan will meet the Act 129 energy and demand reduction requirements, at a total overall cost of approximately $78.2 million over the life of the Plan, which represents 2% of the Company's combined revenues as of December 2006, multiplied by four to reflect the four year duration of the Plan. The plan is divided by program costs per customer class by year, with the proposed total amounts being approximately $13.2 million for 2009-2010; approximately $21.2 million for 2010-2011; approximately $21.7 million for 2011-2012; and approximately $22.1 million for 2012-2013.

## IV. Summary of Argument

The Commission should accept Duquesne's plan because it satisfies the statutory requirements of 66 Pa. C.S. §2806.1(b)(1)(i)(A)-(K), including the requirement to provide programs that are believed to achieve the energy savings and demand reductions mandated by Act 129.

## V. Argument

### A. Act 129 Conservation and Demand Reduction Requirements

Duquesne's plan is expected to achieve or exceed the energy savings and demand reductions mandated by Act 129.

#### 1. Overall Conservation Requirements

##### a. 2011 Requirements

Duquesne's plan provides for conservation reductions to meet the required amount of 1% by May 31, 2011. According to the statute, the 1% load reduction in consumption shall be measured against the EDC's expected load as forecasted by the Commission for June 1, 2009 through May 31, 2010, with provisions for weather adjustments and extraordinary loads that the EDC must serve. 66 Pa. C.S. §2806.1(c)(1). For Duquesne, the 1% reduction is 140,855 megawatt-hours. Forecast Order at 3.

### b. 2013 Requirements

Duquesne's plan provides for conservation reductions to meet the required amount of 3% by May 31, 2013, which is also measured against the EDC's expected load as forecasted by Commission for June 1, 2009 through May 31, 2010, with provisions for weather adjustments and extraordinary loads that EDC must serve. 66 Pa. C.S. §2806.1(c)(2). Duquesne's 3% target reduction is 422,565 megawatt-hours. Forecast Order at 3.

## 2. Overall Demand Reduction Requirements

Duquesne's plan also provides for the required demand reduction in the amount of 4.5% percent of annual system peak demand in the 100 hours of highest demand to be met by May 31, 2013, which is to be measured against the EDC's peak demand for June 1, 2007, through May 31, 2008. 66 Pa. C.S. § 2806.1(d)(1). Duquesne's 4.5% reduction is 113 Megawatts. Forecast Order at 5.

## 3. Requirements for a Variety of Programs Equitably Distributed

Duquesne's plan adheres to the requirements for a variety of programs equitably distributed. The Commission did not require a proportionate distribution of measures among customer classes; rather, it directed EDCs that each customer class be offered at least one energy efficiency and one demand response program, leaving the initial mix and proportion of energy efficiency and demand response programs to the EDCs. Implementation Order at 23. The Company included at least one energy efficiency and demand response program for each customer class, in accordance with the Implementation Order. In fact, Duquesne's Plan offers 23 different programs distributed across all customer classes. DLC Exhibit No. 1, Plan at 165-169. Duquesne is confident in its proportion of energy efficiency and demand response programs because of the planning process, benchmarking data, and experiences gained from other energy service providers throughout the nation. The valuable lessons learned about what has been effective elsewhere were applied to the specific information relative to Duquesne's customers. With all of this in mind, the Company ultimately made decisions to include or exclude particular measures within its plan to achieve the mandated reductions in cost-effective ways that are consistent with customer interests.

**4. 10% Government/Non-Profit Requirement**

The Act requires that a minimum of ten (10%) percent of all consumption reduction requirements are to come from units of the federal, state and local governments, including municipalities, school districts, institutions of higher education and nonprofit entities. 66 Pa. C.S. § 2806.1(b)(1)(i)(B). Duquesne began working directly with regional local governments shortly after the Act 129 Stakeholder meetings in an effort to tailor the EEC&DR programs to meet segment specific needs. In preparation for program launch, Duquesne executed memoranda of understanding with several key local public agencies and identified project areas for EEC&DR services. The Public Agency Partnerships established through the execution of a memorandum of understanding ("MOU") puts in place dedicated contacts and a working group structure to identify and evaluate energy efficiency project opportunities within all governmental departments and sub-agencies. Duquesne believes that its Public Agency Partnership Program will achieve the required 10% consumption reductions according to the Act. DLC Exhibit No. 1, Plan at pages 77-78 and in the Study at pages 59-61.

**5. Low Income Program Requirements**

The Act requires each EDC plan to include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines and 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)(G). Duquesne adhered to the Act's Low Income Program Requirements in its Low Income Energy Efficiency Program (LIEEP). LIEEP is an income-qualified program that provides services designed to assist low-income households to conserve energy and reduce electricity costs. This program adopts the local government energy efficiency partnership strategy that leverages local agency staff to reach, pre-screen and enroll participants. Duquesne and the agency share or co-fund the specified program costs. DLC Exhibit No. 1, Pages 36-39 of the Plan, and 49-51; 70-73 of the Study.

**6. Issues Relating to Individual Conservation and Demand Reduction Programs**

DEP objected to Duquesne's Plan to the extent Duquesne would count energy savings derived from projects that may have state or federal funding associated with them. Tr. at 117, DEP Statement No. 1 at 5. The Commission has previously decided this issue, finding that credit will be given to reductions no matter how funded or by whom Additionally, 66 § 2806.1(A)(3) requires EDCs to implement energy efficiency and conservation programs that are cost-effective in accordance with a Total Resource Cost test approved by the Commission. In its TRC Order, subsection "(f) Savings Claims from Act I Programs and Act 129 Programs" conveys that customers can simultaneously participate in both Act I and Act 129 programs. The PUC goes on to state,

> This raises the issue as to how the savings benefits will be attributed to the two programs. . . As a practical matter, it would be very difficult and time consuming to determine on a case-by-case basis the precise role an Act 1 incentive/rebate versus an Act 129 incentive/rebate played in motivating the customer to participate in the program. Thus, it would be virtually impossible to determine how to attribute savings to each program in proportion to the degree of motivation each incentive played in the customer's decision. . . For the purposes of TRC testing, if the end-use customer is a recipient of an Act 1 incentive or rebate for the same equipment or service, we conclude that the entire savings of that equipment or service can also be claimed by the EDC for TRC testing purposes. TRC Order at 24-25.

Beyond the clear direction under the Commission's Order, Duquesne argues that Act 129 does not mandate ***who*** pays for the energy reductions. Whether customers pay for a large part of energy reductions or government tax dollars pay for part of the reductions is not relevant – the goal is to reduce energy usage. If a customer pays for the reduction, Duquesne does not have to discount its reportable savings impacts, so why should Duquesne lose reportable savings impacts if it indirectly receives funds to assist in energy reduction goals? Nothing prohibits Duquesne from taking credit for energy usage reductions that may be accomplished, in part, through the use of federal or state funds.

Additionally, DEP's objection has no factual basis because Duquesne's plan does not propose that any federal or state funds replace Act 129 funds through the surcharge nor does Duquesne's plan restrict the sources of funds that customers can use. Tr. at 228. Furthermore, Duquesne and DEP are in agreement that it is better to work together to receive federal funds than compete – for the betterment of all Pennsylvania utility customers and statewide energy reduction goals. Tr. at 229.

It is worth noting that other incentives may affect customer decisions besides those from Duquesne and from government programs. For example, customers may receive incentives to purchase higher efficiency models of equipment from manufacturers, distributors or contractors.

For Duquesne to adjust estimated savings based on the source of funds by customers to underwrite their investment would be unduly complex. The Commission previously decided that it would be too complicated to separate which energy savings came from Act 1 versus Act 129. It could create additional burdens upon customers to provide such funding information that could inhibit participation. Obtaining such information from customers could also raise issues about confidentiality and privacy.

**a. Residential**

DEP advocated for statewide whole-house approach with audits to be added to Duquesne's Plan. DEP Statement No. 1 at 17-18. Duquesne rejects this recommendation for several reasons. The building stock in Duquesne's service territory is unique – it is a building stock where there is only a mere 5% market share in electric space heating and a 10% market share in electric water heating. Tr. at 147. Also of note, approximately 29% of the housing stock has central air conditioning.[3] With this building stock, a homogenous whole house audit program imposed statewide would be an overly expensive program design for Duquesne's plan. Tr. at 147. Duquesne is promoting implementation of programs that address energy efficiency potential *where it exists. Only 5%* of the building population would achieve cost effective benefits from a whole house audit fully funded by Duquesne. Clearly, under any mandated statewide whole-house audit for all customers/participants, Duquesne would be significantly overpaying for the value of electric efficiency gain. Id. This would be a wasteful of ratepayer funds. For example, if Duquesne took an all-electric home that went through a whole-house audit, Duquesne would achieve approximately 73% of the reductions from space heating, 8% of the reductions from water heating, and 19% of the reductions from appliances and lighting. Id. If, as most of the housing stock in Duquesne's territory is, the space/water heating is gas or some fuel other than electricity, Duquesne would *only achieve 19%* of the associated potential. Tr. at 148. For these reasons, Company Witness Crooks raised a concern that a statewide program imposed on Duquesne requiring it to pay for whole house audits, regardless of the presence of

[3] Central air-conditioning (CAC) applicability in pre-1978 regional housing stock is 18%; 90% in post 1978 housing stock (Study Attachment 1 Residential Sector Forecast Assumptions beginning at page 215); regional housing stock vintages are identified as 84.9% pre-1978; 15.2% post-1978 (Study page 21). This results in an estimated CAC saturation of 28.8%

electric load and the potential for electric energy efficiency gain, would cause Duquesne to overpay relative to the amount of electric energy saved. Id.

Accordingly, Duquesne agrees that a whole house audit may be cost-effective if the house is all electric, but because the majority of Duquesne's service territory does not contain all electric housing stock, the whole-house audit would not be cost-effective for its Plan. Id.

Additionally, Duquesne is limited in what it can spend on the energy efficiency and conservation programs. Company Witness Crooks compared the cents per annualized kilowatt-hour in program funding to nationally benchmarked levels – Duquesne is at $0.12[4] per kilowatt-hour where most programs range between $0.20 to $0.40 per kilowatt-hour. A whole-house performance program based on the conduct of whole-house audits may provide a comprehensive evaluation, but such programs have proven costly when compared to other types of utility funded programs. For instance, Duquesne's analysis indicates comparable cost for whole-house performance programs are between $0.37 and $1.10 per annualized kWh ($0.37 per kWh for electric only measures in a dwelling with natural gas space and water heating, $1.10 per kWh in an all-electric dwelling).[5] Subsequently, Duquesne's already "skinny" program cannot risk spending money as the DEP suggests for the whole-house audit; it must focus spending money on implementing electric efficiency, or the mandated reductions will not be met. Tr. at 148-149.

The Company's Plan includes whole-house audits to be provided to customers through the Low-Income Energy Efficiency Program (LIEEP), implemented through the public agency partnership programs. Company Witness Crooks stressed that a LIEEP implemented in concert with the public agency partnership program was benchmarked to leverage local government resources and infrastructure to access their constituency and implement energy efficiency measures. This approach renders cost-effective programs to the low-income sector supporting larger programs than typical low-income programs provided to ensure low-income rate class equity. Tr. at 166-167.

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[4] Projected annualized energy savings for the Residential Energy Efficiency Rebate Program and Refrigerator Recycling Program in program years 2009 through 2012 is 129.789 million kWh and project program costs are $15.283 million; program cost per kWh is $0.117.

[5] Annualized savings estimates of 3,997 kWh are based on PRSM (Princeton Scorekeeping Method), analysis of whole-house weatherization of 200 all-electric homes; assumed auditing cost is $500; installed measure cost is $3,030, utility administration cost is $880; total cost $4,410 or $1.10 per annualized kWh. 19.1% of total annual energy savings come from electric appliance and lighting measures or 764 kWh. Proportional share of the audit cost is $95, electric measure cost is $130, and utility administration cost is $55; total cost is $281 or $0.37 per annualized kWh

**b. Commercial**

DEP suggested that EDC plans "could result in adverse environmental impacts by allowing diversion of demand from power plants where stringent controls exist to less-well controlled distributed generation units." DEP Statement No. 1 at 23. It goes on to presume that more frequent use of such generation units may result in an increase in per unit emissions. Id. In oral rebuttal testimony, Company Witness Barrett disagreed, stating "as long as a generator participates in [Duquesne's] curtailable load program and complies with the environmental rules, that would be acceptable from our perspective." Tr. at 193-194.

One method of achieving peak load reductions is for the customer to operate standby or emergency generators. These distributed generation units are commonly found in critical facilities such as hospitals, airports, water treatment plants, wastewater treatment plants, military bases, telecommunication centers, mining operations and large facilities in general. Tr. at 193. Duquesne expects to rely on the third party contractor to sign up participating customers for the curtailable load program. Tr. at 188. Duquesne expects these customers to achieve their load reductions through such practices as reduced air conditioning, lighting, ventilation, refrigeration, cooking, water heating and manufacturing operation. DLC Statement No. 3 at 9. There is also the possibility that the third party contractor will recruit participants that may contribute distributed generation resources as a way to reduce load on the electric system. Tr. at 195. As long as such distributed generation meets environmental and other permitting requirements, Duquesne expects to accept such resources as part of the program. Tr. at 194.

Duquesne believes standby generators are an important part of the curtailable load program, and if a customer wants to include them, the curtailment service provider wants to include them, and they comply with all permitting and environmental requirements, then there is no reason for DEP to be concerned, let alone prohibit distributed generation from Duquesne's Plan. Tr. at 194. Moreover, DEP regulates the air emissions and permitting process, so it should not complain over perceived increased emissions from the very sources it regulates and permits. Tr. at 233.

**c. Industrial**

There were no issues regarding the industrial sector.

### 7. Proposals for Improvement of EDC Plan

The OCA recommended that Duquesne scale-back the proposed plan savings. OCA Statement No. 1 at 3. Company Witness Crooks explained why the projected program impacts exceeded the mandated requirements at the Evidentiary Hearing. The programs were planned on an annual basis, and the first full program year will be program year 2010, starting June 1 through May 31, 2011. Duquesne did not feel it could count heartily on 2009's impacts due to the many uncertainties, such as start-up, approvals, time needed to educate customers, customer acceptance, and other uncertainties. With that in mind, Duquesne had to in one full program year achieve the May 31, 2011 mandated reductions. Given this as a design requirement, Duquesne had to be able to achieve and design programs to achieve the mandated reduction in one year, not including the 2009 impacts. Tr. at 145-46. While the impacts provided appear to exceed the mandated targets, they are based on significant assumptions for 2009. Tr. at 146. Duquesne's uncertainty with regard to 2009 impacts juxtaposed with having the confidence that it *can* achieve the mandated reductions within the single 2010 program year to meet the 2011 goals -- shows that Duquesne does not believe it is overshooting. In other words, the ability to achieve the projected savings impacts for 2010 program year is 160 million kilowatt-hours and the mandated reductions by May 31st 2011 is 140 million kilowatt-hours. With no basis to know what will happen with ramp-up in 2009, this is a conservative approach to planning. Tr. at 146.

#### a. Residential

ACORN recommended that Duquesne address electric space heaters as part of its Plan. ACORN Statement No. 1 at 8. Duquesne agrees that electric space heating can be inefficient and a potential safety hazard; however, Duquesne also believes that the most appropriate way to address the situation of electric space heating is within its Smart Comfort or LIURP program. Duquesne currently utilizes Smart Comfort aka LIURP to address space heating issues and needs. Duquesne would be interested in reviewing whether Smart Comfort can and should be expanded As far as adding a space heating component to the Plan, Duquesne believes that it would only lead to confusion and inconsistency. Tr. at 122.

OCA believed there was a gap in the Company's program portfolio in that there was an absence of residential furnace fans. OCA Statement No. 1 at 18. After review of the high-efficiency furnace fan measure savings impacts and cost-effectiveness, Duquesne found that it had made an error in its TRC calculations on furnace fans. With the correction, Duquesne now agrees with the OCA and will modify its residential program mix to include high-efficiency furnace fans.

#### b. Commercial

The OCA also believed there was lack of new construction in Duquesne's non-residential portfolio regarding C&I new construction program. OCA Statement No. 1 at 18. Duquesne agrees that new construction programs are an important part of energy efficiency program portfolios, but its program is based on analysis of energy efficiency, technical, economic and achievable potential, and found that 95% of commercial efficiency gain potential in Pennsylvania is from the retrofit of existing building stock. Tr. at 144. The 95% was pulled from the most recent (April 2009) study completed by the American Council for Energy Efficiency Economy ("ACEEE"). Company Witness Crooks explained that because 95% of the potential gain is associated with retrofit and because of the significant, aggressive targets Duquesne must achieve, the focus was on the 95%. Tr. at 144. One more element Duquesne considered was the very short period of time to ramp up and achieve the 2011 goal. Nonresidential new construction programs typically engage the design build community through architectural vignettes and design competitions (long sales cycle activities). Duquesne has approximately 17 months to achieve the mandated targets and does not believe it could achieve market penetration even if it chose to target the small 5% potential for efficiency gain. Tr. at 144-145.

#### c. Industrial

There were no proposals regarding the industrial sector.

## B. Cost Issues

### 1. Plan Cost Issues

OSBA and DII suggested a separate line item on the bill to show the EEC&DR surcharge. OSBA Statement No. 1 at 7-8; DII Comments at 34-35. Duquesne performed customer research and evaluation in the late 1990's and early 2000's and found that customers preferred a simpler bill that was easy to understand. Based on this preference, Duquesne proposed, in its filing, to roll the surcharge into the existing distribution rates as opposed to a separate line item. Tr. at 207. However, Duquesne would have no objection to placing the surcharge on customer bills as a separate line item if that is the preference of the Commission or the statutory parties. Duquesne believes, however, that it should treat all customers the same for billing administration -- either list the surcharge for all customers or do not list the surcharge separately for all customer classes and just roll the charge into base rates.

Although the issue of budget funding by year was not brought up at the Evidentiary Hearing, Duquesne would like to explain the calculation for annual funding of its plan. The language in 66 Pa. C.S. §2806.1(g) states, "the total cost of any plan required under this section shall not exceed 2% of the electric distribution company's total annual revenue as of December 31, 2006." Duquesne interprets "the total cost of any plan" to mean the 4-year cost of the plan. Therefore, Duquesne used the 2% limitation as a way of calculating the total amount of funds it could spend over 4 years. Duquesne does not find this section of the statute to limit EDCs to spend exactly 2% each year of the four year plan. Therefore, the annual budget swings will average out to 2% spending each year.

**2. Cost Effectiveness/Cost-Benefit Issues**

The OSBA raised a concern regarding the matching of costs of the incentives to those who pay for them in Duquesne's Plan. In testimony, it states, "Duquesne's programs do not properly match the costs of the program with the customers who pay for the program." OCA Statement No. 1 at 9. The OSBA fails to mention a specific program or set of programs in the Plan where this issue purportedly exists. Duquesne believes that the incentives offered are matched as well as they can be under the circumstances of the Plan. If the Company later finds that the OSBA issue does in fact exist somewhere within its programs, it can always propose specific modifications if needed.

**3. Cost Allocation Issues**

The OSBA raised concerns involving the allocation of costs. Specifically, OSBA wanted modification to costs being recovered from classes that benefit from the programs. More specifically, OSBA was fearful the proposed allocation method for plan-wide administrative costs as well as statewide evaluator costs will be proportional to the assigned program costs rather than proportional to program benefits and sales. OSBA Statement No. 1, at 4-5. In response to the OSBA's concerns, Duquesne provided clarification through Witness Crooks' oral rebuttal testimony on pages 157-160 of the Transcript. Duquesne believes that based on this clarification, this OSBA issue is resolved.

**4. Cost Recovery Issues**

OTS proposed a non-symmetrical interest adjustment to cover the over/under-collection, with any over-collections being refunded with the statutory rate plus two percent. OTS Statement No. 1 at 20-21. Duquesne strongly opposes this suggestion. The Company's position in regard to interest is to refund over-collections as well as a surcharge for under-collections at the statutory rate of 6%. Tr. at 206. This is how the current adjustments are made for Duquesne's other two trackers in place today – the Duquesne Transmission Service Charge as well as the Duquesne Consumer Education Surcharge. There are true-ups with the same interest rate for both under and/or over collections. Tr. at 207. Duquesne believes this is the most equitable approach, and does not believe a non-symmetrical approach is justified. Duquesne believes the purpose of the EE&C tracker is to make utilities whole for their costs. Applying two different rates to over and under collections does not accomplish that goal.

OCA suggested a symmetrical approach but believed it should be 0% since the statute did not specifically address interest. OCA Statement No. 1 at 30. Duquesne believes that even though the statute did not dictate such details as interest on under or over recoveries, that the PUC has authority to set such ratemaking details.

Both OTS and DII agreed with Duquesne's proposed cost recovery timing--- specifically, the Residential and Large C&I Customers' costs being reconciled on a one-time basis in June, 2013 and the Small and Medium C&I Customers being reconciled annually. OTS Statement No. 1 at 12, DII Comments at 15. DII noted in its statement that Duquesne's filing did not propose to extend any program beyond May 31, 2013. DII Comments at 15. OTS asked a similar question of Company Witness Pfrommer on cross-examination. OTS requested that in the event the programs continue beyond 2013, there would be some method for reconciliation. Tr. at 218. Duquesne agrees that it would come up with a method for reconciliation, and requested flexibility in doing so. Id.

## C. CSP Issues

DII, ClearChoice, and EnerNOC had related concerns regarding CSPs. DII sought clarification on whether Duquesne would allow customers utilizing their existing PJM CSPs to participate in Duquesne's Large C&I demand response program. DII Comments at 20. Witness Barrett elaborated on the PJM relationship and their demand response programs as related to Duquesne's proposed programs. The Company sees its curtailable load program as adding another layer or supplementing those PJM programs, so it does not see the curtailable load program for Large C&I customers as displacing but rather adding to and enhancing those PJM programs. Tr. at 188. Duquesne also clarified that it expects to use a third party Curtailment Service Provider to implement this Large C&I curtailable load program, and expects that third party to qualify both as a PJM Curtailment Service Provider as well as a PUC Conservation Service Provider. Id. Duquesne plans to go through a RFP process, and depending on how the proposals come in and the evaluation made on cost, scope, responsiveness and various other criteria, Duquesne will decide whether it will have one CSP managing this program on Duquesne's behalf or more than one. Tr. at 189. A customer could participate in both the PJM demand-side reduction program and the Duquesne demand-side reduction program. However, Duquesne would be careful not to double count or double dip – for instance if a large multi-site customer is participating now with certain buildings in PJM's program then decides it would like to add another set of buildings using Duquesne's programs, that would certainly be allowed and encouraged. In this situation, the first set of buildings would participate under the PJM program and the additional buildings could participate under the Duquesne curtailable load program. Id.

ClearChoice raised a concern that Duquesne would only select one CSP, so the Company clarified that it intends to go through a RFP process and could select one or several CSPs. Duquesne's report speaks to a curtailment service provider serving as a third party on behalf of Duquesne. Duquesne is completely open to the possibility that it may have more than one CSP when it ultimately implements the program. Tr. at 190. The selection of one or more contractors is expected to be made as a result of a competitive and open process based on a request for proposals. The Company expects respondents will be sufficient in number and in size of proposed load reductions to meet the megawatt goals. However, if proposals are insufficient, Duquesne is willing to consider an unsolicited proposal after the RFP process that would help meet the goal for load reduction at a price competitive with the winning respondents to the RFP.

Another concern ClearChoice had was that it may be too small to win the RFP conducted by Duquesne. ClearChoice Statement No. 1 at 9. When ClearChoice Witness Pengidore testified at the Evidentiary Hearing, she stated that ClearChoice has six employees. She also disclosed that ClearChioce is currently serving and has more reductions in place than the 3.6 MW needed by Duquesne in Year 1 for demand response. Tr. at 272. Although Witness Pengidore said she would have to see Duquesne's RFP for the demand response programs, she indicated that she no longer feared that the size of her company would prevent it from working with Duquesne's plan of operating an RFP for 3.6 MW. Tr. at 271.

EnerNOC encouraged Duquesne to have a fully engaged curtailment service provider. EnerNOC Comments at 7. Duquesne believes EnerNOC is referring to a curtailment service provider that would provide a turnkey service to Duquesne, which would include all the marketing, customer contact, signing up, installing any equipment, setting up the procedures to communicate with that customer during curtailment events, and certifying the load reductions, processing payments. Duquesne is willing to entertain such an operation when it gets into the RFP process to go out and select one or more curtailment service providers. Tr. at 191-192. EnerNOC also suggested that Duquesne's proposed incentives for the demand-side reduction program were too low. EnerNOC Comments at 8. Duquesne will obtain bids from the RFP participants to suggest what an appropriate payment would be to attract customers to the program and what an appropriate payment would be for the CSP to agree to participate with Duquesne. Tr. at 192. Company Witness Barrett added that the beauty of an RFP process is going to be to let the market test what an appropriate price signal will be. Id.

**D. Implementation and Evaluation Issues**

**1. Implementation Issues**

DII recommended that the Company be required to obtain Commission approval through a formal proceeding in conjunction with the annual reporting requirement and conduct a formal stakeholder process to shift costs between customer classes. DII Comments at 13. At the Evidentiary Hearing, Company Witness Sandoe explained that Duquesne intends to go to the Commission and stakeholders for major changes but should be given the right to shift funds for minor changes. This flexibility is important as the Company needs to be able to shift budget dollars quickly if programs are not working as anticipated. Tr. at 119. Further, Company Witness Crooks clarified that the quarterly regulatory reporting memos sent from Duquesne to the PUC will include all changes to the plan – minor and major. Company Witness Sandoe explained that the programs under Duquesne's plan are brand new, and although Duquesne believes its Plan will be successful, it realizes that it will have to monitor the programs closely to make sure they are on target, and if a program is failing, Duquesne will need to be able to quickly adjust from one program to the next to reach the mandated goals. Tr. at 138. Shifting funds between customer classes will enable Duquesne to react quickly to any programs that are not getting the response/participation needed to reach the goals. Upon DII and OTS questioning on the difference between major and minor, the Company indicated that a 15-25% of fund movement between customer classes could be a demarcation point between what is allowable absent obtaining additional PUC approval and what needed further PUC review and approval. Tr. at 127-128, 135. This is based on the experience that Duquesne's consultants have had through developing these programs in other states.[6] Tr. at 135.

ACORN recommended that Duquesne hire or recruit unemployed or low income people as part of Duquesne's Plan. ACORN Statement No. 1 at 7-8. Duquesne understands the desire to hire unemployed, underemployed and low income personnel when possible; however, given that its ratepayers are ultimately paying for this plan, Duquesne's priority is to hire the best conservation service providers at the lowest price. Tr. at 121.

**2. QA Issues**

Duquesne did not have any proposals or issues raised regarding the quality assurance elements of its EEC & DR Plan. Duquesne's planning for program quality assurance/quality control is described in DLC Exhibit No. 1, Plan pages 100 to108. Additionally, a significant focus was placed on including evaluation, measurement and verification (EM&V) in program plans. For a complete description of how EM&V is addressed before programs are launched,

[6] The range 15% to 25% is cited based on the consultant's experience operating programs, generally. Examples of the policy application: Under programs administered by the California Public Utilities Commission (CPUC) during funding cycle 2004-2005 reallocation of program funding up to 15% was permitted without a requirement for Commission approvals; such funding shifts are noted in monthly progress reports to the Commission. In CPUC Ordering Paragraph 11 of D.03-12-060, the ALJ is delegated to resolve motions in which a utility seeks authority to transfer more than 25% of one 2004-2005 program's funds into another program.

during program implementation, and following implementation, as well as the proactive efforts taken to support statewide evaluation see DLC Exhibit No. 1, Study pages 166 to 213.

### 3. Monitoring and Reporting Issues

As stated above, Duquesne plans to monitor and report issues in order to best serve its customers in every rate class. Duquesne will file quarterly and annual reports according to its plan and the Commission's Implementation Order.

### 4. Evaluation Issues

Duquesne's position regarding the cost of the statewide evaluator is that it falls outside of the 2% cap. The governing statute does not state that utilities must include the cost of the statewide evaluator within the 2% cap. In establishing that cost cap, Section 2806.1(g) specifically characterizes the cap as a limitation on the "total costs of any ***plan*** required under this section." (Emphasis Added) Duquesne interpreted Section 2806.1(g) to limit costs related to its plan, not an audit to be performed by the statewide evaluator. Therefore, Duquesne did not include the costs for the statewide Act 129 evaluator under the Company's 2% cost cap. If the Commission determines otherwise, Duquesne will scale back its programs approximately $2.2 million over the plan period to handle those costs.

## E. Other Issues

NGDC asserts that Duquesne's Plan will promote fuel switching. Specifically, NGDC believes that the Act 129 rebates could have the unintended effect of influencing consumer appliance replacement decisions by artificially encouraging customers to choose an electric appliance eligible for an Act 129 rebate in lieu of a more efficient natural gas appliance. NGDC Statement No. 1 at 1. Duquesne does not believe that fuel switching is not only irrelevant to this proceeding, but is being handled by the Commission in another forum as noted in the Commission's TRM Order.

> "The Commission recognizes that fuel switching is a complicated topic that will require additional time and effort to fully address. As the TRM will provide vital guidance to EDCs in developing their EE&C plans, which are due to be filed by July 1, 2009, there is not enough time to convene a working group to address all the related issues, fuel switching will not be included in this TRM. The Commission will convene a fuel switching working group

in the near future to identify, research and address issues related fuel switching." TRM Order at 9.

Assuming *arguendo*, that fuel switching is at issue in this case, Duquesne's plan in no way promotes fuel switching for the following reasons. The incentives that Duquesne will provide to customers will not make customers select electric over gas appliances. Rather, this is a choice driven more by the connections in the home, the appliances already operating there, and price of the fuel. Tr. at 150. In fact, the likelihood that a small incentive that offsets the incremental cost associated with purchases that could cause a consumer to switch from electric to gas is extremely low. Tr. at 150. By example, consider the following scenario where a customer is considering the purchase of an electric clothes dryer. Clothes dryer A has a standard efficiency rating and clothes dryer B is a high efficiency model. Dryer B is more expensive as it is a high efficiency model. The function of the incentive is to offset a portion of the incremental higher cost of dryer B from dryer A. This is in an attempt to make the buyer indifferent to the higher cost of Dryer B.

NGDC claims a potential unintended effect of the program design is that the incentive payment will cause the customer looking for a gas dryer to choose an electric dryer. This is an illogical conclusion for the following reason: If appliance cost is driving a customer to choose electric over gas, as NGDC asserts, the customer would choose the base efficiency electric model (i.e., dryer A with no incentive). Hence, the incentive payment would not play a part in a customer decision to choose electric over gas. If the customer was going to buy electric in any event, he might take the incentive to choose the more efficient electric appliance. That is the intent of the incentive and cannot be said to promote fuel switching.

The proposed Duquesne programs were not designed to encourage fuel switching, unlike a few other plans from other utilities where fuel switching was worked into the plan. Tr. at 279-280, 298. The Duquesne programs will not be marketed to encourage fuel switching. Tr. at 150. Because Duquesne's programs were not designed to promote fuel switching, will not be marketed to promote fuel switching, and because the program incentives do not lower base case electric technology costs, as illustrated above, program incentives do not promote gas to electric fuel switching. Duquesne firmly assures that its plan does not promote fuel switching. Tr. at 151.

Beyond the fact that Duquesne's programs do not promote fuel switching, it vehemently disagrees with NGDC Witness Raab's statement that the Commission should encourage the use of natural gas where it is a viable substitute for electricity, require EDCs to provide proper incentives to convert load currently served by electricity to natural gas, and prohibit customer movement from the use of natural gas to electricity. NGDC Statement No. 1 at page 17. Duquesne questioned Witness Raab on why the Commission should dictate what fuel source a customer uses, and he admitted that he did not think the PUC should dictate that choice. Tr. at 296.

At the Evidentiary Hearing, NGDC Witness Raab testified that he believed Duquesne's programs "have the perhaps unintended consequence of promoting electric fuel – natural gas to electric fuel switching." Tr. at 286. He went on to specifically note the rebates for the installation of heat pumps in the residential program. He said, "To the extent that the heat pumps would replace an air conditioning unit, that I would regard as fuel switching whether or not gas was still in the home or not in the home." Id. First, Duquesne does not understand how the witness views this as fuel switching as there is not even a gas source in the house. Second, when asked whether a customer would be better off staying with natural gas than buying an electric add-on heat pump, Witness Raab stated that the customer would be better off, and for evaluation purposes, dealing with the total resource cost test, *society would be better off,* because that's the TRC test measures. Tr. at 287. (*Emphasis added*). Duquesne respectfully reminds NGDC that the TRC cost test adopted by the Commission pursuant to implementing Act 129 *does not use the Societal Test* as part of the TRC test. CITE Commission's June 18, 2009 Order regarding Implementation of Act 129 – Total Resource Cost Test at page 5. Act 129 specifically provides that only "monetary" benefits and costs are to be factored into the TRC test. 66 Pa. C.S. §2806.1(m). In the TRC Order, the Commission concluded, "therefore, Pennsylvania's version of the TRC test will exclude environmental and societal costs and benefits unless such costs and benefits are otherwise already embedded in the wholesale cost for generation of electricity." TRC Order at 5.

NGDC Witness Raab's expressed concern with heat pumps that would replace or supplement natural gas heating load, or cause fuel switching. Tr. at 286. This concern is moot, Duquesne believes, because the heat pumps he speaks of are not in Duquesne's Plan. While the heat pump space heating was evaluated through comparison to resistance baseboard heating, Duquesne found them not to be cost effective based on the heating cycle performance. *No incentives* are provided to motivate customer adoption of heat pumps to replace electric resistance heating or any other form of heating.

NGDC Witness Raab could not provide any data on the frequency of occurrences in Pennsylvania between electric to gas fuel switching. Tr. at 294. However, he revealed that fuel switching can occur among any fuels – propane, fuel oil, etc. Tr. at 295. NGDC Witness Raab also acknowledged that gas companies can offer incentives for gas appliances. Tr. at 295. While gas companies are always free to provide incentives to their customers, they are not under a mandated reduction schedule like EDCs are currently with Act 129. Duquesne must concentrate on its reduction goals, and one of the best ways to meet them are with financial incentives offered to customers to reduce costs associated with installing more efficient appliances.

The arguments advanced by NGDC are unreasonable and should not be considered as part of evaluating EDC EE&DR Plans. If the Commission elects to take-up an evaluation of source-fuel efficiency, a complex analysis addressed in past decades and subsequently abandoned in other states, it should do so under a separate proceeding.

Early Start Programs

The Company requested authorization and approval to launch three of its programs prior to commission approval of its plan. DLC Exhibit No. 1, Petition at 4. The three "Early Start Programs" are the Residential School Energy Pledge Program, the Commercial Healthcare Program, and the Public Agency Partnership Program. Duquesne requests approval of the early start of those programs, the deemed savings, and the recovery of costs that will occur prior to the Commission's final order in this proceeding.

Likewise, while Duquesne does not plan to start any other programs early prior to the Commission's final order, Duquesne has had substantial developmental costs in formulating its plan and ramping up for quick action. Duquesne requests that those costs be includable at part of the surcharge mechanism proposed as part of the plan.

## VI. Conclusion

For the reasons set forth above, it is clear that Duquesne's proposed Plan meets the requirements under 66 Pa. C.S. §2806.1(b)(1)(i)(A)-(K), and should be approved. Duquesne Requests approval of its Energy Efficiency and Conservation and Demand Response Plan, including the plan budget as well as the Energy Efficiency and Demand Response Surcharges to be effective December 1, 2009.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Main Brief of Duquesne Light Company has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant):

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