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September 10, 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 Reply 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,

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

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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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: September 10, 2009

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I. INTRODUCTION

On August 28, 2009, the Office of Consumer Advocate (OCA) filed its Main Brief (M.B.) addressing the issues raised in this proceeding. The OCA submits that its Main Brief provides the Public Utility Commission (Commission) with a comprehensive discussion of the issues it has identified in this proceeding. The OCA's Main Brief fully addresses and responds to many of the arguments raised by Duquesne Light Company (Duquesne or Company) and the other parties in their Main Briefs.

It is not the purpose of this Reply Brief to respond to all of the arguments contained in the Company's or other parties' Main Briefs. The OCA will limit its reply to those issues requiring additional clarification and response. Thus, any failure of the OCA to address specific arguments contained in the Company's or other parties' Main Briefs does not mean that the OCA agrees with Duquesne's or the other parties' positions or that the OCA has revised its position.

II. PROCEDURAL HISTORY

No reply necessary.

III. DESCRIPTION OF EDC PLAN

No reply necessary.

IV. SUMMARY OF ARGUMENT

As explained in the OCA Main Brief and as further set forth in this Reply Brief, the OCA generally supports the Company's proposed Energy Efficiency and Conservation and Demand Response Plan (EE&C/DR Plan or Plan). There are, however, a number of areas of the Plan as to which the OCA made recommendations for modification in its Main Brief. In the face of arguments made in Duquesne's Main Brief as to several of the OCA's recommended modifications, the OCA finds itself compelled to reply. Specifically, the OCA will address in this Reply Brief: 1) further clarification of the OCA's recommendation related to scaling back the Company's projected energy savings in its Commercial and Industrial Energy Efficiency and Conservation programs; 2) the importance of incorporating a new construction component within its Commercial and Industrial Energy Efficiency and Conservation programs; 3) the need to account for the costs of the statewide evaluator within the applicable 2% cap and 4) the need to forego interest on over-/under-collections, particularly if such interest would result in customers paying more than $78.2 million for the Plan.

V. ARGUMENT

A. Act 129 Conservation and Demand Reduction Requirements

No reply necessary.

1. Overall Conservation Requirements

No reply necessary.

a. 2011 Requirements

No reply necessary.

b. 2013 Requirements

No reply necessary.

2. Overall Demand Reduction Requirements

No reply necessary.

3. Requirements for a Variety of Programs Equitably Distributed

No reply necessary.

4. 10% Government/Non-Profit Requirement

No reply necessary.

5. Low Income Program Requirements

No reply necessary.

6. Issues Relating to Individual Conservation and Demand Reduction Programs

No reply necessary.

a. Residential

No reply necessary.

b. Commercial

No reply necessary.

c. Industrial

No reply necessary.

7. Proposals for Improvement of EDC Plan

In its Main Brief, the OCA recommended with respect to Duquesne's Commercial and Industrial energy savings programs that the Company tailor its spending so as to achieve energy savings more in line with the amount mandated by Act 129 than aim for projected savings considerably above that amount as its Plan proposes. OCA M.B. at 23.

In its Main Brief, the Company responded by pointing out that it does not have a high degree of confidence in its projected energy savings for the 2009 plan year due to uncertainties such as "start-up, approvals, time needed to educate customers, customer acceptance, and other uncertainties." DLC M.B. at12. Consequently, Duquesne submits that it must achieve its 1% 2011 energy savings goal on the strength of the savings that can be achieved during the 2010 plan year, running from June 1, 2009 to May 31, 2010. As Duquesne states, "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." DLC M.B. at 12.

Duquesne's view is that while its Plan projections for energy savings appear to overshoot the mandated targets, these projections rely on uncertain 2009 data. With that data removed, Duquesne points out that its projected savings for the 2010 plan year are 160 million KWH, while the mandated reduction is 140 million KWH. Given the uncertainties surrounding the 2009 data, Duquesne submits that the 20 million KWH difference is not an overshoot and actually represents a conservative approach to planning. DLC M.B. at 12. Duquesne expresses confidence that the mandated reductions can be achieved in the single 2010 plan year.

This however is precisely the point. The OCA does not share the Company's confidence that overshooting the goal will produce the result expected by the Company. The OCA is concerned that the spending levels for each KWH saved in the Commercial and Industrial programs are too small due to the high level of savings targeted and may make achieving even the mandated levels difficult. OCA witness David G. Hill testified:

> 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. In other words, by trying to do too much with the budget, Duquesne can offer only limited incentives, thus compromising its ability to attract necessary participants.

Duquesne may also be able to offer participants only limited measures thus impacting the efficiency of its program delivery.

Mr. Hill presented a chart (Chart 5) in his testimony showing that reducing the savings goals for the Commercial and Industrial programs to the levels mandated by Act 129 would enable the Company to increase spending per MWH saved by $100.

"Chart 5: Comparison of Duquesne $/MWH spending for Plan Proposed"

	Cumulative Budgets	$/MWH at 75% over goal	$/Reduced MWH
	2010 - 2011	2010 - 2011	2010 - 2011
C&I - Small	$2,900,143	$80	$139
C&I - Large	$15,875,907	$143	$249
Gov't/Non-Profit	$4,633,069	$172	$300
Total	$23,409,119	$134	$234

Source: OCA St. 1 at 24.

With the concern that the proposed spending levels are currently too low to engender significant program participation, an increase of $100 per MWH saved would go a long way to ensuring the success of the Commercial and Industrial programs. The Company should adjust its targeted level of energy savings, thereby increasing the amount spent per KWH saved and thereby improving the likelihood of success of these programs.

a. Residential

No reply necessary.

b. Commercial

In its Main Brief, the OCA recommended that Duquesne give consideration to incorporating a new construction component into its Commercial and Industrial energy efficiency programs. OCA M.B. at 21.

In response, at the evidentiary hearing and again in its Brief, Duquesne pointed to an American Council for an Energy-Efficient Economy (ACEEE) April 2009 study of energy efficiency potential in Pennsylvania which indicated that a significant portion of the commercial efficiency gain potential lies in the retrofit of existing buildings. DLC M.B. at 13. Duquesne notes that its initial reduction target in 2011 will have to be met in approximately 17 months and therefore it has chosen to place its focus on the area where the largest potential exists. Duquesne also states that nonresidential new construction programs involve "long sales cycle activities" and questions whether it could achieve market penetration in the new construction market in the 17-month period. DLC M.B. at 13.

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.

Moreover, the OCA does not necessarily view a new construction component as something that must be in place at the outset or used to meet the 2011 requirements. Rather, the OCA views the inclusion of such a component as an important element in a balanced portfolio of programs that is going to be in place for at least three to four years. As Mr. Hill stated at the hearing:

> 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.

The OCA would also note that at the hearing, Duquesne witness Crooks was asked whether incorporating a new construction element into its Commercial and Industrial programs might be something the Company could consider with respect to achieving its 2013 mandated reductions. In response, Mr. Crooks stated:

> ... it seems to me that it would be possible to incorporate new construction program elements into the portfolio within the three year period.

Tr. at 176.

Accordingly, the OCA continues to recommend that Duquesne consider the incorporation of a new construction component into its Commercial and Industrial energy savings programs and that its inclusion be timed to contribute to savings needed to meet the 2013 reduction goal.

c. Industrial

No reply necessary.

B. Cost Issues

1. Plan Cost Issues

No reply necessary.

2. Cost Effectiveness/Cost-Benefit Issues

No reply necessary.

3. Cost Allocation Issues

No reply necessary.

4. Cost Recovery Issues

a. Interest Costs

The OCA supports the Company's proposal to levelize its cost recovery over the term of the Plan. However, as explained in the testimony of OCA witness Hill and the OCA's Main Brief, the OCA does not support the Company's proposal to charge interest on over and undercollections. In its Main Brief, the Company stated that: "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." DLC M.B. at 15. The OCA submits that while the statute may be silent specifically with respect to the charging of interest, it nevertheless imposes a very clear and certain cap on the amount of money to be spent by an EDC on its EE&C/DR Plan, and in turn on the amount of money that can be collected from customers. It is the OCA's view that the imposition of interest on over or undercollections of the Company's cost recovery mechanism could result in customers paying more than the 2% spending cap.

Therefore, the OCA recommends that the Company not collect or charge any interest in connection with its cost recovery mechanism, particularly if such interest would result in customers paying more than $78.2 million for the Plan.

b. Statewide Evaluator Costs

In its Main Brief, Duquesne argued that the statute does not direct EDCs to include the cost of the statewide evaluator within the 2% spending cap. The Company stated that it interprets the statute to "limit costs related to its plan, not an audit to be performed by the statewide evaluator." DLC M.B. at 19.

The OCA submits that Duquesne's reading of the statute is incorrect. The statewide evaluator costs are a necessary component of the measurement, evaluation and verification needed to ensure that the Plan complies with Act 129. Indeed, Section 2806.1(a)(2) of the Act, 66 Pa.C.S. § 2806.1(a)(2), charges the Commission with establishing an evaluation process "including a process to monitor and verify data collection, quality assurance and results *of each plan* and the program." (*Emphasis added*). Evaluation of each plan is required and therefore must be considered a necessary compliance element of Duquesne's Plan. Accordingly, the EE&C/DR Plan budget must accommodate the inclusion of the costs of the statewide evaluator. Further, the applicable statutory language reads:

> (g) Limitation on Costs.—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. *The provisions of this paragraph shall not apply to the cost of low-income usage reduction programs established under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs).*

66 Pa.C.S. § 2806.1(g)(*Emphasis added*). The OCA submits that if the General Assembly had intended for other exclusions to the 2% spending limit besides the low-income usage reduction program costs, it would have so stated.

C. CSP Issues

No reply necessary.

D. Implementation and Evaluation Issues

No reply necessary.

1. Implementation Issues

No reply necessary.

2. QA Issues

No reply necessary.

3. Monitoring and Reporting Issues

No reply necessary.

4. Evaluation Issues

No reply necessary.

E. Other Issues

No reply necessary.

VI. CONCLUSION

For the reasons discussed above, and those set forth in the Main Brief of the OCA, the OCA submits that the Commission should adopt the recommendations set forth in this Brief and the OCA Main Brief.

VII. PROPOSED ORDERING PARAGRAPHS

The OCA's Proposed Ordering Paragraphs are set forth at pages 35 and 36 of its Main Brief.

Respectfully Submitted,

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Dated: September 10, 2009

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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, the Reply 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:

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