McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Patrick L. Gregory
Direct Dial: 717.237.5378
Direct Fax: 717.260.1776
pgregory@mwn.com

May 19, 2011

VIA HAND DELIVERY

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

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and three (3) copies of the Answer to the Petition for Approval of Duquesne Light Company's Proposed Changes to Demand Response Programs on behalf of the Duquesne Industrial Intervenors ("DII") in the above-referenced proceeding.

As indicated on the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Answer, and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Patrick L. Gregory
Patrick L. Gregory

Counsel to the Duquesne Industrial Intervenors

RECEIVED
2011 MAY 19 PM 4:04
PA PUC
SECRETARY'S BUREAU

PLG/km
Enclosures
c: Administrative Law Judge Susan D. Colwell (via E-mail and Hand Delivery)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DUQUESNE INDUSTRIAL INTERVENORS ANSWER TO PETITION FOR APPROVAL OF DUQUESNE LIGHT COMPANY'S PROPOSED CHANGES TO DEMAND RESPONSE PROGRAMS

I. INTRODUCTION

On October 15, 2008, Governor Edward G. Rendell signed House Bill 2200, otherwise known as Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expanded the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and set forth new requirements on Electric Distribution Companies ("EDCs") regarding the reduction of energy consumption and demand. The Commission issued an Implementation Order concerning Act 129 on January 16, 2009. In accordance with the Act, on June 30, 2009, Duquesne Light Company ("Duquesne" or "Company") filed its original Energy Efficiency and Conservation Plan ("EE&C Plan" or "Plan"), which was approved in part and rejected in part by Commission Order entered October 27, 2009, at Docket No. M-2009-2093217 ("October 27 Order").

On December 23, 2009, Duquesne submitted a revised EE&C Plan ("Revised Plan") in accordance with the October 27 Order. The Commission approved the Revised Plan by Opinion and Order entered February 17, 2010. On June 24, 2010, and September 1, 2010, the Commission issued Secretarial Letters addressing the filing procedures for EDCs' Act 129 Annual Reports and proposed revisions to their EE&C Plans. On September 15, 2010, Duquesne submitted a Petition, Annual Report, and proposed modifications to its EE&C Plan. Duquesne filed a clarification to its Petition on December 15, 2010, requesting approval of two additional energy efficiency measures. On January 28, 2011, by Commission Opinion and Order, the Commission approved the Company's September 15, 2010, Petition and modified EE&C Plan.

On May 9, 2011, the Company submitted a Petition ("May 9 Petition") to the Commission requesting that the PUC (i) approve changes to eliminate the Residential and Small/Midsized Commercial and Industrial ("C&I") Demand Response ("DR") Programs and to "transfer those funds to other programs, or hold in reserve pending further request and Commission approval, for more productive energy efficiency and demand reduction use" and (ii) issue a final Amended Order as soon as practical and if possible, by June 9, 2011.[1] The Company stated that it wished to stop spending money on the Residential and Small/Midsized C&I Programs "since the programs are not cost effective." May 9 Petition at 6. The Company noted that the Total Resource Cost ("TRC") for the Residential and Small/Midsized C&I DR Programs "is now only 0.05" (a decrease from the TRC of 1.4 at the time of filing of the Company's original Plan) and that the programs "would be wasteful of ratepayer funds" at a cost of $780,000 per MW. *Id.* pp. 5-6.

Duquesne stated that EE&C Plan modifications are also needed because its energy efficiency programs are now expected to produce an insufficient amount of demand reduction. *Id.* at 3. Duquesne's overall demand reduction goal is 113 MWs, and the Company designed its original portfolio to achieve 199 MWs of demand reductions "to create a buffer over the required goal to ensure the goal is met." *Id.* While Duquesne's energy efficiency programs were originally projected to reduce demand by 162 MWs, the Company now states that only 56 MWs of demand reduction is expected. *Id.* Duquesne did not update Figure 4 of its Plan to reflect the

[1] *Petition of Duquesne Light Company*, Docket No. M-2009-2093217, at 7 (May 9, 2011).

new assumptions regarding the revised demand reduction projections associated with its energy efficiency offerings; rather, Duquesne only reflected the elimination of the Residential and Small/Midsized Commercial DR programs and the proposed increase of the Large C&I Curtailable Load demand reduction to 40 MW. *See* May 9 Petition (redlined Plan at 14). The changes that were reflected *increase* the total portfolio to achieve projected demand reductions of 202.011 MW. *Id.*

Duquesne stated that while its Large C&I DR Program was originally expected to achieve only 10.8 MWs for the budgeted amount of $556,656 (or approximately $52,000 per MW) the Company "now expects to achieve 40 MWs of peak shaving for that same approved budget amount, which is approximately $14,000 per MW." May 9 Petition at pp. 4-5. Duquesne stated that the TRC for the Large C&I DR Program "is now 1.37," a decrease from the TRC of 4.4 at the time the original Plan was filed. *Id.* at 5. The Company proposed to further increase the expected reductions from the Large C&I Program to 60 MW. *Id.* at 6. These reductions would be achieved (i) through the 40 MW of currently expected reductions and (ii) by shifting $892,000 of funds from the Small/Midsized C&I DR Air Conditioning Cycling Program to the Large C&I DR Program, for an additional 20 MW of reductions from Large C&I customers. *Id.* The Company stated that it would only spend the portion of the $892,000 "that is necessary in order to meet the demand reduction obligation with an appropriate buffer to assure compliance." *Id.* The Company believes that the 20 MW of reductions will cost $300,000 (or $15,000 per MW) out of the transferred funds. *Id.* If the entire $892,000 is expended for the additional 20 MW of reductions, the cost per MW of the incremental 20 MW of demand reduction will be $44,600 per MW.

Pursuant to Section 5.61(a) of the PUC's regulations, 52 Pa. Code § 5.61(a), the

Duquesne Industrial Intervenors ("DII") hereby files this Answer to the Company's Petition filed on May 9, 2011. DII opposes (i) the Company's proposal to cancel its Residential and Small/Midsized C&I DR Programs; (ii) the Company's proposal to shift $892,000 in EE&C fund responsibility to the Large C&I DR Program; (iii) Duquesne's proposal to increase the size of the Large C&I DR Program to 40 MW; and (iv) Duquesne's proposal to further increase the Large C&I DR Program by an additional 20 MW, at a cost of up to $892,000.

II. ANSWER

DII appreciates the Company's willingness to engage in the informal exchange of information regarding this request. Based on the information provided, DII has concerns regarding the proposal. DII realizes that Duquesne is under a statutory mandate to produce demand reductions established by the General Assembly based on a limited pool of ratepayer funding. Although the total budget is capped, the allocation of that funding among customer classes is based on the funds expended for each particular class and is not capped based on any formula. While the Commission's Implementation Order did not require "a proportionate distribution of measures among customer classes," neither did it sanction an overreliance on a single class or single program. Implementation Order at 23. Rather, it stated that it did "expect the EDCs to provide a reasonable mix of energy efficiency and demand response programs for all customers." *Id.* Duquesne's proposal results in a single demand reduction program being offered to a single class. In addition, the potential price for the incremental 20 MW above the original budget cost projection for the Large C&I Curtailable Load Program may be achieved at an exhorbitant price per MW that results in the TRC dropping below 1.

A. Proposed Cancellation of Residential and Small/Midsized C&I DR Programs

The proposed cancellation of the Residential and Small/Midsized C&I DR Programs would not comply with the Commission's Implementation Order. The Commission stated that the Act "requires an EDC to demonstrate" that its EE&C plan "provides a diverse cross section of alternatives for customers of all rate classes." Implementation Order at 14. Accordingly, an EDC "must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class." *Id.* at 22. The Commission specifically directed "that each customer class be offered at least one energy efficiency and one demand response program." *Id.* at 23. As Duquesne's proposed modifications would result in elimination of each DR Program for Residential and Small/Midsized classes, the Company's proposal is noncompliant on its face. We note that "[t]he burden is on an EDC to explain and justify its distribution of measures among its customer classes if such distribution is challenged." *Id.* Although some energy efficiency measures may also have projected demand reduction benefits under Duquesne's portfolio, the Commission's Implementation Order clearly requires at least one energy efficiency and one demand reduction program for each class, not a program or programs for each class that achieve both energy efficiency and demand response reductions. As discussed herein, the Company has not provided sufficient explanation and justification for the program and cost distribution set forth in its proposal, and elimination of the only demand response programs for the Residential and Small/Midsized Commercial classes is not consistent with the Commission's directives in the Implementation Order.

B. Proposed Shifting of $892,000 to Large C&I DR Program and Expansion of Such Program

The Company's proposal to shift $892,000 in funds to the Large C&I DR Program, and to expand the program to 60 MW, would not result in the "balanced" and "reasonable" mix of programs that the PUC requires. *See* Implementation Order at 22-23. Under Duquesne's proposal, more than 50% of the targeted 113 MW in demand reduction would be achieved solely through the Large C&I DR Program. Duquesne states that its original budget amount of $556,656 is now expected to achieve 40 MW of demand reduction rather than the original amount of 10.8 MW. May 9 Order at 5. Duquesne does not, however, discuss the possibility of achieving the original amount of 10.8 MW at a decreased cost to Large C&I customers, rather than increasing this amount to 40 MW at a comparatively higher cost. Based on DII's discussion with Duquesne's counsel, this 10.8 MW of reduction could now be achieved for a total cost of $150,000 (or approximately $13,900 per MW), which would be $406,656 less than the original budget of $556,656. Rather than discuss this possibility, the May 9 Petition assumes that the Large C&I DR Program should bear more than $400,000 in extra costs. Duquesne then requests that an even more unreasonable burden be placed upon Large C&I customers, as it requests an additional 20 MW of reduction from the Large C&I DR Program at a projected cost of $300,000, and potentially as much as $892,000 beyond the original budget.[2] May 9 Petition at 6. In the absence of this shift, Large C&I customers will be credited through the reconcilable surcharge to reflect payment of only $150,000 for the 10.8 MW of demand reductions originally assigned to the class under Duquesne's portfolio. Duquesne's proposal is unreasonable as it has not explained or justified why Large C&I customers should bear a potential cost burden of $1,298,656 ($892,000 plus $406,656) rather than $150,000.

It is unclear why Duquesne could not provide a more balanced mix of programs, rather than relying to such a great extent on the Large C&I DR Program. While Duquesne requests cancellation of its Residential and Small/Midsized DR Programs, we note PECO Energy

---

[2] It is unclear how the $892,000 would be divided between incentive costs and administrative costs. Figure 40 appears to indicate that this amount would be divided 50/50 between the two categories, but no explanation of this division is given. *See* the Company's proposed EE&C Plan attached to its May 9 Petition, at p. 78.

Company ("PECO") is moving forward with DR Programs for customer classes other than Large C&I. For example, PECO has the "Residential Direct Load Control" program and the "Residential Super Peak TOU [time of use]" DR Programs.[3] These programs appear to be cost effective, as they have a TRC of 1.12 and 1.23, respectively.[4] PECO also has a "Commercial & Industrial Direct Load Control" DR Program, targeted at customers with less than 100 kW of load.[5] This program has a TRC of 1.41.[6] Additionally, PECO provides a "Commercial & Industrial Super Peak TOU" Program targeted at customers with loads ranging from less than 100 kW to 500 kW.[7] This program has a TRC of 1.23.[8] Given that PECO has DR Programs with positive TRC values for customers other than Large C&I customers, Duquesne should explore the possibility of implementing such programs, or at least explain why it will not do so.

C. The Proposed Expansion of the Large C&I Curtailable Load Program by 29 MW or 49 MW.

Duquesne has not justified the proposed expansion of the Large C&I Curtailable Load Program targets by 29 MW or 49 MW. The Plan's portfolio was designed to have an 86 MW cushion in order to address underperformance of specific programs. While Duquesne identified two specific DR programs that it requests be eliminated, it did not provide an explanation of which of the energy efficiency programs it expects to underperform concerning the originally projected demand reductions. Based on the original mix of programs, it is possible that *all* of the demand reductions are coming from one or two classes; without further information from Duquesne, we cannot know whether or not that is the case. Further, changes in Duquesne's assumptions concerning its programs will impact the TRC values for those programs, and

[3] *See Petition of PECO Energy Company for Approval of its Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 at 7 (Jan. 28, 2011).
[4] *See* PECO's EE&C Plan filed in Docket No. M-2009-2093215 at 150, 156. (Sep. 15, 2010).
[5] *See* Docket No. M-2009-2093215 at 7 (Jan. 28, 2011).
[6] *See* PECO's EE&C Plan filed in Docket No. M-2009-2093215 at 162 (Sep. 15, 2010).
[7] *See* Docket No. M-2009-2093215 at 8 (Jan. 28, 2011).
[8] *See* PECO's EE&C Plan filed in Docket No. M-2009-2093215 at 167 (Sep. 15, 2010).

Duquesne should provide updated information concerning such values.

The May 9 Petition indicates a decrease in the TRC value for the Large C&I Curtailable Load Program from 4.4 to 1.37, despite the Company's projections for an additional 29 MW at the same projected overall cost as was originally budgeted. May 9 Petition at 5. DII recognizes that unlike the request by PPL Electric Utilities Corporation to expand its DR program, Duquesne's program has a TRC greater than 1; nonetheless, the Commission must review whether the Company's requested shift of fund responsibility and expansion of the Large C&I DR program is warranted.[9]

Duquesne has not provided a TRC value for the proposed expansion of the Large C&I Curtailable Load Program to 60 MW, although it informally provided *projections* that the additional MWs could be obtained at a price per MW consistent with achieving the original 10.8 MW amount. DII has grave concerns regarding the overreliance on the Large C&I Curtailable Load Program in the Company's proposed "mix" of DR programs. If the incremental 20 MW proposed by the Company (on top of the proposed increase to 40 MW) costs the $892,000 that the Company requests be shifted to the program, there would be an incremental MW cost of $44,600 per MW. In this case, the TRC value for the program would change, but no formal projection has been provided concerning the TRC. If the Commission approves the increase despite DII's objections, the cost of the incremental 20 MW should be capped at $13,900 per MW, thereby reflecting the average cost per MW of achieving 40 MW of reduction at the original budget of $556,000. This cap would ensure that conservation service providers would not take advantage of the situation by inflating bids, and would also ensure that the TRC remains above 1 for the Large C&I Curtailable Load Program.

---

[9] *See Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093216 at 23 (May 6, 2011).

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission:

1. Reject Duquesne Light Company's proposal to cancel its Residential and Small/Midsized C&I DR Programs;

2. Reject Duquesne Light Company's proposal to shift $892,000 in funds from Small/Midsized C&I DR Programs to the Large C&I DR Program to increase the size of such program to 60 MW.

3. Reject Duquesne Light Company's proposal to increase the expected reductions from the Large C&I DR Program to 40 MW or 60 MW;

4. Take any other action as necessary and deemed appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By

Pamela C. Polacek (PA Bar I.D. 78276)
Patrick Gregory (PA Bar I.D. 310548)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 237-5368
Fax: (717) 260-1736

Counsel to the Duquesne Industrial Intervenors

Dated: May 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant):

VIA E-MAIL AND FIRST-CLASS MAIL

David T. Evrard, Esq.
Tanya McCloskey, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
devrard@paoca.org
tmccloskey@paoca.org

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us

Charles Daniel Shields, Esq.
Adeolu Bakare, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
chshields@state.pa.us
abakare@state.pa.us

Gary A. Jack, Esq.
Kelly L. Geer, Esq.
Assistant General Counsel
Duquesne Light Company
411 Seventh Ave. 16-1
Pittsburgh, PA 15219
gjack@duqlight.com
kgeer@duqlight.com

Kurt E. Klapkowski, Esq.
Commonwealth of Pennsylvania
Department of Environmental Protection
RCSOB, 9th Floor
400 Market Street
Harrisburg, PA 17101-2301
kklapkowski@state.pa.us

Carolyn Pengidore
President/CEO
ClearChoice Energy
180 Fort Couch Road, Suite 265
Pittsburgh, PA 15241
carolyn@clearchoice-energy.com

Theodore J. Gallagher, Esq.
Senior Counsel
NiSource Corporate Services Company
501 Technology Drive
Canonsburg, PA 15317
tjgallagher@nisource.com

Daniel Clearfield, Esq.
Kevin J. Moody, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17108-1248
dclearfield@eckertseamans.com
kmoody@eckertseamans.com

Harry S. Geller, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net

Charles E. Thomas, Jr., Esq.
Thomas T. Niesen, Esq.
Thomas, Long, Niesen & Kennard
P.O. Box 9500
212 Locust Street, Suite 500
Harrisburg, PA 17108-9500
cthomasjr@ttanlaw.com
tniesen@ttanlaw.com

Daniel L. Frutchey
Chief Regulatory Officer
Equitable Distribution Company
225 North Shore Drive
Pittsburgh, PA 15212-5861
dfrutchey@eqt.com

Kevin J. McKeon, Esq.
Tori L. Giesler, Esq.
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17101
kjmckeon@hmslegal.com
tlgiesler@hmslegal.com

Scott H. DeBroff, Esq.
Rhoads & Sinon LLP
One South Market Square
P.O. Box 1146
Harrisburg, PA 17108-1146
sdebroff@rhoads-sinon.com

Divesh Gupta, Esq.
Senior Counsel
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
Divesh.gupta@constellation.com

Patrick L. Gregory

Counsel to the Duquesne Industrial Intervenors

Dated this 19th day of May, 2011, in Harrisburg, Pennsylvania.