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October 29, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

VIA ELECTRONIC FILING

RE: Pennsylvania PUC v. Duquesne Light Company; Docket No. R-2018-3000124; R-2018-3000829

Dear Secretary Chiavetta:

Enclosed for filing please find the Exception of the Duquesne Industrial Intervenors ("DII") to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale, issued in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By Matthew L. Garber

Matthew L. Garber

Counsel to Duquesne Industrial Intervenors

Enclosure
c: Administrative Law Judge Katrina L. Dunderdale (via E-Mail and First-Class Mail)
Stephen Jakab, Bureau of Technical Utility Service (via e-mail)
Certificate of Service

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 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 29th day of October, 2018, at Harrisburg, Pennsylvania

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket No. R-2018-3000124
	:	
Office of Consumer Advocate	:	C-2018-3001029
Jason Dolby	:	C-2018-3001074
Peoples Natural Gas Company LLC	:	C-2018-3001152
Office of Small Business Advocate	:	C-2018-3001566
Duquesne Industrial Intervenors	:	C-2018-3001713
Leonard Coyer	:	C-2018-3002424
NRG Energy Center Pittsburgh LLC	:	C-2018-3002755
	:	
v.	:	
	:	
Duquesne Light Company	:	
1308(d) Proceeding	:	
	:	
Tax Cuts and Jobs Act – Duquesne Light Company	:	Docket No. R-2018-3000829

EXCEPTION OF THE
DUQUESNE INDUSTRIAL INTERVENORS

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Dated: October 29, 2018

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I. INTRODUCTION

On March 28, 2018, DLC filed Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24, to be effective May 29, 2018, which contained a proposed general increase in electric distribution suspension rates of $133.8 million. On April 19, 2018, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rates and suspended Supplement No. 174 until December 29, 2018.

At various dates in March, April, and May, 2018, numerous parties filed Complaints, Motions to Intervene, and/or Notices of Appearance.

On May 3, 2018, the Honorable Administrative Law Judge Katrina L. Dunderdale (the "ALJ") held a Prehearing Conference, discussing procedural matters and establishing a litigation schedule.

On May 7, 2018, Duquesne Industrial Intervenors ("DII") filed a formal Complaint against DLC.[1] On May 8, 2018, the ALJ issued a Prehearing Order, consolidating DII's and other parties' Complaints into the Rate Case.[2]

Non-Company Parties' Direct Testimony was submitted on June 25, 2018; Written Rebuttal Testimony was submitted on July 23, 2018; and Written Surrebuttal Testimony was submitted on August 6, 2018. The parties exchanged Written Rejoinder Testimony or outlines on August 10, 2018.

On August 14, 2018, DLC informed the ALJ that a partial settlement (including all parties except Peoples Natural Gas ("Peoples")) had been reached. The partial settlement addressed all

[1] DII's members for the purposes of this proceeding are: University of Pittsburgh ("Pitt"), United States Steel Corporation ("U.S. Steel"), Duquesne University, Linde Energy Services, Inc. ("Linde"), and the Allegheny County Airport Authority ("ACAA").

[2] On May 21, 2018, and June 7, 2018, DII filed an updated Appendix A, supplementing its Complaint to include additional members.

issues except Rider No. 16 ("Rider 16"), the portion of DLC's Tariff governing service to non-utility generating facilities.

Hearings were held from August 15 to August 17, 2018, in Harrisburg, Pennsylvania. At hearings, Peoples, DII, and DLC presented evidence and cross-examined witnesses regarding Rider 16.

On the third day of hearings, DLC withdrew its proposed changes to Rider 16. Peoples indicated that it no longer opposed the partial settlement or Rider 16. DII continued to support its positions set forth in testimony regarding the appropriate rates, terms, and conditions for Rider 16.

On September 6, 2018, DII and DLC submitted initial Briefs. On September 14, 2018, DII and DLC submitted Reply Briefs. On September 14, 2018, DLC filed a Joint Petition for Approval of Settlement Stipulation ("Joint Petition for Settlement") on behalf of all active parties to the proceeding. The Joint Petition for Settlement proposed to resolve all issues except the rates and terms of Rider 16.

On October 18, 2018, ALJ Dunderdale issued a Recommended Decision ("R.D.") recommending the Commission approve the Joint Petition for Settlement. The ALJ also recommended the Commission approve DII's proposed Rider 16 back-up rate of $0.325 per kW. R.D. at 177. The ALJ stated that DLC failed to demonstrate its rate of $2.50/kW was just and reasonable and found DII's evidence to be credible. *Id.* However, the ALJ did not recommend adoption of DII's proposal for a separate planned maintenance rate at this time. *Id.* at 178.

While DII supports the R.D.'s recommendations on all other issues, the R.D. erred by not recommending a separate rate for planned maintenance and by deferring the decision on whether to mandate a maintenance rate separate from the back-up rate. The R.D. stated, "For reasons that follow, I disagree with DII that the rider rate should be separated between rates for stand-by and maintenance." R.D. at 174. However, the ALJ did not provide a reason for rejecting a distinct maintenance rate, instead stating that DII could present additional evidence in DLC's next rate case. R.D. at 178 ("This Recommendation is without prejudice because DII should have an opportunity to put forward this argument in the next base rate at which time it can more fully develop the contention that a separate rate is needed for distributed generation and/or CHP customers.") While it is unknown when DLC may choose to file its next base rate case, approximately five years have elapsed since its prior case. That amount of time is too long to wait to resolve this issue. Nor did the R.D. address the compelling evidence for a maintenance rate presented by DII in this rate case. Ample evidence in the record supports the development of a maintenance power rate that reflects the unique nature of such service as compared to the back-up power rate. The first is planned and the second is unplanned, and those differences should be reflected in lower costs for the maintenance power rate.

For the reasons set forth below, DII hereby files this Exception to the R.D. and respectfully urges the Commission to adopt DII's proposed maintenance rate.

II. EXCEPTION

<u>Exception</u>: The R.D. Erred in Recommending the Commission Not Require a Separate Rider 16 Maintenance Rate. (R.D., p. 178.)

DII supports all holdings of the R.D. except one – the R.D.'s recommendation that the Commission not require DLC to adopt a separate rate for maintenance service on Rider 16. In testimony and on brief, DII presented ample evidence to support a maintenance rate for outages pre-scheduled at times agreeable to both the self-generator and the utility. Notably, a maintenance rate (a) encourages beneficial coordination between the utility and the customer; (b) encourages system reliability; (c) facilitates clearer reliability data; and (d) is consistent with PURPA and the Pennsylvania Code.

For the reasons set forth below, a maintenance rate is an important and optimal part of rate design for customers with onsite generation. Notably, because maintenance rates are implemented in cooperation with the utility, they are designed to not have any disruptive effect on the distribution system. A Rider 16 customer should not be subjected to the entire amount of the back-up demand charge; instead, it should be charged a lesser amount because of the planned nature of a maintenance outage, which would be scheduled during times when the utility distribution system is not stressed (*i.e.*, non-peak periods).

a. A separate rate for planned maintenance encourages beneficial coordination between the utility and the customer.

A planned maintenance rate encourages coordination so maintenance of onsite generation systems is performed at a mutually beneficial time for the customer and the local distribution utility. *Standby Rates for Combined Heat and Power Systems: Economic Analysis and Recommendations for Five States* (the "RAP Study"), entered as evidence in this proceeding, provides a summary of best practices in standby rate design. Exhibit No. JWS-6 at 5 (Scripps). The RAP Study indicates that daily maintenance rates should be lower than daily standby rates, accounting for the fact that "maintenance outages . . . would be coordinated with the utility and scheduled during periods when system generation requirements are low." *Id.*

A maintenance rate encourages communication between the customer and the distribution utility by incentivizing customers to maximize savings through planned coordination, which in turn provides utilities with advance knowledge of planned downtimes. Without a maintenance rate, utilities may be less informed about customer plans, and customers may be less likely to voluntarily communicate valuable information about their systems.

b. A separate rate for planned maintenance encourages system reliability, which benefits the entire distribution system.

A planned maintenance rate provides customer-generators a two-fold reliability benefit. First, having a separate and lower rate for maintenance service encourages routine maintenance of the distributed generation units, increasing long-term availability and reliability of the generation as a whole. *See* DII Statement No. 1, p. 26 (Crist). As noted by Mr. Crist, setting the maintenance rate lower than the back-up rate encourages customers to engage in necessary maintenance to avoid unplanned outages. *Id.*

Second, a separate and lower rate for maintenance service encourages customers with onsite generation to keep their generation running at utility peak periods. Peoples Statement No. 2, p. 22 (Daniel). This alignment of the customer's generation downtimes with the utility's non-peak periods allows generation systems to be maintained with minimal disruptive effect, to the benefit of the entire local distribution grid.

It is important that both customers and utilities work cooperatively during peak periods experienced by the utility. DII witness Richard Heller of the University of Pittsburgh ("Pitt") provided a clear illustration of such cooperation in his Surrebuttal Testimony. Mr. Heller described two recent incidents (May 14, 2018 and July 2-5, 2018) when DLC was experiencing peak conditions and requested that Pitt voluntarily reduce its load to help DLC avoid curtailment of power service to other customers in the Oakland area. DII Statement No. 2-S, pp. 4-5. In both cases Pitt voluntarily complied with DLC's request by limiting chiller output. *Id.*

As seen by Mr. Heller's example, customer-utility coordination supports system reliability and provides significant benefits to other customers. A separate maintenance rate encourages this coordination, in turn enhancing system reliability for all customers.

c. A separate rate for planned maintenance facilitates clear reliability data to inform potential onsite generation projects and future rate cases.

Evidence produced in this proceeding demonstrates that back-up rates should be based on the amount of unplanned downtime of the customer's onsite generation. The RAP study states that "[g]eneration reservation demand charges should be based on the utility's cost and the *forced outage rate* of customer's generator's on the utility's system." Exhibit No. JWS-6 at 5 (Scripps) (emphasis added). Forced outages do not include planned maintenance outages, which are scheduled to avoid peak times and disruption to the distribution system. DII Statement No. 1, p. 26 (Crist).

Separating downtime into two distinct categories allows for the development of clear reliability data by distinguishing between forced outages and scheduled maintenance. This, in turn, assists the Commission and the utility in developing true cost-based rates in future proceedings. This data will have particular value in light of the Commission's recent Final Policy Statement on Combined Heat and Power ("CHP") at Docket No. M-2016-2530484. As the Commission encourages the removal of barriers to CHP and works to establish just and reasonable rates across the Commonwealth, accurate reliability data is essential. Without separate rates for planned maintenance, it will be more difficult for the Commission to discern the true forced outage rates of onsite generation systems and to set rates accordingly.

Pitt and the Allegheny County Airport Authority are both evaluating installation of major onsite generation facilities. Proper economic signals must be present in rates charged to customers with distributed generation to incent them to perform maintenance at times that would not exacerbate the utility's problems during peak periods. A maintenance power rate must be offered for those scheduled outages planned in cooperation with the electric utility.

DII respectfully urges the Commission to fully implement a rate structure that provides all parties, as well as potential onsite generation customers, with a complete view of customer generator reliability in Duquesne's service territory.

d. A separate rate for planned maintenance is consistent with PURPA and the Pennsylvania Code.

In this proceeding, DII argued that PURPA regulations and 52 Pa. Code § 57.35 govern a distribution utility's rates. DII Reply Brief, p. 22-23. At both the federal level (PURPA) and the state level (PA Code § 57.35) the beneficial rationale for a lower maintenance power rate are clearly indicated due to the planned and scheduled periods for maintenance during the electric utility's off-peak hours, when the utility distribution system is not under stress.

Specifically, Section 305 of PURPA's regulations (18 C.F.R. § 292.305(b)) states clearly that "upon request of a qualifying facility, each electric utility shall provide:

(i) Supplementary power;

(ii) Back-up power;

(iii) Maintenance power; and

(iv) Interruptible power."

Section 305 also states that the rate for back-up and maintenance power must consider the extent to which scheduled outages of Qualifying Facilities can be beneficially coordinated with the utility's operations. 18 C.F.R. § 292.305(c). Section 305 indicates that *when* an outage is scheduled matters, and the rate should reflect that distinction. It is clear that Congress intended that the rate for emergency back-up power and scheduled maintenance power be separate, with the maintenance power rate reflecting the economic benefit of planning and scheduling maintenance outages.

52 Pa. Code § 57.35, in implementing PURPA, requires that every electric utility maintain rates, rules, and regulations for three specified services: (1) supplementary power, (2) Back-up Power, and (3) Maintenance Power. Like Section 305, the Code indicates that scheduled outages should be differentiated between peak and non-peak periods. 52 Pa. Code § 57.35(4). This is exactly what a maintenance rate accomplishes, incentivizing a customer to schedule its necessary downtime when there will be no disruptive effect on the distribution system.

As seen by PURPA regulations and the Code, distribution utilities should (a) maintain separate maintenance and back-up rates and (b) provide reduced pricing for *scheduled, off-peak* outages.

e. Ample evidence exists to support a separate rate for planned maintenance in this base rate case.

The ALJ rejected DLC's current and proposed rate for standby service as unjust and unreasonable because DLC provided "almost no evidence to support the current" standby rate. R.D. at 177. Even less evidence was presented by DLC to support its rejection of a separate maintenance rate. In fact, DLC failed to present any evidence to demonstrate that *planned, off-peak* outages should be charged the same as *unplanned and on-peak* outages.

DLC, in its Reply Brief, argued that there is no valid cost-of-service basis to charge a lower back-up distribution rate when a customer's generator is out of service for "maintenance." However, this contention is based on the faulty premise that a customer with onsite generation should pay a distribution rate that reflects the reservation of the system on a "24/7/365" basis. R.D. at 174. As correctly discerned by the ALJ, DLC's fundamental premise on standby rates was incorrect. This same premise should not be used to justify DLC's refusal to implement separate maintenance rates.

In contrast to DLC's lack of evidence, DII explained and supported the cost-of-service basis for a daily maintenance rate, as summarized in this Exception. DII also referenced the 2018 Michigan Public Service Commission Order, the RAP Study, PURPA regulations, and the Pennsylvania Code. See DII Brief at 35-38. As mentioned above, because maintenance rates are implemented in cooperation with the utility, they are designed to minimize or eliminate any disruptive effect on the distribution system. A Rider 16 customer should not be required to pay the full back-up demand charge for the limited duration of a planned outage within the utility's non-peak periods.

Finally, a maintenance rate supports the Commission's goals in its Final Policy Statement on CHP. Encouraging planned maintenance supports optimal reliability for onsite generation systems and better transparency for all stakeholders.

While the ALJ suggested DII could present evidence on a maintenance rate in DLC's next base rate case, DII submits that ample evidence has been produced in this current base rate case to support the establishment of a distinct maintenance rate. In contrast, DLC has failed to demonstrate its proposed rate structure is just and reasonable. Consequently, DII respectfully requests that the Commission order DLC to establish a maintenance rate as proposed in the DII Brief, the testimony of James Crist – specifically DII Exhibit No. JC-8 (Mr. Crist's proposed Rider 16) – and the Rebuttal and Surrebuttal Testimony of Mr. Crist.

III. CONCLUSION

WHEREFORE, DII respectfully requests that the Commission grant DII's Exception to the Recommended Decision.

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