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November 5, 2018

VIA eFILING

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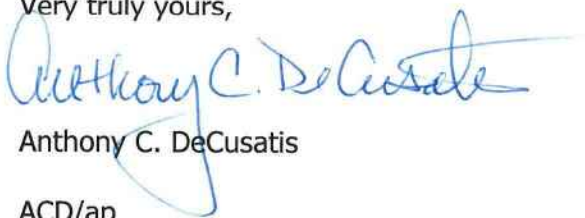
**Re: Pennsylvania Public Utility Commission v. Duquesne Light Company
Docket Nos. R-2018-3000124 and C-2018-3001152**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of **Duquesne Light Company** are its **Reply Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale** in the above-referenced proceedings ("Reply Exceptions").

As evidenced by the enclosed Certificate of Service, copies of the Reply Exceptions are being served on the Administrative Law Judge and all parties to this proceeding. Additionally, a courtesy copy of the Reply Exceptions is being sent via e-mail to the Commission's Office of Special Assistants as instructed in your October 18, 2018 transmittal letter.

Very truly yours,



Anthony C. DeCusatis

ACD/ap
Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket Nos. R-2018-3000124
	:	C-2018-3001152
	:	
DUQUESNE LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **Duquesne Light Company's Reply Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale** have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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Dated: November 5, 2018

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	Docket Nos. R-2018-3000124
v.	:	C-2018-3001152
	:	
DUQUESNE LIGHT COMPANY	:	

**REPLY OF
DUQUESNE LIGHT COMPANY**

**To The Exceptions Of
The Duquesne Light Industrial Intervenors
To The Recommended Decision Of
Administrative Law Judge Katrina L. Dunderdale**

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I. INTRODUCTION AND OVERVIEW

Duquesne Light Company (“Duquesne Light,” “DLC” or the “Company”) files this Reply to the Exception filed by the Duquesne Light Industrial Intervenors (“DII”)¹ to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale (“ALJ”) issued on October 18, 2018. The ALJ recommended that the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) approve all but one of the terms of a Joint Petition for Approval of Settlement Stipulation (“Joint Petition”) filed on September 14, 2018.² The Joint Petition resolved all issues in this case except one, which was reserved for decision.

As to the reserved issue, the ALJ recommended that the Commission adopt DII’s proposal to reduce DLC’s existing, previously-approved rate for back-up distribution service under Rider No. 16³ to its tariff from \$2.50 per kW, applied to the back-up demand for which a customer contracts with the Company, to 35¢ per kW, applied only on an “as used” basis. On October 29, 2018, Duquesne Light filed Exceptions to the ALJ’s recommendation on that issue. The ALJ also recommended that the Commission reject DII’s proposal to set an even lower rate

¹ DII is an *ad hoc* group of five large-use customers consisting of the Allegheny County Airport Authority, Duquesne University, Linde Energy Services Corporation, United States Steel Corporation, and the University of Pittsburgh (Complaint of DII, Appendix A (Revised)). Duquesne University entered into a Memorandum of Understanding (MOU) with Duquesne Light pursuant to which it does not challenge the existing terms of Rider No. 16. *See* DLC Initial Brief, pp. 8-9, 11 and 12; DLC Exhibit No. CJD-1-R. Therefore, hereafter, “DII” will refer to the members of DII excluding Duquesne University.

² The ALJ recommended that the Commission reject the settling parties’ agreement regarding the terms for installation of a generation meter for net-metered facilities (Recommended Decision, pp. 87-90 and 161-164). Neither the Company nor any other party has taken exception to the ALJ’s recommendation to reject that single term of the Joint Petition, nor have they taken exception to the ALJ’s recommendation to approve without modification the balance of the Joint Petition.

³ Rider No. 16 makes “back-up” distribution service available to eligible customers that meet a portion of their load with their own generating facilities and elect to receive service under Rider No. 16. The existing Rider No. 16 rate is lower than the demand charges under the Company’s general service rate schedules for customer classes that are eligible for Rider No. 16 (e.g., Rate GL, for which the demand charge is over \$9.00 per kW for the first 300 kW of demand and over \$8.00 per kW for all additional demand). Duquesne Light Tariff Electric – Pa. P.U.C. No. 24, p. 47.

(24¢ per kW, also applied on an “as used” basis”) for planned “maintenance” outages.⁴ DII has taken exception to this recommendation in its Exception filed on October 29, 2018.

DII’s Exception, for the most part, repeats arguments it advanced in its Main and Reply Briefs to the ALJ to try to support a rate of 24¢ per kW (applied on an “as used” basis) for “maintenance” outages of on-site generators experienced by customers that elect Rider No. 16. Those arguments have been addressed in the Company’s Initial Brief, filed on September 6, 2018,⁵ and its Reply Brief, filed on September 14, 2018.⁶ As explained below and in the Company’s Initial and Reply Briefs, the Commission should reject DII’s proposal to establish a separate rate under Rider No. 16 for “maintenance” outages of a customer’s generator and should also reject its proposal to set any rate for service under Rider No. 16 that is lower than \$2.50 per kW.⁷ Significantly, the same study that DII relies upon in its Exception as authority for “best practices in stand-by rate design”⁸ clearly provides that, in jurisdictions (like Pennsylvania) where generation has been “unbundled” and customers can purchase generation at market-based prices, there is no cost-based justification for charging different rates for distribution service provided during “back-up” and “maintenance” outages:

Under Schedule OAD-SBS, the customer purchases maintenance power not from Ohio Power Company [the incumbent electric distribution company] but through a third-party supplier. This largely eliminates the utility cost savings that could be realized by scheduling maintenance power during off-peak periods. For this reason, the study assumes that the charges for back-up and

⁴ Recommended Decision, p. 178.

⁵ DLC Initial Brief, pp. 19-25, 30-34.

⁶ DLC Reply Brief, pp. 27-31.

⁷ As explained fully in the Company’s Exceptions, there is no valid basis for setting the rate for back-up service under Rider No. 16 lower than \$2.50 per kW.

⁸ See DII Exception, pp. 4, 6 and 9.

maintenance distribution service would be identical under this schedule.⁹

As explained below, DII's Exception repeats the fundamental error underlying its entire proposal in this case, namely, trying to impose rate design principles that only apply to generation service (for which costs vary with a customer's usage) to distribution service (for which costs do not vary with a customer's usage).¹⁰ This is evident from DII's Exception, where it tries to support its proposed rate for "maintenance" outages with a quotation from the Brubaker/RAP Study that, on its face, applies only to "generation requirements."¹¹ A further explanation of the fundamental errors underlying the totality of DII's proposal is provided in the Company's Exceptions (pp. 14-24).

II. ARGUMENT

A. **DII's Proposal To Establish A Separate Rate Within Rider No. 16 To Apply To Distribution Service Furnished During "Maintenance" Outages Of A Customer's Generator Was Properly Rejected (DII Exception)**

DII proposed that there should be *two* rates for distribution service furnished to eligible customers electing service under Rider No. 16 (both applied on an "as used" basis): 24¢ per kW for distribution service provided during planned "maintenance" outages of the customer's

⁹ James Selecky, Kathryn Iverson, Ali Al-Jabir, *Standby Rates for Combined Heat and Power Systems – Economic Analysis and Recommendations for Five States* (Feb. 2014) ("Brubaker/RAP Study"), p. 34. The Brubaker/RAP Study was submitted by Peoples' witness Jamie W. Scripps as Peoples Exhibit No. JWS-6.

¹⁰ *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (May 3, 2018) ("Alternative Ratemaking Policy Statement"), p. 16 (Stating that unlike "the supply costs of energy . . . [that] vary as [a customer's] consumption varies," "distribution service costs do not vary, in the short run . . . in proportion to a customer's daily and monthly levels of consumption." See also *Alternative Ratemaking Policy Statement*, p. 14.

¹¹ DII Exception, p. 4. See also DII Exception, p. 6 (Attempting to rely upon a quotation from the Brubaker/RAP Study that explicitly states it applies to "generation reservation charges.") DII's misstatements and misrepresentations of rate design criteria set forth in the Brubaker/RAP Study (i.e., appropriating statements about "generation" service and trying to apply them to "distribution" service) are identified and addressed in DLC's Exceptions (pp. 19-20) and DLC's Reply Brief (pp. 21-22 and 29-30).

generator; and (2) 35¢ per kW¹² for back-up distribution service during unplanned outages (i.e., all other outages). Both rates are unreasonable on their face, as evidenced by the fact that a customer with a 2 MW generator¹³ could place 2 MW of load on DLC’s distribution system during an unplanned outage and pay only \$700¹⁴ in the month it imposed that demand, while it could impose the same 2 MW of demand during a claimed “maintenance” outage and pay even less (\$480)¹⁵ (also, only in the month of the outage). Given that the fully-allocated cost of distribution service for the customer classes eligible for Rider No. 16 is over \$7.00 per kW,¹⁶ there is no valid cost-of-service basis for Rider No. 16 rates as low as DII has proposed. For that reason, Office of Small Business Advocate (“OSBA”) witness Brian Kalcic opposed DII’s proposal in its entirety and testified that it “would result in subsidized back-up service.”¹⁷

DII asserts that its proposal would promote vaguely-worded public policy goals (e.g., a separate 24¢ per kW “maintenance” rate would allegedly “[encourage] beneficial coordination” between utilities and customer-generators; give customer-generators an incentive (as if they needed one) to perform “routine maintenance of their distributed generation units;” and “facilitates” the collection of “reliability data” DII claims the Commission might conceivably find helpful at some point in the future.¹⁸) However, rhetoric is not a substitute for substance,

¹² In its Exception (e.g., p. 2), DII states that this rate is \$0.325 per kW, which is not correct. DII proposed a rate of \$0.352 per kW. *See* DII Main Brief, p. 9 and Recommended Decision, pp. 177, 178 and 181.

¹³ Peoples’ witness Jamie Scripps provided various analyses of DLC’s Rider No. 16 and the back-up rates of other companies based on a “representative” customer-generator that she defined as a customer with 5 MW of total load and a 2 MW generator. Ms. Scripps’ definition of a “representative” customer-generator was used by other witnesses in this case. *See* DLC Statement No. 16-R, p. 20, n.17.

¹⁴ 2,000 kW x \$0.35 per kW = \$700.

¹⁵ 2,000 kW x \$0.24 per kW = \$480.

¹⁶ *See* DII Cross-Exam. Exhibit No. 3; DLC Exceptions, pp. 27-28.

¹⁷ OSBA Statement No. 1-R, pp. 4-7.

¹⁸ *See* DII Exception, pp. 4, 5 and 6.

and there is no substance to those arguments. Putting rhetoric aside, DII offers three purported reasons for creating a separate “maintenance” rate within Rider No. 16, none of which is valid.

1. DII’s Claim That A Separate “Maintenance” Rate Within Rider No. 16 Is Appropriate Because Maintenance Outages Can Be “Planned” Erroneously Treats Distribution Service Costs As If They Vary With A Customer’s Usage In The Same Way The Costs Of Generation Supply Service Vary With Usage

DII contends there should be a separate rate within Rider No. 16 for distribution service furnished during “maintenance” outages of customers’ generators that is lower than the rate for back-up service furnished at other times. DII claims that such a lower rate is justified 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).”¹⁹ Notably, DII’s argument for a lower “maintenance” rate tacitly concedes that “unplanned” outages can and do occur during “peak” periods when the distribution system would be “stressed” – a conclusion that DII’s own witness was forced to admit on the record (“I don’t know when the unpredicted outages are, that is why they are unpredicted.”)²⁰ Because unplanned outages can and do occur during on-peak periods,²¹ there is no valid cost-of-service basis for establishing a back-up rate that is 95% below the fully-allocated cost of service, as DII proposes to do with its 35¢ per kW back-up rate.²² There is even less reason to establish a separate “maintenance” rate that is even further below the fully-allocated cost of service.

At the outset, if a back-up rate is applied to a customer’s contracted level of back-up demand – as the terms of Rider No. 16 currently provide and as “best practices” for back-up rate

¹⁹ DII Exception, p. 4.

²⁰ Tr. at 612, lines 9-22.

²¹ See DLC Exceptions, pp. 25-26, setting forth actual historical data showing that outages of DLC’s Rider No. 16 customer’s generator occurred during on-peak periods, including one outage that was coincident with the class peak.

²² See DLC Exceptions, pp. 14-27.

design deem proper²³ – then no purpose is served by setting a second rate for “maintenance” outages. Stated another way, only under an “as used” application of Rider No. 16 (which is not appropriate under any circumstances²⁴) would separate “back-up” and “maintenance” rates produce different distribution charges to a customer based on when (or why) an outage of its generator may occur.

As Rider No. 16 is currently structured, the customer pays a single rate applied to the level of back-up demand for which it contracts. For that rate, the customer is entitled to receive back-up distribution service up to the maximum hourly limit set forth in Rider No. 16 irrespective of when or why a generator outage occurs. This approach is clearly correct because whether or not “maintenance” outages can be “planned” to occur off-peak, the Company must still have sufficient distribution capacity to meet randomly occurring demands the customer will impose when its generator has *unplanned* outages. The Company incurs the fixed costs of having distribution capacity available to meet a customer-generator’s peak demands whenever they occur, including during generator outages that occur during on-peak periods. Therefore, the fact that some of the customer’s generator outages might occur during off-peak periods does not change the level of fixed costs the Company incurs, and the customer should bear, for the service provided. Those costs are measured by the distribution capacity needed to meet a customer-generator’s peak demand during unplanned outages; if maintenance outages occur off-peak, their cost is already subsumed in the charge that is billed by applying the back-up rate to the contracted level of back-up demand. This is appropriate because, as this Commission has previously stated, “most, if not all, of a utility’s distribution system costs are fixed in the short

²³ See DLC Exceptions, pp. 11-12.

²⁴ *Id.*

run” and “customers should pay for those costs through fixed charges on their bills that reflect the amount of fixed costs of the distribution system for each customer class.”²⁵

DII’s proposal to set a separate “maintenance” rate within Rider No. 16 is based on the erroneous premise that, like generation supply costs, the costs of distribution service vary with a customer’s usage. They do not.²⁶ DII’s error is evident from its attempt to rely upon the portions of the Brubaker/RAP Study²⁷ delineating principles that only apply to *generation* service. Thus, DII’s Exception (p. 4) states:

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.” (Emphasis added.)

The same confusion of applicable principles is exhibited at page 6 of DII’s Exception, where it again attempts to rely on the Brubaker/RAP Study, stating: “The RAP study states that ‘[g]eneration reservation demand charges should be based on the utility’s cost and the forced outage rate of customers’ generators on the utility’s system.” (Emphasis added.)

Significantly, DII ignored the portion of the Brubaker/RAP Study that actually did address distribution costs in states that, like Pennsylvania, have “unbundled” generation and customers can purchase generation supply at market-based prices. The Brubaker/RAP Study concluded that, in such states, there is not a valid basis for charging different rates for distribution service furnished during “back-up” and “maintenance” outages:

Under Schedule OAD-SBS, the customer purchases maintenance power not from Ohio Power Company [the incumbent electric

²⁵ Alternative Ratemaking Policy Statement, p. 14.

²⁶ *Id.* at 16

²⁷ DII refers to the Brubaker/RAP Study as the “RAP Study.”

distribution company] but through a third-party supplier. This largely eliminates the utility cost savings that could be realized by scheduling maintenance power during off-peak periods. For this reason, the study assumes that the charges for back-up and maintenance distribution service would be identical under this schedule.²⁸

All of the benefits that DII claims would accrue from scheduling “maintenance” outages during “off-peak” periods are generation-related; they do not impact the cost of providing distribution service, as the Brubaker/RAP Study properly concluded. Because an electric distribution company must meet a back-up service customer’s peak demand whenever it occurs and irrespective of whether it is caused by planned or unplanned outages of the customer’s generator, there is no valid basis for setting a separate distribution rate for “maintenance” outages.

2. DII’s Claim That A Separate “Maintenance” Rate Is Needed To Create Incentives For Customers To Schedule Maintenance Of Their Generators During Off-Peak Periods Is Meritless And Should Be Rejected.

DII also errs in claiming that a lower rate for “maintenance” outages is necessary to encourage customers to schedule maintenance of their generators during off-peak periods.²⁹ It is worth noting that, at the rates DII has proposed, the difference in charges to a “representative” customer imposing 2 MW of load at the “back-up” rate of 35¢ per kW (\$700) and the “maintenance” rate of 24¢ per kW (\$480) is \$220. Thus, according to DII, the impact of an additional charge of \$220 in a month would drive fundamental changes in the way a customer with 5 MW of load and a 2 MW generator would schedule its maintenance. That makes little sense. Even if the differential were larger, setting a lower “maintenance” rate would not provide

²⁸ Brubaker/RAP Study, p. 34.

²⁹ DII Exception, pp. 4-5.

the kind of behavior-influencing “incentive” that DII claims because the cost of back-up service at Duquesne Light’s existing rates, including its existing Rider No. 16 rate, is less than 3%-4% of a customer’s total bill.³⁰ In short, generation supply costs dwarf back-up *distribution* costs overall and, therefore, would also dwarf any differential between “maintenance” and “back-up” rates for distribution service.

DII ignores the fact that, when a customer’s generator is out of service for any reason, the customer must replace the electricity it otherwise would have generated with power from an external source. Replacement power purchased from external sources is more expensive (frequently much more expensive) if needed during on-peak periods as compared to off-peak periods. The difference in cost – particularly in light of the fact that generation is such a large part of a customer-generator’s bill³¹ – also far outweighs the cost of back-up distribution service and provides all the “incentive” a customer needs to save considerable generation costs by scheduling maintenance outages during off-peak periods.³²

3. DII’s Claim That The Federal Energy Regulatory Commission’s Regulations Implementing The Public Utility Regulatory Policies Act Of 1978 “Govern A Distribution Utility’s Rates” Is Wrong As A Matter Of Law

DII contends that regulations issued by the Federal Energy Regulatory Commission (“FERC”) to implement the Public Utility Regulatory Policies Act of 1978 (“PURPA”) “govern a distribution utility’s rates.”³³ Based on that premise, DII contends further that a separate rate for distribution service furnished during “maintenance” outages is required by Section 305 of the FERC’s regulations, which states that, upon the request of a qualifying facility, each electric

³⁰ See DLC Initial Brief, p. 13 and DLC Statement No. 16-R, p. 39, n.45.

³¹ See DLC Statement No. 16-R, p. 30, Figure 4 (revised).

³² See DLC Initial Brief, p. 13 and n.54.

³³ DII Exception, p. 7.

utility shall provide: “(i) Supplementary power; (ii) Back-up power; (iii) Maintenance power; and (iv) Interruptible power.” DII’s argument is wrong in several respects.

At the outset, the FERC’s PURPA regulations apply only to “qualifying facilities” that meet qualification criteria established by PURPA and have been certified by the FERC.³⁴ The FERC’s regulations simply do not apply to customer-owned behind-the-meter generation that is not certified as a “qualifying facility.”

Furthermore, even as to qualifying facilities, the PURPA regulations that define an electric utility’s obligation to supply “power” to qualifying facilities pertain *only* to the supply of “energy and capacity” (i.e., generation supply) and not to the state-regulated function of electric *distribution* service. This conclusion is perfectly clear from portions of the FERC’s PURPA regulations that DII failed to discuss in its Exception. DII focused exclusively upon, and quoted, only a portion of Section 292.305 of the FERC’s regulations, which discusses how rates should be designed for sales of “back-up” and “maintenance power.”³⁵ It did not discuss the nature of the obligation the FERC’s regulations places on electric utilities to sell “power” to qualifying facilities – i.e., the only “obligation” to which the rate design criteria of Section 292.305 apply.

Electric utilities’ “obligation to sell to qualifying facilities” is set forth in Section 292.303(b) of the FERC’s PURPA regulations, which states: “Each electric utility shall sell to any qualifying facility, in accordance with § 292.305 . . . *energy and capacity* requested by the qualifying facility” (emphasis added). The operative words are “energy and capacity” – terms that are consistently used in the FERC’s PURPA regulations to define the scope of an electric

³⁴ 18 CFR § 292.301(a): “Applicability. This subpart [C] applies to the regulation of sales and purchases between qualifying facilities and electric utilities.” 18 CFR §§ 292.203 – 292.207 set forth the PURPA qualification criteria and procedures for certification.

³⁵ DII Exception, p. 7.

utility's obligation to "sell" "power" to a qualifying facility.³⁶ Significantly, DII's own witness conceded that "energy" and "capacity" are terms well-understood to refer to generation supply and *not* to the distribution of electric power.³⁷ Additionally, this same point was driven home by the Brubaker/RAP Study. The Brubaker/RAP Study, tracking the same language used in Section 292.305 of the PURPA regulations, notes that "delivery," which it defines as "synonymous with 'transmission and distribution,'"³⁸ is a service separate from "Backup power," "Maintenance power," and "Supplemental power" and that, "in restructured states, the utility may provide only delivery service and provider-of-last-resort energy service."³⁹

Thus, the rate design criteria in Section 292.305 that DII attempts to rely upon apply only to the supply of "energy and capacity" – a generation function – and not to a state-regulated electric utility's separate and distinct function of furnishing *distribution* service. Because Pennsylvania has "unbundled" electric generation from the transmission and distribution functions, any customer, including customer-generators, can obtain its generation supply at market-based prices.⁴⁰ And, for customers who choose not to "shop," Duquesne Light provides competitively-procured, market-priced default service on a non-discriminatory basis.⁴¹ Thus, in a state like Pennsylvania where electric restructuring has occurred, the "unbundling" of electric generation assures that the "energy and capacity" supplied for "back-up," "maintenance" and

³⁶ See, e.g., 18 CFR § 292.101(5) (defining "rate" "with respect to the sale or purchase of electric energy or capacity") and 18 CFR § 292.101(9) (defining "back-up power" as "electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generating equipment"). See also 18 CFR § 292.312, which authorizes the FERC to terminate an electric utility's "obligation to sell to qualifying facilities" if "competing retail electric suppliers" are available to sell "electric energy" to the qualifying facility.

³⁷ Tr. at 602, line 1, through 603, line 8.

³⁸ Brubaker/RAP Study, p. 11, n.10.

³⁹ *Id.* at 8 and n.4. See also *Id.* at 11 (stating that the "rate design principles" the Brubaker/RAP Study articulates "are consistent with the requirements of PURPA . . .")

⁴⁰ DLC Statement No. 16-R, p. 11, line 16 through p. 12, line 10.

⁴¹ *Id.*

“supplementary” power fully and completely satisfy the rate design criteria of 18 CFR § 292.305(c).⁴²

DII’s attempt to reply upon the PURPA regulations is yet another example of its attempt to appropriate principles and rate criteria that only apply to the generation supply service and erroneously apply them to distribution service. As explained above and in the Company’s Exceptions, this fundamental error pervades every aspect of DII’s proposal.

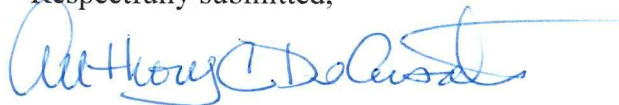
III. CONCLUSION

For the reasons set forth above and in the Company’s Initial and Reply Briefs, the Commission should reject DII’s proposal to create a separate rate within Rider No. 16 to apply to “maintenance” outages; to set that rate below the existing rate for back-up service of \$2.50 per kW; and to apply that rate on an “as used” basis. In addition, for the reasons set forth in Duquesne Light’s Exceptions, the ALJ’s recommendation that the Commission adopt DII’s

⁴² DLC Statement No. 16-R, pp. 12-13. DLC Statement No. 16-RJ, p. 9. *See also* Brubaker/RAP Study, p. 8, n.4, and p. 34 (stating there is no basis for a separate “maintenance” rate in a state that has unbundled generation).

proposal to set a Rider No. 16 rate that is less than the existing, previously-approved rate of \$2.50 as applied to a customer's contract back-up demand should be rejected.

Respectfully submitted,



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