COMMONWEALTH OF PENNSYLVANIA

January 13, 2021

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Petition of Duquesne Light Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan / Docket No. M-2020-3020818

Dear Secretary Chiavetta:

Enclosed please find the Response to the Office of Administrative Law Judge's Proposed Revised Schedule, on behalf of the Office of Small Business Advocate ("OSBA") in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, all known parties will be served, as indicated.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures
cc: **PA PUC Secretary Rosemary Chiavetta (Cover Letter & Certificate of Service only)**
Robert D. Knecht
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of its Act 129 Phase IV Energy and Efficiency Conservation Plan	: : :	**Docket No. M-2020-3020818**

RESPONSE OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE'S
PROPOSED REVISED SCHEDULE

Introduction

On January 2, 2021, the Commission issued another Notice in the Pennsylvania Bulletin at Docket No. M-2020-3015228. The January 2nd Notice provided all interested parties 20 days to file responsive pleadings. *PA Bulletin*, Volume 51 Issue 1, at 116

On January 8, 2021, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), *et al.*, filed a *Joint Expedited Motion for Extension of Procedural Schedule* at Docket No. M-2020-3015228 ("*Expedited Motion*"). The Expedited Motion addressed the Phase IV Energy Efficiency and Conservation ("EE&C") Plans filed by PPL Electric Utilities, PECO Energy Company, Duquesne Light Company, and the four First Energy Companies. The Office of Small Business Advocate ("OSBA") joined in the *Expedited Motion.*

On January 9, 2021, the Commission issued another Notice in the Pennsylvania Bulletin at Docket M-2020-3015228. The January 9th Notice provided all interested parties 20 days to file responsive pleadings. *PA Bulletin*, Volume 51 Issue 2, at 252.

On January 11, 2021, Administrative Law Judges ("ALJs") Mark A Hoyer and Emily I. DeVoe issued their *Interim Order Directing Parties to Respond to Joint Expedited Motion and OALJ's Proposed Revised Schedule* ("*Interim Order*").

The OSBA submits this response in accordance with the ALJ's *Interim Order*.

Response

The *Interim Order* proposes a revised schedule for the Phase IV EE&C cases. The revised schedule may have been a reasonable solution if the Commission had published only the one Notice on January 2, 2021. However, even if it was a mistake, the Commission published a second Notice on January 9. 2021, providing interested parties the ability to file responsive pleadings up to Friday, January 29. 2021. The *Interim Order* took notice of the January 9th filing, observing that it provided a responsive pleading date of January 29th. *Interim Order*, at 1, footnote 1.

If the *Interim Order's* revised schedule were to be enacted, that would provide those "January 29th" interested parties five business days, or less, to provide Direct and/or Rebuttal Testimony. Regardless of whether the Commission made a mistake on January 9th, that simply does not provide those parties with due process.

The *Expedited Motion* stated, as follows:

> The Notice of the proposed Phase IV Plans was published in the *Pennsylvania Bulletin* on January 2, 2021 ('Notice'), fourteen (14) days ***after*** the proposed publication date established in the Implementation Order.

Expedited Motion, at 3, Paragraph 8 (footnote omitted) (emphasis in original). The *Expedited Motion* ultimately requested a 14-day extension of the original procedural schedules. *Id.*, at 10.

Using the *Expedited Motion's* math, and taking into account the January 9th Commission Notice, the OSBA requests that the procedural schedules be extended by 21 days. Respectfully, the January 9th Notice adds additional due process issues that must be addressed.

The Commission has full authority to extend the timeframe set forth in 66 Pa. C.S.A. § 2806.1(e). On April 13, 2020, the Pennsylvania Supreme Court addressed the Governor's

Proclamation, as well as the authority granted to the Governor, in *Friends of DeVito v. Wolf*, 2020 Pa. LEXIS 1987.

The Pennsylvania Supreme Court, exercising its King's Bench jurisdiction, ruled, as follows:

> [W]e conclude that the COVID-19 pandemic triggered the Governor's authority under the Emergency Code and that as a result of the COVID-19 pandemic, the Governor had the authority under the Emergency Code to declare the entirety of the Commonwealth a disaster area.

DeVito, at 35. The Supreme Court continued, as follows:

> As to the predicate requirements that the interests of the public justify the Governor's assertion of its authority, the nature of this emergency supports it.

DeVito, at 37.

The Supreme Court also observed:

> The Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders and proclamations which shall have the full force of law. 35 Pa.C.S. § 7301(b).

DeVito, 42.

Finally, the Supreme Court stated, as follows:

> Upon the declaration of a disaster emergency, the Emergency Code vests with the Governor expansive emergency management powers, including, inter alia, to '***[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency***, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency...'

DeVito, at 25 (emphasis added).

Therefore, the Pennsylvania Supreme Court has ruled that the Governor's March 6th *Proclamation of Disaster Emergency* is a legal, valid exercise of authority granted to the Governor. The Pennsylvania Supreme Court has also ruled that statutes "prescribing the procedures for conduct of Commonwealth business," as well as the Commission's "orders, rules or regulations" may be suspended while the Governor's *Proclamation* is in effect. The Governor's *Proclamation* remains in effect as of the time of this filing.

Conclusion

Therefore, the OSBA respectfully requests that the Commission and Office of Administrative Law Judge extend the procedural schedules by 21 days in order to cure any due process issues caused by the January 9th Commission Notice. Commission extension of the timeframe set forth in 66 Pa. C.S.A. § 2806.1(e) is lawful and should be exercised.

Respectfully submitted,

/s/ Sharon E. Webb

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Dated: January 13, 2021

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for Approval of its Act 129 Phase IV Energy and Efficiency Conservation Plan	: : :	**Docket No. M-2020-3020818**

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: January 13, 2021