

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company for a	:	
Certificate of Public Convenience and for	:	
Commission Approval of the Transfer and	:	Docket No. R-00974104
Acquisition of Property Used and Useful in the	:	Docket No. A-110150-F0020
Public Service Between Duquesne Light	:	
Company and FirstEnergy Corporation	:	

**Comments of the Environmentalists on the
Generation Exchange Proposal
of Duquesne Light Company**

Comment 1) Duquesne’s proposed Accounting Protocols are inconsistent with prior Commission Orders in that they brush over issues reserved for future review and decision and treat them as resolved.

The Opinion and Order entered on December 18, 1998 (“the December 18 Order”) by the Pennsylvania Public Utility Commission (“Commission”) in Docket No.R-00974104 identified numerous issues that were to be addressed in future filings by Duquesne Light Company (“Duquesne” or “Company”) and in future Commission proceedings before the Commission would issue its final approval of the generation exchange and the auction. The Environmentalists urges the Commission to hold fast to this approach and to decide issues only when they are ripe for decision and have been thoroughly aired.

There are several instances in the Accounting Protocols (included as Appendix E to Duquesne’s May 3 Application) where issues reserved for future review and decision are brushed over and treated as resolved. One example is the proposed treatment of

the market value of assets not sold in the auction. In the earlier proceeding, Duquesne took the position that the value of unsold assets should be zero, but after the OCA and others objected, Duquesne acknowledged that the Commission may defer resolution of this issue. The Commission agreed, stating in the December 18 Order that "[t]his market value, along with the details of disposition, will receive appropriate Commission scrutiny at the proper time."¹ However, in the Accounting Protocols submitted in Duquesne's May 3 Application, Duquesne states in footnote 3 that "[t]he sales price shall be deemed to be zero for any Utility Asset for which a transfer is not completed..." The Commission should not allow this back-door approach to resolve issues which the December 18 Order reserves for future airing and resolution.

Another example of this problem involves the Beaver Valley II lease cancellation costs. The December 18 Order quotes the OCA's position accepting inclusion of these costs only if "(1) such expenses are 'incremental cost(s) to Duquesne' and (2) Duquesne has adequately 'explore(d) with FirstEnergy any possible alternative to termination of this lease.'" The Commission then notes the Company's offer that "a full accounting for the final lease termination costs will be provided at the time a final accounting for stranded costs is made following completion of the auction." The Commission resolves the issue by ruling that "[t]o the extent that Duquesne may demonstrate that the lease termination costs were reasonably incurred we will allow such costs to be recovered."² However, in the Accounting Protocols submitted in

¹ December 18 Order, pages 29-30.

² December 18 Order, pages 28-29.

Duquesne's May 3 Application, Duquesne includes the costs associated with terminating the Beaver Valley II lease as a component of the Transaction Costs, with no indication of any future full accounting or exploration of the open issues.

A third example of this concern involves the costs of environmental remediation. The December 18 Order states that Duquesne "contends that the purchaser will assume most of the environmental liabilities associated with the plant sites" and that "it is not requesting recovery of any environmental liabilities it may retain under the asset sale or exchange agreements."³ However, according to footnote 6 of the May 3 Application, Duquesne is asking the Commission to approve "approximately \$2 million" of environmental remediation costs at Beaver Valley.

The Environmentalists recommend that the Commission hold to its December 18 Order and be very careful about not approving a resolution of any issue that has not been adequately presented by Duquesne and addressed by the parties. The Environmentalists urge the Commission to be very clear, as it was in its December 18 Order, about precisely what issues with the generation swap and the auction have been resolved and what issues are left for rulings in the future.

Comment 2) Duquesne's proposed Accounting Protocols are inconsistent with prior Commission Orders in that they propose significant increases to Duquesne's stranded costs.

The Accounting Protocols also seek to change previous Commission rulings on

stranded costs. The Commission's calculation for deferred taxes is challenged and increased by \$160 million.⁴ The Deferred Fuel Cost Regulatory Asset value is increased to \$25 million.⁵

The Commission should not allow Duquesne to make these changes to the stranded cost determination that the Commission adopted in the Duquesne restructuring order.

Comment 3) Duquesne has failed to demonstrate that the two sets of plants of comparable value.

In order for the Commission to approve the swap, it must determine that the generation assets that Duquesne obtains in the swap are no less valuable than the generation and transmission assets it is giving to FirstEnergy. It is not enough to say that FirstEnergy has guaranteed that the auction will produce net proceeds of at least \$110 million. Because Duquesne is proceeding with divestiture, the ratepayers are entitled to have the stranded cost figure reflect the market value of the generation assets as determined by the market. The only grounds for approving the swap is if the market value of the assets being received are as great as the market value of the assets being given away.

Many critical pieces of information are missing which prevent the Commission from concluding that the two sets of plants are of comparable value:

³ December 18 Order, page 43.

⁴ Appendix E, Accounting Protocols, pages vi-vii.

⁵ Appendix E, Accounting Protocols, page vi.

1. **The Due Diligence Analysis.** The parties have been assured that the due diligence analysis of the FirstEnergy plants was favorable,⁶ but the due diligence reports were not presented and the Commission has no ability to determine if this conclusion is in fact the case. We also have not heard anything about the due diligence analysis of the Duquesne plants. The due diligence information about these assets is important because of Duquesne's liability for incremental capital expenditures at these facilities.
2. **The Beaver Valley II lease cancellation.** An important factor in the value of the swapped facilities will be the cost of the cancellation of the Beaver Valley II lease, and no information has been presented on that issue. This cost is relevant to the swap because, as Duquesne proposes in the Accounting Protocols (Appendix E of the May 3 Application), these costs are to be included in the costs of implementing the Swap Agreement and are to be deducted from the price obtained in the auction.
3. **The environmental liabilities and remediation costs.** The proposed Accounting Protocols include the costs of site remediation as a cost of implementing the Swap Agreement. Footnote 6 of the May 3 Application projects approximately \$2 million of remediation costs for Beaver Valley, a figure that is totally unsupported. No support for this figure is provided and no indication that this is the full extent of the remediation costs that will be incurred. Schedule 7.6

⁶ May 3 Application, page 22.

of the Generation Exchange Agreement (Tab 44) indicates that the EPA has issued a notice of violation for one of the FirstEnergy plants that Duquesne will be acquiring, but no information is provided about the possible costs of this environmental problem.

4. **Incremental O&M.** This cost is relevant to the swap because, as Duquesne proposes in the Accounting Protocols (Appendix E of the May 3 Application) these costs are to be included in the costs of implementing the Swap Agreement and are to be deducted from the price obtained in the auction. No information is presented about what the cost of incremental O&M will be.
5. **incremental capital.** This cost is relevant to the swap because, as Duquesne proposes in the Accounting Protocols (Appendix E of the May 3 Application) these costs are to be included in the costs of implementing the Swap Agreement and are to be deducted from the price obtained in the auction. No information is presented about what the incremental capital costs will be.
6. **The cost of the labor agreements.** The information presented by Duquesne on the resolution of the labor issues (see Appendix A of the May 3 Application) fails to indicate what the costs will be of these labor provisions. This cost is relevant to the swap because, as Duquesne proposes in the Accounting Protocols (Appendix E of the May 3 Application) these costs are to be included in the costs of implementing the Swap Agreement and are to be deducted from the price obtained in the auction.

7. **Local community Impacts.** The December 18 Order noted that the Commission does “not take lightly our responsibility to oversee this process in such a way that affected communities ... are protected to the extent possible.”⁷ As many parties noted in an earlier round of comments, the impacts on local communities involve issues outside of the scope of the labor issues and include matters such as local taxes, support of local economic development programs, etc. Duquesne has provided no such assessment.
8. **Reliable service.** The December 18 Order required Duquesne to “make subsequent filings for the Commission’s final approval of the Auction, which include the steps necessary to maintain reliable service in a reasonable cost effective manner.”⁸ This analysis, and the cost of maintaining reliable service, has not been presented.

Without information on all of these costs, the Environmentalists contend that the Commission is unable to determine that the assets Duquesne will obtain are equal in value to the assets Duquesne will transfer to FirstEnergy.

Comment 4) Duquesne has not yet proposed a plan to address the Provider of Last Resort Issues.

In its December 18 Order, the Commission reserved the right to review and approve any final arrangements for the Provider of Last Resort service.⁹ How will the

⁷ December 18 Order, page 35.

⁸ December 18 Order, page 41.

⁹ December 18 Order, pages 23-24.

Company provide POLR customers with the equivalent competitive benefits of the CDS process? What customer safeguards will be put in place? How will the Chapter 56 protections be preserved? All of these issues are open.

Comment 5) The Commission should not modify the stranded cost figures as proposed by Duquesne without balancing the public interest by requiring Duquesne to create a Sustainable Energy Fund and a Renewable Energy Pilot Program similar to those in the other major electric utility settlements.

Duquesne is asking the Commission to reopen the restructuring order and recognize some significant increases in the company's stranded costs. As stated above in Comment 2, the Commission should not allow this to happen. If the Commission does allow this increase in stranded costs, it should also make some additional changes to the restructuring order to preserve the public interest balance. The Environmentalists suggest two that would increase the public interest value for Duquesne's ratepayers. We suggest that the Commission direct Duquesne to create a Sustainable Energy Fund according to the provisions in the many restructuring settlement agreements. We also suggest that Duquesne be directed to adopt a renewable energy pilot program as contained in the settlement agreements.

Respectfully submitted,

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