

123 FERC ¶ 61,221  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Duquesne Light Company

Docket No. IN07-27-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 29, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Duquesne Light Company (DLC). This order is in the public interest because it resolves all issues relating to a non-public, formal investigation conducted by Enforcement, pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007). Enforcement concluded that DLC violated the cost allocation procedures, the electric quarterly report (EQR) filing requirement, and the standards of conduct.
2. DLC is a public utility that purchases, transmits, and distributes electricity in an 800-square mile service territory in southwestern Pennsylvania. DLC agreed it committed the acts in question, but neither admitted nor denied that its acts constituted violations. However, as part of a settlement DLC agreed to pay a \$250,000 civil penalty, develop and implement a comprehensive regulatory compliance plan at a minimum cost of \$1,000,000 and implement other remedies.
3. This matter originally commenced as an audit, conducted by the Division of Audits (DOA), who then referred it to the Division of Investigations. As a result of the investigation, Enforcement identified several violations, described below.
4. Enforcement found that DLC violated the Commission's cost allocation procedures<sup>1</sup> by not charging affiliates for the actual time DLC employees spent working on affiliate tasks. DLC billed the affiliates for prorated portions of shared employees' salary, overhead and fringe benefits based on budget estimates collected from the company's cost centers before the beginning of each calendar year.

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<sup>1</sup> 18 C.F.R. Part 101, General Instruction 9 (2007).

5. Enforcement found that DLC violated the Commission's EQR filing requirement<sup>2</sup> by failing to file EQRs for Monmouth Energy Inc. (Monmouth), a DLC marketing affiliate, from 2002 through 2006.
6. Enforcement found that DLC violated the Commission's regulation concerning the accurate and timely posting of organizational charts and personnel changes on OASIS<sup>3</sup> in several respects. Specifically, DLC failed to post functional organizational charts on its OASIS that accurately reflected its operations and reporting hierarchy, and failed or incompletely provided a list of marketing affiliates, shared employees, transferred employees, and job descriptions. In addition, DLC failed to timely post information on personnel changes and transferred employees.
7. Enforcement found that DLC violated the independent functioning requirement of the standards of conduct<sup>4</sup> by allowing three transmission function employees to perform marketing duties related to certain provider of last resort (POLR) customers<sup>5</sup> periodically from January 1, 2005 through June 2007. Specifically, these employees negotiated and semi-annually renewed five contracts with Orion Power and were actively involved in supplying energy to a wholesale power sales contract with Zinc Corporation of America. These employees shared operational responsibility with Orion and submitted day ahead demand bids. But, these employees were not involved in any other type of marketing or trading activities.
8. Enforcement found that DLC violated the information sharing requirement of the standards of conduct<sup>6</sup> in three respects: (1) by allowing the three employees who conducted both transmission and marketing activities to have access to non-public transmission information between January 1, 2005 through June 2007; (2) when transmission employees would periodically disclose non-public transmission information to the President of Monmouth, a marketing affiliate, at lead team meetings; and (3) when non-public transmission information was disclosed to certain marketing affiliate

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<sup>2</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); 18 C.F.R. § 35.10b (2007).

<sup>3</sup> 18 C.F.R. § 358.4(b)-(c) (2007).

<sup>4</sup> 18 C.F.R. § 358.4(a) (2007).

<sup>5</sup> The Commission has proposed revision to the standards of conduct, which if adopted, would change some of the regulations implicated in this case, including those related to POLR activities. *Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, 73 Fed. Reg. 16,228 (Mar. 27, 2008).

<sup>6</sup> 18 C.F.R. § 358.5 (2007).

employees during attempts to sell Duquesne's transmission assets for several months between late 2003 and early 2004 and again for several months between late 2005 to early 2006.

9. In addition, Enforcement found that DLC submitted testimony to the Pennsylvania Public Utilities Commission (PAPUC) in Docket No. R-00061346 that mischaracterized DOA's conclusions regarding DLC's cost allocation procedures. More specifically, during the audit, DOA submitted a draft audit report to DLC and then had follow-up discussions with DLC relating to the audit's conclusions, including DLC's failure to comply with the Commission's cost allocation procedures. In January 2006, after these conversations, DLC submitted testimony to the PAPUC stating that the audit had determined that DLC's cost allocation procedures were "proper and adequate."

10. Enforcement and DLC have entered into the attached Agreement to resolve Enforcement's investigation. The Agreement requires DLC to pay a \$250,000 civil penalty, develop and implement a comprehensive regulatory compliance program at a minimum cost of \$1,000,000, implement cost allocation procedures, which record shared employee's actual time conducting services on behalf of affiliates, and notify the PAPUC and all parties to Docket No. R-00061346 clarifying in its filed testimony that DOA did not find that DLC's cost allocation procedures were proper and adequate.

11. In approving the Agreement and the \$250,000 civil penalty, we considered the factors set forth in the Federal Power Act (FPA)<sup>7</sup> and our *Policy Statement on Enforcement*.<sup>8</sup> In particular, the Commission finds: (1) DLC's acts caused no harm to the market or other market participants; (2) DLC did not engage in any fraudulent or deceitful conduct; (3) DLC has no history of violations; (4) DLC's acts were discovered through an audit, and were not self-reported; and (5) DLC's senior management failed to place sufficient emphasis on compliance.

12. The lack of emphasis on compliance and insufficient internal compliance also demonstrated the need for a comprehensive regulatory compliance plan. By requiring DLC to retain an independent external consultant and spend a \$1,000,000 in developing and implementing a comprehensive regulatory compliance plan, we expect that DLC will improve the effectiveness of its attempts to comply with our statutes, rules, and regulations.

13. In approving the Agreement, the Commission is also cognizant of the fact that in other situations where other companies self-reported conduct similar to some of DLC's violations, and Enforcement determined the conduct constituted violations, the matters

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<sup>7</sup> Section 316A(b) of the FPA, 16 U.S.C. § 8250-1(b).

<sup>8</sup> *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2005).

were closed without any sanction.<sup>9</sup> In contrast to those situations, DLC did not self-report its conduct, DLC engaged in a variety of violations for a longer period of time and did not timely remedy all of the alleged violations.

14. In light of the facts and circumstances, the Commission concludes that the Agreement, including the civil penalty and the compliance program specified in the Agreement are appropriate and provide a fair and equitable resolution of these matters and are in the public interest.

The Commission orders:

The attached Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> See Report on Enforcement, Docket No. AD07-13-000, Nov. 14, 2007, at 15 (discussing that staff resolves a self-report without a civil penalty if the violation is minor in nature, the company brings its conduct into compliance and/or voluntarily implements actions to prevent reoccurrence of the misconduct).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Duquesne Light Company

Docket No. IN07-27-000

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Duquesne Light Company (DLC) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic investigation conducted by Enforcement, pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007). Following an audit initiated by the Division of Audits (DOA), Enforcement investigated DLC for possible violations of the standards of conduct, 18 C.F.R. Part 358 (2007), cost allocation procedures, 18 C.F.R. Part 101, General Instruction 9 (2007), and the electric quarterly report (EQR) filing requirement, 18 C.F.R. § 35.10b (2007).

**II. STIPULATIONS**

Enforcement and DLC hereby stipulate to the following:

**A. Background**

2. DLC is a public utility that purchases, transmits, and distributes electricity in an 800-square mile service territory in southwestern Pennsylvania. DLC has approximately 587,000 customers over a 17,000 square mile transmission and distribution system. The Commission granted DLC market based rates in 1998. Throughout the investigation, DLC was a member of PJM Interconnection, LLC (PJM).

3. In 2000, DLC sold all of its generation resources in conjunction with Pennsylvania's functional unbundling and generation deregulation and entered into a full requirements contract with a non-affiliate, Orion Power (Orion), to serve all of DLC's provider of last resort (POLR) and wholesale customers. In late 2004 when that contract expired, DLC entered into a full requirements contract with its marketing affiliate, Duquesne Power, to supply the power needed for most of its POLR customers effective January 1, 2005.

**B. Marketing Affiliate Activities**

4. Under the full requirements contracts with Orion and Duquesne Power, DLC was not actively involved in procuring energy for its customers. However, to serve a specific class of eleven POLR customers not covered by the contracts with Orion and Duquesne

Power, DLC took a more active role beginning on January 1, 2005. DLC transmission employees negotiated and entered into separate contracts with Orion (and renewed them every six months) that required them to submit a day-ahead demand bid to PJM to cover these customers. Orion would then choose the generation to supply the power and confirm the energy schedules. All of these contracts expired by June 2007. Enforcement concluded that the renewal of the Orion contracts to serve these customers and the submission of day-ahead demand bids was conducted by three DLC transmission employees in violation of the independent functioning requirement, 18 C.F.R. § 358.4(a) (2007), and information sharing requirement, 18 C.F.R. § 358.5 (2007), of the standards of conduct.

5. DLC also had a special supply agreement with one wholesale customer, Zinc Corporation of America (Zinc). When Zinc required energy, it contacted a DLC transmission employee and either requested DLC to obtain a price quote from Orion or Cinergy Solution (Cinergy), or requested DLC to purchase its energy in the day-ahead market. Each instance of Zinc-related Orion purchases required dual confirmation by DLC and Orion. In 2005, Zinc used DLC to purchase energy through Orion on 108 occasions and through Cinergy on one occasion. The transmission employees were also responsible for purchasing related ancillary services for Zinc in the PJM market. Enforcement concluded that the activities undertaken by these transmission employees were violations of the independent functioning requirement, 18 C.F.R. § 358.4(a) (2007), and information sharing requirement, 18 C.F.R. § 358.5 (2007), of the standards of conduct.

6. In June 2007, DLC underwent a significant corporate reorganization. After the reorganization, the remaining marketing activities relating to certain POLR customers and Zinc conducted by transmission employees became the responsibility of Duquesne Power, one of DLC's marketing affiliates. With this reorganization and the expiration of certain contracts, Enforcement found that DLC has remedied these violations.

7. Enforcement also concluded DLC violated the information sharing provision of the standards of conduct, 18 C.F.R. § 358.5 (2007), by disclosing certain transmission information to five marketing affiliate employees during attempts to sell Duquesne's transmission assets during 2003-4 and 2005-6.

### **C. Monmouth**

8. Monmouth Energy, Inc. (Monmouth), another DLC marketing affiliate, owned a 10MW generating facility fueled by landfill gas located in New Jersey. The generating facility's output was committed under a long term fixed rate contract. DLC's parent company, Duquesne Light Holdings, subsequently sold Monmouth in late 2006. However, when still affiliated with DLC, the President of Monmouth regularly attended lead team meetings (with DLC transmission employees) organized by his supervisor, the Chief Operating Officer of DLC. DLC discontinued the lead team meetings in December

2006. Enforcement determined that during several lead team meetings, non-public transmission information was disclosed to the President of Monmouth in violation of the information sharing provision, 18 C.F.R. § 358.5 (2007), of the standards of conduct.

9. The Commission granted Monmouth market based rate authority in 1999. The Commission requires companies with market based rate authority to file a quarterly EQR report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter. 18 C.F.R. § 35.10b (2007). Enforcement determined that Monmouth failed to file EQRs with the Commission from 2002 through September 2006 in violation of the Commission's regulations. In November 2006, DLC filed all overdue EQRs on behalf of Monmouth.

#### **D. Cost Allocation Procedures**

10. Enforcement found that DLC violated the Commission's cost allocation provision that requires a utility to record a shared employee's actual time spend performing work for its affiliates, or if this is impracticable, conduct a time study. 18 C.F.R. Part 101, General Instruction 9 (2007). In order to bill DLC's affiliates for prorated portions of shared employees' salaries, overhead and fringe benefits DLC based its figures on budget estimates collected from the company's cost centers before the beginning of each calendar year, rather than actual time or a time study. Enforcement staff cannot evaluate whether DLC or its affiliates benefited from any improper cost allocation because DLC did not keep actual time.

11. During the audit, DOA submitted a draft audit report to DLC and then had follow-up discussions relating to the audit's conclusions, including discussions related to DLC's failure to comply with the Commission's cost allocation procedures. In January 2006, after these conversations, DLC submitted testimony to the Pennsylvania Public Utilities Commission (PAPUC) in Docket No. R-00061346 stating that the audit had determined that DLC's cost allocation procedures were "proper and adequate." Enforcement found this characterization of the audit misrepresented DOA's conclusions.

12. Following issuance of the draft audit report, DLC implemented a post closing reconciliation true-up to check estimates of time allocated against time incurred by each applicable employee at the end of each quarter. According to DLC it believed these procedures complied with the Commission's regulations. However, Enforcement informed DLC that the quarterly reconciliation did not comply with the requirements of Part 101, Instruction 9 that requires allocation based on actual time or a time study.

### **E. Oasis Postings**

13. Enforcement determined that DLC violated the Commission's regulations concerning the accurate and timely posting of organizational charts and personnel changes on OASIS, 18 C.F.R. § 358.4(b) (2007). Specifically, DLC failed to post functional organizational charts on its OASIS that accurately reflected its operations and reporting hierarchy, and failed to or incompletely provided a list of marketing affiliates, shared employees, transferred employees, and job descriptions. In addition, DLC failed to timely post information on personnel changes and transferred employees.

### **F. DLC's Compliance Measures**

14. In response to the findings of the investigation and with the intention of strengthening corporate compliance, DLC created a separate Corporate Compliance Department in June 2007 with three employees to help ensure compliance with the Commission's regulations. DLC has also strengthened its procedures to ensure accurate and timely OASIS postings and has committed to implementing actual time cost allocation procedures. The Chief Compliance Officer now has direct access to the Board of Directors.

### **G. Other Relevant Factors**

15. Enforcement found no evidence that DLC's violations gave its marketing affiliates an undue preference or caused quantifiable harm to the market.

16. Enforcement found, that the actions and inactions by DLC's senior management played a role in the violations, because senior management did not place sufficient emphasis on compliance and failed to ensure adequate compliance procedures. However, staff found no evidence that senior management intentionally did not comply with the standards of conduct.

17. Enforcement found that DLC did not remedy some of the independent functioning and information sharing violations until eight to ten months after the draft audit report and allowed several additional violations to occur during the investigation

### **H. Resolution of Enforcement's Determinations**

18. DLC agrees that it committed the acts in question, but neither admits nor denies that they constitute violations. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving any dispute between Enforcement and itself regarding the acts in question, DLC agrees to undertake the obligations set forth in this Agreement.

19. DLC consents to the use of Enforcement's determinations, findings, and conclusions set forth in this Agreement for the purpose of assessing the factors, including the factor of determining the company's history of violations, that are set forth in the



October 20, 2005 Policy Statement on Enforcement,<sup>10</sup> or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided however that DLC does not consent to the use of the specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does DLC consent to the use of this Agreement by any other party in any other proceeding.

### **III. REMEDIES AND SANCTIONS**

20. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation of DLC's violations, and in lieu of any other remedy that the Commission might assess, determine, initiate, or pursue, concerning any of the matters referred to above, DLC agrees that after the Commission issues an order approving this Agreement without modification, it shall take the following actions:

#### **A. Civil Penalty**

21. DLC shall pay a civil penalty in the amount of \$250,000 payable to the United States Treasury, within 10 days of the Commission issuing an order approving this Agreement without modification.

22. The civil penalty shall not be passed through, directly or indirectly, to any present or future customers or ratepayers.

#### **B. Comprehensive Regulatory Compliance Plan**

23. DLC shall develop and implement, a comprehensive regulatory compliance program. DLC will retain independent external consultant[s] to assist DLC in this endeavor. The program will include a thorough review of the effectiveness of DLC's compliance processes, including the violations discussed above. The external consultant shall simultaneously submit to Enforcement and DLC its report and recommendations. After the program has been implemented, DLC will report the results of the program, including any and all recommendations to Enforcement. DLC agrees to spend a minimum of \$1,000,000, or more if necessary, to develop and implement the comprehensive regulatory compliance program.

24. One year after implementing the comprehensive regulatory compliance program, DLC must conduct an internal audit to evaluate its implementation of the external consultant's recommendations. DLC shall submit the results of that audit to Enforcement

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<sup>10</sup> *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2005).

within one year and 90 days of having implemented the comprehensive regulatory compliance program.

### **C. Other Remedies**

25. DLC shall implement cost allocation procedures, which record shared employees' actual time conducting services on behalf of affiliates, and bill the affiliates accordingly as required by 18 C.F.R. Part 101, General Instruction No. 9, for those costs and for the administrative and general costs associated with that employee.

26. Within 10 days of the Effective Date, DLC shall notify, in writing, the PAPUC and all parties to Docket No. R-00061346 clarifying in its filed testimony that DOA did not find that DLC's cost allocation procedures were proper and adequate in the draft audit report and stating that DLC will implement direct charging of time to and from its energy marketing affiliates. DLC will also provide a copy of that notice to Enforcement.

### **IV. TERMS OF CONSENT AGREEMENT**

27. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification.

28. Unless the Commission issues an order approving the Agreement in its entirety and without modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor DLC shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and DLC.

29. The Agreement binds DLC and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on DLC, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Section II of this Agreement.

30. In connection with the payment of the civil penalty provided for herein, DLC agrees that the Commission's order approving the Agreement without modification shall be a final order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. DLC further waives rehearing of any Commission order approving the Agreement without modification, and judicial review by any court of any Commission order approving the Agreement without modification.

31. Commission approval of this Agreement without modification shall release DLC, its agents, officers, directors and employees, both past and present, and any successor in interest to DLC from, and forever bar the Commission from bringing against DLC, any and all administrative or civil claims arising out of the alleged violations addressed herein

in Docket No. IN07-27-000. Upon the Effective Date of this Agreement, Enforcement's investigation of DLC shall terminate in Docket No. IN07-27-000.

32. Failure to make a timely payment or to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject DLC to additional action under the enforcement and penalty provisions of the FPA.

33. If DLC does not make the payment above at or before the time agreed by the parties, interest payable to the United States Treasury will begin to accrue, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.

34. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or DLC has been made to induce the signatories or any other party to enter into the Agreement.


35. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

36. The undersigned representative of DLC affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

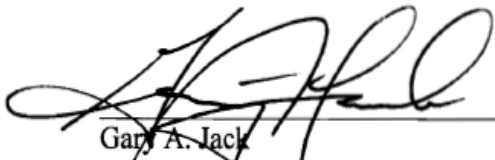
37. The Agreement may be signed in counterparts.

38. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
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Susan J. Court  
Director  
Office of Enforcement

  
\_\_\_\_\_  
Date



4/29/08

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Gary A. Jack  
Assistant General Counsel and FERC Chief Compliance Officer  
Duquesne Light Company