


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 30, 2020

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 Default Service Plan for the Period of June 1,  
2021 through May 31, 2025  
Docket No. P-2020-3019522

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply  
Exceptions in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of  
Service.

Respectfully submitted,

/s/ David T. Evrard  
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Enclosures:

cc: The Honorable Mark A. Hoyer (**email only**)  
Office of Special Assistants (**email only**: [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for :  
Approval of its Default Service Plan for the Period : Docket No. P-2020-3019522  
From June 1, 2021 through May 31, 2025 :

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REPLY EXCEPTIONS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: November 30, 2020

## I. INTRODUCTION

This proceeding involves the Petition of Duquesne Light Company (Duquesne or Company) for Approval of its Ninth Default Service and Procurement Plan (DSP IX) intended to establish the terms and conditions by which the Company will acquire and provide service to its non-shopping customers for the period beginning June 1, 2021 through May 31, 2025. Duquesne's Petition was filed with the Public Utility Commission (Commission) on April 20, 2020. The Office of Consumer Advocate (OCA) entered the case on May 22, 2020, with the filing of its Answer to Duquesne's Petition and its Notice of Intervention

As explained in the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mark Hoyer, issued November 12, 2020, many of the issues raised in this proceeding have been tentatively resolved by way of a Joint Petition for Approval of Unopposed Partial Settlement (Partial Settlement), for which ALJ Hoyer has recommended approval by the Commission.

In addition, on several other issues where a full settlement could not be reached, Duquesne was able to enter into Joint Stipulations with several parties with respect to those issues, specifically, the Electric Vehicle Time Of Use (EV TOU) Pilot Program and the Standard Offer Program (SOP) and Customer Assistance Program (CAP) Shopping issues. The OCA is a signatory to both of those Joint Stipulations. In the R.D., the ALJ recommended that the Joint Stipulations be approved by the Commission.

On two other issues – the Solar Purchase Power Agreement (PPA) and the recovery of Network Integration Transmission Service (NITS) costs – no settlement or Joint Stipulation was reached and those matters were fully litigated. The OCA addressed only the Solar PPA issue in its Briefs. It did not oppose the Company's proposal, but argued that Duquesne should demonstrate that any proposed solar agreement would be at least revenue-neutral (in relation to

default service customers) over the term of the contract. The R.D. recommended that the Commission adopt Duquesne's Solar PPA proposal. It rejected the OCA's call for a showing (on a projected basis) of revenue-neutrality or better in relation to default service customers. Nonetheless, the OCA elected not to file an Exception on this point.

However, on November 23, 2020, Exceptions to the R.D. were filed by the EGS Parties, a coalition of the following licensed EGSs: Direct Energy Services, Interstate Gas Supply, Shipley Choice, NRG Energy, Vistra Energy, ENGIE Resources, and WGL Energy Services and by MAREC Action. The OCA now files these Reply Exceptions in response to the EGS Parties, urging the Commission to adopt the R.D. as rendered by the ALJ, without modification.

## II. REPLY EXCEPTIONS

### A. Solar PPA Proposal

#### 1. REPLY to EGS PARTIES' EXCEPTION NO. 3: The R.D.'s Approval of Duquesne's Solar PPA was Proper. (R.D. at 42-51)

In their Exception, EGS Parties contend that "there is no legal basis on which to approve the proposed Solar PPA project." EGS Exc. at 4. Yet, as Duquesne explains in its Main Brief, the Company is proposing to enter into the long-term Solar PPA, which is one of the types of contracts that can be used to satisfy the "prudent mix" requirements of Act 129. Duquesne M.B. at 25, citing § 2807(e)(3.2) of the Public Utility Code (Code). That Code section requires default service providers to enter into a prudent mix of contracts, including spot market purchases, short-term contracts and long-term contracts. In pursuing a long-term power purchase agreement with a solar power facility, Duquesne is acting well within its rights, indeed its obligations, under the Code.

EGS Parties argue that the most serious concern with the Solar PPA is that it would put Duquesne into the business of buying and selling electricity on behalf of default service customers.

EGS Exc. at 5. This is because in addition to purchasing the solar facility's Alternative Energy Credits (AECs), Duquesne also proposes to purchase the facility's energy and to resell that energy into the PJM wholesale market. Revenue from the resale of the energy is to be credited to default service customers. EGS Parties maintain that the plan to sell energy into the wholesale market goes well beyond what is authorized in §2807(e) of the Code.

The R.D. rejects the concerns of the EGS Parties. It states that the resale of the solar facility energy does not put Duquesne in the generation business. The Company will not own the solar facility. Rather it will contract with the facility for its AECs and energy. Notably, bilateral contracts are an authorized procurement method under Section 2807(e)(3.1). 66 Pa.C.S. § 2807(e)(3.1). As the R.D. notes, the resale of the energy is "simply a process to balance supply and demand and obtain for default service customers additional value from the solar PPA." R.D. at 49. It is also important to note that Duquesne has explained its rationale for reselling the solar energy. The Company states that reselling the energy will avoid interfering with the load following fixed price wholesale contracts it relies upon to provide default service energy requirements. Without reselling the solar energy, the prices of the wholesale contracts could increase due to uncertainty over how much energy the solar facility will produce. Duquesne R.B. at 11.

Further, Duquesne points out that the Commission has previously authorized a Default Service Supplier to sell excess energy into the market when default service supply purchased under a block product exceeded the demands of default service customers. *Petition of PECO Energy for Approval of Default Service Program and Rate Mitigation Plan*, Order April 16, 2009, Docket No. P-2008-2062739, pp. 6-7. 9. *Id.*; R.D. at 49.

Finally, with regard to the purchase of energy from the proposed solar facility, it is important to remember that the Commission approved a PPA for the purchase of solar AECs in

Duquesne's DSP VIII proceeding. As explained by Duquesne and the R.D., that PPA never came to fruition because solar developers were not interested in separating the AECs from the energy supply. Duquesne St. 1 at 16; Duquesne R.B. at 12; and R.D. at 49. As a result of this experience, Duquesne proposed in DSP IX to purchase both AECs and energy under a Solar PPA.

Duquesne's proposed Solar PPA establishes reasonable long term contracts permitted by law, does not return the Company to the generation business, and as proposed, is reasonably structured. The Commission has previously permitted the sale of excess default service energy, and the DSP IX Solar PPA is designed to complete a proposal that the Commission approved in DSP VIII. For all of these reasons, the Company's Solar PPA proposal should be approved as recommended in the R.D. and the EGS Parties' Exception should be denied.

B. CAP Shopping

1. REPLY TO EGS PARTIES' EXCEPTION NO. 4: The R.D. did not err in approving the Joint Stipulation related to CAP Shopping which defers Duquesne's submission of a CAP Shopping Plan. (R.D. at 55-59; OCA M.B. at 18; OCA R.B. at 7-10)

On September 30, 2020, Duquesne filed with the ALJ a Joint Stipulation among Duquesne, the OCA and CAUSE-PA under which it was agreed that Duquesne would withdraw its CAP Shopping proposal in this case and would, within six months of a final order implementing CAP Shopping in the PPL Electric territory (pursuant to its pending default service proceeding), make a filing with the Commission regarding CAP Shopping that is consistent with its CAP design and which is informed by all available information and data. The R.D. recommended approval of the Joint Stipulation and found it to be in the public interest. R.D. at 58-59. EGS Parties filed an Exception to this determination stating that the issue was briefed and could have been decided and

thus should not have been deferred per the Joint Stipulation. EGS Exc. at 6. EGS Parties stated, “In postponing the inevitable, the RD erred.” Id.

The OCA urges the Commission to deny this Exception. In its Main Brief, the OCA observed that going forward with Duquesne’s CAP Shopping proposal would inevitably result in litigation of most of the very same issues currently being decided in the PPL DSP proceeding. Thus, the OCA regarded the withdrawal of Duquesne’s proposal and awaiting a decision in the PPL case as a prudent exercise in administrative economy. It is better to litigate these issues before the Commission once, not twice. Duquesne will then have the benefit of the PPL decision to design its revised CAP Shopping plan. See, OCA M.B. at 18. Duquesne witness Scholl previewed this idea in her Surrebutal Testimony when she stated:

Parties’ testimony in this proceeding illuminate legitimate questions regarding whether the Company’s CAP shopping proposal should be implemented, even notwithstanding its consistency with applicable Commission guidance. **These are ultimately questions for the Commission.** The Company intends to abide by the Commission’s direction regarding whether to implement CAP shopping in DSP IX.

Duquesne St. 5-SR at 4-5 (emphasis added). It should be noted that this testimony was submitted well before the submission of the Joint Stipulation.

The R.D. states that it is reasonable to wait for additional clarity from the Commission and/or courts before going forward with CAP Shopping. The OCA submits that the R.D. is correct and that the approach of the Joint Stipulation is proper and prudent. The EGS Parties Exception should be denied.

### III. CONCLUSION

For the reasons set forth in these Reply Exceptions and in the OCA's Main and Reply Briefs in this proceeding, the OCA submits that the issues related to Duquesne's Solar PPA proposal and regarding deferral of its CAP Shopping proposal were properly decided in the Recommended Decision of ALJ Hoyer. Accordingly, the OCA requests that the EGS Parties' Exceptions be denied and urges that the Recommended Decision be adopted by the Commission.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

Re: Petition of Duquesne Light Company for :  
Approval of Default Service Plan for the : Docket No. P-2020-3019522  
Period of June 1, 2021 through May 31, 2025 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30<sup>th</sup> day of November 2020.

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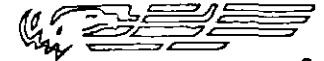
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