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September 30, 2020

***VIA ELECTRONIC FILING***

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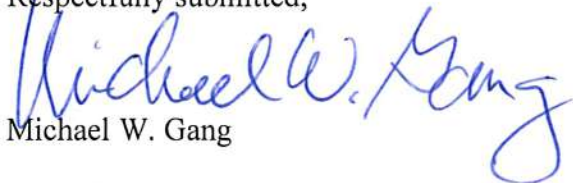
**Re: Petition of Duquesne Light Company for Approval of Its Default Service Plan for  
the Period From June 1, 2021 through May 31, 2025  
Docket No. P-2020-3019522**

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Dear Secretary Chiavetta:

Attached please find for filing Duquesne Light Company's Main Brief in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,

  
Michael W. Gang

MWG/kl  
Attachment

cc: Honorable Mark A. Hoyer  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has 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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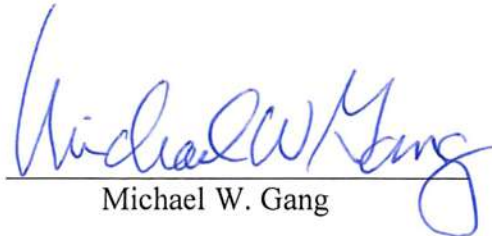
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Date: September 30, 2020

  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF  
DUQUESNE LIGHT COMPANY**

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## **I. INTRODUCTION**

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files its Main Brief pursuant to the litigation schedule set forth in the June 23, 2020 Prehearing Order issued by the Honorable Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ”) in the above-referenced proceeding. Importantly, Duquesne Light and all of the parties in this proceeding reached an agreement in principle with respect to many of the issues in this proceeding and agreed to file a formal Settlement Petition with accompanying Statements in Support by the Reply Brief date of October 13, 2020, as determined at the June 23, 2020 Prehearing.

Pursuant to this agreement, the parties have agreed that the above-captioned Petition of Duquesne Light Company for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025 (“Petition”) should be approved as follows: (1) the four-year Program Term will be approved as set forth in paragraph Nos. 5-6 of the Petition; (2) the Procurement Plans and Rates will be approved as set forth in paragraph Nos. 7-46 of the Petition, except that, with respect to the Federal Energy Regulatory Commission (“FERC”) Docket No. EL-18-178, Minimum Offer Price Rule (“MOPR”), Duquesne Light will expand the role of its Market Monitor; (3) the Purchase of Receivables Program will be approved as set forth in paragraph No. 67 of the Petition; (4) the Recovery of Net-Metered Excess Generation Costs will be approved as set forth in paragraph Nos. 73-76 of the Petition; (5) Duquesne Light will consider the recommendations of the Coalition for Affordable Utility Service of Pennsylvania’s (“CAUSE-PA”) witness Mr. Geller in CAUSE-PA St. 1, page 53, lines 13-21 and page 59, lines 15-21 regarding the Company’s ongoing bill redesign initiatives; (6) Duquesne Light’s bills for consolidated-billed residential electric generation supply (“EGS”) customers taking basic supply service will clearly display the Price-To-Compare (“PTC”), as well as basic supply charges in actual dollars or cents per kWh,



average dollars or cents per kWh, and/or flat monthly charge(s); (7) Duquesne Light will revise Rule 12.1.6 of its Supplier Coordination Tariff regarding bill-ready billing; and (8) Duquesne Light will revise Rule 12.1.7 of its Supplier Coordination Tariff, as described in Duquesne Light St. 5-R regarding EGS non-basic service charges. All parties have either indicated their approval of, or non-opposition to, these proposals, as will be more fully explained in the Settlement Petition and accompanying Statements in Support to be filed on or before October 13, 2020.

The following issues, however, were reserved for litigation: (1) EGS payment of Network Integration Transmission Service (“NITS”) charges; (2) Electric Vehicle Time of Use (“EV-TOU”) Pilot Program issues; (3) Solar Power Purchase Agreement (“PPA”) issues; (4) Standard Offer Program (“SOP”) issues; and (5) Customer Assistance Program (“CAP”) shopping issues. Duquesne Light hereby submits this Main Brief with respect to these issues in compliance the litigation schedule adopted in this proceeding.

## **II. PROCEDURAL HISTORY**

Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Pennsylvania Public Utility Commission (“Commission”) to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania. Duquesne Light is also an electric distribution company (“EDC”) and a default service provider (“DSP”) as those terms are defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803. Duquesne Light provides electric distribution service to approximately 603,500 customers and is currently the default service supplier (“DSP”) for approximately 435,000 of those customers.

On April 20, 2020, Duquesne Light filed the above-captioned Petition with the Commission requesting approval of a Default Service Plan for the period of June 1, 2021 through May 31, 2025 (“DSP IX,” “Default Service Plan,” or “Plan”).

In the Default Service Plan, Duquesne Light proposed to continue separate default supply procurements for: (1) Residential and Lighting customers, (2) Small Commercial and Industrial (“C&I”) customers, (3) Medium C&I customers with demands under 200 kW (“Medium C&I <200kW”), and (4) Medium C&I customers with demands equal to or greater than 200 kW and Large C&I customers (collectively, “HPS-Eligible”). Duquesne Light proposes to procure supplies for Residential and Lighting and Small C&I customers through the combination of twelve (12) and twenty-four (24) month fixed price, full requirements, laddered contracts. Duquesne Light will continue to supply Medium C&I <200kW default service customers through fixed-price full requirements supply contracts with three-month terms from third-party suppliers with no laddering. Duquesne Light proposes to continue to procure supply for HPS-Eligible default service customers through the day-ahead PJM energy market prices. Duquesne Light proposes to continue the current structure and administration for HPS customers, to conduct an RFP to supply HPS customers, and to preserve the demand threshold for HPS at  $\geq 200$  kW.

In the Default Service Plan, Duquesne Light also proposed to (1) create an EV-TOU default supply rate for Residential, Small C&I and Medium C&I <200kW customers who own or lease an EV or who operate EV charging infrastructure at the service location; (2) allow customers participating in the Company’s CAP to purchase supply from EGSs, subject to certain protections (“CAP Shopping”), provided that there are sufficient EGSs that are willing to serve CAP customers; (3) use a third-party vendor to administer the Company’s SOP; and (4) enter into a

long-term Solar PPA to support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area.

On April 30, 2020, the ALJ issued a Prehearing Conference Order scheduling a Telephonic Initial Prehearing Conference on Friday, June 12, 2020 at 10:00 a.m. The parties filed various prehearing memoranda in advance of the Prehearing Conference.

Also on April 30, 2020, Petitions to Intervene were filed by Calpine Retail Holdings, LLC ("Calpine") and CAUSE-PA.

On May 1, 2020, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources LLC, WGL Energy, and Direct Energy Services, LLC (collectively, "EGS Parties"), filed a Petition to Intervene.

On May 20, 2020, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Answer.

On May 22, 2020, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Answer.

On June 2, Calpine filed a Motion for Admission Pro Hac Vice of James H. Laskey.

On June 3, 2020, StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania (collectively, "StateWise") filed a Petition to Intervene and Motions for Admission Pro Hac Vice of Thomas F. Pucher and Kevin C. Blake.

On June 5, 2020, the following entities filed Petitions to Intervene: MAREC Action ("MAREC"); ChargePoint, Inc.; the Natural Resources Defense Council ("NRDC"); and Solar United Neighbors of Pennsylvania ("SUN-PA"). NRDC also filed an Answer on June 5, 2020.

On June 9, 2020, the Company filed an Answer to the Petition to Intervene of SUN-PA.

Also, on June 9, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

On June 12, 2020, a telephonic Prehearing Conference was held, consistent with the April 30, 2020 Prehearing Order.

On June 23, 2020, the ALJ issued a Prehearing Order, which among other things established a litigation schedule and discovery rules for the proceeding. Notably, SUN-PA was not represented at the conference and no representative entered an appearance on its behalf.

On July 7, 2020, the ALJ issued an Initial Decision denying the Petition to Intervene filed by SUN-PA. Duquesne Light filed a letter indicating that it was not filing exceptions to the Initial Decision on July 27, 2020. The Initial Decision became final without further Commission action by operation of law on August 28, 2020.

On July 10, 2020, Duquesne Light filed a Petition for Protective Order. A Protective Order was subsequently issued on August 3, 2020.

On July 17, 2020, OCA, CAUSE-PA, NRDC, the EGS Parties, and MAREC each served direct testimony.

Also on July 17, 2020, I&E and Calpine each filed a letter indicating it was not serving direct testimony in this proceeding. ChargePoint also filed letter comments in support of the EV-TOU Pilot Program proposed in DSP IX.

On August 12, 2020, the Commission issued a Telephonic Evidentiary Hearing Notice, scheduling a Telephonic Evidentiary Hearing for September 9, 2020.

On August 14, 2020, Duquesne Light, OCA, OSBA, CAUSE-AP, Calpine, the EGS Parties, and NRDC served their respective rebuttal testimony. Duquesne Light specifically served the following pieces of testimony, together with accompanying exhibits: (1) DLC Statement No.

1R – Rebuttal Testimony of C. James Davis; (2) DLC Statement No. 2R – Rebuttal Testimony of John Peoples; (3) DLC Statement No. 3R – Rebuttal Testimony of Scott Fisher; (4) DLC Statement No. 4R – Rebuttal Testimony of David Ogden; and (5) DLC Statement No. 5R – Rebuttal Testimony of Katherine Scholl.

Also on August 14, 2020, I&E filed a letter indicating it was not serving rebuttal testimony in this proceeding.

On August 28, 2020, Duquesne Light, OCA, CAUSE-PA, the EGS Parties, MAREC, and NRDC each served surrebuttal testimony. Duquesne Light specifically served the following piece of surrebuttal testimony: (1) DLC Statement No. 5-SR – Surrebuttal Testimony of Katherine Scholl.

Also on August 28, 2020, I&E, OSBA and Calpine each filed a letter indicating it was not serving surrebuttal testimony.

On September 4, 2020, Duquesne Light served rejoinder testimony and NRDC submitted rejoinder outlines. Duquesne served the following pieces of rejoinder testimony: (1) DLC Statement No. 1RJ – Rejoinder Testimony of C. James Davis; (2) DLC Statement No. 3RJ – Rejoinder Testimony of Scott Fisher; (3) DLC Statement No. 5RJ – Rejoinder Testimony of Katherine Scholl.

A Telephonic Evidentiary Hearing was held on September 9, 2020. NRDC provided oral rejoinder. All parties waived cross-examination. At the hearing, parties stipulated to the admission of the previously served testimony and exhibits. At the hearing, the Company and CAUSE-PA also stipulated to the admission of certain updated Company interrogatory responses not included in the testimony.

Pursuant to the litigation schedule adopted in this proceeding, the Company hereby submits its Main Brief. In addition, Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs are respectively provided as Appendices A, B and C hereto.

### **III. SUMMARY OF ARGUMENT**

The issues in this proceeding have been narrowed substantially by a general settlement of all parties on many fundamental matters that must be resolved in a DSP proceeding. Nevertheless, as of the time of preparation of this main brief, there remains a dispute among some parties on five issues, and non-unanimous stipulations among the Company and some parties on some of these issues.

The first unresolved issue is the EGS Parties' proposal that NITS charges for interstate transmission of power to Duquesne Light and to EGSs as separate load serving entities be recovered by Duquesne Light in a non-bypassable charge for all customers. This proposal has repeatedly been rejected by the Commission in two prior Duquesne Light DSP cases and other DSP cases as an improper rebundling of distribution and transmission charges in violation of the Competition Act. It is also opposed by other parties in this case including another EGS, Calpine. The EGS Parties have offered no basis for revising the Commission's prior decisions.

The second unresolved issue is the Company's proposed Electric Vehicle Time-of Use Pilot ("EV-TOU Pilot or Rate"). The EGS Parties oppose the pilot as untimely and as a service that they contend should be provided by EGSs. The Company has demonstrated that the provision of a EV-TOU Rate will benefit customers owning or leasing EVs or operating charging stations, benefit other customers by moving EV distribution load to off peak periods, and benefit the public by reducing emissions. Further, the Company explains herein that there is no basis in law or policy

that prevents the Company from offering this needed service to customers. OCA, CAUSE-PA, and NRDC each also offered testimony regarding the EV-TOU Rate. The Company has entered into a joint stipulation with these parties that addresses their concerns.

The third issue concerns the Company's proposal to seek to acquire by competitive bid a long-term contract from a solar power provider. The Company proposes to seek bids for 7 MW of solar capacity in its service territory to serve about 50% of its default service AEPS requirements for solar alternative energy credits. EGS Parties also oppose this proposal as an activity that should be reserved for EGSs given the risk that the costs of such contracts may end up being uneconomic over their life. OCA contends that Duquesne Light should demonstrate that any such long-term contract is expected to be at least revenue-neutral over its term. Both parties misconstrue the value of a long-term solar contract. First, long-term contracts are explicitly identified as being a potentially viable component of a prudent mix of contract terms under Act 129, which specifically contemplates long term contracts of 4 or more years. Second, adding measured volumes of long-term contracts can provide the opportunity to gain more information about the solar generation market in Duquesne Light's service area, support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area, while being sized to mitigate risks associated with the long-term commitment. In this regard, the EGS Parties' objections to the procurement of supplies for default service customers should not be a basis for rejection of such a contract. In addition, the contract will be submitted to the Commission for final approval after the bids. MAREC, an advocate of renewable power, supports such procurements in principle but requests more aggressive long-term renewable purchases, which the Company does not support at this time.

The fourth unresolved issue concerns the Company's Standard Offer Program ("SOP"). The Company proposed to use a third party, Allconnect, to enroll customers in this program where

EGSs provide a 7% discount to customers off the current Price to Compare (“PTC”), in order to increase enrollments. CAUSE-PA and OCA raised issues with this proposal, including concerns about prices paid by electing customers after the initial 12-month term of the SOP. These concerns have been resolved by separate stipulation between those parties and the Company. While the EGS Parties appear to support the Company’s initial proposal to use a third-party SOP administrator, their witness proposed that all new and moving customers be automatically enrolled with an EGS without being offered the opportunity to elect default service, as the Company currently provides. The Company strongly opposes this proposal as poor policy and explains herein that it would violate the express terms of the Competition Act, if adopted.

The final issue concerns whether Customer Assistance Plan participants should be able to enroll with an EGS. In its filing, the Company offered a proposal to extend shopping to CAP customers under the guidelines outlined in the Secretarial Letter attached as Appendix D to this brief. In particular, EGSs would be required to charge no more than the PTC. Nonetheless, CAUSE-PA and OCA have expressed significant concerns with the proposed program, while the EGS Parties support it as proposed. By separate stipulation between CAUSE-PA, OCA, and the Company, these parties have attempted to resolve such issues based primarily on the upcoming decision of the Commission in the PPL DSP proceeding.

#### **IV. ARGUMENT**

##### **A. LEGAL STANDARDS**

##### **1. Burden of Proof**

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), Duquesne Light, as the Petitioner, has the burden of proof with respect to its proposals in this proceeding:



Except as may be otherwise provided in Section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

It is to be emphasized, however, that the burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). If the Company presents evidence found to be of greater weight than the other parties, then the Company will have carried its burden of proof. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

Although Duquesne Light bears the burden of proving that its proposals are in the public interest, a party that makes a proposal that is not included in a public utility's case bears the burden of proof as to its proposal. For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007), a party offered proposals that were not included in the public utilities' filings. The ALJ held that, as the proponent of a Commission order with respect to the offered proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to a proposal that the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at \*184-87. *See also Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, *et al.*, 2010 WL 1259684 at \*2, 19-20 (February 25, 2010) (the companies had the burden of proof as to the

proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals).

## **2. Legal Standards Applicable To Default Service**

As an EDC and DSP, Duquesne Light's default service obligations are set forth in Act 129 of 2008, Oct. 15, P.L. 1592, No. 129 ("Act 129"), codified in Chapter 28 of the Public Utility Code, 66 Pa.C.S. Ch. 28.

Duquesne Light is obligated to provide electric generation supply service to both customers that do not choose an EGS and to customers that contract with an EGS for supply service if the chosen EGS does not provide the service. 66 Pa.C.S. § 2807(e)(3.1).

Act 129 requires that power "shall be procured through competitive procurement processes" (including auctions, requests for proposals and/or competitively procured bilateral agreements procured at no greater than the cost of obtaining generation under comparable terms in the wholesale market), and such procurement must be a "prudent mix" of spot market purchases, short-term contracts and long-term purchases. *Id.* at 2807(e)(3.1)-(3.2). Act 129 also requires that a default service plan ensures "adequate and reliable service" at the "least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.4). Moreover, the preamble to Act 129 specifically provides that one of the objectives of the Act is to take into account any benefits of price stability over time, stating as follows:

- (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

See Historical and Statutory Notes to 66 Pa.C.S. § 2806.1.

As explained below, Duquesne Light's procurement plan meets all of the statutory requirements. All default service supplies are procured through competitive procurement processes. Duquesne Light is proposing a prudent mix of contracts for customers that will provide least cost to customers over time, while taking into account the benefits of price stability for customers.

**B. ISSUES RESERVED FOR LITIGATION**

**1. EGS Payment of NITS Charges**

**a. Summary of EGS Parties' Proposal**

In this proceeding, the EGS Parties argue that Duquesne Light should recover NITS charges for both default service customers and customers that are taking service from an EGS. EGS Parties St. No. 1, pp. 27-33. Historically, Duquesne Light has always paid NITS charges for default service customers, and EGSs have always paid NITS charges for customers that they serve. The EGS Parties argue that NITS charges are variable and can prevent EGSs from making long-term fixed price contracts to customers or can require EGSs to include requiring a risk premium to hedge against price uncertainty. EGS Parties St. No. 1, p. 32. The EGS Parties argue that Duquesne Light should collect NITS on behalf of all customers through a non-bypassable charge. EGS Parties St. No. 1, p. 33.

**b. The EGS Parties' NITS Proposal Should Be Denied.**

The EGS Parties' proposal that Duquesne Light recover NITS for all customers should be summarily rejected. The Commission has rejected this proposal in both the DSP VI proceeding and the DSP VII proceeding. In DSP VI, the Commission held:

We believe that Duquesne's position that EGSs should continue to recover transmission and transmission-related costs, such as PJM's RTEP costs, NITS costs, expansion costs, generation deactivation costs and ELR costs, from their own customers is reasonable and should be approved. We agree with Duquesne that it appropriately

recovers these costs only from default service customers, and that EGSs should recover these costs from their customers. We believe that this cost recovery process is consistent with the Commonwealth's continued migration to a more competitive retail market and that RESA's proposal would be a step backward because it would result in the rebundling of transmission costs with distribution rates.

*Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* at Docket No. P-2012-2301664, Opinion and Order dated January 25, 2013, pp. 221-222

Likewise, in DSP VII, the Commission stated:

[T]he evidence presented by RESA and Exelon Gen is insufficient to cause the Commission to alter our decision within Duquesne's DSP VI proceeding that the costs in question should not be collected through a non-bypassable recovery mechanism as proposed by these two Parties or that Duquesne should assume the cost responsibility for all of these charges on behalf of both the wholesale and default service suppliers and EGSs.

*Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242, Opinion and Order dated January 15, 2015, pp. 45-46 and 52-53. As in DSP VII, the EGS parties have not presented in this case any new evidence or argument that would justify the Commission's revision of its decision not to include NITS charges in a non-bypassable charge in two prior Company DSP cases. See also, *Pa. PUC v PPL Electric*, Order of October 17, 2014, P-2014-2417907, 204 Pa. PUC LEXIS 551.

Mr. Ogden also explained why the EGS Parties' NITS proposal should be denied in this proceeding:

First, as noted above, this topic was litigated twice before as part of the Company's DSP VI and DSP VII proceedings. Both times, the Commission agreed with the Company's position regarding

recovery for transmission related costs, and Mr. Kallaher presents no reasons to deviate from this precedent.

Second, including NITS in the TSC ensures that the transmission component of the rate was unbundled and “portable.” Customers switching to an EGS would also purchase their transmission requirements from the EGS. Modifying the TSC such that it is non-bypassable would reduce the scope of products subject to meaningful competition and customer choice.

Third, the Company has continued with the same methodology to recover transmission costs for default service since customer choice began. As transmission cost line items have changed over time, the Company has relied upon Commission and/or FERC for guidance to define what transmission-related costs are and what should be recovered from default service customers through the TSC. Changing the content and structure of the TSC to a non-bypassable charge will change the fundamental composition of the PTC. This change could create customer confusion.

Fourth, changing the content and structure of the TSC could have a negative impact on current shopping customers. Current shopping customers are paying their EGS for applicable transmission charges through the rates charged by their EGS. Implementing a non-bypassable charge could cause shopping customers to pay twice for transmission service for the remainder of their EGS contracts.

Fifth, EGSs should be able to address their concerns in the pricing offerings they make available to customers. For example, some EGSs could offer to fix only the supply portion of their charges and pass through the transmission charges in question. EGSs also could offer to fix some, but not all charges. Other EGSs may choose to fix both the supply and transmission charges for the benefit of customers. Allocating all of the transmission charges into a pass-through, non-bypassable charge for all customers would limit the breadth of options available to customers and EGS service offerings in the competitive market.

Finally, even if one were to accept Mr. Kallaher’s position that these costs are volatile and hard to predict, this alone would not justify making such charges non-bypassable. For instance, some may describe energy and capacity prices as volatile and hard to predict, yet Mr. Kallaher does not suggest that these charges should be non-bypassable. The competitive market in Pennsylvania established generation and transmission charges to be included in the PTC. These costs (including NITS) are incurred by EGSs. Duquesne Light

does not believe that it is proper to socialize NITS costs incurred by EGSs to all distribution customers simply because they are (arguably) unpredictable. This is not a proper basis for cost allocation. For all these reasons, I recommend the Commission deny the EGS Parties' proposal for the Company to collect and remit NITS on behalf of all customers through a non-bypassable charge.

Duquesne Light St. No. 4-R, p. 22, line 9-p. 24, line 7.

In addition, not all EGSs agree with the EGS Parties' proposal. Calpine provides retail electric service in 20 states and through its subsidiaries is a licensed EGS in Pennsylvania. Calpine St. No. 1, p. 2. Calpine Retail strongly opposes the EGS Parties' proposal. Calpine witness Becky Merola testified as follows:

**Q. Why do you object to Mr. Kallaher's proposal?**

A. Mr. Kallaher is looking to shed retail business risk and move it from the competitive retail market to all customers of the utility, regardless of existing market, contracts and products and services. When it comes to servicing customers who do not take default service, but who instead rely on Electric Generation Suppliers (EGS) such as Calpine Retail, such cost shifting would simultaneously limit existing and potential customers' product and service choices. Not only would this harm the competitive retail market, it would remove any incentive and opportunity to create customized products and services that are, or potentially might be, formulated to assist EGS customers in addressing these costs.

**Q. How does the current system for allocating NITS costs affect competition?**

A. An important factor overlooked by Mr. Kallaher is that NITS charges are demand based. This creates an opportunity for LSEs such as Calpine Retail and the companies represented by Mr. Kallaher to manage these costs. Not every customer has the same load profile, nor does every LSE. NITS are manageable and provide the opportunity to offer products and services in the retail market space. As structured by PJM, LSEs individually have the ability to proactively understand their customers' needs and work with their customers to manage their loads. LSEs in the competitive market (unlike a utility that offer a simplified one size fits all as the default supplier) can work with customers to adjust their usage to more

efficiently only use the amount of transmission to meet the individual needs of the customer.

**Q. How would adopting Mr. Kallaher's proposal affect competition?**

- A. Interestingly, Mr. Kallaher acknowledges (at page 32, lines 8-11) that the robust competition among EGSs which exists in Duquesne service territory undoubtedly puts downward pressure on the risk premium associated with NITS. That is correct and that is one of the benefits of moving to a retail competitive market. That risk is shifted away from the ratepayer/customer onto the market and the price is reflective of the competitive efficiencies and discipline of the market. The Pennsylvania customer is benefitting. But under Mr. Kallaher's proposal, neither the LSEs nor their customers would have any incentive to manage their load, because their obligation to pay for NITS would be based on the average demand seen by Duquesne.

Calpine Retail St. No. 1, p. 3, line 7-p. 4, line 12.

The EGS Parties NITS proposal would limit EGS competition and should be denied just as it has been denied many other times by this Commission.

**2. Duquesne Light's Proposed EV-TOU Pilot Should Be Approved.**

**a. Summary of Proposed EV-TOU Pilot**

The Company proposes in this proceeding to establish an optional EV-TOU Rate for Residential, Small Commercial and Industrial ("Small C&I") and Medium Commercial and Industrial (Medium C&I) customers with less than 200 kW of demand who use Default Service (Rider 8) supply. In order to be eligible for EV-TOU Rate, the customer would be required to own or lease a plug-in battery electric vehicle or a plug-in hybrid electric vehicle (collectively "EV") or offer charging services. Duquesne Light St. No. 5, pp. 19.<sup>1</sup>

Company witness Katherine Scholl, summarized the reasons for proposing the EV-TOU Rate as follows:

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<sup>1</sup> CAP customers are not eligible for the EV-TOU Rate. Duquesne Light St. No. 5, p. 23.

**Q. Why is the Company proposing an EV-TOU Pilot Program?**

- A. The Company is proposing an EV-TOU Pilot Program because it provides environmental, economic, and operational benefits for customers and for the Company. The Pennsylvania Public Utility Commission (“PUC”) has encouraged EDCs to adopt EV-TOU rates. A recently released Secretarial Letter regarding the Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms, entered January 23, 2020, at Docket M-2019-3007101 states: “We urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.”

EVs are an ideal flexible load since they are parked the majority of the time and can be easily programmed to begin charging at pre-defined times. A report by the Smart Electric Power Alliance (SEPA) affirmed that time-varying rates are an effective behavioral tool to encourage customers to shift EV charging to off-peak times. As the number of EVs registered in the Company’s territory grows from over 3,000 EVs today to an estimated 18,500 EVs by the end of 2025, the electric load associated with EVs is expected to grow. As this load expands, the Company wants to optimize existing grid and generation capacity by shifting EV charging to off-peak times.<sup>2</sup> The Company anticipates that flattening the growing EV load may also help reduce the need for additional distribution upgrades, which benefits all distribution customers, not only those on the EV-TOU rate.

By offering lower supply rates during the off-peak period, when underlying electricity supply costs are generally lower, the EV-TOU Pilot Program is designed to reduce the cost to customers by encouraging them to shift their charging time. This shift can benefit all customers by decreasing the proportion of higher-priced, on-peak energy needed to serve default service customers.

Electric vehicles also have environmental and economic benefits that can help the Company’s customers. As of 2017, the transportation sector accounted for the largest share of greenhouse gas (“GHG”) emissions generated in the United States.<sup>3</sup> Greater adoption of EVs can help reduce GHG emissions since EVs charging up in Pennsylvania are estimated to emit one-third of the GHG emissions of gasoline-fueled vehicles and produce zero tailpipe emissions helping to improve local air quality.<sup>4</sup>

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<sup>2</sup> Residential Electric Vehicle Rates That Work. Smart Electric Power Alliance. November 2019.

<sup>3</sup> U.S. Environmental Protection Agency. Sources of Greenhouse Gas Emissions. <https://www.epa.gov/ghemissions/sources-greenhouse-gas-emissions>.

<sup>4</sup> U.S. Department of Energy. Alternative Fuels Data Center. Emissions from Hybrid and Plug-in Electric Vehicles. [https://afdc.energy.gov/vehicles/electric\\_emissions.html](https://afdc.energy.gov/vehicles/electric_emissions.html).



Due to the greater fuel efficiency and lower maintenance requirements of EVs, drivers who switch to EVs from gasoline-powered vehicles will save on maintenance and fuel costs over the lifetime of their vehicles, producing economic benefits for drivers and companies deploying EVs in their fleets.

The EV-TOU rate is another mechanism to encourage EV adoption by helping to lower the total cost of ownership for EV drivers, especially for fleets where total cost of ownership is a major consideration. Cost continues to be a barrier to more wide-spread EV adoption, and by providing more rate flexibility, the Company aims to give customers additional tools to lower their costs of EV fueling.

(Duquesne Light St. No. 5, pp. 20-22.)

The EV-TOU Rate has the potential to benefit EV customers by lowering the cost of owning and operating an EV. The EV-TOU Rate also has the potential to benefit all of Duquesne Light's customers by increasing usage of the Company's existing electric grid during non-peak periods, thereby producing increased revenues to offset existing grid costs and reducing the need to build new facilities to serve EV load. Finally, the EV-TOU Rate has the potential to benefit the general public by reducing GHG emissions. (Duquesne Light St. No. 5, pp. 20 to 22.) For these reasons, the Company has proposed a pilot program to offer an EV-TOU Rate to its Default Service customers.

**b. Details Of The EV-TOU Rate.**

As further explained by Ms. Scholl, the Company proposes that customers electing the EV-TOU rate will receive TOU service for the entire usage served via the existing smart meter. This will reduce the costs of electric, EV-TOU service to the customer since a separate meter installation will not be required. However, the Company will continue to monitor technology changes that may offer solutions to separate metering of EV usage. (Duquesne Light St. No. 5, p. 22.) Because the EV-TOU Rate will include total premises usage in order to avoid the cost to the customer of

separate metering, the Company will provide online tools and assistance to customers in evaluating the effects of electing whole-premises TOU service. (Duquesne Light St. No. 5, p. 27.)

The EV-TOU Rate supply will be provided by the Default Service wholesale suppliers, who will continue to receive the fixed price accepted in the Company's competitive procurements. The supply costs paid to these wholesale suppliers and the revenues recovered through EV-TOU rates shall be reconciled, by customer class, through the Default Service reconciliation process. Duquesne Light St. No. 4, pp. 19-20.

As explained by Duquesne Light witness David Ogden, the Default Service fixed price for each class will be segregated into Off-Peak, On-Peak and Shoulder Period rates based upon each class's respective energy consumption and capacity requirements. Further details are provided by Mr. Ogden in his Direct Testimony. (Duquesne Light St. No. 4, pp. 17-19, Exhibit No. DBO-3; Duquesne Light St. No. 4R, pp. 3-4.)

The On-Peak, Off-Peak and Shoulder Periods for the EV-TOU pilot are as follows:

**EV-TOU Schedule**

<b>Schedule</b>	<b>Time Period</b>
Peak	1 pm – 9 pm
Shoulder	6 am – 1 pm; 9 pm – 11 pm
Off-Peak	11 pm – 6 am

Mr. Ogden explained that the EV-TOU time periods were chosen to encourage EV charging overnight when demand is low and costs are lower and to discourage charging during peak periods when market costs of electricity are higher. Mr. Ogden also explained that the same Off-Peak Period of 11 PM through 6 AM every day of the week is simple for customers to understand. Duquesne Light St. No. 4, p. 17.

**c. The EGS Parties Opposition to the EV-TOU Pilot Must Be Rejected.**

The EGS Parties oppose the EV-TOU pilot primarily because they believe that Default Service should not provide customers with anything other than a simple default service rate. EGS Parties St. No. 1, p. 20. This argument must be rejected for several reasons. First, there is no legal prohibition against a Default Service provider offering a TOU rate. To the contrary, Section 2807(f)(5) of the Public Utility Code provides that TOU service is to be provided by the DSP. Second, the Commission by Secretarial letter dated January 23, 2020, at Docket No. M-2019-3007101 (“Secretarial Letter”), directed parties participating in Default Service proceedings in 2020 to consider how EV-specific TOU rate offerings could be made available to customers. And third, the undisputed benefits offered by EV-TOU rates previously explained in this brief cannot be achieved by the Company’s customers without a Company EV-TOU rate because no EGS is offering an EV-TOU rate. (Duquesne Light St. No. 5-R, p. 22.)

**i. The EGS Parties’ Contention that the Commission Should Wait to See if EGS Offers TOU Service Should Be Rejected.**

The EGS Parties argue that the Commission should refrain from approving a Default Service EV-TOU Rate and wait to see if EGSs decide to offer such rates, stating that there is a limited but growing market for charging EVs. The EGS Parties’ witness states that the Commission’s directive in the January 23, 2020 Secretarial Letter at Docket No. M-2019-3007101, simply required an examination of the need for the adopting a Default Service EV-TOU Rate. EGS Parties St. No. 1, pp. 18-21. The Secretarial Letter is attached as Appendix D to the Brief.

The record in this proceeding clearly establishes the growing and projected growth of EVs in Pennsylvania and the Company’s service area. In addition, the Company has demonstrated that the provision of an EV-TOU Rate will further encourage such growth. The record also

demonstrates that no EGS is offering an EV-TOU rate in the Company's service area. Finally, the Company has demonstrated that offering a pilot EV-TOU rate will advance the use of EVs in the territory, benefitting EV owners, the Company's other customers by shifting increased usage to off-peak periods, and the public by providing important environmental benefits. Duquesne Light St. No. 5, pp. 20-22. There is, therefore, no reasonable policy reason to reject the Company's EV-TOU Rate pilot.

The EGS Parties have only one perspective, which is to reserve a potential market for EGSs in the event they decide whether to participate in that market. There is nothing in the Competition Act as amended by Act 129 which provides them this right. They are, instead, given a right to offer their products to customers. The Company's EV-TOU Rate pilot does not prevent an EGS from designing and offering its own EV-TOU rates, including different on-peak and off-peak periods that may benefit specific customers. Duquesne Light St. No. 5-R, p. 22-23, and St. No. 2-R, pp. 6-7. The EGS Parties' attempt to reserve this market to themselves should be rejected. The regulatory process should not support or condone such actions, particularly where the adoption of an EV-TOU Rates has such important benefits for EV owners, all other customers and the environment.

The EGS Parties also contend that the Company should convene a collaborative or working group on EVs and that the Company should seek to find EGSs that will provide an EV-TOU rate to customers. But they fail to note that Company has already pursued such efforts. As explained by Ms. Scholl, the Company has already held a collaborative open to the EGS Parties on TOU rates, including EV-TOU rates. Duquesne Light St. No. 5-R, pp. 23-25. Mr. Peoples explained that the Company previously solicited EGSs to provide TOU service, but after only one year, those EGSs declined to continue providing such service. Duquesne Light St. No. 2-R, pp. 6-7. In this

regard, it is important that customers who make a significant investment in purchasing or leasing an EV, in part on the basis of the availability of an EV-TOU rate to obtain off-peak charging at lower cost, have such a rate available on an ongoing basis. Leaving the decision whether to offer an EV-TOU rate to EGSs decision would not adequately serve customers and the public.

It is also noted that the Commission directed in the January 23, 2020 Secretarial Letter as follows:

We urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to customers.

Duquesne Light has provided a specific proposal to provide an EV-TOU Rate, which is widely accepted or not opposed by all other parties, other than the EGS Parties, in this proceeding. For these reasons, it is time for the Company to offer the EV-TOU Rate pilot and its proposal should be approved.

***ii.* There is No Legal Prohibition on the Provision of TOU Service by a Default Supplier.**

The EGS Parties' witness offers general views in his direct testimony that default service should be very limited and, if possible, eliminated. EGS Parties St. No. 1, pp. 6-7. It is not clear whether EGS Parties intend to contend that the provision of EV-TOU service by the Company is impermissible.

The provision of TOU service by the Default Supplier is clearly permitted by Act 129 and codified in Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(5). As stated by the Commission in the Secretarial Letter:

The Commenters all agreed that the TOU programs should be voluntary and that Act 129 specifies that an EDC's TOU Program should be optional for default service customers. Appendix A, p. 6.

The Commission noted that:

The Default Service Provider shall offer the Time-of-Use rates and real-time price plan to all customers that have been provided with Smart Meter Technology under Paragraph (2)(III). Residential and Commercial customers may elect to participate in Time-of-Use Rates and Real Time Pricing. *See* 66 Pa. C.S. § 2807 (f)(5).

The Commission, therefore, has acknowledged that it is the obligation of the Default Service Provider to provide the TOU program. Therefore, there is no basis for an argument that the Company cannot provide EV-TOU service, particularly in the circumstance where there is no other supplier of such service in its market. *See also, Dauphin County Industrial Development Authority v. PUC*, 123 A.2d 1124, 2015 Commw. LEXIS 381.

**d. Other Parties' Comments on the Proposed EV-TOU Rate Pilot.**

Although no other party has opposed the EV-TOU pilot, two parties have commented on and proposed revisions to the proposal.

**i. CAUSE-PA Comments**

CAUSE-PA's witness Mr. Geller supports the Company's proposal to exclude CAP customers from EV-TOU pilot. He also proposed additional protections for other low-income customers and those with medical certificates that choose to enroll in the pilot. CAUSE-PA St. No. 1, p. 23. Mr. Geller proposed individualized bill impact analyses for these customers. Mr. Geller also proposed that a third-party evaluation be conducted of this pilot program which would include assessing demographics of participants and he recommended that Company create an EV-TOU rate for mass transit. CAUSE-PA St. No. 1, p. 25.

The comments by CAUSE-PA on the EV-TOU Rate pilot have been resolved by Stipulation between the Company and other parties filed on September 30, 2020. Explanation of the Company's positions on the CAUSE-PA comments are provided in Ms. Scholl's rebuttal testimony. Duquesne Light St. No. 5-R, pp. 26-30.

**ii. Comments by NRDC**

The comments by NRDC on the EV-TOU Rate pilot have been resolved by Stipulation between the Company and other parties filed on September 30, 2020. Explanation of the Company's positions on the NRDC comments are provided in Ms. Scholl's rebuttal testimony. Duquesne Light St. No. 5-R, pp. 31-35.

**iii. Comments by OCA**

The comments by OCA on the EV-TOU Rate pilot concerned allocation of the costs and revenues of the EV-TOU Rate by class in the default service reconciliations. OCA St. No. 1, pp. 12-15. The Company has explained that that revenues and costs will be allocated by class. Duquesne Light St. No. 5-R, p. 35-37. The resolution of this issue has been resolved by the Stipulation between the Company and other parties filed on September 30, 2020. Explanation of this Company's positions on OCA's comments are provided in Ms. Scholl's rebuttal testimony.

**e. Conclusion**

For the reasons explained herein, the Company's proposed EV-TOU Rate Pilot is in the public interest and should be approved as revised by the EV-TOU Rate stipulation filed on September 30, 2020.

**3. Duquesne Light's Solar PPA Proposal is in the Public Interest and Should be Approved.**

**a. Summary of Duquesne Light's Solar PPA Proposal**

In this proceeding, Duquesne Light Company is requesting pre-approval from the Commission to seek to enter into a long-term solar PPA in order to support a utility-scale solar project of up to 7MW in Pennsylvania. Duquesne Light St. No. 1, p. 13. The Company intends to purchase the alternative energy credits ("AECs") from this facility in order to meet its Alternative Energy Portfolio Standards ("AEPS") requirements. The Company also intends to

acquire the energy from this facility and will sell this energy back into the PJM market on a real-time basis and credit these revenues back to default service customers. Duquesne Light St. No. 1, p. 15. The Company also plans to assess the potential of purchasing the capacity and ancillary services from the facility but has not made a final determination of this issue at this time.

The purposes of this long-term (more than 4 but less than 20 years) solar PPA are to support the further development of solar energy in Pennsylvania, preferably in Duquesne Light's service area, and gain more information about the solar generation market in Duquesne Light's service area, while doing so in a quantity that mitigates risks associated with the long-term commitment. Duquesne Light intends to conduct a competitive solicitation for the PPA sometime during the DSP IX period. Duquesne Light will report the results of the solar PPA to the Commission for final approval before entering into the PPA. Duquesne Light St. No. 1, p. 14.

**b. Duquesne Light's Solar PPA Proposal Should Be Approved.**

Duquesne Light is proposing to enter into the long-term solar PPA, which is one of the types of contracts that can be used to achieve the prudent mix requirements of Act 129. Section 2807(e)(3.2) of Act 129 requires default service providers to enter into a prudent mix of contracts, such as spot market purchases, short-term contracts and long-term contracts. 66 Pa. C.S. § 2807(e)(3.2). The statute further defines long-term contracts more than four but not more than 20 years. 66 Pa. C.S. § 2807(e)(3.2)(iii). The prudent mix of contracts shall be designed to ensure adequate and reliable service at the least cost to customers over time.

While the inclusion of long-term contracts in a given default service plan may depend upon specific circumstances, in prior default service proceedings, Chairman Dutrieuille and Commissioner Sweet have encouraged default service providers to acquire long-term products. In Duquesne Light's Default Service VIII proceeding, Chairman Dutrieuille and Commissioner



Sweet dissented from approving the non-unanimous settlement in that proceeding because it did not include long-term contracts. In a Joint Statement, Chairman Dutrieuille and Commissioner Sweet stated as follows:

There is one important concern we must raise, namely, the lack of any new or grandfathered long-term contracts within Duquesne's proposed default service portfolio. In our opinion, this lack of any long-term contracts is a fatal flaw under 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e) which warrants our dissent in this proceeding. Section 2807(e) provides that a default service provider must procure electric power via a prudent mix of spot market, short-term, and long-term contracts designed to ensure adequate and reliable service at the least cost to customers over time.

The Commonwealth Court ruled that this Commission acted within the bounds of act 129 when the Commission approved Pike County Electric Company's 100% spot market procurement in a default service filing. *Popowsky v. Pa. PUC*, 71 A.2d 1112 (Pa. Cmwlth. 2013), *appeal den.*, 2013 Pa. Lexis (2013). However, the court in *Popowsky* also found that the Commissions' approval of a spot market only procurement in light of the prudent mix standard was lawful since the Commission properly considered the possibility of including other contracts (including financial hedges) and determined it was not prudent to do so. *Popowsky*, 71 A.3d 1112, 1118.

*Petition of Duquesne Light Company for Approval of Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2543140, Joint Dissenting Statement dated December 22, 2016.

Chairman Dutrieuille has also criticized other default service plans for not including new long-term contracts. In PECO Energy Company's last default service proceeding, Chairman Dutrieuille issued a statement noting the absence of new long-term contracts. Therein, she stated:

I note that none of the default service plans that I have voted on during my tenure include "new" long-term contracts, only long-term contracts inherited from previous default service plans. The long-term contract in the instant proceeding is a grandfathered alternative energy credit contract. Such contracts will eventually expire. In my opinion, it will be incumbent upon the EDCs and this Commission

to carefully consider long-term contracts of four to twenty year terms, consistent with Section 2807(e) of the Code, in future default service plans unless the Legislature decides otherwise.

*Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2017, through May 31, 2021*, Docket No. P-2016-2534980, statement dated December 8, 2016.

Duquesne Light proposed its long-term solar PPA, in part, in response to Chairman Dutrieuille's guidance. Duquesne Light also proposed its solar PPA in order to encourage additional solar development in Pennsylvania and hopefully in the Company's service area. The Company believes that a long-term solar contract may provide greater opportunity for cost-effective financing for the developer of a utility-scale solar project. Duquesne Light St. No. 1, p. 13. The Company proposed to acquire AECs only as part of its DSP VIII proceeding but determined that a solar developer preferred a contract for all of the attributes of the facility, not just the AECs. Duquesne Light St. No. 1, p. 16. Therefore, the Company expanded its proposal in DSP IX to potentially cover all of the attributes of a solar facility, to better assist developers who are trying to obtain financing. Duquesne Light St. No. 1, p. 17.

**c. Other Parties' Opposition to Duquesne Light's Solar PPA Proposal Should Be Denied.**

Other parties in this proceeding have taken various positions with respect to the solar PPA. Duquesne Light's solar PPA proposal is reasonable and well-balanced and should be adopted as filed.

**i. *The EGS Parties' Opposition to the Solar PPA Should Be Denied.***

The EGS Parties argue that the Commission should delay Duquesne Light's solar PPA proposal in this proceeding. As an initial matter, the EGS Parties' concerns are unfounded and should not be accepted. The EGS Parties' attempts to delay the contract appear to be efforts to

deny the contract and run contrary to the guidance provided by Chairman Dutrieuille and Commissioner Sweet.

The EGS Parties argue that Duquesne Light should delay the solar PPA and instead convene a working group to consider solar development in Duquesne Light's service territory and determine if it is necessary to encourage additional solar development. EGS Parties St. No. 1, p. 26. Furthermore, the EGS Parties argue that the solar industry does not need the support offered by a long-term contract and that this type of solar proposal could impede the development of solar resources in Pennsylvania. EGS Parties St. No. 1, pp. 23-24. This argument is contrary to logic and is unsupported. A long-term solar contract in accordance with Duquesne Light's proposal will support the development of solar resources in Pennsylvania because it provides a guaranteed source of revenue to the developer, which is expected to assist in obtaining financing. In addition, the EGS Parties provide no support for their argument that this solar PPA will discourage solar development. Despite stating in his direct testimony that Duquesne Light's solar PPA could be a barrier to "more productive" solar opportunities in the offering, the EGS Parties witness Mr. Kallaher stated in his discovery that he had no specific projects in mind when he made that statement. Duquesne Light Exh. CJD-1R. The EGS Parties contend that Duquesne Light's proposed long-term solar PPA will somehow distort the market for solar power by assisting the supplier with a long-term revenue stream. EGS Parties St. No. 1, p. 25. This claim both is unsupported and ignores the fact that solar providers will have to bid for the opportunity to enter into the solar PPA in a competitive market. Duquesne Light St. No. 1, p. 14.

There is no need to conduct a collaborative before going forward with the solar PPA proposal. As explained by Mr. Davis, before executing a solar PPA, the Company will provide

the PPA to the Commission for review and approval. If the Commission determines that the PPA is not in the public interest at that time, it can deny the PPA.

The EGS Parties also argue that the Commission should monitor legislative action on community solar and put DLC's proposal on hold until the next DSP proceeding. They argue that this type of plan could discourage community solar legislation. EGS Parties St. No. 1, p. 24. There is no support on the record for the EGS Parties' position. As explained by Mr. Davis, the Company follows the laws as they stand and not as they might be. The potential for legislative action concerning solar developments is not a reason to deny the solar PPA. Moreover, there is no suggestion that the Company's AEPS requirements are going away.

The EGS Parties argue that the solar PPA will extend beyond the terms of the DSP plan, and this could be a concern if Duquesne Light does not continue as the default service provider. EGS Parties St. No. 1, p. 23. The EGS Parties' concerns about long-term contracts preventing another service provider from assuming the default service role should be denied. Duquesne Light is not proposing to stop serving as the default service provider. Moreover, Act 129 provides for long-term contracts of up to 20 years. Any long-term contract would present this issue. In the unlikely event that Duquesne Light would no longer be the default service provider, any long-term contractual obligations could be addressed by the Commission at that time.

The EGS Parties also argue that the solar PPA could become uneconomic and, therefore, should be denied. EGS Parties St. No. 1, p. 24. Duquesne Light's witness, Mr. Davis, rebutted this argument as follows:

**Q. Do you agree with Mr. Kallaher's suggestion that the Company's proposed solar PPA should be denied because it might be uneconomic in the long term?**

A. No, I do not. While I agree that there is a possibility that such a contract could be uneconomic in the long term, there is also a

possibility that such a contract could be lucrative for customers over the long term. From a risk management or prudence perspective, adding measured volumes of long-term contracts can provide the opportunity to gain more information about the solar generation market in Duquesne Light's service area, support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area, while being sized to mitigate risks associated with the long-term commitment.

Duquesne Light St. No. 1-R, p. 2

Further, Mr. Davis explained that the solar PPA is a manageably sized program accounting for less than 55% of the Company's projected solar AEC requirements.

The EGS Parties present no valid reason for delaying the solar PPA. Their opposition to the solar PPA is contrary to Act 129 and the Chairman's guidance regarding long-term contracts.

*ii. The EGS Parties' MOPR Arguments Should be Denied.*

Mr. Kallaher also argues that the solar PPA may trigger application of FERC's proposed MOPR concerning generation contracts that would be considered state subsidies, which might lead to higher wholesale capacity charges. Duquesne Light St. No. p . As an initial matter, the MOPR rules are not final and, therefore, it is not clear whether the proposed solar PPA would or would not trigger the MOPR. Moreover, Duquesne Light's witness, Mr. Davis, explained that the Company did not intend to subject itself to the MOPR and that the Company would not seek to enter into the PPA if it violated the MOPR. Duquesne Light St. No. 1-RJ, p. 2.

The Company also disputed Mr. Kallaher's general recommendation to require the Company to make a supplemental filing to specify that the Company's default service plan meets PJM's requirements under the MOPR. EGS Parties St. No. 1, pp. 12-13. Duquesne Light's witness Mr. Peoples responded to this argument as follows:

**Q. Do you agree with Mr. Kallaher's recommendation that the Commission should direct Duquesne Light to make a supplemental filing to specify the manner in which the**

**Company's default service program meets PJM's requirements for being the "result of a non-discriminatory and competitive bidding process?"**

- A. No. Mr. Kallaher's recommendation to require a supplemental filing is unnecessary and inappropriate. First, the FERC proceeding is not yet final. Second, it is not at all clear how the MOPR would be applied, if at all, to EDCs, as default service providers. As Mr. Kallaher notes, the FERC MOPR applies to "PJM and Capacity Market Sellers." Duquesne Light is neither of these things. The Company, as a default service provider, is a "buyer" of full requirements wholesale supply. Therefore, the MOPR may not require any regulatory filings on the part of the Company. Third, a supplemental filing is unnecessary since, as I describe further below, the Company's independent auction monitor is able to certify that the Company's DSP IX solicitations represent a resource-neutral, non-discriminatory and competitive bidding process. For these reasons, the EGS Parties' recommendation to require a supplemental filing should be rejected by the Commission.

Duquesne Light St. No. 2-R, p. 2, line 17-p. 3, line 13.

The EGS Parties' MOPR recommendations are not necessary and should not be adopted.

***iii. MAREC's Opposition to the Solar PPA Should Be Denied.***

In its testimony, MAREC takes the opposite position of the EGS Parties, and argues that Duquesne Light should enter into a higher quantity of long-term renewable contracts than it is proposing. MAREC argues that Duquesne Light should conduct an All-Resource RFP followed by Integrated Resource Modeling to determine the least cost mix of resources. MAREC St. No. 1, p. 8. MAREC's proposal is substantially flawed and should be denied.

Duquesne Light opposes MAREC witness Dr. Stanton's request to increase the quantity of supply under the solar PPA or to expand it to other renewable resources at this time. Duquesne Light's proposed solar PPA for up to 7 MW is a reasonable amount given the size of Duquesne Light's default service load. Long-term contracts can create savings over the long-term or can become uneconomic if prices later fall. Duquesne Light St. No. 3-R, p. 12. Duquesne Light's specific proposal balances the risks and rewards of entering into long-term contracts for customers.

Dr. Stanton's request for the Company to perform an all-resource RFP followed by Integrated Resource Modeling is also flawed. She did not provide sufficient detail regarding her proposal to implement it. Duquesne Light's witness, Mr. Fisher explained as follows:

Once again, Dr. Stanton's recommendation is insufficiently defined. When asked about her recommended "all-resource Request for Proposals" during the discovery process, Dr. Stanton was unable to provide any detail about the design, the types of eligible resources, the products that would be solicited, the contract terms, the qualification requirements, the basis for selection of the winning bidders, or how definitional differences between the different types of products would be considered. Furthermore when asked about her recommended "Integrated Resource Modelling" during the discovery process, Dr. Stanton was unable to describe the process to develop the associated model(s), the necessary modeling assumptions and market forecasts, how the modeling assumptions and market forecasts would be agreed upon, what stakeholders would be involved, who would be responsible for coding and running the model, what specific outputs would be measured by the modeling, how these measurements would be factored or weighted, who would be responsible for approving the results of the model, or the timing of approval of the results of the model. And, regarding her recommended overall "all-resource Request for Proposals followed by Integrated Resource Modelling," Dr. Stanton could not provide an estimate of the time required to develop and implement the process, an estimated cost of the process, or a proposal regarding how the costs of the process would be recovered. Finally, when asked in discovery, Dr. Stanton could not identify an instance in Pennsylvania or in any U.S. jurisdiction in which the electricity industry has been restructured and customers are afforded retail access, where her recommended process was required as a condition of the approval of a default service plan.

Duquesne Light St. No. 3-R, p. 29, line 1-p. 30, line 3, footnotes omitted.

MAREC's arguments are flawed, and its all-resource RFP proposal lacks detail, is overly complicated and is unnecessary. It should be denied.

*iv. The Company's Proposed Long-Term Solar PPA Meets Act 129's Prudent Mix Requirements.*

MAREC argues that Duquesne Light did not demonstrate that its long-term solar PPA meets the prudent mix standards of Act 129 and argues that Duquesne Light should have more long-term contracts. See MAREC St. No. 1, p. 8. On the other hand, the EGS Parties also argue that Duquesne Light did not demonstrate that its long-term solar PPA meets Act 129's prudent mix standards and argue that Duquesne Light should have no long-term contracts. EGS Parties' St. No. 1, pp. 10 – 11. Duquesne Light's solar PPA is a reasonable balance between the two extremes taken by MAREC and the EGS Parties. Duquesne Light's witness, Mr. Fisher, describes the further support for, and lack of opposition to, Duquesne Light's proposed default service supply product mix, and the resulting balance that Duquesne Light has achieved:

**Q. Do any other parties in this proceeding oppose Duquesne Light's proposed default service supply product mix?**

A. No other intervenor has expressed any opposition to Duquesne Light's proposed default service supply product mix. Furthermore, the Office of Consumer Advocate ("OCA") has actively voiced its satisfaction with Duquesne Light's residential default service supply portfolio and its reasoning for its choice of proposed supply product mix, noting that "the products that DLC is proposing to use to meet its residential default service obligations provide a reasonable balance between price stability and market responsiveness and are consistent with Act 129."

**Q. At a high level, what do these facts indicate about Duquesne Light's proposed default service supply mix?**

A. I will address in detail the specific positions of the intervenors later in my testimony. But at a high level, the fact that no intervenor has voiced any concerns with regard to the default service supply product mix, except two intervenors that have diametrically opposed positions on one issue, indicates that Duquesne Light's DSP IX strikes a reasonable balance of competing perspectives regarding the default service supply mix. Duquesne Light's carefully designed approach incorporates stakeholder input through evidentiary proceedings as well as past Commission approvals of both Duquesne Light's tailored supply portfolios for different customer



classes and the results of default service supply solicitations. It provides the benefits of competition on all aspects of the full requirements supply obligation (including the portfolio management function) through the procurement of fixed-price full requirements (“FPFR”) products, and it incorporates design components to support the competitive retail electricity market.

Duquesne Light St. No. 3-R, p. 5, line 14-p. 7, line 2 (footnotes omitted).

Duquesne Light’s procurement proposal is well-balanced and meets the prudent mix requirements of Act 129. Duquesne Light’s solar PPA is a reasonable proposal designed to encourage solar development, and it is part of a prudent mix of contracts that meets the Act 129 standards.

***v. OCA’s Argument That the Solar PPA Must Be Revenue Neutral Should Be Denied.***

OCA argues that Duquesne Light should demonstrate that any solar PPA should be at least revenue neutral over the term of the contract. OCA St. No. 1, p. 18. OCA’s proposal should not be accepted.

It is not possible to accurately predict whether a long-term contract will be revenue neutral over the term of the contract. Duquesne Light witness Mr. Davis explained that the nature of a long-term contract is that it extends beyond the discoverable market price period. Duquesne Light St. No. 1-R, p. 4. Mr. Davis further explained:

The nature of a long-term contract is that it typically extends beyond the discoverable market price period for the various attributes. For example, forward energy market prices are typically discoverable for a period of no more than three years. The same can also be paid for capacity prices. Price projections beyond that horizon would be speculative, so a demonstration of revenue-neutrality would be subjective. To help ensure that the least cost PPA is obtained, the Company proposes to hold a competitive RFP to be conducted by its independent default service auction manager. Once bids are received, the Commission will be in a better position to decide whether or not to enter into the contract.

Duquesne Light St. No. 1-R, p. 4, line 19-p. 5, line 5.

In surrebuttal, OCA's witness agreed that price projections beyond a few years are subjective. OCA St. No. 1-SR, p. 6. Trying to determine whether a long-term contract will be revenue neutral based upon completely subjective estimates would provide no value. Moreover, Act 129 does not require an evaluation of whether a long-term contract will be revenue neutral. OCA's recommendation should not be accepted.

#### **4. Standard Offer Program Issues**

##### **a. Summary of Duquesne Light's SOP Proposal**

Duquesne Light's witness, Ms. Scholl, explained the Company's current SOP as follows:

##### **Q. Please provide an overview of the Company's Standard Offer Program.**

A. The Company's SOP was initially implemented as part of its Default Service Plan VI. The SOP targets residential and small C&I customers who are not served by an Electric Generation Supplier ("EGS") and who contact the Company with four types of calls. Specifically, customers who contact the Company: 1) to initiate or move service, 2) to discuss choice questions, 3) to resolve high bill concerns, or 4) to inquire about the SOP, are provided information regarding participation in the Company's SOP. After the customer's specific inquiry has been resolved, Duquesne Light's customer service representative ("CSR") offers the customer the opportunity to participate in the SOP utilizing an established script. When the customer indicates that he/she is interested in participating in the SOP, he/she is transferred to a participating EGS for program details and enrollment. Customers who enroll with an EGS through SOP have the option of choosing a fixed price 7% below the Company's then-effective price to compare ("PTC") for a period of 12 months. Customers can leave the SOP at any time during these 12 months without penalty.

Duquesne Light St. No. 1, p. 3, lines 3-18.

Duquesne Light currently administers its own SOP directly using its own customer service representatives ("CSRs") to offer the SOP to customers. Duquesne Light is the only large EDC in

Pennsylvania that directly administers the SOP. All of the other EDCs outsource administration of their SOPs to third party vendors. Duquesne Light St. No. 1, p. 4.

In this proceeding, the Company proposed to outsource administration of the SOP to a third-party vendor. Duquesne Light St. No. 1, p. 5. Duquesne Light's SOP enrollment numbers have lagged behind other EDCs and Duquesne Light believes that outsourcing could increase customer participation. Duquesne Light St. No. 1, p. 8. Outsourcing administration of the SOP also will allow the Company's CSRs to focus on core distribution company issues. In addition, outsourcing the SOP will align administration with the other EDCs in Pennsylvania. Duquesne Light St. No. 1, pp. 9-10.

**b. Other Parties' Positions Regarding the SOP.**

OCA initially opposed outsourcing the administration of the SOP to a third-party vendor. OCA argued that a third-party vendor could present the SOP in a promotional manner and not fair and neutral. OCA St. No. 2, p. 14. OCA also presented concerns regarding the Company's scripting. OCA St. No. 2, p. 15. OCA and CAUSE-PA also argued that the Company should conduct a study of prices charged by SOP suppliers following the 12-month SOP term. OCA St. No. 2, pp. 16-17; CAUSE-PA St. No. 1, p. 30. As explained below, Duquesne Light has entered into a stipulation with OCA and CAUSE-PA regarding the SOP, which resolves all issues among those parties as to the SOP.

The EGS Parties did not oppose Duquesne Light's proposal to outsource administration of the SOP to a third-party vendor. However, the EGS Parties argued that Duquesne Light should automatically enroll new and moving customers with an EGS, rather than being given the option to enroll in default service or choose an EGS. EGS Parties St. No. 1-SR, pp. 2-3. The EGS Parties' witness, Mr. Kallaher, admits that this type of change could only be accomplished with input from

a broad range of stakeholders. EGS Parties St. No. 1-SR, p. 3. However, the EGS Parties provide no detail as to how this would be accomplished.

The EGS Parties' proposal to presumptively place new and moving customers with an EGS violates the law and should be denied. Pennsylvania's restructuring law was titled the "Electricity Generation **Customer Choice** and Competition Act." 66 Pa. C.S. § 2801. (Emphasis supplied.) The most fundamental right under the Customer Choice Act is the ability of customers to choose their electricity supplier. The most fundamental protection in the Customer Choice Act was the provision of default or provider of last resort service in the event that a customer elected not to take service from the competitive market or in the event that a competitive supplier failed to deliver. 66 Pa. C.S. § 2807(e). Act 129, which was passed in 2008, also continued the fundamental right of customers to choose not to take service from a competitive supplier. Act 129 provides as follows:

Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service **or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.**

66 Pa. C.S. § 2807(e)(3.1) (emphasis supplied).

The EGS Parties' proposal would deny customers the right to take default service, it is contrary to law, and it should be summarily dismissed.

Moreover, even if the EGS Parties' proposal were legally permissible, the record in this proceeding would weigh against adopting it here. As explained by Duquesne Light witness Fisher:

**Q. Why does Mr. Kallaher's recommendation, that the Commission require new or moving customers calling to initiate**

**service be required to take service from an EGS, raise legitimate public policy concerns with the potential for significant customer harm?**

- A. Under the existing, established default service model, mass market customers who choose not to shop, or who do not have the time, energy, sophistication, or resources to make an informed service decision, are charged default service rates that reflect the cost of supply from competitive wholesale solicitations, in which many parties compete to provide the supply on the basis of lowest price. The selection of winning bidders is subject to Commission approval, and the timing and definitions of the supply products that are procured are established through a Commission proceeding in which the benefits of price stability are considered. Consequently, these customers are provided stable rates established through the competitive market with active Commission oversight.

In contrast, under Mr. Kallaher's proposal, new or moving customers would be forced to choose or be involuntarily assigned to an EGS, and the same assurances cannot be made that the rates that the EGS charges would be as stable, subject to competitive market forces, and subject to the same level of Commission oversight on an ongoing basis. Under Mr. Kallaher's proposal, whenever the EGS is allowed to charge the new or moving customer (that was forced to accept EGS service) rates at the EGS's discretion without Commission approval of the rates (e.g., after the initial fixed-price period of the SOP), the customer will be exposed to the potential loss of the stable, competitively-priced rate upon which it relies. I believe there is an important distinction between a customer that voluntarily and affirmatively elects to enroll with an EGS (either through the SOP or another EGS offering) and a customer that is forced to enroll with an EGS and that therefore may not have the time, incentive, knowledge, sophistication, or resources to make educated electricity service choices going forward. A customer that does not voluntarily and affirmatively elect service from an EGS should not be forced to accept service from an EGS that subsequently can charge the customer whatever rate the EGS elects to charge, without any Commission oversight.

Duquesne Light St. No. 3-R, p. 44, line 7, to p. 45, line 14.

Mr. Fisher also explained that factors exist that magnify this potential for significant customer harm under the EGS Parties' proposal. These factors include the numerous studies cited by CAUSE-PA witness Geller, which identify instances in several states in which competitive

retail suppliers have been charging significantly more than default service rates and/or engaging in misleading marketing practices, and that therefore cast doubt on the ability to rely upon EGSs to charge rates reflective of “least cost” on an ongoing basis to new or moving customers that are forced to accept service from an EGS. The results of Mr. Geller’s analysis of EGS charges in Duquesne Light’s service area further magnifies these concerns. Duquesne Light St. No. 3-R, p. 46, line 17, to p. 47, line 14. The EGS Parties do not dispute this rate disparity; rather, they urge the Commission to simply disregard it. *See* EGS Parties St. 1R at 2-5; EGS Parties St. 1SR at 4-5. Similarly, the EGS Parties offered no evidence to suggest that such price disparities would not persist if their proposal were adopted. To accept the EGS Parties’ proposal would therefore require the Commission to overlook record evidence in this proceeding that, on balance, demonstrates that the proposal should be denied.

**c. The SOP Stipulation Entered Into By Duquesne Light, OCA and CAUSE-PA Should Be Approved.**

On September 30, 2020, Duquesne Light filed with the Commission an SOP stipulation between the Company, OCA and CAUSE-PA. The Stipulation is set forth below:

a. Per its initial proposal, DLC will outsource administration of the SOP to a third party, initially Allconnect. The costs associated with the third party administrator will be recovered, as proposed by DLC, from participating EGSs. As part of its transition to Allconnect, DLC agrees to develop customer education scripts that are consistent with the practices of Pennsylvania’s EDCs that currently utilize third party SOP administrators. DLC will provide these scripts to the parties for review/comment. Upon implementation of such scripting, DLC agrees to monitor Allconnect’s adherence to the scripts at regular intervals to ensure compliance and provide a report of its efforts at the midpoint of DSP IX, including a random sampling of call recordings of monitored solicitations, as part of such report. Additionally, DLC will provide a report in its next Default Service filing that will document the third party administrator’s compliance with the Company’s SOP directives.

- b. DLC will continue its current practice of referring eligible customers to SOP, rather than automatically placing them into SOP.
- c. DLC will continue its current practice of allowing SOP participants to remain with their EGS following the initial 12-month SOP period, absent affirmative action by the customer.
- d. DLC will add a section to the “Customer Choice” page of its website that specifically addresses SOP and participating customers’ options upon expiration of their initial 12-month SOP contract.
- e. DLC will conduct an analysis of SOP participants’ effective supply rates following their initial 12-month SOP period, and will present results annually beginning in 2022.

This SOP Stipulation is in the public interest and should be approved. The Stipulation adopts the Company’s proposal to outsource administration of the SOP to a third-party vendor. This makes the Company’s SOP administration consistent with the other EDCs in Pennsylvania and allows the Company’s CSRs to focus on addressing other customer issues.

The Stipulation also addresses customer protection concerns raised by OCA, including revised scripting, and ensures additional education regarding customer options upon expiration of the initial 12-month SOP contract. In addition, the Stipulation adopts OCA’s proposal to conduct an analysis regarding SOP participants supply rates following their initial 12-month SOP period. This analysis will give parties and the Commission additional information regarding the price impacts to customers after their SOP term expires.

Duquesne Light believes that this SOP Stipulation is a reasonable compromise of the stipulating parties’ positions and asks that the Stipulation be adopted without modification.

Duquesne Light also requests that the ALJ and the Commission deny the EGS Parties’ request to automatically enroll new and moving customers to take service from an EGS. The EGS Parties’ request is contrary to law and must be denied.

## 5. CAP Shopping Issues

### a. Summary of Duquesne Light's CAP Shopping Proposal.

Duquesne Light's CAP customers currently are not permitted to enroll with EGSs. In recent proceedings, the Commission has encouraged default service providers to implement CAP shopping, with certain protections. In its Proposed Policy Statement Order entered on February 28, 2019 at Docket No. M-2018-3006578, the Commission provided proposed CAP shopping guidelines, which included:

- (1) a CAP shopping product rate at or below the EDC's Price-to-Compare ("PTC") for the duration of the contract;
- (2) a prohibition in the EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and
- (3) the following options for CAP customers upon expiration of the current contract period: enter into another contract with their existing EGS with the same CAP protections, switch to another supplier offering a contract with the same CAP protections, or return to default service.

Proposed Policy Statement Order, pp. 5, 9-10.

On January 23, 2020, the Commission also suggested in a Secretarial Letter that EDCs consider CAP shopping issues in their upcoming default service proceedings. *Re: Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019-3007101.

Pursuant to the Proposed Policy Statement and the Secretarial Letter, Duquesne Light proposed a CAP shopping program based on those of the FirstEnergy Companies. Docket Nos. P-2017-2637855 *et. al.*, Order entered February 28, 2019. Specifically, Duquesne Light proposed to allow CAP shopping with the following primary conditions:



(1) Participating EGSs must charge CAP customers at a rate at or below the applicable residential PTC throughout the duration of the contract.

(2) EGSs must use “rate-ready” consolidated EDC billing for all contracts with CAP customers. Any EDI transactions to enroll a CAP customer at a rate above the PTC, or into a non-rate-ready product, will be rejected.

(3) If at any time the EG’s rate charged to a CAP customer would exceed the Company’s applicable residential PTC, the customer would be automatically unenrolled from the EGS and returned to default service within three business days.

(4) EGSs’ contracts with CAP customers also may not include early cancellation or termination fees, or fees for anything unrelated to electric supply service.

(5) At the expiration of a CAP customer’s contract with an EGS, the customer may renew the contract with his or her existing EGS at a new Program-compliant rate, switch to another supplier offering a Program-compliant rate, or return to default service.

(6) Where an EGS seeks to enter into a new contract or revise an existing contract with a CAP customer, it must comply with the Commission’s notice regulations at 52 Pa. Code § 54.10.

(7) Where an EGS elects to return a CAP customer to default service upon contract expiration or cancellation, the contract cancellation and notice provisions described in the EGS’s disclosure statement will apply.

(8) If the EGS disclosure does not address cancellation and notices, the EGS must provide at least one notice fifteen days in advance of discontinuing service to the customer.

Duquesne Light St. No. 5, p. 14.

The other conditions of the CAP shopping program are set forth in the Direct Testimony of Ms. Scholl, Duquesne Light Statement No. 5.

Ms. Scholl noted that implementing CAP shopping would require modifications to the Company’s billing system at a cost of approximately \$160,000. The Company proposed to recover

the capital portion of these costs, approximately \$120,000, through base rates and the expense portion through the Universal Service Charge. Duquesne Light St. No. 5, pp. 18-19.

In addition, in order to avoid the expenditures of unnecessary costs, the Company proposed to only implement the CAP Shopping Program upon receipt of CAP Notice Affidavit from 5 EGSs indicating their interest (not obligation) to market to and enroll CAP customers. Duquesne Light St. No. 5, p. 19.

**b. Other Parties' Positions Regarding CAP Shopping.**

CAUSE-PA opposed the Company's CAP shopping proposal for several reasons. CAUSE-PA argued that customers that are already enrolled with an EGS that want to enroll in CAP may pay more than the PTC until their then-current contract expires, or during a transition period. CAUSE-PA also criticized the Company's plan to educate customers. CAUSE-PA and OCA also recommended that the Company recover some portion of the costs of implementing CAP shopping from EGSs.

EGS Parties' witness Mr. Kallaher argued that when a CAP shopping term expires, if the customer makes no affirmative choice, that the customer continue to be served by its existing EGS at program compliant terms. Mr. Kallaher also argued that the CAP shopping proposal be clarified to allow that CAP customers to participate in the SOP, provided it is a CAP-compliant product. EGS Parties St. No. 1, p. 18.

**c. The Stipulation Regarding CAP Shopping Should Be Approved.**

On September 30, 2020, Duquesne Light filed a Stipulation with OCA and CAUSE-PA regarding an agreement between these parties regarding the Company's CAP shopping proposal. The Stipulation provides with respect to CAP Shopping:

- a. DLC's CAP Shopping proposal is withdrawn.

- b. Within 6 months of a final, unappealable order implementing CAP Shopping in PPL Electric service territory, Duquesne will make a filing with the Commission regarding CAP shopping that is consistent with Duquesne's CAP design, and which is informed by all available information and data.

Under the CAP Shopping Stipulation, Duquesne Light is withdrawing its proposed CAP shopping proposal pending the Commissions' decision in PPL Electric's ongoing default service proceeding at Docket No. P-2020-3019356. In that proceeding, PPL Electric is proposing to eliminate its CAP shopping program for several reasons, including that newly enrolled CAP customers often have contracts that are higher than the PTC and lack of EGS participation in the Program. *See PPL Electric* Main Brief at Docket No. P-2020-3019356.

Given the substantial opposition to CAP shopping by CAUSE-PA and OCA in this proceeding, Duquesne Light believes that it is reasonable to wait for additional clarity from the Commission and/or courts before going forward with CAP shopping. In the event that the Commission orders PPL Electric to continue its CAP shopping program, Duquesne Light will make a separate filing with the Commission regarding CAP shopping.

V. **CONCLUSION**


WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Hoyer and the Pennsylvania Public Utility Commission:

- (1) approve the Partial Settlement that will be filed on or before October 13, 2020;
- (2) grant the approvals for Duquesne Light to procure power as set forth in this proceeding, including if needed, credit support from its parent;
- (3) authorize the Company to file on one day's notice tariff sheets implementing the terms of the settlement and the Commission's directives in a final order;
- (4) approve the Supply Master Agreement;
- (5) approve the EV-TOU Stipulation between the Company, NRDC, CAUSE-PA, and OCA;
- (6) approve the SOP stipulation between the Company, OCA and CAUSE-PA;
- (7) approve the CAP shopping stipulation between the Company, OCA and CAUSE-PA;
- (8) deny the EGS Parties' NITS proposal;
- (9) approve the Company's EV-TOU proposal;
- (10) approve the Company's solar PPA proposal;
- (11) make the specific findings required under 66 Pa. C.S. § 2807(e)(3.7); and
- (12) grant other such relief as necessary for Duquesne Light to implement its default service plan.

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# **APPENDIX A**

**APPENDIX A**  
**PROPOSED FINDINGS OF FACT**

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following findings of fact:

**A. OVERVIEW**

1. Duquesne Light filed the Petition of Duquesne Light Company for Approval of Its Default Service Plan for the Period from June 1, 2021 through May 31, 2025 (“Petition”).

2. Therein, Duquesne Light sought Commission approval of a Default Service Plan for the period of June 1, 2021 through May 31, 2025 (“DSP IX,” “Default Service Plan,” or “Plan”).

3. Duquesne Light developed its Plan to satisfy Act 129, which amended Section 2807(e)(3) of the Public Utility Code, 66 Pa. C.S. § 2807(e)(3), with respect to, among other things, power procurement for default service providers. In developing its Plan to satisfy Act 129, the Company was guided by the Second Default Service Rulemaking Order, which the Commission entered to provide guidance with respect to the interpretation of Act 129's requirements.<sup>1</sup> Duquesne Light also considered the guidance provided in the Default Service End-State Order in the Investigation of Pennsylvania's Retail Electricity Market.<sup>2</sup> Duquesne Light St. 1 at 5-6.

4. The Company also considered the Commission's guidance in the January 2020 Secretarial Letter in the Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms.<sup>3</sup> Duquesne Light St. 1 at 6-7.

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<sup>1</sup> Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Order entered October 4, 2011) (“Second Default Service Rulemaking Order”).

<sup>2</sup> Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Order entered February 15, 2013.

<sup>3</sup> Investigation into Default Service and RIM Interconnection, LLC. Settlement Reforms, Docket No. M-2019- 3007101, Secretarial Letter issued January 23, 2020 (“January 2020 Secretarial Letter”).

5. The Default Service Plan is a comprehensive program under which Duquesne Light will provide default service to its customers from June 1, 2021 through May 31, 2025. Duquesne Light has grouped its default service customers into four primary customer classes, which are the same customer class groupings used in its currently effective default service plan: Residential & Lighting,<sup>4</sup> Small Commercial & Industrial ("Small C&I"),<sup>5</sup> Medium Commercial & Industrial <200kW ("Medium C&I <200kW"),<sup>6</sup> and HPS-Eligible.<sup>7</sup> The Plan includes default service offerings tailored to the needs of each customer class, it complies with the requirements of Act 129, and it includes concrete steps to support retail competition. The Default Service Plan also builds upon the foundation established in previous Commission-approved plans, which have facilitated and supported the competitive retail market over a sustained period of time, while offering stable and reasonable rates for small customers who do not elect to receive service from an EGS. Duquesne Light St. 1 at 8.

## **B. ISSUES RESOLVED BY SETTLEMENT**

6. Duquesne Light and all of the parties in this proceeding reached an agreement in principle with respect to many of the issues in this proceeding and agreed to file a formal Settlement Petition with accompanying Statements in Support by the Reply Brief date of October 13, 2020.

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<sup>4</sup> Residential customers are those served under rate schedules RS, RH and RA. Lighting customers are those served under rate schedules AL, SE, SM, SH, and PAL.

<sup>5</sup> Small C&I customers are those with average monthly metered demands less than 25 kW served under rate schedules GS/GM, GMH and UMS.

<sup>6</sup> Medium C&I <200kW customers are those served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 25 kW but less than 200kW.

<sup>7</sup> HPS-Eligible customers are those who are eligible for Rider No. 9 — Day-Ahead HPS. They include Medium C&I >200kW customers (customers served under rate schedules GS/GM and GMH with average monthly metered demands that are at least 200 kW) and Large C&I customers (customers served under rate schedules GL, GLH, L, and HVPS).



7. Duquesne Light and the parties have agreed that the Petition of Duquesne Light Company for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025 (“Petition”) should be approved as follows.

8. The four-year Program Term will be approved as set forth in paragraph Nos. 5-6 of the Petition.

9. The Procurement Plans and Rates will be approved as set forth in paragraph Nos. 7-46 of the Petition, except that, with respect to the Federal Energy Regulatory Commission (“FERC”) Docket No. EL-18-178, Minimum Offer Price Rule (“MOPR”), Duquesne Light will expand the role of its Market Monitor, currently Charles River Associates, to include certifying that Duquesne Light’s Default Service Supply solicitations are conducted through a resource-neutral, non-discriminatory and competitive bidding process.

10. The Purchase of Receivables Program will be approved as set forth in paragraph No. 67 of the Petition.

11. The Recovery of Net-Metered Excess Generation Costs will be approved as set forth in paragraph Nos. 73-76 of the Petition.

12. Duquesne Light will consider the recommendations of the Coalition for Affordable Utility Service of Pennsylvania’s (“CAUSE-PA”) witness Mr. Geller in CAUSE-PA St. 1, page 53, lines 13-21 and page 59, lines 15-21 regarding the Company’s ongoing bill redesign initiatives.

13. Duquesne Light’s bills for consolidated-billed residential electric generation supply (“EGS”) customers taking basic supply service will clearly display the Price-To-Compare (“PTC”), as well as basic supply charges in actual dollars or cents per kWh, average dollars or cents per kWh, and/or flat monthly charge(s).

14. Duquesne Light will revise Rule 12.1.6 of its Supplier Coordination Tariff regarding bill-ready billing to read as follows (revisions shown in bold):

12.1.6 EGS BILLING DATA

The EGS shall provide all necessary data in its possession for the timely computation of bills. **Where the EGS uses bill-ready billing for residential customers taking basic electric supply service, the EGS shall provide electric supply charges in actual dollars or cents per kWh, average dollars or cents per kWh, and/or flat monthly charge(s).** A failure of the EGS to provide necessary data to the Company in a timely fashion may delay generation of a bill for the month to which the data pertains. In such instances, the EGS is responsible for all fines and violations, if any, arising as a consequence of the Company's inability to render a timely bill.

15. Duquesne Light will revise Rule 12.1.7 of its Supplier Coordination Tariff, as described in Duquesne Light St. 5-R and copied below regarding EGS non-basic service charges (revisions shown in bold):

12.1.7 PURCHASE OF EGS RECEIVABLES (POR) PROGRAM

Duquesne will purchase the accounts receivable, without recourse, associated with EGS sales of retail electric commodity, comprised of generation and transmission services, to residential customers and commercial and industrial ("C&I") customers with monthly metered demand less than 300 kW within Duquesne's service territory. Eligible customers are those customers taking delivery service under the Company's retail tariff Rate RS, RH, RA, GS/GM and GMH, and who purchase their electric commodity requirements from the EGS through consolidated billing with the Company. **Upon request, an EGS shall provide a written certification to Duquesne that the EGS is providing only basic electric supply to residential customers billed through consolidated billing with the Company.**

**C. ISSUES RESERVED FOR LITIGATION**

**1. EGS Payment of NITS Charges.**

16. During the course of this proceeding, the EGS Parties argued that Duquesne Light should recover NITS charges for both default service customers and customers that are taking service from an EGS. EGS Parties St. 1 at 27-33.

17. The EGS Parties' proposal should be rejected.

18. This topic was litigated twice before as part of the Company's DSP VI and DSP VII proceedings. Both times, the Commission agreed with the Company's position regarding recovery for transmission related costs, and Mr. Kallaher presents no reasons to deviate from this precedent. *See* Duquesne Light St. 4-R at 22:9-24:7.

19. Including NITS in the TSC ensures that the transmission component of the rate was unbundled and "portable." Customers switching to an EGS would also purchase their transmission requirements from the EGS. Modifying the TSC such that it is non-bypassable would reduce the scope of products subject to meaningful competition and customer choice. *See* Duquesne Light St. 4-R at 22:9-24:7.

20. The Company has continued with the same methodology to recover transmission costs for default service since customer choice began. As transmission cost line items have changed over time, the Company has relied upon Commission and/or FERC for guidance to define what transmission-related costs are and what should be recovered from default service customers through the TSC. Changing the content and structure of the TSC to a non-bypassable charge will change the fundamental composition of the PTC. This change could create customer confusion. *See* Duquesne Light St. 4-R at 22:9-24:7.

21. changing the content and structure of the TSC could have a negative impact on current shopping customers. Current shopping customers are paying their EGS for applicable

transmission charges through the rates charged by their EGS. Implementing a non-bypassable charge could cause shopping customers to pay twice for transmission service for the remainder of their EGS contracts. *See* Duquesne Light St. 4-R at 22:9-24:7.

22. EGSs should be able to address their concerns in the pricing offerings they make available to customers. For example, some EGSs could offer to fix only the supply portion of their charges and pass through the transmission charges in question. EGSs also could offer to fix some, but not all charges. Other EGSs may choose to fix both the supply and transmission charges for the benefit of customers. Allocating all of the transmission charges into a pass-through, non-bypassable charge for all customers would limit the breadth of options available to customers and EGS service offerings in the competitive market. *See* Duquesne Light St. 4-R at 22:9-24:7.

23. Finally, even if one were to accept Mr. Kallaher's position that these costs are volatile and hard to predict, this alone would not justify making such charges non-bypassable. For instance, some may describe energy and capacity prices as volatile and hard to predict, yet Mr. Kallaher does not suggest that these charges should be non-bypassable. The competitive market in Pennsylvania established generation and transmission charges to be included in the PTC. These costs (including NITS) are incurred by EGSs. Duquesne Light does not believe that it is proper to socialize NITS costs incurred by EGSs to all distribution customers simply because they are (arguably) unpredictable. This is not a proper basis for cost allocation. For all these reasons, I recommend the Commission deny the EGS Parties' proposal for the Company to collect and remit NITS on behalf of all customers through a non-bypassable charge. *See* Duquesne Light St. 4-R at 22:9-24:7.

24. Not all EGSs agree with the EGS proposal. Specifically, Calpine Retail strongly opposes the EGS Parties' proposal. Calpine Retail St. 1 at 3:7-4:12.

## **2. EV-TOU Pilot Program Issues**

25. The Company proposes in this proceeding to establish an optional EV-TOU Rate for Residential, Small C&I and Medium C&I customers with less than 200 kW of demand who use Default Service (Rider 8) supply. In order to be eligible for EV-TOU Rate, the customer would be required to own or lease a plug-in battery electric vehicle or a plug-in hybrid electric vehicle (collectively "EV") or offer charging services. Duquesne Light St. 5 at 19.<sup>8</sup>

26. The EV-TOU Rate has the potential to benefit EV customers by lowering the cost of owning and operating an EV. *See* Duquesne Light St. 5 at 20-22.

27. The EV-TOU Rate also has the potential to benefit all of Duquesne Light's customers by increasing usage of the Company's existing electric grid during non-peak periods, thereby producing increased revenues to offset existing grid costs and reducing the need to build new facilities to serve EV load. *See* Duquesne Light St. 5 at 20-22.

28. The EV-TOU Rate has the potential to benefit the general public by reducing greenhouse gas ("GHG") emissions. *See* Duquesne Light St. 5 at 20-22.

29. The Company proposes that customers electing the EV-TOU rate will receive TOU service for the entire usage served via the existing smart meter. This will reduce the costs of electric, EV-TOU service to the customer since a separate meter installation will not be required. However, the Company will continue to monitor technology changes that may offer solutions to separate metering of EV usage. Duquesne Light St. 5 at 22.

30. Because the EV-TOU Rate will include total premises usage in order to avoid the cost to the customer of separate metering, the Company will provide online tools and assistance

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<sup>8</sup> CAP customers are not eligible for the EV-TOU Rate. Duquesne Light St. 5 at 23.

to customers in evaluating the effects of electing whole-premises TOU service. Duquesne Light St. 5 at 27.

31. The EV-TOU Rate supply will be provided by the Default Service wholesale suppliers, who will continue to receive this fixed price accepted in the Company's competitive procurements. The supply costs paid to these wholesale suppliers and the revenues recovered through EV-TOU rates shall be reconciled, by customer class, through the Default Service reconciliation process. Duquesne Light St. 4, pp. 19-20.

32. The Default Service fixed price for each class will be segregated into Off-Peak, On-Peak and Shoulder Period rates based upon each class's respective energy consumption and capacity requirements. *See* Duquesne Light St. 4 at 17-19, Exhibit No. DBO-3; *see also* Duquesne Light St. 4-R at 3-4.

33. The EV-TOU time periods were chosen to encourage EV charging overnight when demand is low and costs are lower and to discourage charging during peak periods when market costs of electricity are higher. The same Off-Peak Period of 11 PM through 6 AM every day of the week is simple for customers to understand. Duquesne Light St. 4 at 17.

34. The record in this proceeding clearly establishes the growing and projected growth of EVs in Pennsylvania and the Company's service area. In addition, the provision of an EV-TOU Rate will further encourage such growth. The record also demonstrates that no EGS is offering an EV-TOU rate in the Company's service area. Finally, the Company has demonstrated that offering a pilot EV-TOU rate will advance the use of EVs in the territory, benefitting EV owners, the Company's other customers by shifting increased usage to off-peak periods, and the public by providing important environmental benefits. Duquesne Light St. 5 at 20-22.

35. The Company's EV-TOU Rate pilot does not prevent an EGS from designing and offering its own EV-TOU rates, including different on-peak and off-peak periods that may benefit specific customers. Duquesne Light St. No. 5-R at 22-23; Duquesne Light St. 2-R at 6-7.

36. The Company has also already held a collaborative open to the EGS Parties on TOU rates, including EV-TOU rates. Duquesne Light St. No. 5-R at 23-25.

37. Duquesne Light witness Mr. Peoples explained that the Company previously solicited EGSs to provide TOU service, but after only one year, those EGSs declined to continue providing such service. Duquesne Light St. 2-R at 6-7.

38. The comments by CAUSE-PA on the EV-TOU Rate Pilot have been resolved by the Stipulation between the Company and other parties filed on September 30, 2020. An explanation of the Company's positions on the CAUSE-PA comments are provided in Ms. Scholl's rebuttal testimony. Duquesne Light St. 5-R at 26-30.

39. The comments by NRDC on the EV-TOU Rate pilot have been resolved by Stipulation between the Company and other parties filed on September 30, 2020. Explanation of the Company's positions on the NRDC comments are provided in Ms. Scholl's rebuttal testimony. Duquesne Light St. 5-R at 31-35.

40. The Company has explained that that revenues and costs associated with the EV-TOU Rate Pilot will be allocated by class. Duquesne Light St. 5-R at 35-37. The resolution of this issue has been resolved by the Stipulation between the Company and other parties filed on September 30, 2020. Explanation of this Company's positions on OCA's comments are provided in Ms. Scholl's rebuttal testimony.

### **3. Solar PPA Issues.**

41. Duquesne Light proposed to enter into a long-term contract to support a utility-scale solar project (up to 7 MW). The alternative energy credits associated with this project

would be used to help satisfy the solar requirements of serving all default service customers at some point during the DSP IX period and beyond. Duquesne Light St. 1 at 10.

42. Duquesne Light Company is requesting pre-approval from the Commission to seek to enter into a long-term solar PPA in order to support a utility-scale solar project of up to 7MW in Pennsylvania. Duquesne Light St. 1 at 13.

43. The Company will follow the requirements to acquire supply in Act 129, which allows the Company to rely on an auction, request for proposal (“RFP”), or bilateral agreement with certain conditions. Duquesne Light St. 1 at 14.

44. Duquesne Light will conduct a competitive solicitation for the PPA. The results of the competitive solicitation would be reported to the Commission consistent with the process used for the Company’s other default service supply auctions. Duquesne Light St. 1 at 14.

45. The Company also plans to purchase the associated energy provided by the solar facility, because the Company wants to provide greater opportunity for cost-effective financing for developers of utility-scale solar projects. A PPA that includes energy may be the best means to do so. Duquesne Light St. 1 at 15.

46. The Company proposes to sell the energy into the PJM market on a real-time basis in order to monetize the energy of the solar PPA. The Company would accrue these revenues and would reconcile them back to its default service customers at the same weighting as each customer class's solar AEC obligation share. The necessary language to credit these solar PPA revenues already exists as a placeholder within Duquesne Light's current Retail Tariff. Duquesne Light St. 1 at 15.

47. The Company plans to assess the potential of purchasing the associated capacity and ancillary services as part of the competitive solicitation process. Duquesne Light St. 1 at 15.



48. As part of DSP VIII, the Company amended the SMA to include language that permits the Company to allocate AECs to third-party wholesale suppliers. If and when Duquesne Light enters into a long-term PPA for AECs, Duquesne Light will continue to require each wholesale supplier to transfer AECs to Duquesne Light corresponding to the AEPS obligations associated with the amount of default service load served by that supplier. Any AECs allocated to a wholesale supplier will be credited to that supplier's AEPS obligation. Duquesne Light St. 1 at 16.

49. The Company proposed a similar process in its prior default service proceeding by which the Company could, subject to Commission approval, enter into a PPA with a solar developer in the Company's service territory to serve a portion of the Company's default service load. The Commission approved that proposal as part of the Company's DSP VIII, and the Company conducted solicitation for prospective solar developers; however, the Company ultimately did not enter into a PPA under that program. A preliminary market survey indicated that there were significant challenges for a solar developer to match the Company's desire to procure only the AECs with another entity willing to enter into a contract for the remaining attributes for the same contract term. Duquesne Light St. 1 at 16.

50. The Company's proposal in DSP IX includes the energy and AEC, and potentially all other attributes, of the solar facility. This addresses the difficulty of matching an AEC offtake agreement with another offtake agreement for the energy attribute. In addition, it potentially mitigates any risk premium the developer would have to price into a contract due to tenor or credit risk of the second entity. Duquesne Light St. 1 at 17.

51. Solar providers will have to bid for the opportunity to enter into the solar PPA in a competitive market. Duquesne Light St. 1 at 14.

52. There is no support on the record for the EGS Parties' position that Duquesne Light's plan could discourage community solar legislation. EGS Parties St. 1 at 24.

53. While there is a possibility that the proposed Solar PPA could be uneconomic in the long term, there is also a possibility that such a contract could be lucrative for customers over the long term. From a risk management or prudence perspective, adding measured volumes of long-term contracts can provide the opportunity to gain more information about the solar generation market in Duquesne Light's service area, support a utility-scale solar project in Pennsylvania, preferably in Duquesne Light's service area, while being sized to mitigate risks associated with the long-term commitment. Duquesne Light St. 1-R at 2.

54. With respect to the EGS Parties' claim that FERC's proposed MOPR concerning generation contracts could be considered state subsidies, the Company explained that it did not intend to subject itself to the MOPR and that the Company would not seek to enter into the PPA if it violated the MOPR. Duquesne Light St. 1-RJ at 2.

55. The Company also explained that the EGS Parties' recommendation to require a supplemental filing to specify the Company's default service plan meets PJM's requirements under the MOPR is unnecessary and inappropriate for three reasons. *See* Duquesne Light St. 2-R at 2:17-3:13.

56. Duquesne Light also opposed MAREC witness Dr. Stanton's request to increase the quantity of supply under the solar PPA or to expand it to other renewable resources at this time. Duquesne Light's proposed solar PPA for up to 7 MW is a reasonable amount given the size of Duquesne Light's default service load. Long-term contracts can create savings over the long-term or can become uneconomic if prices later fall. Duquesne Light St. 3-R at 12.

Duquesne Light's proposal balances the risks and rewards of entering into long-term contracts for customers.

57. Duquesne Light's witness, Mr. Fisher explained further testified that MAREC's proposal is insufficiently defined. MAREC was unable to provide any detail about the "all-resource Request for Proposal" and "Integrated Resource Modelling" that formed the basis of its proposal. In addition, MAREC could not identify an instance in Pennsylvania or in any U.S. jurisdiction in which the electricity industry has been restructured and customers are afforded retail access, where its recommended process was required as a condition of the approval of a default service plan. Duquesne Light St. No. 3-R at 29-30.

58. Duquesne Light's solar PPA is also a reasonable position between the two extremes taken by MAREC and the EGS Parties. Duquesne Light's witness, Mr. Fisher, explained that no other intervenor has expressed opposition to Duquesne Light's proposed product mix. The fact that no intervenor has voiced any concerns with regard to the default service supply product mix, except two intervenors that have diametrically opposed positions on one issue, indicates that Duquesne Light's DSP IX strikes a reasonable balance of competing perspectives regarding the default service supply mix. Duquesne Light St. 3-R at 5:14-7:2 (footnotes omitted).

59. Concerning OCA's claim that Duquesne Light should demonstrate any Solar PPA should be at least revenue neutral over the term of the contract, Duquesne Light showed that it is not possible to accurately predict whether a long-term contract will be revenue neutral over the term of the contract. Duquesne Light witness Mr. Davis explained that the nature of a long-term contract is that it extends beyond the discoverable market price period. Duquesne Light St. 1-R, at 4.

60. Mr. Davis further explained that to help ensure that the least cost PPA is obtained, the Company proposes to hold a competitive RFP to be conducted by its independent default service auction manager. Once bids are received, the Commission will be in a better position to decide whether or not to enter into the contract. Duquesne Light St. 1-R at 4:19-5:5.

#### **4. SOP Issues**

61. The Company's current SOP was initially implemented as part of its Default Service Plan VI. The SOP targets residential and small C&I customers who are not served by an Electric Generation Supplier ("EGS") and who contact the Company with four types of calls. Specifically, customers who contact the Company: 1) to initiate or move service, 2) to discuss choice questions, 3) to resolve high bill concerns, or 4) to inquire about the SOP, are provided information regarding participation in the Company's SOP. After the customer's specific inquiry has been resolved, Duquesne Light's customer service representative ("CSR") offers the customer the opportunity to participate in the SOP utilizing an established script. When the customer indicates that he/she is interested in participating in the SOP, he/she is transferred to a participating EGS for program details and enrollment. Customers who enroll with an EGS through SOP have the option of choosing a fixed price 7% below the Company's then-effective price to compare ("PTC") for a period of 12 months. Customers can leave the SOP at any time during these 12 months without penalty. Duquesne Light St. 1 at 3.

62. Duquesne Light currently administers its own SOP directly using its own customer service representatives ("CSRs") to offer the SOP to customers. Duquesne Light is the only large EDC in Pennsylvania that directly administers the SOP. All of the other EDCs outsource administration of their SOPs to third party vendors. Duquesne Light St. 1 at 4.

63. As a part of its DSP IX, the Company proposed to outsource administration of the SOP to a third-party vendor. Duquesne Light St. 1 at 5.

64. Duquesne Light's SOP enrollment numbers have lagged behind other EDCs and Duquesne Light believes that outsourcing could increase customer participation. Duquesne Light St. 1 at 8.

65. Outsourcing administration of the SOP also will allow the Company's CSRs to focus on core distribution company issues. In addition, outsourcing the SOP will align administration with the other EDCs in Pennsylvania. Duquesne Light St. 1 at 9-10.

66. Duquesne Light has entered into a stipulation with OCA and CAUSE-PA regarding the SOP, which resolves all issues among those parties as to the SOP.

67. The Stipulation adopts the Company's proposal to outsource administration of the SOP to a third-party vendor. This makes the Company's SOP administration consistent with the other EDCs in Pennsylvania and allows the Company's CSRs to focus on addressing other customer issues.

68. The Stipulation also addresses customer protection concerns raised by OCA, including revised scripting, and ensures additional education regarding customer options upon expiration of the initial 12-month SOP contract. In addition, the Stipulation adopts OCA's proposal to conduct an analysis regarding SOP participants supply rates following their initial 12-month SOP period. This analysis will give parties and the Commission additional information regarding the price impacts to customers after their SOP term expires.

69. The EGS Parties' proposal should be rejected. *See* EGS Parties St. 1-SR at 2-3.

## **5. CAP Issues**

70. Duquesne Light proposed to allow CAP shopping with the following primary conditions.

71. First, participating EGSs must charge CAP customers at a rate at or below the applicable residential PTC throughout the duration of the contract. Duquesne Light St. 5 at 14.

72. Second, EGSs must use “rate-ready” consolidated EDC billing for all contracts with CAP customers. Any EDI transactions to enroll a CAP customer at a rate above the PTC, or into a non-rate-ready product, will be rejected. Duquesne Light St. 5 at 14.

73. Third, if at any time the EG’s rate charged to a CAP customer would exceed the Company’s applicable residential PTC, the customer would be automatically unenrolled from the EGS and returned to default service within three business days. Duquesne Light St. 5 at 14.

74. Fourth, EGSs’ contracts with CAP customers also may not include early cancellation or termination fees, or fees for anything unrelated to electric supply service. Duquesne Light St. 5 at 14.

75. Fifth, at the expiration of a CAP customer’s contract with an EGS, the customer may renew the contract with his or her existing EGS at a new Program-compliant rate, switch to another supplier offering a Program-compliant rate, or return to default service. Duquesne Light St. 5 at 14.

76. Sixth, where an EGS seeks to enter into a new contract or revise an existing contract with a CAP customer, it must comply with the Commission’s notice regulations at 52 Pa. Code § 54.10. Duquesne Light St. 5 at 14.

77. Seventh, where an EGS elects to return a CAP customer to default service upon contract expiration or cancellation, the contract cancellation and notice provisions described in the EGS’s disclosure statement will apply. Duquesne Light St. 5 at 14.

78. Eighth, if the EGS disclosure does not address cancellation and notices, the EGS must provide at least one notice fifteen days in advance of discontinuing service to the customer. Duquesne Light St. 5 at 14.

79. Additional conditions were described by Duquesne Light witness, Ms. Scholl in Duquesne Light St. 5.

80. Implementing CAP shopping would require modifications to the Company's billing system at a cost of approximately \$160,000. The Company proposed to recover the capital portion of these costs, approximately \$120,000, through base rates, and the expense portion through the Universal Service Charge. Duquesne Light St. 5 at 18-19.

81. In order to avoid the expenditures of unnecessary costs, the Company proposed to only implement the CAP Shopping Program upon receipt of CAP Notice Affidavit from 5 EGSs indicating their interest (not obligation) to market to and enroll CAP customers. Duquesne Light St. 5 at 19.

82. On September 30, 2020, Duquesne Light filed a Stipulation with OCA and CAUSE-PA regarding an agreement between these parties regarding the Company's CAP shopping proposal.

83. Under the CAP Shopping Stipulation, Duquesne Light is withdrawing its proposed CAP shopping proposal pending the Commission's decision in PPL Electric's ongoing default service proceeding at Docket No. P-2020-3019356. In that proceeding, PPL Electric is proposing to eliminate its CAP shopping program for several reasons, including that newly enrolled CAP customers often have contracts that are higher than the PTC and lack of EGS participation in the Program. *See PPL Electric Main Brief at Docket No. P-2020-3019356.*

84. Given the substantial opposition to CAP shopping by CAUSE-PA and OCA in this proceeding, Duquesne Light believes that it is reasonable to wait for additional clarity from the Commission and/or courts before going forward with CAP shopping. In the event that the Commission orders PPL Electric to continue its CAP shopping program, Duquesne Light will make a separate filing with the Commission regarding CAP shopping.

# **APPENDIX B**



**APPENDIX B**  
**PROPOSED CONCLUSIONS OF LAW**

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following conclusions of law:

1. The Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over the parties and issues in this proceeding.

2. Duquesne Light, as the Petitioner in this proceeding, has the burden of proof. 66 Pa. C.S. § 332(a).

3. The burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). If the Company presents evidence found to be of greater weight than the other parties, then the Company will have carried its burden of proof. *Morrissey v. Commonwealth of Pennsylvania*, 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. P.U.C.*, 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

4. Although Duquesne Light bears the burden of proving that its proposals are in the public interest, a party that makes a proposal that is not included in a public utility’s case bears the burden of proof as to its proposal. For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007), a party offered proposals that were not included in the public utilities’ filings. The ALJ held that, as the proponent of a Commission order with respect to the offered proposals, the party bears the burden of proof as to proposals that are not included in the companies’ filings. The Commission agreed and adopted the ALJ’s conclusion that the Public Utility Code cannot reasonably be read

to place the burden of proof on the utility with respect to a proposal that the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at \*184-87. *See also Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at \*2, 19-20 (February 25, 2010) (the companies had the burden of proof as to the proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals).

5. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

6. Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.

7. Duquesne Light is also an electric distribution company (“EDC”) and a default service provider (“DSP”) as those terms are defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803.

8. Pursuant to Section 2807(e)(3.1) of the Public Utility Code, a Default Service provider shall provide Default Service pursuant to a Commission-approved competitive

procurement plan that includes auctions, RFPs, and/or bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1).

9. Section 2807(e)(3.2) of the Public Utility Code provides that electric power procured by a Default Service provider shall include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts. 66 Pa.C.S. § 2807(e)(3.2).

10. Section 2807(e)(3.4) of the Public Utility Code requires a Default Service provider to provide adequate and reliable service to customers. 66 Pa.C.S. § 2807(e)(3.4).

11. Pursuant to Section 2807(e)(3.4) of the Public Utility Code, Default Service providers are to obtain Default Service supply at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.4).

12. The Alternative Energy Portfolio Standards Act (“AEPS Act”), 73 P.S. §§ 1648.1 – 1648.8, and the Commission’s implementing regulations further require EDCs to obtain Alternative Energy Credits (“AECs”) in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. *See* 52 Pa. Code § 54.182.

13. The Commission’s Default Service Regulations require that a default service plan include copies of agreements or forms to be used in the procurement of electric generation supply for Default Service customers. *See* 52 Pa. Code § 54.185(e)(6).

14. The Commission’s Default Service Regulations require that a Default Service plan include contingency plans to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. *See* 52 Pa. Code § 54.185(e)(5).

15. The Commission’s Default Service Regulations require that a Default Service plan include a rate design plan recovering all reasonable costs of Default Service, including a

schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. *See* 52 Pa. Code § 54.185(e)(3).

16. The Commission’s Default Service Regulations require that a Default Service plan be consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the Regional Transmission Organization (“RTO”) or other entity in whose control area the default service provider is providing service, and that the default service procurement plan’s period of service must align with the planning period of that RTO or other entity. *See* 52 Pa. Code § 54.185(e)(4).

17. Duquesne Light’s DSP IX, as modified by the terms and conditions of the Settlement Petition, includes and/or addresses all of the applicable elements prescribed by Section 2807 of the Public Utility Code, the AEPS Act, the Commission’s regulations, and the Commission’s policies for a Default Service plan.

18. Act 129 requires that power “shall be procured through competitive procurement processes” (including auctions, requests for proposals and/or competitively procured bilateral agreements procured at no greater than the cost of obtaining generation under comparable terms in the wholesale market), and such procurement must be a “prudent mix” of spot market purchases, short-term contracts and long-term purchases. 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2).

19. Act 129 also requires that a default service plan ensures “adequate and reliable service” at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.4).

20. The preamble to Act 129 specifically provides that one of the objectives of the Act is to take into account any benefits of price stability over time, stating as follows:

- (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any

benefits of price stability over time and the impact on the environment.

See Historical and Statutory Notes to 66 Pa.C.S. § 2806.1.

21. It is appropriate for Duquesne Light to recover transmission and transmission-related costs, such as PJM's RTEP costs, NITS costs, expansion costs, generation deactivation costs and ELR costs only from default service customers, and that EGSs should recover these costs from their customers. See *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* at Docket No. P-2012-2301664, Opinion and Order dated January 25, 2013, pp. 221-222; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242, Opinion and Order dated January 15, 2015, pp. 45-46 and 52-53.

22. Duquesne Light has carried its burden of proof to demonstrate that its transmission and transmission-related cost recovery process is consistent with the Commonwealth's continued migration to a more competitive retail market. See *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015* at Docket No. P-2012-2301664, Opinion and Order dated January 25, 2013, pp. 221-222; *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017* at Docket No. P-2014-2418242, Opinion and Order dated January 15, 2015, pp. 45-46 and 52-53.

23. The provision of TOU service by the Default Supplier is permitted by Act 129 and codified in Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(5).

24. The Default Service Provider shall offer the Time-of-Use rates and real-time price plan to all customers that have been provided with Smart Meter Technology under Paragraph (2)(III). Residential and Commercial customers may elect to participate in Time-of-Use Rates and Real Time Pricing. *See* 66 Pa. C.S. § 2807 (f)(5).

25. Duquesne Light has carried its burden of proof to demonstrate that proposed EV-TOU Rate Pilot is in the public interest and should be approved as revised by the EV-TOU Stipulation filed on September 30, 2020.

26. Section 2807(e)(3.2) requires default service providers to enter into a prudent mix of contracts, which may include spot market purchases, short-term contracts and long-term contracts. 66 Pa. C.S. § 2807(e)(3.2).

27. The statute defines long-term contracts more than four but not more than 20 years. 66 Pa. C.S. § 2807(e)(3.2)(iii).

28. Duquesne Light has carried its burden of proof to demonstrate that enter into the long-term solar PPA, in part, satisfies the prudent mix requirements of Act 129.

29. Pennsylvania’s restructuring law was titled the “Electricity Generation **Customer Choice** and Competition Act.” 66 Pa. C.S. § 2801. (Emphasis supplied.)

30. Act 129 provides as follows:

Following the expiration of an electric distribution company’s obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service **or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.**

66 Pa. C.S. § 2807(e)(3.1) (emphasis supplied).

31. Duquesne Light has carried its burden of proof to demonstrate the SOP and CAP Shopping Stipulation between the Company, OCA and CAUSE-PA is in the public interest and should be approved.

# **APPENDIX C**



**APPENDIX C**  
**PROPOSED ORDERING PARAGRAPHS**

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following ordering paragraphs:

1. The Partial Settlement that will be filed on or before October 13, 2020, is in the public interest and should be approved.

2. Duquesne Light is granted all necessary authority and approvals to procure power as set forth in its Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation, including, if needed, credit support from its parent.

3. Duquesne Light’s Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation, (i) includes prudent steps necessary to negotiate favorable generation supply contracts, (ii) includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis, and (iii) neither Duquesne Light nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law, and, therefore Duquesne Light’s Default Service Plan, as modified by the Partial Settlement, the EV-TOU Stipulation, and the SOP Stipulation and CAP Shopping Stipulation is approved.

4. Duquesne Light is authorized to file on one day’s notice tariff sheets implementing the terms of the Partial Settlement and the Commission’s directives in a final order.

5. The Supply Master Agreement is approved.

6. Duquesne Light’s proposed Solar Power PPA is approved.

7. The EV-TOU Stipulation entered into between the Company, NRDC, CAUSE-PA and OCA, is approved.

8. The SOP Stipulation and CAP Shopping Stipulation entered into between the Company, OCA and CAUSE-PA is approved.

9. The EGS Parties' network integration transmission service proposal is hereby denied.

10. The above-captioned docket shall be marked closed by the Secretary of the Commission.

# **APPENDIX D**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE  
M-2019-3007101

January 23, 2020

To: All Electric Generation Suppliers, Electric Distribution Companies, Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate.

Re: Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms. Docket M-2019-3007101

With this Secretarial Letter, the Pennsylvania Public Utility Commission (Commission) closes the *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms* at Docket M-2019-3007101<sup>1</sup> by offering guidance to the Electric Distribution Companies (EDCs) as they prepare the next round of Default Service Plans (DSPs). The Commission initiated this investigation in January 2019 seeking input on how smart meter technology could be utilized to design default service rates in a way that better aligns associated wholesale cost allocation with retail cost allocation. After review of the Comments and Reply Comments submitted by various stakeholders, the Commission has decided that it will consider some of these topics further on a case-by-case basis in subsequent DSP proceedings based upon the evidence presented in each case. With this Secretarial Letter, the Commission invites the EDCs to include in their DSP filings information and analysis on a variety of default service topics so that the Commission can arrive at an informed decision upon consideration of the record evidence presented in DSP proceedings.

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<sup>1</sup> See *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Order at Docket No. M-2019-3007101 entered on February 26, 2019.

## **Background**

On January 17, 2019, the Commission adopted the Motion of Commissioner Andrew G. Place seeking an investigation into how the EDCs allocate wholesale costs to individual customers and whether the growth in advanced metering and settlement technologies may facilitate cost allocation for customers receiving DSP service.<sup>2</sup> The Motion raised several issues to be addressed in the Investigation.

On February 26, 2019, the Commission entered an Order consistent with the Motion that required all interested stakeholders to file comments within 90 days of the Order entry date and reply comments within 120 days of the Order entry date. The Commission also directed the Office of Competitive Market Oversight (OCMO), Law Bureau and the Bureau of Technical Utility Services (TUS) to convene stakeholder groups, if necessary, to discuss the submitted comments and other issues relating to the default service regulations at 52 Pa. Code §§ 54.181-190 or statement of policy at 52 Pa. Code §§ 69.1801-1817. Finally, the Commission directed OCMO, Law Bureau and TUS to develop recommendations regarding wholesale cost allocation and default service rate design and procurement reforms no later than nine months after the Order entry date.

On March 29, 2019, the Office of Small Business Advocate filed a Motion for an Extension of Time for Comments and Reply Comments. On April 22, 2019, the Commission issued a Secretarial Letter granting the Motion and extending the Comment deadline to July 26, 2019 and the reply comment deadline to August 26, 2019.

Comments were filed by the following entities: Calpine Retail Holdings, LLC (Calpine); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Consumer Advisory Council (CAC); Duquesne Light Company (Duquesne); Electric Generation Supplier Coalition (EGS Coalition); Enel X

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<sup>2</sup> The Commission noted that the focus of this segment of the investigation dealt with basic default service rate design, not rate design reform for distribution rates under consideration in Docket No. M-2015-2518883, nor time-of-use design options under Act 129, 66 Pa. C.S. § 2807(f)(5).

North America Inc. (EXNA); Exelon Generation Company, LLC (Exelon); Met Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PPL Industrial Customer Alliance and West Penn Power Industrial Intervenors (collectively, Industrials); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively, FirstEnergy); Mid-Atlantic Renewable Energy Coalition (MAREC); National Energy Marketers Association (NEMA); Office of Consumer Advocate (OCA); Office of Small Business Advocate (OSBA); PECO Energy Company (PECO); PJM Power Providers (P3); PPL Electric Utilities Corporation (PPL); PSEG Energy Resources & Trade LLC (PSEG); Retail Energy Supply Association (RESA); and WGL Energy Services Inc (WGL). The following entities filed reply comments:

CAUSE-PA, Duquesne, EGS Coalition, Industrial Energy Consumers of Pennsylvania (IECPA), Industrials, FirstEnergy, MAREC, OCA, OSBA, PECO, PPL, and RESA. All of the initial and reply comments are available at this weblink:

[http://www.puc.pa.gov/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2019-3007101](http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=M-2019-3007101).

With this Secretarial Letter, the Commission thanks the stakeholders for their thorough and helpful comments and provides the EDCs and stakeholders with guidance on the following topics as they prepare their upcoming DSP filings.

### **Capacity and Transmission Cost Allocation**

As a starting point, the Commission sought review of wholesale cost allocation methods, as reflected in the Attachment M-2 in the PJM Tariff filed at the Federal Energy Regulatory Commission (FERC) to see if they are reasonably aligned with cost allocation. In analyzing this issue, the Commission proposed the following preliminary questions:

1. What number of peak hours should be averaged to determine an optimal basis for allocation of capacity and transmission costs to load serving entities (LSEs)? Should we include consecutive peak hours, or just one hour per peak day?
2. Should selected hours be based on Regional Transmission Organization (RTO) peak or the EDC peak usage periods for capacity and/or transmission cost allocation?
3. Should we examine seasonal cost allocators for capacity and/or transmission to incent lower usage during, for example, the summer and winter periods?
4. Assuming some reform is ultimately implemented, what transitional period should this Commission adopt, recognizing that existing contracts could, in theory, be affected by changes in wholesale cost allocation?

Most of the commenters agreed that the currently used calculations to determine the capacity and transmission tags should remain unchanged, with many of the EDCs reporting that they use the current PJM standard five coincident peak hours – and opining that shifting to an allocation methodology would be less predictable and would make risk management more difficult. However, this is not uniform across all EDCs with some of the EDCs indicating that they utilized different methodologies in calculating their regional peak load contribution (PLC) and Network Service Peak Load (NSPL). One EDC does not use PJM’s five coincident peak (CP) for the PLC – but instead chooses a specified hour. Another EDC uses 1 CP instead of the five CP for the NSPL calculation while another EDC still uses profile data for the residential class to determine PLCs/NSPLs. Two EDCs use only the summer period five CP to determine the NSPL, while most use the five CP for the entire year. Accordingly, to simplify the calculations for customers, the Industrials’ recommend modifying the NSPL calculation to a single zonal peak.

OCA believes that a move to demand charges and the use of PLC and NSPL “tickets” for residential customers is fraught with problems. The OCA recognizes that the current residential DSP rate design can result in some intra-class subsidy. OCA states that these types of intra-class subsidies have traditionally characterized residential rates for decades and they believe that they have not shown themselves to be a burden to the broad class of residential customers.

While the Commission agrees that the case for a major overhaul in capacity and transmission cost allocation may not have been made at this time, we find that this topic could benefit from some additional scrutiny. Specifically, the Commission is interested in whether making the use of capacity and transmission tags more uniform across the state (at least among the large EDCs<sup>3</sup>) would be beneficial and in the public interest. Accordingly, we request that the large EDCs, in their next DSP filings, provide information and analysis on their NSPL/PLC cost allocation calculations and why they use such cost allocation for consideration by the Commission. This analysis should also include a discussion on why any large EDC may still be using monthly summary usage data instead of actual customer usage data to determine PLCs/NSPLs, and what steps and timelines, would be needed to implement a change to their current practice, as well as any associated costs.

## **Energy**

Additionally, the Commission sought to analyze how the growth in advance metering and settlement technologies may facilitate our application of the default service design requirements enumerated in Act 129, 66 Pa. C.S. § 2807(f)(5). As to energy related costs, the Commission sought responses to the following questions:

1. Should default service rates evolve to include time-of-use (TOU) structures,

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<sup>3</sup> In this context, large EDCs refers to EDCs with more than 100,000 customers, as they are required to deploy smart meter technology. *See* 66 Pa. C.S. § 2807(f).



such as on and off- peak rates, super off-peak rates, critical peak pricing (CPP) periods, or peak time rebate structures? If so, what specific TOU structures do interested parties believe are most optimal, and why?

2. What other energy market structures should we consider?
3. What modifications or standardization should be considered with regard to the design of hourly price service (HPS) rates for large customers?

The commenters all agreed that the TOU programs should be voluntary and that Act 129<sup>4</sup> specifies that an EDC's TOU program should be optional for customers on default service. Consumer representatives stressed that residential, especially low-income customers, electricity consumption is not as adaptable to TOU rates as are larger commercial customers. OCA asserts that it has been difficult for EDCs to offer TOU rates that have achieved anything resembling broad acceptance by residential customers. Exelon stated that it is difficult to implement TOU structures seamlessly for default service supply, and that default service costs, and risk premiums are influenced by a supplier's ability to forecast load. RESA, CAC and OCA agree that customers who desire something other than plain vanilla default rates should shop and obtain those products from EGSs. The OCA, however, recognizes the need to comprehensively address emerging issues related to increased electric vehicle (EV) penetration, such as EV sub-metering and time-sensitive pricing for EV charging.

The Commission acknowledges the past difficulties of implementing TOU rates in a default service context. However, looking forward, we agree with the OCA that as EV usage and distributed energy deployment increase in the coming decades, TOU rates should be considered. While the adoption rate of EVs is a matter of speculation, it is indisputable that during the timeframe covered by the upcoming DSP's, EV use will

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<sup>4</sup> The Default Service Provider shall offer the Time-of-Use rates and Real-time Price plan to all customers that have been provided with Smart Meter Technology under Paragraph (2)(III). Residential or Commercial Customers *may* elect to participate in Time-of-Use Rates or Real-Time Pricing. *See* 66 Pa. C.S. § 2807(f)(5).

increase. With that said, we find that TOU rates, especially in the context of EV expansion, needs to be explored further, especially whether the lack of TOU rate offerings for operators of EVs presents a barrier to EV adoption. Accordingly, we urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.

### **DSP/Long Term Contracts**

Lastly, the Commission sought responses on what procurement charges, if any, should this Commission pursue? The Commission welcomed comments on the prudence of long-term contracts in today's evolving marketplace. Specifically, the Commission sought comments on the following questions:

1. What evidence is there in PJM markets that long-term contracts can be obtained in PJM markets that offer cost-effective hedges relative to status quo default service plans?
2. Assuming prudent opportunities exist:
  - a. What type of request for proposal structure for energy or renewable attributes should be contracted for?
  - b. Is there an optimal length for such long-term contracts?
  - c. Is there an optimal amount of long-term contracting?
  - d. Should contracting be limited to resources in a certain geographical area, and if so, what geographical area? Discuss the legal and cost impacts of any geographical limited proposal.

Most commenters did not support or cautioned against the use of long-term contracts. Some commenters stated that extending the contract term beyond the PJM three-year forward capacity market would increase risks and cause higher financial collateral requirements. Commenters noted that, as with TOU rates, EGSs are free to serve customers who are seeking long-term contracts. Other than that, most commenters

agreed that contracting long-term poses a risk of locking in above market prices that may cause customers to leave default service.

One party, MAREC, voiced strong support for long-term renewable contracts for terms of 10 years to 20 years. MAREC opines that long-term contracts are price stable and pose a lesser risk ratio in comparison to fossil fuel energy resources that they believe are more volatile. MAREC believes that the risks of long-term contracting can be mitigated by having a variety of different term lengths and carefully limiting the percentage to no more than 50% of DSP renewable energy requirements.

Regarding changes to procurement practices, PPL notes that with its fourth DSP, PPL moved to conducting two auctions per year (April and October), and to issuing a PTC twice a year (June and December), rather than quarterly. Further, PPL eliminated the issuance of a preliminary PTC, by publicly releasing the final PTC 30 days in advance of it going into effect. With these changes, PPL reports that it reduced auction costs, streamlined its auction process, improved customer communication, reduced the volatility of the PTC, and reduced customer confusion. PPL notes that this was all done while maintaining strong market reflectivity through use of 6-month and 12-month residential and Small C&I energy contracts.

Concerning procurement and long-term contracts, the Commission agrees that long-term contracts need to be carefully considered and that we need to consider this topic further in upcoming DSP proceedings. We request that the EDCs include in their filings evidence showing how its DSP proposal complies with the prudent mix requirements of the Public Utility Code<sup>5</sup> and case law.<sup>6</sup>

The Commission also believes that the DSP auction process and the PTC change intervals should also be reviewed in the upcoming round of DSP proceedings. We find

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<sup>5</sup> 66 Pa. C.S. § 2807(e)

<sup>6</sup> See, *Popowsky v. Pa. Public Utility Comm'n*, 71 A.3d 1112 (Pa. Cmwlth. 2013).

that it may be worthwhile for the Commission and the large EDCs to closely examine the history of PTC changes over the past few years to see if a 6-month PTC change interval would have provided more stability. Accordingly, we request that the large EDCs include in their upcoming DSP filings a 10-year history of their PTC changes and assess the benefits of a 6-month PTC change compared to a 3-month PTC change. EDCs are also free to propose other PTC change intervals that change no more frequently than on a quarterly basis.<sup>7</sup>

### **CAP Customer Shopping**

While not a topic of the proceeding at this docket, the Commission wants to take this opportunity to remind the EDCs and all interested parties to assess how Customer Assistance Program (CAP) customers can participate in the competitive market in future DSP proceedings. This topic has been addressed in various dockets, and we refer all parties to these dockets for more information.<sup>8</sup> In addition, parties should review the most recent Commission actions on this topic, including how CAP-shopping was addressed in the FirstEnergy EDCs DSP IV proceedings<sup>9</sup> and the Commission's proposed CAP-shopping policy statement.<sup>10</sup> While we acknowledge that the proposed policy statement is unlikely to be final and effective in time for some of the upcoming DSP proceedings, we still think the EDCs and interested stakeholders should consider the issues and concerns raised by the Commission and commenters in that proceeding in any

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<sup>7</sup> See 66 Pa. C.S. § 2801(e)(7).

<sup>8</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021 (DSP IV)*; Docket P-2016-2534980; and *Petition of PECO Energy Company for Approval of its Default Service Program Customer Assistance Program Shopping Plan (DSP II)*; Docket P-2012-2283641.

<sup>9</sup> See *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket P-2017-2637855; and *Petition of Pennsylvania Electric Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket P-2017-2637857; and *Petition of Pennsylvania Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket P-2017-2637858; and *Petition of West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket P-2017-2637866.

<sup>10</sup> See *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Docket M-2018-3006578 (Order entered February 28, 2019).

future DSP proceeding. We suggest that all the EDCs with CAP programs, as well as interested stakeholders, consider the issues and concerns raised by the Commission in the above-noted prior proceedings when developing their CAP-shopping proposals in the upcoming DSP filings.

### **SOP Referral Scripting**

Another topic not included in this docket, but again we think it prudent to mention because it has been a subject litigated in past DSP proceedings, is Standard Offer Program (SOP) scripting language. These are the scripts used by the EDCs and their vendor call centers to refer customers to the SOPs. We direct the EDCs and all interested parties to our most recent statement on SOP scripting as found in the 2018-2019 FirstEnergy DSP proceeding; specifically, the February 28, 2019 order, in that proceeding.<sup>11</sup> We suggest that EDCs, when preparing their upcoming DSP filings, review the Commission's actions in the above-noted FirstEnergy proceeding and to include in their filings analyses of their SOPs, the current scripting, and any proposed scripting that adequately informs customers about the SOPs while maintaining important safeguards and protections.

### **Conclusion**

The Commission again thanks the parties for their participation in this proceeding and for the data and advice offered. We think the outcome of this proceeding will result in more information available to litigants in the DSP proceedings and better-informed decision-making by the Commission. We close this proceeding by summarizing the various requests directed to the EDCs as they prepare their upcoming DSP filings:

1. We request that the large EDCs, in their next DSP filings, provide information and analysis on their NSPL/PLC cost allocation calculations and why they use such cost allocation for consideration by the Commission. This analysis should also include a

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<sup>11</sup> See *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket P-2017-2637855 (Order entered February 28, 2019) et.al.

discussion on why any large EDC may still be using monthly summary usage data instead of actual customer usage data to determine PLCs/NSPLs, and what steps and timelines, would be needed to implement a change to their current practice, as well as any associated costs.

2. We urge all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.
3. We request that the EDCs include in their filings evidence showing how their DSP proposals comply with the prudent mix requirements of the Public Utility Code<sup>12</sup> and case law.
4. We request that the large EDCs include in their upcoming DSP filings a 10-year history of their PTC changes and assess the benefits of a 6-month PTC change compared to a 3-month PTC change. EDCs are also free to propose other PTC change intervals that change no more frequently than on a quarterly basis.
5. We suggest that all the EDCs with CAP programs, as well as interested stakeholders, consider the issues and concerns raised by the Commission in the above-noted prior proceedings when developing their CAP-shopping proposals in the upcoming DSP filings.
6. We ask that EDCs review the Commission's actions in the above-noted FirstEnergy proceeding concerning SOP scripting and include in their filings analyses of their SOPs, the current scripting, and any proposed scripting that adequately informs customers about the SOPs while maintaining important safeguards and protections.

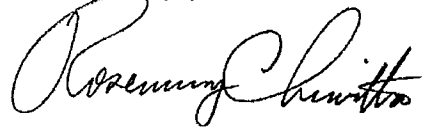
Questions about this Secretarial Letter can be addressed to the following:

- Dan Mumford, Director of the Office of Competitive Market Oversight ([dmumford@pa.gov](mailto:dmumford@pa.gov) or 717-783-1957).
- Darren Gill, Deputy Director of the Bureau of Technical Utility Services ([dgill@pa.gov](mailto:dgill@pa.gov) or 717-783-5244).
- Legal questions can be directed to Kriss Brown, Deputy Director of the Office of Competitive Market Oversight ([kribrown@pa.gov](mailto:kribrown@pa.gov) or 717-787-4518).

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<sup>12</sup> 66 Pa. C.S. § 2807(e)

Very truly yours,



Rosemary Chiavetta  
Secretary

cc: Chairman Gladys Brown Dutrieuille  
Vice Chairman, David W. Sweet  
Commissioner Andrew G. Place  
Commissioner John F. Coleman, Jr.  
Commissioner Ralph V. Yanora  
Seth Mendelsohn, Executive Director  
Renardo Hicks, Chief Counsel  
Richard Kanaskie, Director, Bureau of Investigation and Enforcement  
Tom Charles, Director, Office of Communications  
Paul Diskin, Bureau of Technical Utility Services  
Alexis M. Bechtel, Director, Bureau of Consumer Services  
Daniel Mumford, Director of Office of Competitive Market Oversight  
Kriss Brown, Deputy Director of Office of Competitive Market Oversight