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September 30, 2020

**VIA ELECTRONIC FILING**

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Main Brief of Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., ENGIE Resources LLC., WGL Energy Services, Inc., and Direct Energy Services, LLC in the above-captioned matter. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart  
*Counsel for EGS Parties*

TSS/jld

Enclosures

cc: Administrative Law Judge Mark A. Hoyer (via electronic mail and first-class mail)  
Per Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL ONLY**

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Todd S. Stewart

DATED: September 30, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MAIN BRIEF  
OF INTERSTATE GAS SUPPLY, INC.,  
SHIPLEY CHOICE LLC, NRG ENERGY, INC., VISTRA ENERGY CORP.,  
ENGIE RESOURCES LLC, WGL ENERGY SERVICES, INC.,  
AND DIRECT ENERGY SERVICES, LLC**

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DATED: September 30, 2020

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## **I. INTRODUCTION AND STATEMENT OF THE CASE**

The EGS Parties are a coalition of Electric Generation Suppliers (“EGS”) including, Direct Energy Services, Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc, Vistra Corp., ENGIE Resources LLC., and WGL Energy Services, Inc., that have banded together to address some common concerns about the default service plan (“DSP”) filed by Duquesne Light Company (“Duquesne” or the “Company”). Duquesne’s proposed plan includes a shopping program for customers on Customer Assistance Programs (“CAP”) and includes some changes to its Standard Offer Program (“SOP”). The EGS Parties generally support these initiatives but have proposed some improvements.

Duquesne’s filing also proposes two programs that the EGS Parties oppose. One of these is the Company’s intention to enter into a long-term Power Purchase Agreement (“PPA”) with a utility-scale solar project. The other is its proposed new time of use (“TOU”) tariff rate for electric vehicles (“EV TOU”). In general the EGS Parties’ concern with these two programs is that Duquesne has proposed what are essentially competitive programs (or ones that will impact the competitive market) and yet has wholly failed to demonstrate that the competitive market is unwilling or unable to provide them. Consequently, the EGS Parties recommend that these programs be put on hold until more is known about any need for the programs and the market is given the opportunity to provide them. The EGS Parties also have proposed an improvement to Duquesne’s default service program that will assist shopping customers and their suppliers in managing the risk from the sudden and volatile changes to Network Integrated Transmission Services (“NITS”) charges that can plague and financially harm shopping customers and suppliers. Finally, the EGS Parties discuss the fact that Duquesne’s filing fails to address the recent Federal Energy Regulatory Commission (“FERC”) order on the PJM’s Minimum Offer Price Rule

("MOPR"). These requirements could have impacts on the Company's provision of default service.

## **II. STATEMENT OF THE QUESTIONS PRESENTED**

1. Is Duquesne's proposal for an EV TOU reasonable and in the public interest?

**Suggested answer: No.**

2. Is Duquesne's proposal for a Solar PPA reasonable and in the public interest?

**Suggested answer: No.**

3. Is Duquesne's SOP program, as proposed to be modified by the EGS Parties reasonable and in the Public Interest?

**Suggested answer: Yes.**

4. Is Duquesne's CAP shopping program, as proposed to be modified by the EGS Parties, reasonable and in the public interest?

**Suggested answer: Yes.**

5. Should Duquesne be required to implement a non-bypassable charge to recover NITS Charges for all customers?

**Suggested answer: Yes.**

6. Should Duquesne be required to submit a compliance filing, detailing why its default service plan is not subject to the MOPR requirements?

**Suggested answer: Yes.**



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

Duquesne has proposed to seek a long-term contract to purchase Solar Alternative Energy Credits (“SAEC”) in addition to energy, capacity and ancillary services from a utility scale solar energy project. Its stated purpose is to acquire the SAECs needed for its default service customers. However, Duquesne does not intend that its default service customers will use the energy, rather it intends that the energy, ancillary services and capacity will be sold into the wholesale market and that default service customers will be responsible for any losses or gains from these wholesale transactions. (EGS Parties’ St. No. 1, 24:15-25:11). From a legal perspective, speculating at the risk of default service customers is not authorized. Moreover, Duquesne has not provided sufficient evidence of the need for such a project or how it is likely to impact the solar energy market in its territory and western Pennsylvania. The EGS Parties recommend that this transaction not be approved.

Similarly, Duquesne has proposed an Electric Vehicle Time-of-Use (“EV TOU”) tariff rate. This rate would be available to customers who document that they own an EV. Similar to the Solar PPA however, Duquesne did little to document that the competitive market is unwilling or unable to provide this sort of product. Nor has Duquesne provided the results of any research on the need for this type of rate to actually stimulate EV adoption. Rather it has taken the “if we build it, they will come” approach. The EGS Parties also recommend that this rate not be approved pending the outcome of a stakeholder process to address the need for such a tariff rate.

Duquesne has proposed a Standard Offer Program (“SOP”) under which customers will be provided a rate from a participating electricity generation supplier, that is at least 7% less than the price to compare in effect at the time they enroll. The major change in the new SOP is that the enrollment services will be provided by a contractor, and suppliers will be charged a bit more for each referral. The EGS Parties support these changes and propose an enhancement to the program.

Duquesne also has proposed a program to allow customers who participate in its Customer Assistance Program (“CAP”) to shop for electricity subject to the guardrails established by the Commission. This is in keeping with the statutory requirement that all customer classes have the right to choose an electric generation supplier. 66 Pa.C.S. § 2806(a). The EGS Parties support this program and submit that the arguments likely to be raised by those opposed to allowing CAP customers to shop are contrary to law. The EGS Parties urge the Commission to approve Duquesne’s proposed CAP shopping program with its proposed enhancements.

The EGS Parties also propose that Duquesne be required to end its discriminatory practice of not billing and collecting Network Integration Transmission Service charges for shopping customers while doing so for default service customers. Duquesne’s refusal to provide this billing service is contrary to law and imposes more risk and hence higher prices on EGSs and their customers. The Commission should require Duquesne to provide shopping customers the same level of access and protection that it provides for default service customers.

Finally, the EGS Parties’ witness, Mr. Kallaher, expresses his concern regarding Duquesne’s apparent failure to comply with FERC requirements for the Minimum Offer Price Rule (“MOPR”). Mr. Kallaher makes a number of recommendations after explaining his concerns. His recommendations should be adopted.

#### **IV. ARGUMENT**

##### **A. Duquesne’s Solar PPA Proposal Lacks Any Evidence of Need, Will Harm the Market and Should be Rejected.**

Duquesne has proposed to enter into a long term PPA with a yet-to-be determined utility scale solar project. Duquesne refers to this as the “Solar Project Plan.” (“Project”) The Project would be selected through an RFP and would acquire not only the solar alternative energy credits, but also the energy and capacity from the Project and any ancillary services as well. (EGS Parties

St. No. 1, 22:19-23:3). Duquesne also proposes to sell energy into the real-time PJM market and credit the revenues back to default service customers. Such Project would essentially put Duquesne back in the generation business – with the default customers shouldering the entirety of the risk -- under the guise of a SAEC acquisition program. (EGS Parties’ St. No. 1, 24:15-25:11). There are policy reasons, discussed below for why this type of arrangement is potentially problematic, but at the forefront, such a contract is not authorized by the *Electricity Generation Customer Choice and Competition Act*, 66 Pa.C.S. § 2801, *et seq.*. In particular, the plan to sell the energy into the wholesale market as a means of “offsetting” default service costs, goes well beyond what is authorized in Section 28079(e)3.1, *et seq.* As discussed by Mr. Kallaher, if Duquesne wanted to invest shareholder money into adventures in solar energy production and procurement, and to sell AECs, and even energy, apart from the default service procurement, that could be permitted. 66 Pa.C.S. § 2807(e)(3.5). But there is nothing in the Code that would allow a default service provider to engage in a purchase and subsequent sale into the wholesale electricity market, at unknown terms and conditions, where the ratepayers are ultimately on the hook for any losses. 66 Pa.C.S. § 2801, *et seq.* It is difficult to understand how Duquesne can even claim that such a contract will be “least cost over time” when it does not even have a contract.

This concern is only the beginning; Duquesne’s long-term contract ambitions also run the risk of outliving the proposed and even subsequent default service plans. While that is potentially problematic from a cost perspective, it also presents the possibility that Duquesne could no longer be the Default Service Provider and the costs of such a contract could become stranded, or worse; be used as an excuse why a new default provider should not be approved. (EGS Parties’ St. No. 1, 23:6-23:21). This kind of state-supported, resource-specific procurement may also be just the

kind of arrangement FERC sought to address in the MOPR, making it even more imperative that Duquesne address MOPR-related issues in a supplemental filing.

This is not Duquesne's first attempt to enter the solar PPA field; in its last DSP filing, it sought and received approval to enter a SAEC-only contract, which never came to fruition. The EGS Parties' witness, Mr. Kallaher, was surprised that Duquesne did not "provide more detailed information about why they believed their previous efforts at contracting with a solar developer failed, why they believe renewed efforts will be more successful, and what the continuing need is for such an arrangement. Their filing contains little or no evidence on these points." (EGS Parties' St. No. 1, 24:1-12). Instead, Duquesne offered only conclusory points in the testimony of Mr. Davis. (Duquesne Light Statement No. 1, 13:26-17:7). In short, Duquesne has failed to support that there is need for such an arrangement, or how that need might have changed, despite its failure to reach an agreement previously. If the Commission feels compelled to approve some sort of acquisition program for SAECs, the EGS Parties could accept an AEC only acquisition, but there should be no authorization for the purchase (or resale) of energy, capacity or ancillary services.

The fact is that there are serious concerns that utility ratepayer funded, long-term contract supported solar projects could crowd-out competitive projects in the marketplace and put suppliers at a disadvantage for capital and eventually in the market for such projects. Ratepayer funding creates a lower risk profile for investors that drives such decisions. (EGS Parties' St. No. 1, 24:15-25:11). This type of project also is a direct assault on current efforts to enact Community Solar initiatives that provide ownership opportunities in solar projects for even very small investors. Community Solar democratizes energy production. Yet Duquesne's proposed move here will provide fodder for those who say we don't need that; the utility already provides it. (*Id.*) In short,

there is no legal basis on which to approve the proposed Solar PPA Project, and there are multiple policy reasons to reject it. The EGS Parties urge that it be rejected.

**B. Duquesne’s EV TOU Tariff Proposal is not Supported by the Record, can Potentially Harm the Market, and Should be Rejected.**

It is correct to note that the Commission’s January 23, 2020 Secretarial Letter that closed the *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019-3007101, did address time-of-use rates for electric vehicles, but in the form of suggesting that there needs to be a determination if the lack of a TOU rate for EV charging is presenting a barrier to EV adoption. In that context the Commission urged “all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to customers.”<sup>1</sup> Duquesne did not reach out to other stakeholders, and it presented only scant evidence of lack of a TOU rate as a barrier to EV adoption. In short, Duquesne did not address the need for a TOU EV rate, rather it took an “if we offer it, they will adopt it” mentality, with full cost recovery from customers.

Rather than this approach, the EGS Parties’ witness, Mr. Kallaher, would have preferred that Duquesne convene a working group to address key questions concerning the rate – before it was introduced: (1) whether the absence of EV-specific TOU rates is, in fact, a barrier to EV adoption in Pennsylvania; (2) if so, what is the cause of the absence of EV-specific TOU rates; and (3) what steps should be taken to overcome those barriers to the development of EV-specific TOU rates without stifling the development of the competitive market in this area? (EGS Parties’ St. No. 1, 21:19-22:14). After the workgroup had completed its process, Duquesne could have made a filing to effectuate the results. Assuming for sake of argument that some need was

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<sup>1</sup> Secretarial Letter at pp. 6-7 (footnote omitted; emphasis added).

determined, the best implementation would have been for Duquesne to issue a request for interested parties to propose the means of bringing an EV TOU rate to fruition. (*Id.*) But Duquesne decided to simply put a rigid three time slot TOU rate out there that will likely stifle any market that may have had a chance to develop, while also not being effective in promoting greater EV adoption.

As a matter of policy, the EGS Parties are not supportive of utilities using default service to provide what are essentially competitive offerings, particularly offerings with the subsidized default service rate as the core. That rate is not reflective of the cost of providing default service and to base an ostensibly competitive rate on the default service rate simply perverts the intention of having a competitive market in the first place. Suppliers will find it extremely difficult to offer rates that compete with the subsidized default rate and the competitive aspect of the market will lose another battle. For these reasons, Duquesne's request for approval of an EV-TOU rate should be rejected pending Duquesne holding a working group to discuss with stakeholders actual evidence of need for the rate offering and a plan to implement it that does not necessarily require the use of a default service rate offering.

**C. Duquesne's Proposed SOP Should be Approved with Some Modifications.**

By most reasonable measures, Duquesne's SOP is functioning well. (EGS Parties St. No. 1, 15:2-16-17). In this proceeding, the Company has proposed to retain a third party to take on the role of administrator. This will simplify the administration for the Company. The EGS Parties support this move. (*Id.*) At the same time, however, the EGS Parties' witness, Mr. Kallaher, believes that this change presents an opportunity to improve the SOP by starting new and moving customers on the SOP. This change provides an immediate opportunity for customers to experience the competitive market, at a guaranteed rate. And because SOP has no cancellation

fees, customers could opt out at will without incurring any penalty. The rationale for this recommendation is that the competition act never envisioned that after nearly 25 years, the vast majority of customers would still be receiving default service. The mere fact that all customers are now required to start service as default service customers, ensures that this status will persist into the future unless we make a change. (*Id.*) To that end, Mr. Kallaher proposes that the SOP program be modified so that customers begin service on the SOP product.

**D. Duquesne's Proposed CAP Shopping Program Should be Approved with Minor Modifications.**

Some parties believe that customers who participate in low income programs are incapable of managing the ability to shop for electricity, even though these same individuals may participate in a variety of other subsidized programs, where they are perfectly capable of doing so. Nonetheless, the primary reason that the introduction of a shopping program for CAP customer is an issue at all, is because of the mistaken notion that the appropriate benchmark for the reasonableness of competitive rates is the Price-to-Compare. (EGS Parties' St. No. 1-R, 1:15-5:21). It is this false comparison that drives the opposition to a program that is required if Duquesne's program is to comply with the clear mandate of the *Electricity Generation Customer Choice and Competition Act*, 66 Pa.C.S. § 2806(a), that requires that all customers classes have the ability to choose a supplier. Failing to implement a CAP shopping program in Duquesne's service territory would clearly violate that mandate by excluding all CAP customers from choice. Simply put, CAP customers must have the ability to shop and the proposed program, with one clarification, is well suited to the task. (EGS Parties' St. No. 1, 17:17-18:13). The clarification involves the status of customers at the end of their initial contract; do they stay with their supplier at a CAP compliant rate, or are they forcibly returned to default service? The EGS Parties obviously support the former and oppose the latter. (*Id.*) There simply is no basis to force

customers away from their supplier so long as the supplier provides a CAP compliant, i.e., at or below the PTC, rate. An improvement to the program would be to simply allow CAP customers to participate in the SOP program, provided that their rate is always CAP compliant. (EGS Parties' St. No. 1, 17:17-18:13). In any event, the CAP shopping program as proposed is legally necessary and with a CAP compliant rate being required all of the time, will address the primary concerns raised by those opposed.

Another issue that seems to be of concern to CAUSE PA is the treatment of customers who are shopping and who subsequently become CAP customers while in the middle of an existing supply contract. If a customer presently has a contract with a supplier, it would be a violation of the Pennsylvania and the United States Constitutions<sup>2</sup> if the Commission were to order that those contracts to be abrogated in the future based upon the customer's entry into the CAP program. States are not permitted to impair the obligation of contracts in existence at the time of the state action.<sup>3</sup> Clearly imposing a condition on suppliers presently participating in the market that a lawful contract that they entered into with a customer is terminated upon that customer entering a CAP program impairs the obligation of the contract and is unconstitutional.

Moreover, the recent Commonwealth Court decision that addressed the CAP program in PPL's last DSP case is similarly unavailing. In that case the Commonwealth Court held that the Commission could impose limits on the rates charged by suppliers that participate in the CAP shopping program, but said nothing about impairing the terms of existing contracts for suppliers NOT participating in CAP.<sup>4</sup> In fact, the court noted as a justification for allowing the price ceiling

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<sup>2</sup> UNITED STATES CONSTITUTION, Art. I, Sect. 10; PENNSYLVANIA CONSTITUTION, ART. I, Sect. 17.

<sup>3</sup> *Beaver County Building & Loan Association v. Winowich et ux.*, 323 Pa. 483, 187 A. 481, 488-489 (1936)

<sup>4</sup> *RESA v. Pa. P.U.C.*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018).



that the program is “voluntary” – something that would cease to be if other parties’ objectives in this case were considered.<sup>5</sup> Clearly an EGS that is not participating in CAP cannot be bound by CAP rules, as doing so would make participation in the program, and its rules, involuntary. There simply is no legal rationale that would allow the Commission to authorize termination of a supplier’s otherwise valid contract with its customer based upon that customer’s change in status. Doing so would put every contract that every supplier and customer execute at risk of early termination. In short, what Duquesne has proposed for a CAP shopping program is reasonable with the conditions discussed herein. The EGS Parties do not agree that the law allows the Commission to restrict the entire class of CAP customers from shopping and so believe that such a program is legally required if CAP customers are to be treated differently. Moreover, customers who become CAP customers after they enter a contract with a supplier, should not have their contracts cancelled as a result, as that would clearly impair the contract and would be illegal. The EGS Parties submit that Duquesne’s CAP program should be approved.

**E. Duquesne Should be Required to Implement a Non-Bypassable Charge to Recover NITS and to Remit to PJM.**

Network Integrated Transmission Services (“NITS”) is the service that provides energy consumers with access to generation supply throughout the Regional Transmission Operator (“RTO”), in this case PJM, control area in which the customer is located. Customers served by the same distribution utility pay the same rate for this service regardless of where they are located on the system in relation to generation resources. In many utility service areas, including Duquesne, NITS rates are formula-based rates adjusted annually through FERC-approved formula rate filings. This is to account for changes in operating costs, system loads, or cost recovery

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<sup>5</sup> *Id.*, at 1223.

requirements for new transmission projects. (EGS St. No. 1, 26:15-22). NITS rates are based on a number of factors: 1) Transmission Owners Cost of Service; 2) Cost of Capital in Rate Base, including allowed Return on Equity and Interest costs; 3) Depreciation and Amortization; and, 4) Taxes, Operation and Maintenance expenses. (EGS Parties' St. No. 1, 26:23-27:3). The problematic part of NITS charges is that they change annually, because both the FERC-approved NITS rate and the individual customer's Network Transmission Service Peak Load Contribution can and usually do change from year to year; and recently are changing in a more volatile manner. The net result of these changes is that an Load Serving Entity's (Utility or EGS) NITS obligation on behalf of an individual customer, and its total NITS payment, can be difficult to predict, and even more difficult to influence. (EGS Parties' St. No. 1, 27:15-19). There are many examples of NITS rates to customers varying by as much as 30% per year. The rates change frequently and suddenly. (EGS Parties' St. No. 1: 29:3-12). NITS rates have been increasing over the years at some dramatic rates. (EGS St. No. 1, 30:4-5).

For default service customers, Duquesne recovers NITS and other non-market-based charges ("NMB") in a manner that allows the customer to pay the actual cost of those charges on a fully reconciling basis. That means no one takes any risk on the charges, the customer will be asked to pay the exact amount and Duquesne will eventually charge and remit only the exact amount. (NGS St. No. 1, 31:3-6). For customers who shop, however, the picture is quite different.

As Mr. Kallaher notes:

The impact of NITS and other NMBs on customers who shop is far more profound and negative. A customer's EGS is responsible for paying the NITS charges and as discussed above, these charges can vary wildly from year to year. For larger customers in particular, most suppliers cannot absorb the risk of the volatile charges and instead contracts often pass-through this risk to the customer. Thus, for example, if a customer signed a contract with an EGS for a fixed-price contract with a term of 24 months that began on July 1, 2018 and expired on June 30, 2020, the contract would span three separate planning years for purposes of Duquesne's

NITS charges such that the charges the EGS would have to pay on that customer's behalf would change twice during the term of the contract. (EGS Parties St. No. 1, 31:12-21).

Mr. Kallaher has significant concerns about how this disparate means of collecting NITS charges will continue to negatively impact the competitive market:

One is that EGSs may avoid making fixed price offers to customers due to the risk presented by the variability of NITS charges. This does a disservice to customers who are looking for price certainty against a PTC that changes on a quarterly basis. Another implication is that when an EGS does make fixed-price offers, they will tend to include a risk premium to reflect the likelihood that the customer's share of NITS charges will change and could well increase. The robust competition among EGSs that exists in the Duquesne service territory undoubtedly puts downward pressure on that risk premium, but the net result is that an EGS customer is almost certain to either overpay or underpay for their share of NITS charges. This stands in sharp contrast to default service customers, who pay exactly their share of Duquesne's NITS charges, no more and no less. Considering that these charges are unpredictable, as noted above, and cannot be effectively hedged by EGSs, the result with respect to EGS customers is plainly inefficient, with some customers paying too much and others paying too little based only on the arbitrary factor of their EGS's ability to predict a charge that, by its nature, is unpredictable. (EGS Parties' St. No. 1, 31:1-6).

The need to shoulder this risk for shopping customers or their suppliers, and the converse lack of risk for default service customers is an obvious and profound difference between the two services. And because NITS is a passthrough of PJM charges, Duquesne's role in this is merely as collection agent, not as the payee. This differential collection mechanism favors default service over shopping customers and their suppliers.

The Public Utility Code prohibits the granting of an advantage to one class of customers to the detriment of others,<sup>6</sup> and requires that Electric Distribution Companies, such as Duquesne, provide terms of access for EGSs and customers that are comparable to their own abilities.<sup>7</sup> To do

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<sup>6</sup> 66 Pa.C.S. § 1502.

<sup>7</sup> 66 Pa.C.S. § 2804(6).

otherwise is to illegally discriminate in the provision of public utility service.<sup>8</sup> In the Columbia case the Commission found that the provision of billing service for “non-commodity products and services” was a public utility service and must comply with the non-discrimination provisions of the Code. There can be no doubt that Duquesne’s billing of NITS charges is likewise a Public Utility Service and subject to the same non-discrimination requirements. Simply put, if Duquesne is going to continue to bill default service customers for NITS charges that are identical to their shopping counterparts on a basis that differs only because of a customer’s status as default or shopping, that counts as discrimination and is prohibited.

To avoid this discrimination, Mr. Kallaher proposed a simple solution; have Duquesne collect and remit NITS charges on behalf of all customers, not just default service customers. Such a process would not harm other default service customers as the same costs that are now embedded in default service rates would be recovered through a non-by passable charge.

Collecting NITS through a nonbypassable charge would eliminate the risk premiums that EGSs must currently include for offers that extend beyond the next change in the utility’s NITS calculation. Assuming that EGSs are likely erring on the side of a higher versus lower risk premium to avoid being short, my proposed change would result in shopping customers paying less than they do now for NITS. The change would also likely encourage more longer term offers from EGSs, which would also benefit customers looking for price certainty, especially at a time when prices are generally relatively low and stable. In fact, one of the unintended consequences of the current treatment of NITS is that the need for EGSs to take on the risk of a cost like NITS, which cannot be effectively predicted or hedged, tends to reduce the robustness of the offers EGSs can make that manage the risks related to commodity costs, which EGSs are well-placed to predict, hedge and even influence. (EGS Parties St. No. 1, 33:15-34:12).

In short, the record is clear that the current collection of NITS charges is transparent and risk free for default service customers while presenting significant risk and opacity for shopping customers

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<sup>8</sup> *Pa. PUC et al v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577, Opinion and Order (Order entered December 6, 2018) (“*Columbia*”).

and their suppliers. The means to address the illegal and discriminatory treatment is easily at hand and will harm no one.<sup>9</sup> The choice is clear; NITS charges should be collected via a non-bypassable charge for all customers, shopping and default service, based upon each customers' contribution to the overall charge.

**F. Duquesne Should be Required to File a Compliance Filing Detailing Compliance with the FERC's MOPR Requirements.**

Duquesne's DSP plan does not address in any fashion the recent order where the Federal Energy Regulatory Commission ("FERC") required that state default service auctions could meet the definition of a "State Subsidy", to the extent that they constitute:

[A] payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support the construction, development, or operation of a capacity resource, or could have the effect of allowing a resource to clear in any PJM auction.<sup>10</sup>

In its response, PJM proposed a revised definition of "State Subsidy" that would "not encompass transactions or obligations associated with a state default service auction where the underlying state auction is competitive and resource-neutral."<sup>11</sup>

Mr. Kallaher testified at length about the possible negative aspect of Duquesne's plan as it relates to the MOPR issue:

I have two concerns. One is that the DSP proposes to limit the ability of certain customers (namely CAP customers) from the retail choice market unless they take service from an EGS on a product the price of which never exceeds the default service rate. Because I believe the default service rate is subsidized by the inclusion of retail costs in Duquesne's delivery rates, conditioning the access of any group of

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<sup>9</sup> This means of collecting and remitting NITS has been adopted by the FirstEnergy utilities in Ohio, which successfully addressed the implementation issues raised by some parties as a possible barrier to adopting this approach in Pennsylvania.

<sup>10</sup> *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) ("April 26 Order" at P 386).

<sup>11</sup> Second Compliance Filing at p. 19.

customers on a requirement that the product they buy not exceed the default service rate effectively deprives those customers of the ability to avoid the default service supply costs by holding them captive to the default rate. This concern is a subset of my broader concern, which is that the pricing of default service does not, in fact, “establish market-based compensation” for that product, and those concerns continue with respect to this filing. Truly “market-based” compensation would be established through a market mechanism such as a retail auction, which Duquesne does not use for its retail default service product. Rather, Duquesne takes an estimate of the wholesale costs incurred to provide default service and passes those costs through to retail customers with little attempt to include retail cost components that the EGS competitors of default service incur when providing retail electric service in the Duquesne service territory. It is one thing for the Commission to reject requests from EGSs to include these retail costs in default service rates as a matter of state policy, regardless of how misguided EGSs might believe those decisions to be. While these concerns may not have been what FERC directly intended to address in its April 16 Order, the standard of market-based compensation nevertheless makes it imperative for Duquesne, other stakeholders and, ultimately the Commission to examine this issue carefully in light of the need to avoid having suboptimal state policy result in the unintended consequences of the application of the MOPR rules to default service auctions that PJM is attempting to avoid.<sup>12</sup> (EGS Parties’ St. No. 1, 13:13-14:12).

In short, Mr. Kallaher believes that to avoid the potentially serious negative consequences that would come should Duquesne’s default service plan be deemed a “state subsidy,” in whole or in part, the Commission and stakeholders must review Duquesne’s filing in light of the MOPR orders and adjust if needed. This need is heightened by Duquesne’s proposal to include a long-term solar PPA in its default service plan. As discussed above, if Duquesne wished to show its commitment to renewable energy in Pennsylvania by creating a competitive affiliate to finance, build and operate a solar facility, the EGS Coalition would have no objection. By instead attempting to add a long-term solar PPA to its default service portfolio, with the clear goal of facilitating the construction of a new solar facility as a result of that PPA, Duquesne is proposing the kind of

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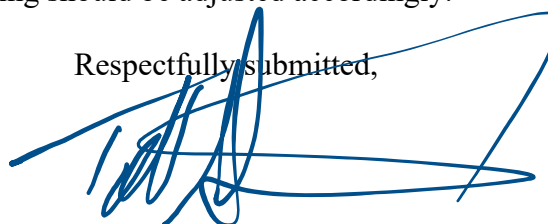
<sup>12</sup> I also acknowledge that the Commission has sought limited rehearing from FERC with respect to the issue of default service as a state subsidy. Request for Limited Rehearing of the Pennsylvania Public Utility Commission, Docket Nos. EL16-49, ER18-1314, and EL18-178 (May 18, 2020). Until that portion of the April 26 Order is modified or vacated, however, the Commission should direct utilities to address the issue in their default service plans.

explicit state subsidy that might bring its default service plan within the ambit of the MOPR. As Mr. Kallaher testified, Duquesne should not misapprehend the EGSs' position as arguing that the DSP is unequivocally a state subsidy or favoring the conclusion that FERC should consider the DSP to be a state subsidy. To the contrary, the EGS Coalition has no desire to see any Pennsylvania resources unnecessarily brought within the MOPR. The EGSs are concerned that Duquesne is giving short shrift to the implications of the MOPR, and the implications that its application could have for the Commission's assessment of the DSP. The EGSs urge Duquesne to give this issue the attention it deserves by addressing the implications of the MOPR for its DSP in a supplemental filing.

#### V. CONCLUSION

As a general matter, Duquesne has proposed some programs, namely SOP and CAP shopping that are reasonable and can be approved with minimal change. It has proposed two new programs, The EVTOU and the Solar PPA which are ill-advised and which should not be approved, and it is failed to address the issues of NITS and the MOPR that shouldn't have been included in this proceeding, and we not. Its filing should be adjusted accordingly.

Respectfully submitted,



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*Counsel for EGS Parties*

DATED: September 30, 2020

## **APPENDIX A**

### **PROPOSED CONCLUSIONS OF LAW**

1. Duquesne's proposed CAP shopping program complies with the recent commission guidance and is otherwise consistent with the law.
2. Duquesne's proposed SOP program is reasonable.
3. Duquesne's proposed Solar PPA is contrary to law. 66 Pa. C.S. S 2807(e).
4. Duquesne's proposed EVTOU rate is not consistent with recent commission guidance and is contrary to law.
5. Duquesne's filing is not consistent with the recent FERC orders and must be supplemented with a compliance filing.



## **APPENDIX B**

### **PROPOSED ORDERING PARAGRAPHS**

- a. Duquesne's CAP Shopping program is approved as modified by Mr. Kallaher's Testimony.
- b. Duquesne's SOP is approved as modified by the EGS Parties' testimony.
- c. Duquesne's proposed Solar PPA is not approved
- d. Duquesne's proposed EVTOU rate is not approved pending the outcome of a commission sponsored Stakeholder process which is required by this order.
- e. Duquesne is required to implement a non-bypassable NITS recovery rider as proposed in Mr. Kallaher's testimony.
- f. Duquesne is required to make a MOPR compliance filing as described by Mr. Kallaher.

## APPENDIX C

### PROPOSED FINDINGS OF FACT

1. Mr. Kallaher is concerned about the present state of Competition in Pennsylvania in general in the Duquesne Light Company service territory in particular:

The reasons are the structural flaws in the design of the retail market, which after an initial burst of enthusiasm and investment, have left it only a shadow of what it could be. The Wind Solar Alliance Report released earlier this year explores these flaws at some length. They boil down to the presence of a domineering default service provider (“DSP”) and a persistently unlevel playing field between the DSP and EGSs. That unlevel playing field is evinced in the inability of EGSs to have a direct relationship with their customers, through monthly consolidated bills. That unlevel playing field also arises in the persistent cross-subsidization that causes distribution customers, including those who have chosen a product other than Duquesne default service, to nevertheless pay for costs related to Duquesne’s default service. Indeed, the very presence of a DSP that is also the local transmission-and-distribution monopoly—a provider-of-first resort arrangement that has come to be accepted as inevitable, even though it was not inevitable in the design the authors of Pennsylvania’s competition statute conceived—biases customers toward the entity that physically meters them and bills them. (EGS Parties’ St. No. 1, 6:2-16). . . .

The negative consequences are several. The Wind Solar Alliance Report focuses on one, namely the lack of long-term contracts that are signed to supply customers in Pennsylvania and other states that have a similar, domineering DSP. Simply put, EGSs are reluctant to make longer term investments in the market if its main competition—the DSP—both dominates the market by a default arrangement that consistently directs customers back to it and enjoys a regulatory model of assured cost recovery. For an EGS that must work to earn its customers and stake its own capital at risk, the model is not a feasible one to drive meaningful investments over the long term. In the presence of a dominant utility DSP, the EGS market is destined primarily to consist of shorter-run arrangements that aim only to undercut the DSP. Likewise, without the ability to bill its customers directly, EGSs are put at a disadvantage in establishing meaningful, long-term relationships with their customers—further undermining the case for long-term investments and damaging the prospects of offering innovative products that cannot be conveyed in the small space that EGSs are afforded on Duquesne’s bill. Ironically, these negative developments then invite further tinkering with the default service to solve what the market does not seem to be offering. In this proceeding, Duquesne has proposed an electric vehicle-specific time-of-use rate and a long-term solar purchase – things that

a well-designed competitive retail market can amply provide. As the Wind Solar Alliance scorecard for Pennsylvania suggests, there is much room for improvement. (EGS Parties St. No. 1, 6:19-7:16).

2. While Mr. Kallaher acknowledges that there is investment being made in generation assets in Pennsylvania, those investments are being made in response to wholesale market design, not to meet the needs of the retail market:

[T]hose investments are mostly a function of wholesale market design, including PJM's regional capacity market, where market administrators forecast forward demand and hold a competitive auction to procure it. Ideally, much of the heavy lifting currently left to the PJM capacity auction would instead be done by a diverse group of buyers seeking to cover their retail positions. In the highly competitive Texas market, for example, only 10-20% of total energy volumes transacted in the wholesale ERCOT market were unhedged by a bilateral contract. This demonstrates that in a truly competitive retail market, a significant incentive faces EGSs to cover the positions they are contractually obligated to serve, or that they expect to serve in the future given expectations of their market share. This obligation drives investment in generating resources and, in particular, creates a virtuous cycle for renewable development, as many of those hedges take the form of renewable power purchase agreements. (EGS Parties St. No. 1, 7:19-8:8).

3. Mr. Kallaher has serious concerns regarding Duquesne's lack of demonstration, in its filing, that it has complied with the FERC's Minimum Offer Price Rule ("MOPR") requirements:

I have two concerns. One is that the DSP proposes to limit the ability of certain customers (namely CAP customers) from the retail choice market unless they take service from an EGS on a product the price of which never exceeds the default service rate. Because I believe the default service rate is subsidized by the inclusion of retail costs in Duquesne's delivery rates, conditioning the access of any group of customers on a requirement that the product they buy not exceed the default service rate effectively deprives those customers of the ability to avoid the default service supply costs by holding them captive to the default rate. This concern is a subset of my broader concern, which is that the pricing of default service does not, in fact, "establish market-based compensation" for that product, and those concerns continue with respect to this filing. Truly "market-based" compensation would be established through a market mechanism such as a retail auction, which Duquesne does not use for its retail default service

product. Rather, Duquesne takes an estimate of the wholesale costs incurred to provide default service and passes those costs through to retail customers with little attempt to include retail cost components that the EGS competitors of default service incur when providing retail electric service in the Duquesne service territory. It is one thing for the Commission to reject requests from EGSs to include these retail costs in default service rates as a matter of state policy, regardless of how misguided EGSs might believe those decisions to be. While these concerns may not have been what FERC directly intended to address in its April 16 Order, the standard of market-based compensation nevertheless makes it imperative for Duquesne, other stakeholders and, ultimately the Commission to examine this issue carefully in light of the need to avoid having suboptimal state policy result in the unintended consequences of the application of the MOPR rules to default service auctions that PJM is attempting to avoid. (EGS Parties' St. No. 1, 13:13-14:1).

4. Duquesne has proposed to retain an outside administrator for its Standard Offer Program ("SOP") to replace Duquesne as the current administrator. Mr. Kallaher acknowledges that the existing program appears to be functioning as intended, but he has made recommendations to improve the SOP beyond what was proposed: namely, to start new and moving customers in an SOP. (EGS Parties St. No. 1, 15:2-16-17).
5. Mr. Kallaher supports Duquesne's proposed CAP shopping program provided customers remain with the original supplier at the end of their contract, at a CAP compliant rate, absent affirmative choice to either return to default service or avail themselves of a competing CAP compliant offer from another supplier. He also recommends that CAP customers be permitted to participate in the SOP so long as the rate is CAP compliant- i.e., always less than the price to compare. (EGS Parties' St. No. 1, 17:17-18:13).
6. Mr. Kallaher notes several concerns regarding PPL's proposed Time of Use Electric Vehicle ("TOU-EV") rate. He notes that there was supposed to be a process to discuss such rates:

First, it appears that Duquesne has short-circuited what was intended to be a more robust collaboration among stakeholders regarding the possible development of TOU rates for EVs. The January 23, 2020 Secretarial Letter closing *Investigation into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket M-2019-3007101, the Commission issued the following guidance with respect to the possible development of TOU rates for EVs:

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 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 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.**<sup>13</sup> (EGS Parties' St. No. 1, 19:1-33)

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<sup>13</sup> Secretarial Letter at pp. 6-7 (footnote omitted, emphasis added).

7. Mr. Kallaher takes issue with Ms. Scholl's characterization of the Commission's guidance as "encouraging" utilities to provide EV TOU rates. Mr. Kallaher would have "preferred" for Duquesne to have reached out to other stakeholders before deciding to provide such a rate on its own. His primary concern, however, is the decided negative impact such a rate will have on the competitive market. (EGS Parties' St. No. 1, 20:1-21:5). His concern is that a utility provided rate will claim the space and make it difficult if not impossible for other parties to enter and to compete. This is particularly true because the default service rate at the base of the TOU is subsidized by distribution customers because the default service rate does not recover all the costs of providing the service. (EGS Parties' St. No. 1, 21:9-16).
8. The way to address the problems with Duquesne's TOU EV proposal is to convene a working group to address:

(1) whether the absence of EV-specific TOU rates is, in fact, a barrier to EV adoption in Pennsylvania; (2) if so, what is the cause of the absence of EV-specific TOU rates; and (3) what steps should be taken to overcome those barriers to the development of EV-specific TOU rates without stifling the development of the competitive market in this area? At the conclusion of this process, should the working group recommend further action on Duquesne's part, Duquesne would make a compliance filing laying out its plan for accomplishing the recommended action.

The second proposal would be for Duquesne to issue an RFI for proposals from competitive entities to enhance the development of the EV market in Duquesne's service territory, using measures that could be implemented within the scope of Duquesne's DSP. This process could be thought of as potentially getting to the same result as the first proposal, only much quicker. The second largest automaker in the world right now by market capitalization, with a capitalization greater than General Motors and Honda combined, is a company that makes only EVs. It seems inconceivable that there are not plenty of ideas out there for helping to serve the EV market that would make use of innovation and creativity rather than a three-period time-of-use rate that would likely do little other than stifle the further development of a market that seems perfectly capable of developing on its own. (EGS Parties St. No. 1, 21:19-22:14).

9. Duquesne has proposed to enter into a long-term Power Purchase Agreement (“PPA”) with a “utility-scale” solar energy project. It has proposed a competitive process for acquiring the contract and is proposing to acquire not only the Solar Alternative Energy Credits (“SAEC”) from the project, but also the energy, capacity and ancillaries associated with the facility. (EGS Parties St. No. 1, 22:19-23:3).

10. There are problems with Duquesne’s proposal, and while Mr. Kallaher does not object to long-term contracts as a general matter, he does object:

in the case of EDCs entering into such contracts, ... I have serious concerns. The program period for this default service plan is four years, which means that a contract as proposed by Duquesne could extend well past the expiration of this plan, and even several subsequent plans, should Duquesne continue to serve in the role of the exclusive DSP in its service territory. While Duquesne has served that role since the expiration of generation rate caps, both the statute and the Commission’s regulations contemplate the possibility of the default service provider role being shifted to an alternative default service provider such as an EGS. It would be improper in this proceeding to take any action that either forecloses that possibility or creates future stranded costs that would unduly burden the potential for that important reform. (EGS Parties’ St. No. 1, 23:6-23:21).

11. Mr. Kallaher likewise is concerned that Duquesne has failed to make any sort of showing that the solar industry needs the support of long-term utility contracts in order to flourish in western Pennsylvania. Particularly considering that Duquesne had received approval in its prior DSP plan to enter into a SAEC-only PPA but failed, Mr. Kallaher

would have expected that in their next filing Duquesne would provide more detailed information about why they believed their previous efforts at contracting with a solar developer failed, why they believe renewed efforts will be more successful, and what the continuing need is for such an arrangement. Their filing contains little or no evidence on these points. Only Mr. Davis discusses the solar PPA and, on the need for and impact of the proposed contract, he offers only the most conclusory statements. (EGS Parties’ St. No. 1, 24:1-12).

12. There are serious concerns about utilities entering the renewables space – but unlike other market participants who must risk their own capital to engage in such ventures, Duquesne would be risking ratepayer money – that is, it has proposed that it would receive dollar for dollar recovery from default service customers. Mr. Kallaher describes it this way:

First, entering into long term contracts, as Duquesne proposes here, places Duquesne’s default service ratepayers at risk because they will be required to pay for the costs of contracts that may end up being uneconomic over their life. If there is a case to be made that such a long-term arrangement actually reduces the risks to default service ratepayers, the company’s filing did not make it. Certainly, if Duquesne risked its own capital—as do EGSs—on a venture that could result in a profit or loss, then the Commission should be supportive of long-term arrangements, and such a proposal would represent a true commitment on Duquesne’s part to provide a boost to utility-scale solar development in Pennsylvania. The same would be true if any entity wished to enter into such a contract, putting its own capital at risk. Putting someone else’s money at risk is more like a gesture than a commitment, and an empty one at that.

Second, I also have concerns that this kind of “support” for solar development will create a barrier to more productive opportunities that may be in the offing. These could take the form of solar projects that are currently in development that may pass up terms that are available now in the hopes of contracting with Duquesne instead. But my greatest concern is that pushing for this kind of utility contract will decrease the likelihood of achieving what should be a high priority for all those who support solar power in Pennsylvania, and that is the passage of a bill allowing community solar projects to go forward. (EGS Parties’ St. No. 1, 24:15-25:11).

13. It is also likely that the proposed PPA would be considered a “State Subsidy” under the FERC MOPR Order.
14. Mr. Kallaher recommends that Duquesne’s Solar PPA proposal be put on hold pending resolution of the issues he has identified. (EGS Parties’ St. No. 1, 26:1-10).
15. Network Integrated Transmission Services (“NITS”) as the name suggests:

is the service that provides energy consumers with access to generation supply throughout the RTO control area in which the customer is located. Customers served by the same distribution utility pay the same rate for this service regardless of where they are located on the system in relation to generation resources. In many utility service areas, including Duquesne,



NITS rates are formula-based rates adjusted annually through FERC-approved formula rate filings. This is to account for changes in operating costs, system loads, or cost recovery requirements for new transmission projects. (EGS St. No. 1, 26:15-22).

16. NITS rates are based on a number of factors: 1) Transmission Owners Cost of Service; 2) Cost of Capital on Rate Base, including allowed Return on Equity and Interest costs; 3) Depreciation and Amortization; and, 4) Tax Operation and Maintenance (EGS Parties' St. No. 1, 26:23-27:3).
17. NITS charges change from year to year. Both the FERC-approved NITS rate and the individual customer's Network Transmission Service Peak Load Contribution can and usually do change from year to year. The net result of these changes is that an LSE's NITS obligation on behalf of an individual customer, and its total NITS payment can be difficult to predict, and even more difficult to influence. (EGS Parties' St. No. 1, 27:15-19).
18. There are many examples of NITS rates to customers varying by as much as 30% per year. The rates change frequently and suddenly. (EGS Parties' St. No. 1: 29:3-12). NITS rates have been increasing over the years at some dramatic rates. (EGS St. No. 1, 30:4-5).
19. The recovery of NITS and other Non-Market-Based Charges ("NMB") is done by Duquesne in such a way that default service customers pay the actual cost of those charges, no more and no less. This is because Duquesne passes those charges through to default service customers on a fully reconciling basis. (NGS St. No. 1, 31:3-6).
20. The impact of NITS and other NMBs on customers who shop is far more profound and negative. A customer's EGS is responsible for paying the NITS charges and as discussed above, these charges can vary wildly from year to year. For larger customers in particular, most suppliers cannot absorb the risk of the volatile charges and instead contracts often pass-through this risk to the customer. Thus, for example, if a customer signed a contract

with an EGS for a fixed-price contract with a term of 24 months that began on July 1, 2018 and expired on June 30, 2020, the contract would span three separate planning years for purposes of Duquesne's NITS charges such that the charges the EGS would have to pay on that customer's behalf would change twice during the term of the contract. (EGS Parties St. No. 1, 31:12-21).

21. Mr. Kallaher is concerned that the variability of NITS charges has negative implications for EGS service to customers. He notes a few specific concerns:

One is that EGSs may avoid making fixed-price offers to customers due to the risk presented by the variability of NITS charges. This does a disservice to customers who are looking for price certainty against a PTC that changes on a quarterly basis. Another implication is that when an EGS does make fixed-price offers, they will tend to include a risk premium to reflect the likelihood that the customer's share of NITS charges will change and could well increase. The robust competition among EGSs that exists in the Duquesne service territory undoubtedly puts downward pressure on that risk premium, but the net result is that an EGS customer is almost certain to either overpay or underpay for their share of NITS charges. This stands in sharp contrast to default service customers, who pay exactly their share of Duquesne's NITS charges, no more and no less. Considering that these charges are unpredictable, as noted above, and cannot be effectively hedged by EGSs, the result with respect to EGS customers is plainly inefficient, with some customers paying too much and others paying too little based only on the arbitrary factor of their EGS's ability to predict a charge that, by its nature, is unpredictable. (Text of Footnote 21 follows) If anything, the utility is in a better position to predict or influence NITS charges for its default service customers than EGSs are for their customers. The utility will have more visibility into its transmission revenue requirements (one of the factors that determine the amount of NITS charges a customer ultimately pays) and how those might change from year to year than do EGSs. Despite this possible advantage over EGSs in forecasting NITS, no Pennsylvania utility takes on the kind of risk that EGSs are required to with respect to NITS charges. They either pass them through directly or shift that risk to wholesale suppliers (in the case of the FirstEnergy utilities), an option that is not effectively available to EGSs. As the monopoly provider of default service in its service territory, a utility is also a monopsony purchaser of wholesale supply for the retail service that is the dominant participant in terms of market share in the residential and small commercial market segments. As the sole purchaser of supply for the leader in market share, the utility can dictate terms to its wholesale suppliers in ways that EGSs

simply cannot. So, for example, the FirstEnergy utilities can simply tell wholesale suppliers that they must take on the risk of NITS changes if they want to provide supply for default service, and wholesale suppliers will do just that. Even if EGS made such a demand, wholesale suppliers would not be required to respond positively and, if they did, they are almost certain to include a higher risk premium for an EGS that has a much smaller market share than the utility. Moreover, because of the shorter-term nature of many default service wholesale supply contracts, wholesale suppliers who agree to include NITS charges in their bids do not take on the same level of risk as do EGSs seeking to provide longer-term solutions to their customers. (EGS Parties' St. No. 1, 31:1-6 and footnote 21).

22. Mr. Kallaher recommends that Duquesne collect and remit NITS on behalf of all customers, not just default service customers. Such a process would not harm other default service customers as the same costs that are now embedded in default service rates would be recovered through a non-bypassable charge. Mr. Kallaher believe this is the best win-win result:

Collecting NITS through a nonbypassable charge would eliminate the risk premiums that EGSs must currently include for offers that extend beyond the next change in the utility's NITS calculation. Assuming that EGSs are likely erring on the side of a higher versus lower risk premium to avoid being short, my proposed change would result in shopping customers paying less than they do now for NITS. The change would also likely encourage more longer term offers from EGSs, which would also benefit customers looking for price certainty, especially at a time when prices are generally relatively low and stable. In fact, one of the unintended consequences of the current treatment of NITS is that the need for EGSs to take on the risk of a cost like NITS, which cannot be effectively predicted or hedged, tends to reduce the robustness of the offers EGSs can make that manage the risks related to commodity costs, which EGSs are well-placed to predict, hedge and even influence. (EGS Parties St. No. 1, 33:15-34:12).