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*Via e-filing*

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street, 2nd Floor North  
Harrisburg, PA 17105-3265

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

Secretary Chiavetta:

On behalf of the Natural Resources Defense Council, please find enclosed a **Brief of the Natural Resources Defense Counsel** in the above-referenced proceeding. Parties are being served as indicated in the certificate of service appended to the Brief. Please contact me if you have any questions.

Thank you very much.

Sincerely,

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cc: Per certificate of service  
M. Szybist  
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Hon. Mark A. Hoyer (via email, together with word version)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**BRIEF OF THE  
NATURAL RESOURCES DEFENSE COUNCIL**

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DATE: September 30, 2020

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## STATEMENT OF THE CASE

This case arises from the Petition of Duquesne Light Company (“the Company” or “DLC”) for Approval of a Default Service Plan (“Petition”), which was filed with the Commission on April 20, 2020. The Commission’s approval of the plan for default service outlined in the Petition would mark the ninth such default service plan implemented by the Company; accordingly, the Company designates the default service plan contemplated in the Petition “DSP IX.” Pet., ¶1 According to the Company, the instant default service proposal’s overarching aim is “to enhance its current default service program and continue to promote competition for its customers.” *Id.* The Petition proposes a four-year program term, proposed to begin on June 21, 2021 and end on May 31, 2025. *Id.* at ¶5-6. The Company states that DSP IX “largely continues the procurement approaches and rate terms” of its current default service plan. *Id.* at ¶7. Additionally, the Company’s proposed plan contemplates implementing several new programs, including:

- Soliciting and entering into a long-term contract to support a utility scale solar project;
- Engaging with a third-party vendor for administering the Company’s Standard Offer Product (“SOP”);
- Allowing Customer Assistance Program (“CAP”) customers to shop for an electric supplier with certain conditions and protections; and
- Implementing a pilot program allowing customers owning an Electric Vehicle (“EV”) and/or EV charging infrastructure to opt for an Electric Vehicle time-of-use (“EV-TOU”) rate structure.

*Id.* at ¶¶ 47-53, 54-58, 60-66, 68-72; *See also* DLC Stmt. 1 (Dir. Test. of C. James Davis), 10-11. The EV-TOU rate offering is the focus of the instant Brief of the Natural Resources Defense Council (“NRDC”).

The Company filed the written direct testimonies of five witnesses – C. James Davis, John Peoples, Scott G. Fisher, David Ogden, and Katherine M. Scholl – contemporaneously with the Petition. The Petition was subsequently assigned to Deputy Chief Administrative Law Judge Mark. A Hoyer. By Order dated April 30, 2020, Judge Hoyer required interested parties to intervene on or before June 5, 2020. Petitions to Intervene were filed by as follows: by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) on April 30, 2020; by Calpine Retail Holdings (“Calpine”) on April 30, 2020; by Interstate Gas Supply, Inc, Shipley Choice LLC, NRF Energy, Inc., Vistra Energy Corp, Engie Resources LLC, and Direct Energy Services, LLC (together, “EGS Parties”<sup>1</sup>) on May 1, 2020; the Office of Small Business Advocate (“OSBA”) on May 20, 2020; by the Office of the Consumer Advocate (“OCA”) on May 22, 2020; by StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (together, “StateWise”) on June 3, 2020; by ChargePoint, Inc. (“ChargePoint”) on June 5, 2020; by MAREC Action on June 5, 2020; and by Solar United Neighbors of Pennsylvania (“SUN-PA”) on June 5, 2020. NRDC’s own Petition to intervene was filed on June 5, 2020. Judge Hoyer granted the Petitions to Intervene (with the exception of the Petition to Intervene filed by SUN-PA) on June 23, 2020.<sup>2</sup>

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<sup>1</sup> Interstate Gas Supply Inc, Shipley Choice LLC, NRF Energy, Inc., Vistra Energy Corp, Engie Resources LLC, and Direct Energy Services, LLC have been referred throughout the course of proceedings as the “EGS Parties,” a designation that this Brief retains for the purposes of consistency and brevity. It should be noted that the self-designated “EGS Parties” do not represent each Electric Generation Suppliers that is a party to the proceeding, and that other EGS companies have noted themselves as having considerably interests. *See* Calpine Retail Statement 1 (Rebuttal Test. Of Becky Merola) 2-5 (arguing the “so-called EGS Parties...represent a subset of the marketplace”).

<sup>2</sup> SUN-PA’s request for intervention was preliminarily denied on July 7, 2020 on the basis of SUN-PA’s lack of representation by counsel. No exceptions to the preliminary denial of SUN-PA’s intervention request were taken, and accordingly SUN-PA’s dismissal became final on August 28, 2020.

Judge Hoyer's June 23 Case Management Order also established a case management schedule for the presentation of testimony. Pursuant to that schedule, the parties presented testimony as follows:

- On July 17, 2020, written direct testimony was tendered by witness Elizabeth Stanton on behalf of MAREC Action; by witness Christopher Kallaher on behalf of the EGS parties; by Harry Geller on behalf of CAUSE-PA; witnesses Sergan Ogur and Barbara Alexander on behalf of OCA; and Kathleen Harris on behalf of NRDC. Additionally, written comments were filed in support of the Petition's EV-TOU program by Matthew Deal on behalf of ChargePoint.
- On August 14, 2020, written rebuttal testimony was tendered by witnesses C. James Davis, John Peoples, Scott Fisher, David Ogden, and Katherine Scholl on behalf of the Company; witness Brain Kalcic on behalf of OSBA, witness Becky Merola on behalf of Calpine; witness Elizabeth Stanton on behalf of MAREC Action; witness Christopher Kallaher on behalf of the EGS parties; by Harry Geller on behalf of CAUSE-PA, witnesses Sergan Ogur and Barbara Alexander on behalf of OCA, and Kathleen Harris on behalf of NRDC.
- On August 28, 2020, written surrebuttal testimony was tendered by witness Katherine Scholl on behalf of the Company, witness Christopher Kallaher on behalf of the EGS parties, witness Harry Geller on behalf of CAUSE-PA, witnesses Sergan Ogur and Barbara Alexander on behalf of OCA, and Kathleen Harris on behalf of NRDC.
- On September 4, 2020, written rejoinder testimony was tendered by witnesses C. James Davis, Scott G. Fisher, and Katherine M. Scholl on behalf of the Company. At a



telephonic evidentiary hearing held on September 9, 2020, oral rejoinder testimony was presented by witness Kathleen Harris on behalf of NRDC.

A telephonic evidentiary hearing was held on September 9, 2020, at which the parties presented a joint stipulation for the waiver of cross examination of all witnesses and the admission of all written testimonies and exhibits, at which time Judge Hoyer indicated that testimony and evidence would be admitted in accordance with that stipulation.

Of the intervening witnesses that submitted testimony, the Company's EV-TOU proposal was discussed by Harry Geller on behalf of CAUSE-PA, Sergan Ogur on behalf of OCA, Matthew Deal on behalf of ChargePoint, Christopher Kallaher on behalf of EGS parties, and Kathleen Harris on behalf of NRDC. The testimonies of all of these parties, other than the EGS Parties, expressed support for the Company's proposed EV-TOU rate, subject to certain modifications. To wit:

- CAUSE-PA agreed with the Company's proposal to exclude customers participating in the Customer Assistance Program ("CAP") from participation on the EV-TOU Program, though they took the position that additional outreach to low-income and medically vulnerable customers should be required of the Company, and that individualized bill impact assessments should be provided. CAUSE-PA Stmt. 1 (Dir. Test. of Harry Geller), 22-24. CAUSE-PA also requested that the Commission require the Company to track EV-TOU program participant demographic information and that the Company be required to develop EV-TOU offerings for mass transit fleet EVs in future DSP proceedings. *Id.* at 25.
- OCA supports the implementation of the program, and supplied three recommendations: (1) that TOU supply rate factors should be reset annually, (2) that the Company should

more clearly state and justify how the costs of the EV-TOU program will be assigned to different classes of customers, and (3) the Company should present a detailed report on the performance of the EV-TOU program as part of its next Default Service Petition.

OCA Stmtnt. 1 (Dir. Test. of Sergan Ogur) 12-14. Finally, OCA states that supply rate factors should “reflect the relative incremental costs of serving load in each TOU period,” and warns against setting “peak to off-peak price ratio at an arbitrarily high level[.]”

OCA Statement 1-R (Rebuttal Test. of Sergan Ogur), 6:4-15.

- ChargePoint supported implementation of the EV-TOU program, while providing two recommendations for future consideration: (1) that the Company’s whole-premise TOU rate offering be supplemented with EV-only time of use rates through the use of imbedded sub-metering, and (2) that the Company utilize EV charging infrastructure to conduct active managed charging programs. *Comments of ChargePoint, Inc.*, Docket No. P-2020-3019522, 2-5 (July 17, 2020).
- NRDC supports the implementation of an EV-TOU program, and notes the myriad benefits of increasingly wider EV adoption, which range from the EV users saving money over the life of their vehicle, to a reduction in greenhouse gas emissions, to the ability of EV users to shift load to off-peak hours, resulting in downward pressure on rates for all customers. NRDC Stmtnt. 1 (Dir. Test. of Kathleen Harris), 3-7. NRDC nevertheless advocates for several program modifications to the Company’s EV-TOU proposal. *Id.* at 4-22. Specifically, NRDC took the position that approval of the EV-TOU program as a “pilot program” is unnecessary, as the benefits of EV-TOU rate offerings are well-established and present little to no risk to non-participating customers. *Id.* at 7. NRDC emphasized the need for clear price signals to end-use customers in order to

achieve the most potential EV load-shifting; for C&I users that make EVSE infrastructure available to third parties, NRDC argued that default arrangement should be pass-through pricing. *Id.* at 7-10. NRDC recommended that, in addition to providing customers a whole-premises rate, the Company should be required to educate customers on the possibility of separately metering their EV load, and the potential tradeoffs of pursuing either option. *Id.* at 11-13. NRDC notes this education and outreach would be especially invaluable in the Commercial and Industrial (C&I) context for customers with fleet charging needs. *Id.* at 14-18. Finally, NRDC noted that C&I TOU rate design should take into account certain customers (such as those offering Direct Current Fast Charging, or DCFC) who may be less able to shift load to off-peak hours than other C&I customers. *Id.* at 18-21.

Only the EGS Parties oppose the adoption of an EV-TOU rate as part of the Company's default service offering. EGS Parties Stmt. 1 (Dir. Test. of Christopher Kallaher) 18-22. The EGS parties argue that EV-TOU rates as a DSP offering hamper the development of the competitive market to make similar offerings, a position which is disputed by the other parties. *Compare id.* with NRDC Stmt. 2 (Rebuttal Test. of Kathleen Harris) 4:12-20, 5:1-6 (noting that "Mr. Kallaher...does not any examples or evidence of" EV-TOU offerings from EDCs resulting in EGS rate offerings being hampered, and that "EDC efforts to implement EV-TOU rates do not prevent the EGSs from developing programs...in fact, the EGS parties should be encouraged to propose similar programs" as a result of the Company's offering). DLC Stmt. 5R (Rebuttal Test. of Katherine Scholl) 22:8-19, 23:1-7 ("The Company's EV-TOU Pilot Program will not foreclose the potential for EGSs and others to offer similar or other innovative solutions to customers"). However, no party disputes the benefits of increasingly widespread EV adoption,

nor does any party dispute that EV charging is a task that represents a tailor-made opportunity for customers to shift energy usage to off-peak hours. *See* EGS Parties' Stmt. 1 (Dir. Test. Of Christopher Kallaher). 20:21-22 (noting "no one disputes" the "case for EVs generally").

On September 30, 2020, a Joint Stipulation was filed by the Company, NRDC, OCA, CAUSE-PA, and OSBA, agreeing to the implementation of the Company's EV-TOU Pilot Program as proposed in the Petition, with certain modifications. Specifically, the Joint Stipulation provides for the following modifications to the EV-TOU program:

- a. Prior to filing its next Default Service Plan (DSP X), the Company will provide a report on the EV-TOU Pilot Program. The report will include:
  - i. Customer enrollment levels by customer class (i.e., residential, small commercial, small industrial, medium commercial, and medium industrial) and enrollment levels of confirmed low-income customers and multi-unit residential buildings
  - ii. Net customer bill impacts as compared to non-TOU rate, by customer classes identified in a.i. above
  - iii. Net energy usage shifted from on-peak hours (for those customers for whom the Company has sufficient historical usage data)
  - iv. Number of customers on the EV-TOU rate who elected to install a separate Duquesne Light meter for their EV charging facilities
- b. Customer Education:
  - i. Prior to implementing the EV-TOU Pilot Program, the Company will provide parties with draft educational materials and solicit their feedback for consideration.
  - ii. The Company's educational materials will include, as applicable:
    - I. Information on the EV-TOU rates and its benefits
    - II. Discussion of the 200kW threshold for C&I customers, including recognition that customers whose demands exceed 200kW are not eligible for the EV-TOU rate but are instead eligible for hourly price service under Rider No. 9.
    - III. Discussion of customer protections and assistance programs for Residential customers
    - IV. Referral to DLC's online bill estimate tool for Residential customers
    - V. Express recognition that the EV-TOU rate may not be the least-cost option for all customers
    - VI. The option, and potential benefits, for customers to elect to separately meter their EV load on the EV-TOU rate
- c. The Company's costs of outreach and education associated with the EV-TOU Pilot Program shall be allocated and recovered per the Company's initial proposal, as described in Duquesne Light St. No. 4 and Exhibit DBO-5.

- d. The Company will annually reset the EV-TOU supply rate factors as part of its tariff supplements updating Default Service Supply rates.
- e. The Company will convene one collaborative meeting with the parties around the midpoint of DSP IX to discuss the EV-TOU Pilot Program implementation and results available to date. The collaborative meeting will include discussion of EV-TOU rates for mass transit and fleet EVs.

Joint Stipulation, 1-2. The Joint Stipulation fully resolves the stipulating parties' disputes over the content of the EV-TOU program. NRDC's decision to join the Joint Stipulation reflects a carefully considered compromise of its litigation positions.

### **SUMMARY OF THE ARGUMENT**

As stated in NRDC's Direct Testimony, "[s]hifting EV charging to off-peak hours can lower electricity bills for all customers, reduce operating costs for EV drivers, and drive down greenhouse gas (GHG) emissions." NRDC Stmt. 1., 4:13-14. "If EV charging load is managed appropriately, the net present value of cumulative benefits from greater EV use in Pennsylvania could exceed \$8 billion by 2050." *Id.* at 4:14-16. No party to this proceeding disputes that that Electric Vehicles deliver these benefits. *See* EGS Parties' Stmt. 1 (Dir. Test. Of Christopher Kallaher). 20:21-22 (noting "no one disputes" the "case for EVs generally"). Nor do any parties dispute that EV-specific TOU rate offerings encourage EV use and maximize the benefits of EV adoption. *See* EGS Parties Statement 1-R (Rebuttal Test. of Charles Kallaher) 8:3-5 ("I don't disagree with Ms. Harris on any of these points"). Accordingly, the case for EV-TOU rates as a general proposition is entirely uncontroversial.

The lone witness offering testimony opposing the adoption of an EV-TOU rate as part of the Company's Default Service Plan is the EGS parties' witness Christopher Kallaher, who requests that the implementation of the EV-TOU program be rejected in favor of stakeholder meetings and/or an RFI solicitation. EGS Parties Stmt. 1, 18-22. As described more fully

below, accepting Kallaher's suggestion that the EV-TOU rate proposed by the company be put on hold would (1) be contrary to Act 129's requirement that DSPs offer TOU rates to smart-metered customers, and (2) contravene the clear balance of evidence in this proceeding favoring the establishment of EV-TOU rate structures. Indeed, to the extent the EGS parties have raised objections to the EV-TOU proposal, they are broadly arguments against the notion of default service itself. *Id* at 21:13-14 (arguing that EGSs see "default service rates...as already being subsidized by delivery rates").

Because the benefits of EV usage are uncontroverted, and because the objections raised to EV-specific TOU rates in the default service are unfounded, the Commission should approve the Company's effort to include an EV-TOU rate structure among its default service offerings, consistent with the terms of the Joint Stipulation reached by the Company, NRDC, OCA, OSBA, and CAUSE-PA.

## **ARGUMENT**

### **I. Burden of Proof and Legal Standard**

Pursuant to 66 Pa. C.S. § 332(a), "the proponent of a rule or order has the burden of proof." Moreover, any order of the Commission granting an application, in whole or in part, must be based on substantial evidence. *Dutchland Tours, Inc. v. PA Public Utility Comm'n.*, 19 Pa. Commw. 1, 337 A.2d 922, 925 (1975). The term "substantial evidence" has been defined by Pennsylvania courts as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; included in that standard is the requirement that the applicant must present a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n.*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990). That is, an applicant must present

evidence more convincing, by even the smallest amount, than that presented by an opposing party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Where a settlement on a particular issue is reached by several but not all parties, the burden of proof is the same as it would have been absent any settlement. *Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish or Supply Natural Gas*, Docket No. A-2010-2153371, 2010 Pa. PUC LEXIS 1114 (November 22, 2010) (“A non-unanimous settlement does not change the standard of legal review). That said, even in the context of non-unanimous settlements, the Commission has held:

The Commission encourages parties in contested on-the-record proceedings to settle cases. See 52 Pa.Code § 5.231(a). Settlements eliminate or significantly reduce the time, effort, and expense of litigating a proceeding to its final conclusion, which might include review of the Commission's decision by the Pennsylvania appellate courts. Such savings directly benefit the individual parties to a proceeding, however, these savings also benefit the Commission and all ratepayers of the utility, who otherwise may have to bear the financial burden such litigation necessarily entails.... Once the settling parties have submitted their joint settlement petition for approval, the principal issue for Commission consideration is whether the agreement serves the public interest.

*Pennsylvania Public Utility Comm’n. v. Duquesne Light Company*, Docket No. R-2013-2372129, 2014 Pa. PUC LEXIS 126, \*36-38 (Order entered March 27, 2014).

An Electric Distribution Company’s (“EDC”) provision of default electric service is a creature of the Electricity Generation Customer Choice and Competition Act, variously referred to as “Chapter 28” the “Choice Act,” or the “Competition Act.” Act 138 of 1996 (Pa. 1997), as amended 66 Pa. C.S. §§ 2801 - 2815; See also *In re Electric Generation Choice and Competition Act – Qualified Rate Order Applications*, Docket No. M-00960890 F.0002, 176 P.U.R. 4th 75, 1997 Pa. PUC LEXIS 12, \*2 (Feb. 13, 1997); *In re Joint Petition of Metropolitan Edison Company at al. for Approval of their Default Service Programs*, Docket No. P-2011-2273650,

2012 Pa. PUC LEXIS 937, \*9 (June 15, 2012). The Commission has previously summarized the legal standard in default service petition proceedings as follows:

The Competition Act requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4). The Competition Act does not, however, require a specific default service rate design methodology. *Id.*

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). See, *Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1802 to 69.1817, addressing default service plans.

*Petition of PECO Energy Co. for Approval of its Default Service Program*, Docket No. P-2012-2283641, 2012 Pa. PUC LEXIS 1465 (August 27, 2012).

Accordingly, it is the Company’s burden to prove, by the preponderance of the evidence, that the EV-TOU rate offering, as modified by the Joint Stipulation of the Company, NRDC, OCA, OSBA, and CAUSE-PA serves the public interest, is consistent with the statutory mandates and policy goals of the Choice Act and its amplifying regulations. *Id.*

**II. EGS Parties’ request that the EV-TOU program be tabled pending stakeholder discussions violates Act 129’s mandate that default service plans offer smart-metered customers time of use rates.**



Prior to the Choice Act, electricity was sold to customers in Pennsylvania pursuant to a “monopoly structure[,]” whereby customers paid their local electric utility both for the distribution as well as the generation of electricity. *Petition of PECO Energy Company for Approval of Retail Access Pilot Program*, Docket No. P-0097110, 1997 Pa. PUC LXIS 47, \*3-4 (Aug. 21, 1997). The Choice Act altered this landscape by requiring the unbundling of electric generation and distribution and allowing customers “to choose among electric generation suppliers [“EGS”] in a competitive generation market through direct access.” 66 Pa. C.S. § 2804(2). The “ultimate goal” of Chapter 28 is “to allow all Pennsylvania retail electric customers direct access to a competitive generation market while, at the same time, enjoying the continued reliability and safety of existing electric industry services.” *Petition of PECO*, 1997 Pa. PUC LXIS 47, \*3-4; *see also* 66 Pa. C.S. § 2802(12). While the Choice Act requires that customers have the option of shopping with an EGS, there is no mandate on the part of a customer to do so; an EDC retains a “statutory obligation to provide default electric generation service to its customers who do not choose an alternative energy supplier[.]” *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pennsylvania Public Utility Comm’n.*, 120 A.3d 1087, 1089 (Pa. Cmwlth. 2015); *see also* 66 Pa. C.S. § 2803 (defining “default service provider”).

The General Assembly’s enactment of Act 129 of 2008 tempered the Choice Act’s *laissez-faire* approach to rate design, and the obligations of default service providers were heightened so as to advance the overall “purpose of reducing energy consumption and demand.” *Romeo v. Pennsylvania Pub. Util. Comm’n.*, 154 A.3d 422, 424 (Pa. Cmwlth. 2017). In enacting Act 129, the General Assembly demonstrated an intention that the provision of default service “move away from a ‘prevailing market price’ standard and to instead require each EDC to procure a prudent mix of products to achieve least cost over time.” *Joint Petition of Metropolitan*

*Edison Company et al.*, P-2011-2273650, 2012 Pa. PUC LEXIS 937, \*16-17 (June 15, 2012). In furtherance of this goal, Act 129 “set in motion a multi-phase implementation process that addresses electric distribution companies and default service provider responsibilities,” specifically noting that “time-of-use rates” are among the approaches DSPs must consider. *Romeo*, 154 A.3d at 424; *see also* 66 Pa. C.S. § 2807(f) (outlining duties of DSPs with respect to smart meter technology and time of use rates). In furtherance of its goal to reduce energy consumption and demand, Act 129 explicitly requires default service providers to explore offering time-of-use rates:

By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. 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 [66 Pa C.S. § 6907(f)(2)(iii)]. Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

66 Pa. C.S. § 6807(f)(5). The Commission has previously noted that Section 2807(f)(5) mandates an EDC “*must* submit one or more TOU rates and real-time price plans to the Commission in their default service plans,” and that a default service provider “*is required to offer a TOU rate option* to its default service customers.” *Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (P-2012-2302074), 316 P.U.R. 4th 167, 2014 Pa. PUC LEXIS 690, \*9-10 (September 11, 2014) (emphasis added).

Despite the statutory command that TOU rates be a part of any default service plan, non-shopping customers in Duquesne Light’s service area have not had any TOU rate option since June of 2017. DLC Stmt. 4 (Dir. Test. Of David Ogden), 13:20-22, 14:1-3. Indeed, a dearth of

TOU offerings throughout the Commonwealth was one factor that led to the Commission's Order of February 26, 2019, initiating an investigation into how widescale deployment of smart meter technology "can be utilized to design default service rates in a way that better aligns associated wholesale cost allocation with retail cost allocation." *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101, 1 (Order entered Feb. 26, 2019). With respect to TOU rates, the Commission noted that increasingly widespread adoption of "advance[d] metering and settlement technologies" both stands to trigger and facilitate the implementation of "the default service design requirements enumerated in Act 129, 66 Pa. C.S. § 2807(f)(5)." *Id.* at 5 (emphasis added). Specifically, the Commission posed the question whether "default service rates evolve to include time of use (TOU) structures, such as on and off-peak rates, super off-peak rates, critical peak pricing (CPP) periods, or peak time rebate structures?" *Id.* at 6.

Following the submission of stakeholder comments, the Commission concluded its investigation with a Secretarial Letter dated January 23, 2020. *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (January 23, 2020). With this Secretarial Letter, the Commission noted stakeholder concerns with residential TOU rate offerings as a general matter: "Consumer representatives stressed that residential, especially low-income customers, electricity consumption is not as adaptable to TOU rates as are larger commercial customers...The Commission acknowledges the past difficulties of implementing TOU rates in a default service context." *Id.* at 6. The Secretarial Letter makes clear, however, the Commission's view on the effect of the plain language of Section 2807(f)(5): default service customers *must* have the ability to select one or more TOU offering. *Id.* at 6, n.4.

Indeed, the Secretarial Letter notes that electric vehicles are a sensible context by which to resolve what has historically been a struggle against Act 129's TOU mandate:

[A]s EV usage and distributed energy deployment increase in the coming decades, TOU rates should be considered...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.

*Id.* at 6-7.

Of the intervening parties that offered comments on the Company's DSP IX proposal, only one intervenor has requested that the Commission not approve the EV-TOU program: the EGS Parties. EGS Parties Stmt. 1 (Dir. Test. of Christopher Kallaher) 18-22. Specifically, the EGS parties request that implementation of the rate be tabled for either "a working group of interested stakeholders" or "an RFI for proposals from competitive entities...that could be implemented within the scope of Duquesne's DSP." *Id.* at 21:19-23, 22:1-14. However, the testimony and evidence establish that the proposed EV-TOU rate is the only means by which the Company will be able to fulfill its obligation to offer all smart-metered customers a TOU rate. *See* DLC Stmt. 4 (Dir. Test. Of David Ogden), 13:20-22, 14:1-3 (noting that the Company presently offers no other TOU supply rate offering). Accordingly, accepting the EGS parties' invitation to table the EV-TOU offering pending stakeholder conferences and RFP procedures violates the plain requirements of Act 129, and as such should be rejected.

To be sure, the Commission has previously approved default service offerings where an EDC establishes TOU programs through one or more EGS. *See, e.g.*, DLC Stmt. 1 (Test. Of David Ogden) 13:22 – 14:1-3 (discussing the Company's TOU-3 program); *see also* *Petition of PPL Electric Utilities Corporation for Approval of a New Time-of-Use Program*, Docket No. P-

2013-2389572, 316 P.U.R. 4th 167, 2014 Pa. PUC LEXIS 690, \*45 (“PPL can use EGSs to satisfy its statutory obligation to offer TOU service to its default service customers”). However, this approach was expressly condemned in the Commonwealth Court’s decision in *Dauphin County Indus. Dev. Authority v. Pennsylvania Pub. Util. Comm’n.*, 123, A.3d 1124, 1130-1136 (Pa. Cmwlth. 2015) (holding Section 2807(f)(5) required PPL itself, as the default service provider in its service area, to provide TOU rates to customer generators rather than shopping that role out to an EGS). In any event, the record does not support the notion that any EGS is presently prepared to fulfill that role for the Company’s service area. No evidence entered in this proceeding indicates that there is any EGS offering a time-of-use rate to which an EV user in the Company’s service area might turn. Indeed, the EGS Parties admit that they themselves are not presently aware of any EGS operating in Pennsylvania that makes an EV-TOU offering. Ex. KAH-106 (Resp. of Chris Kallaher to DLC Interrog. 1). To the extent that the EGS parties suggest an RFI process as a means of developing and offering a TOU rate to default service customers, it is clear that the EGS Parties have failed to craft a meaningful proposal capable of meeting Act 129’s statutory requirements. The Company presented testimony on underdevelopment of the EGS Parties’ RFI proposal as follows:

- Q. Do you agree with Mr. Kallaher’s recommendation that the Company “issue an RFI for proposals for 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”?
- A. No. I do not understand this recommendation, and based on his response discovery, it does not seem that Mr. Kallaher has any specific ideas to offer on this topic. In discovery, Mr. Kallaher was unable to provide any concrete suggestions regarding the products or programs that the Company might procure through this RFI. Similarly, Mr. Kallaher could not suggest who – other than EGSs – might be invited to respond to this RFI. See Exhibit KMS-1R. I therefore am unclear about exactly what Mr.

Kallaher is proposing, and in the absence of further detail, I cannot meaningfully respond to his recommendation.

DLC Stmtnt 5-R (Rebuttal Test. of Katherine Scholl), 24: 9-20; *See also* Ex. KMS-1R, 3-5 (Resp. of EGS Parties witness Christopher Kallaher to interrogatories, noting that “I did not have any specific products or programs in mind when I made this suggestion[,]” that “I did not envision that any particular entity would be invited to respond to the RFI[,]” and “I did not estimate the cost to develop and implement the RFI”). Because stakeholder meetings lacking specific goals plainly do not fulfill Act 129’s plain requirement that TOU rates be available to default service customers, the EGS Parties suggestion to suspend implementation of the Company’s EV-TOU program should be rejected.

**III. EGS Parties’ argument that the EV-TOU program should be tabled pending stakeholder discussion lacks substantial evidentiary support**

Even were the plain statutory commands of Act 129 to be set aside, the testimony and evidence clearly counsel against the EGS Parties’ requested tabling of the EV-TOU rate. The EGS Parties object to the implementation of the Company’s EV-TOU rate initially on procedural grounds, arguing that that the Company’s offering “short-circuited what was intended to be a more robust collaboration among stakeholders regarding the possible development of TOU rates for EVs.” EGS Parties Stmtnt 1 (Dir. Test. of Christopher Kallaher) 19:2-4. The EGS Parties also raise the more substantive concern that approval of the EV-TOU rate will “have a strongly negative impact on the continued development of the competitive market in Pennsylvania.” *Id* at 19:10-11. For the reasons that follow, the EGS Parties’ testimony in either regard is not credible.

With respect to the EGS Parties’ procedural objections to the Company’s EV-TOU proposal, much of the dispute centers on the party’s competing position on the meaning of the Secretarial Letter issued concluding proceedings in *Investigation into Default Service and PJM*

*Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (January 23, 2020). Compare EGS Parties Stmt. 1 (Dir. Test. of Christopher Kallaher) 19:4-34, 20:1-9 (discussing Secretarial Letter and arguing that “[c]onsidering how to make EV specific TOU rate offerings available to consumers is not the same as encouraging EDCs to be the entities providing those rates”); with NRDC Stmt 2 (Rebuttal Test. of Kathleen Harris) 3:3-18 (discussing EGS’ Parties characterization of the Secretarial Letter and noting “that is not what the Secretarial Letter says”); DLC Stmt 5-R (Rebuttal Test. of Katherine Scholl) 21:18-22, 22:1-6 (arguing that considering “how EV specific TOU rate offerings could be made available to consumers” is “exactly what the Company has done” by way of its EV-TOU offering). While the face of the Commission’s Secretarial Letter speaks for itself, NRDC would note that the Order initiating the Investigation was clearly designed to inquire “how the growth in advance[d] 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)*.” Docket No. M-2019-3007101 (February 26, 2019) (emphasis added). That is, the Secretarial Letter arose from a process that explicitly contemplates Act 129’s requirement that smart-metered default service customers have access to TOU rates, and stemmed in part from a concern that default service programs throughout the Commonwealth were failing that statutory mandate. *See id.* As such, the notion that a DSP might fulfill the spirit of the Secretarial Letter by simply convening “a working group of interested stakeholders to examine the issues” is misplaced. EGS Parties Stmt. 1 21:18-21. Indeed, it strains credulity to suggest that by proposing an EV TOU rate in its DSP, a default service provider somehow contravenes a suggestion that “all parties participating in the upcoming DSP proceedings [] consider how EV specific TOU rate offerings could be made available to consumers.” Docket No. M-2019-3007101 (January 23, 2020).

Perhaps more to the point, the EGS Parties' stated concern that there was not sufficient stakeholder outreach and engagement prior to the Company's filing of the instant DSP proposal is unsupported by the record. To wit, in her rebuttal testimony, Katherine Scholl notes as follows on behalf of the Company:

[C]ontrary to Mr. Kallaher's suggestions, the Company did engage with EGSs about its proposed EV-TOU Pilot program prior to filing... For example, consistent with the parties' settlement in the Company's 2018 base rate proceeding (Docket No. R-2018-3000124), during DSP VIII, the Company recently held two collaborative stakeholder meetings to discuss its TOU pilot and plan rates on April 23, 2019 and June 20, 2019. Despite the fact that EGSs, including Mr. Kallaher's employer Direct Energy, were invited to participate, only one EGS attended. That EGS was not an active participant and did not provide any TOU suggestions or proposals for consideration in DSP IX as requested by the Company. The Company has provided ample opportunity for EGSs to engage on this topic.

DLC Stmt. 5R, 20:16-22, 21:1-16. Additionally, as both the Company and NRDC noted in their testimonies, the instant DSP proceedings themselves represent a ripe and suitable forum for the EGS Parties' suggestions on how EV-TOU rates could be offered to customers. *Id* at 20:12-15 ("by proposing an EV-TOU pilot program as part of the DSP proceedings, the Company is engaging interested parties, including EGS Parties and Mr. Kallaher himself, in a robust discussion 'among stakeholders regarding the possible development of TOU rates for EVs'"); NRDC Stmt 2, 3:12-16 ("The Company's proposal of an EV specific TOU rate in this proceeding is the product of consideration of how such rates could be made available to customers, and the testimony presented by NRDC as well as other parties constitutes further consideration"). Despite the availability of this forum, the EGS Parties fail to offer any substantive suggestions on EV-TOU rate construction, whether within the context of default service or the competitive marketplace. Ex. KMS-1R 3 (Resp. of witness Christopher Kallaher to interrogatories, noting that "I did not have any specific products or programs in mind" that might



“enhance the development of the EV market[,] could be provided by competitive entities, and[] could be implemented within the scope of the Company’s default service program”). Moreover, the EGS Parties are not aware of any EGS-sponsored EV-TOU offerings in the Commonwealth. *Id.* at 1-2. It is unclear what further value there is in soliciting suggestions from EGSs that lack “any specific products or programs” to offer in response to such a request. *Id.* at 3.

The record similarly belies the EGS Parties’ stated concern that the Company’s EV-TOU program will harm a nascent and developing competitive marketplace for EV-owning customers. EGS Parties Stmt. 1, 20:10-22, 21:7-16. The essence of the EGS Parties’ testimony in this regard is that “the market for EVs and secondary parts of that market such as EV-specific TOU rates, is clearly only just beginning to take shape in Pennsylvania,” and that, as such the present adoption of EV-TOU rates in default service plans will leave EGSs in the future unable to compete with “cost-of-service options that leverage default service rates that EGSs see as already being subsidized by delivery rates[.]” *Id.* at 21:9-10. This is, first of all, a quarrel that the EGS Parties more properly have with the General Assembly rather than the Company; a default service provider’s obligation to provide rates at the “least cost over time” and to provide TOU rates to smart metered customers both stem from the plain statutory commands of Act 129, rather than some novel feature of the Company’s DSP IX plan. *Joint Petition of Metropolitan Edison Company et al.*, P-2011-2273650, 2012 Pa. PUC LEXIS 937, \*16-17 (June 15, 2012); *Romeo*, 154 A.3d at 424. In any event, to state that the EV-TOU program “[a]bsolutely” will “impede suppliers who may already offer such programs or be planning such programs” strains credulity in the face of the EGS Parties’ admitted lack of knowledge as to whether any EGS actually does or is planning to offer such a program. *Compare* EGS Parties Stmt. 1: 21:7-9; with Ex. KMS-1R, 3-5.

Moreover, the EGS Parties offer no concrete reasons why the existence of default service TOU rates inherently prevents EGSs from developing their own EV-TOU products, and no evidence in this proceeding indicates that the generation supply market has been hampered in other parts of the country where EV-TOU rates have been implemented. NRDC Stmt. 2, 12-20 (“Mr. Kallaher expresses a series of concerns on how the EV-TOU rate will affect competitiveness in Pennsylvania, however, he does not provide any examples or evidence that this has taken place in any of the jurisdictions that have implemented EV-TOU rates, despite the fact that such programs have been in place for several years...in fact, the EGS Parties should be encouraged to propose similar programs”). The EGS Parties insist that there is nothing with respect to “the benefits of EVs and their incorporation into the grid that could not be achieved through the competitive market.” EGS Parties Stmt. 1-R, 9:13-15. To be sure, both NRDC and the Company agree that EGSs stand to play an important role in serving EV customers, if and when the EGS parties are prepared to offer EV-specific products. DLC Stmt 5-R, 23:2-4 (“The Company’s proposal will not foreclose the potential for EGS and others to offer similar or other innovative solutions to customers”); NRDC Stmt. 3, 5:12-14 (“Like the Company, I support the offering of EV-TOU rates by EGS. And as I explain further in my rebuttal testimony, DLC’s implementation of an EV-TOU rate by no means precludes the EGS’ from developing their own TOU rates”). Indeed, an examination of both the *Investigations into Default Service* proceedings as well as the testimony and evidence in this proceeding indicates that a great deal of innovative EV-specific rate options remain to be explored. For instance, the Order initiating the *Investigations* proceedings asks whether “default service rates [should] evolve to include time-of-use (TOU) structures such as on and off-peak rates, super off-peak rates, critical peak pricing (CPP) periods, or peak time rebate structures?” Docket No. M-2019-3007101 (February 26,

2019). The Company's instant EV-TOU proposal schedules "peak" rates to occur between 1:00pm to 9:00pm, "shoulder" rates from 6:00am to 1:00pm as well as 9:00pm to 11:00pm, and "off-peak" rates from 11:00pm to 6:00 am. DLC Stmt. 5, 22:20-24. This relatively straightforward three-period design does not include other novel TOU structures the Commission expressed an interest in exploring such as super off-peak rates, CPP periods, or peak time rebates. *See id.* As such, there remains significant room for the generation supply market to innovate in exploring how they might serve the EV market.

For the foregoing reasons, both the EGS parties' process objections to the EV-TOU rate as well as their stated concern that TOU offerings as part of a DSP will hinder competitive markets are without merit. Rather, the testimony and evidence establish that the instant EV-TOU proposal is actually the sort of "consideration" envisaged by the Secretarial Letter, and that generation suppliers will remain free to develop their own EV-TOU offerings. Accordingly, the EGS Parties' request to table the implementation of the Company's EV-TOU program in favor of stakeholder meetings and/or an RFI solicitation should be rejected.

**IV. The Company's proposed EV-TOU rate, as modified by the Joint Stipulation, should be approved.**

The testimony and evidence establish that adoption of the Company's EV-TOU proposal is consistent with the requirements and policy goals of the Choice Act, Act 129, their amplifying rules, and serves the public interest. As noted in the Company's direct testimony, the EV-TOU rate "provides environmental, economic, and operation benefits for customers and for the Company." DLC Stmt. 5, 20:5-7. EVs are well-suited to TOU rates: "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." *Id.* at 20:13-14. Implementation of an EV-TOU is also timely,

“[a]s 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.” *Id.* at 20:17-19. Accordingly, by providing an incentive to charge during off-peak periods, the EV-TOU rate’s work toward “flattening the growing EV load may also help reduce the need for additional distribution upgrades, which benefits all distribution customers[.]” *Id.* at 20:21, 21:1-2. Rising EV owners, which EV-TOU rates encourages, also portends a reduction in greenhouse gas emissions, and EV drivers save expenses of fueling and maintenance over the lifetime of their vehicles. *Id.* at 21:8-21. Thus, as a preliminary matter, the Company’s proposed EV-TOU rate serves the purposes of Act 129 both by reducing energy consumption and demand, and by helping provide service at the least cost over time to default service customers. *Joint Petition of Metropolitan Edison Company et al.*, P-2011-2273650, 2012 Pa. PUC LEXIS 937, \*16-17 (June 15, 2012); *Romeo*, 154 A.3d at 424.

The Joint Stipulation of the Company, NRDC, CAUSE-PA, OCA, and OSBA make several modifications to the EV-TOU program. *See generally* Joint Stipulation. It is respectfully submitted that the EV-TOU program, as modified by the Joint Stipulation, serves the public interest given the myriad benefits of EV-TOU rates to the environment, EV drivers, and ratepayers as a whole. The Joint Stipulation moreover serves the public interest by obviating the need for any further litigation of the issue by the stipulating parties. NRDC specifically highlights the modifications of the EV-TOU program provided for in the Joint Stipulation: (1) educating customers on the potential benefits of separately metering EV load, (2) educating C&I customers on the consequences of exceeding the 200kW eligibility cap and how separately metering EV load may help retain eligibility to participate in the program, (3) requesting certain customer-type information from C&I participants at the time of program enrollment. As

described more fully below, each of these proposed modifications is supported by a preponderance of the evidence, and accordingly should be incorporated into the Commission's approval of the EV-TOU program.

*A. The Company should educate participating customers about on the differences between whole-premises TOU rates and separate metering, and explicitly inform customers they have the option of separately metering EV load.*

In its direct testimony, the Company notes that the EV-TOU rate is being offered as a whole-premises rate. DLC Stmtnt 5, 22:5-10 (“The Company is proposing that the EV-TOU rate would apply to customers’ total usage”). The Company’s stated rationale is that whole-premise rates are simple and cost effective in that they do not require customers to purchase a separate meter to measure their EV-specific load. *Id.* The Company notes that most other EV-TOU offerings in other jurisdictions do not require any additional metering as a condition of enrollment. *Id.* (citing Smart Electric Power Alliance, *Residential Electric Vehicles that Work* (November 2019)).

While the Company describes the proposed EV-TOU program as whole-premises rate, the Company has also indicated that “customers have the option of setting up a separate service and second meter exclusively for EV charging if that is their preference, but the Company did not want to make such separate service a requirement for customers to access the EV TOU rate.” NRDC Stmtnt 1, 11:19-22, 12:1-2; *see also* KAH-102 (Company response to NRDC Interrogatory I-7). NRDC supports the Company’s position that separate and/or submetering should not be a necessary condition for participation in the EV-TOU program. However, the potential benefits to certain customer having an EV-specific TOU rate warrants the Company’s making sure that enrolling customers understand the potential benefits and tradeoffs of opting for

either approach. To wit, segregating a customers' EV load for TOU billing is attractive to customers who have limited ability to shift their non-EV load, and limits the risk of their electric bills increasing as compared to a whole-premises TOU rate. NRDC Stmt 1, 13:8-10. This may be especially true for C&I customers, given the increasing ripeness for medium- and heavy-duty vehicles for electrification, and the growing potential need for EV fleet charging. *Id.* at 14-18.

In its rebuttal testimony, the Company indicated its agreement with NRDC on the benefits of educating customers on their ability to opt between whole-premises rates and separately metering their EV load. DLC Stmt. 5R, 32:18-19, 33:1-3. The Joint Stipulation of September 30, 2020 provides that the educational materials will include information on “[t]he option, and potential benefits, for customers to elect to separately meter their EV load on the EV-TOU rate.” Moreover, the Joint Stipulation provides that the Company will provide a report on the EV-TOU Pilot Program prior to filing its next Default Service Plan, which will include, *inter alia*, information on the “[n]umber of customers on the EV-TOU rate who elected to install a separate Duquesne Light meter for their EV charging facilities.” Accordingly, the Commission should approve the EV-TOU program, subject to the Company’s provision of educational materials and collection of data consistent with the Joint Stipulation.

*B. The Company should specifically educate C&I customers on the potential for EV load to push customers' demands over the 200kW threshold and the option to separately meter EV load*

The Company’s proposal makes participation in the EV-TOU program available to three customer classes: Residential, Small C&I, and Medium C&I < 200kW. DLC Stmt. 5, 19:13-17. For C&I customers with an energy demand which nears the program eligibility cap of a monthly average of 200kW, utilizing a whole-premises TOU rate presents the potential to “tip” their

usage over the eligibility threshold, removing them from participation in the EV-TOU program. NRDC Stmt. 1, 18:8-15, 19:1-6; *see also* NRDC Stmt. 3, 2-3. While customers with a greater than 200kW average monthly demand have access to other forms of time-varying rate options, analysis presented by NRDC establishes that being shifted onto Large C&I rate schedules would be disadvantageous for several sectors. *Id.*; Ex. KAH-107. Accordingly, it is essential that C&I customers understand the implications of when their usage approaches the program eligibility threshold, and that they be made aware of the possibility of separately metering their EV load. NRDC Stmt 1 18:8-15, 19:1-6, NRDC Stmt. 3, 3:1-3.

In response to NRDC’s testimony raising this concern, the Company has stated that, “as part of its educational materials to nonresidential customers, [the Company] will provide information and resources to customers addressing the issue.” DLC Stmt 5R, 33:5-17. The parties to the September 30, 2020 Joint Stipulation have agreed that the Company will provide educational materials that include “[d]iscussion of the 200kW threshold for C&I customers, including recognition that customers whose demands exceed 200kW are not eligible for the EV-TOU rate but are instead eligible for hourly price service under Rider No. 9.” Accordingly, the Commission should approve the EV-TOU program, subject to the Company’s provision of educational materials consistent with the terms of the Joint Stipulation.

*C. The Company should collect program enrollment data in a manner consistent with the terms of the Joint Stipulation*

The testimony and evidence favor the collection of data on enrollment levels, in a manner outlined in the Joint Stipulation. On behalf of CAUSE-PA, witness Harry Geller suggests that the Company should conduct a holistic evaluation of demographic data of participants in the EV-TOU program. CAUSE-PA Stmt. 1, 25. In arguing for the collection of personal demographic

information, CAUSE-PA appears to be driving at the notion that the “proposed EV-TOU rate generally benefits higher income individuals, who can afford to purchase an electric vehicle[.]”

*Id.* Other parties objected to the collection of the demographic data that CAUSE-PA proposed to request of program enrollees given the potential to deter program enrollment. NRDC Stmt. 2, 7-8.; DLC Stmt. 6:2-7. NRDC offered testimony that supports “the collection of demographic information from residential customers if it can be done in a way that does not deter participation because of privacy concerns.” In any event, NRDC witness Katherine Scholl notes that, “[a]ssuming, for the sake of argument, that 100 percent of customers who use the EV-TOU rate between now and 2025 will be higher-income individuals, I still believe the modest investments in education and outreach that the Company is proposing during this time period are in the public interest...[E]lectric vehicles generate net revenue in excess of the cost to serve their load, and thereby put downward pressure on rates for all consumers.” NRDC Stmt 2, 7-8.

The parties also presented testimony on the topic of the collection of data from C&I customers on the nature of their business. The Company objected to the collection of such data on the basis that it would need to “implement a new process to request” such data from customers. DLC Stmt. 5-SR 6:11-18. In her oral rejoinder testimony on behalf of NRDC, Kathleen Harris noted that the Company already proposes to collect novel kinds of customer data as part of the EV-TOU enrollment process, including proof of vehicle registration. N.T. (transcript forthcoming). Collection of data on customer type (*i.e.*, whether a customer is a multi-unit dwelling, gas station, shopping center, warehouse, hotel, standalone charging meter, or other) would aid in the learning and understanding of who EV-TOU rates are attractive to, who may need additional outreach, or whether additional rate structures should be explored. *Id.*



The Joint Stipulation entered into by the Company, NRDC, CAUSE-PA, OCA, and OSBA on September 30, 2020 provides that the Company will provide a report on the EV-TOU Pilot Program, and that the report will include, *inter alia*, “[c]ustomer enrollment levels by customer class (i.e., residential, small commercial, small industrial, medium commercial, and medium industrial) and enrollment levels of confirmed low-income customers and multi-unit residential buildings.” Joint Stipulation, 1. It is respectfully submitted that the Joint Stipulation reflects a carefully crafted compromise position of all of the stipulating parties as to what customer enrollment data the Company should collect as part of the EV-TOU program. The Joint Stipulation serves the public interest by obviating the need for further litigation of this issue by the Stipulating parties. *Pennsylvania Public Utility Comm’n. v. Duquesne Light Company*, Docket No. R-2013-2372129, 2014 Pa. PUC LEXIS 126, \*36-38 (Order entered March 27, 2014). Accordingly, the Commission should approve the EV-TOU program consistent with the terms of the joint stipulation.

### **CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the Commission should approve the implementation of the Company’s EV-TOU rate, subject to the modifications provided for in the Joint Stipulation of September 30, 2020, between the Company, NRDC, CAUSE-PA, OCA, and OSBA.

Respectfully submitted this 30<sup>th</sup> day of September, 2020.

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## Appendix A – Proposed Findings of Fact

1. EVs are well-suited to TOU rates, as they are an ideal flexible load and can be easily programmed to begin charging at pre-defined times. DLC Statement 5, 20; NRDC Stmtnt 1, 3-7.
2. Implementation of an EV-TOU rate is also timely, as the number of EVs in the Company's service territory is anticipated during the timeframe of DSP IX. DLC Statement 5, 20; NRDC Stmtnt 1, 3-7.
3. EV-TOU rates flatten the growing EV load, which also reduces the need for additional distribution upgrades, in turn benefitting all customers. DLC Statement 5, 20; NRDC Stmtnt 1, 3-10.
4. Increasing EV ownership, which EV-TOU rates encourages, also portends a reduction in greenhouse gas emissions. DLC Statement 5, 20; NRDC Stmtnt 1, 3-7.
5. EV drivers save expenses of fueling and maintenance over the lifetime of their vehicles. DLC Statement 5, 20; NRDC Stmtnt 1; NRDC Stmtnt 1, 3-7.
6. The EGS Parties proposal to table the EV-TOU rate pending stakeholder meetings and/or an RFI process will unduly delay realizing the positive effects of EV-TOU rates. *See* EGS Parties' Stmtnt. 1, 18-22; NRDC Stmtnt 2, 7.
7. The Company's proposed EV-TOU rate, as modified by the September 30, 2020 Joint Stipulation between the Company, NRDC, CAUSE-PA, OCA, and OSBA, will amplify the benefits of increasing EV penetration in the Commonwealth and in the Company's service area.

## Appendix B – Proposed Conclusions of Law

1. As the proponent of the EV-TOU program the Company bears the burden of proof by a preponderance of the evidence. 66 Pa. C.S. § 332(a); *Dutchland Tours, Inc. v. PA Public Utility Comm'n.*, 19 Pa. Commw. 1, 337 A.2d 922, 925 (1975); *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n.*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990).
8. A principle consideration in reviewing non-unanimous settlement agreements is whether the agreement serves the public interest. *Pennsylvania Public Utility Comm'n. v. Duquesne Light Company*, Docket No. R-2013-2372129, 2014 Pa. PUC LEXIS 126, \*36-38 (Order entered March 27, 2014).
9. A default service offering should be approved where it is consistent with the statutory mandates and policy goals of the Choice Act and Act 129 of 2008, as well as their amplifying regulations. *Petition of PECO Energy Co. for Approval of its Default Service Program*, Docket No. P-2012-2283641, 2012 Pa. PUC LEXIS 1465 (August 27, 2012).
10. Act 129 requires default service providers to offer one or more time-of-use products to default service customers. 66 Pa. C.S. § 6807(f)(5); *Dauphin County Indus. Dev. Authority v. Pennsylvania Pub. Util. Comm'n.*, 123, A.3d 1124, 1130-1136 (Pa. Cmwlth. 2015).
11. The Company's EV-TOU Pilot Program, as modified by the Joint Stipulation entered into on September 30, 2020 by the Company, NRDC, CAUSE-PA, OCA and OSBA, fulfills the requirements and policy goals of the Choice Act and Act 129.

12. The Company's EV-TOU Pilot Program, as modified by the Joint Stipulation entered into on September 30, 2020 by the Company, NRDC, CAUSE-PA, OCA and OSBA, serves the public interest.

### **Appendix C – Proposed Ordering Paragraph**

1. The Company’s proposed Electric Vehicle Time of Use (EV-TOU) Pilot Program is approved, as modified by the September 30, 2020 Joint Stipulation of Duquesne Light Company, the Natural Resources Defense Council (“NRDC”), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Office of Small Business Advocate (“OSBA”) , the Office of the Consumer Advocate (“OCA”).

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing *Brief of the Natural Resources Defense Counsel* upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §§ 1.54:

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