PULP
PENNSYLVANIA
UTILITY LAW PROJECT

October 13, 2020

Via E-File

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue – Suite 220
Pittsburgh, PA 15222
mhoyer@pa.gov

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

Reply Brief of CAUSE-PA

Dear Judge Hoyer,

Please find the Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), for consideration in the above referenced matter.

Copies will be circulated in accordance with the attached Certificate of Service.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
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CC: Certificate of Service
Secretary Rosemary Chiavetta

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify I have on this day served copies of the **Reply Brief of CAUSE-PA** in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) and consistent with the Commission's March 20, 2020 Emergency Order.

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October 13, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to arguments raised in the Main Brief of the Electric Generation Supplier Parties (EGS Parties).[1]

Consistent with the arguments advanced in CAUSE-PA's Main Brief, and as further explained herein, the proposals advanced by the EGS Parties in this proceeding should be rejected, as each fail to fulfill the applicable burden of proof and are likely to cause substantial harm to low income and other residential consumers.

Rather, CAUSE-PA urges Deputy Chief Administrative Law Judge Mark A. Hoyer and the Commission to adopt the provisions contained in the Joint Stipulation of Duquesne Light Company (Duquesne), CAUSE-PA, and the Office of Consumer Advocate (OCA) regarding Duquesne's Customer Assistance Program (CAP) shopping rules and Standard Offer Program (SOP) (hereinafter, Joint CAP/SOP Stipulation), as well as the terms contained in the Joint Stipulation of Duquesne, the Natural Resources Defense Council, CAUSE-PA, OCA, and the Office of Small Business Advocate (OSBA) regarding Duquesne's Electric Vehicle Time of Use Rate proposal (hereinafter, Joint EV-TOU Stipulation). The terms of the Joint Stipulations are soundly within the Commission's jurisdiction to adopt, and are critically necessary to remediate the certain and substantial financial harm to low income customers and other residential ratepayers that may otherwise result.

For the sake of brevity, CAUSE-PA will not reiterate the extensive legal and policy arguments raised in its Main Brief in support of the Joint Petitions and in opposition to the

[1] The EGS Parties include: 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.

proposals of the EGS Parties in this proceeding. To the extent an argument raised in the EGS Parties' Main Brief was already addressed in the context of CAUSE-PA's Main Brief, CAUSE-PA does not intend to respond – and instead incorporates its earlier arguments by reference herein.

II. PROCEDURAL HISTORY AND BACKGROUND

CAUSE-PA incorporates the extensive procedural history and background information contained in its Main Brief. (CAUSE-PA MB at 3-10).

On October 6, 2020, ALJ Hoyer issued a First Interim Order admitting the Joint CAP/SOP Stipulation and the Joint EV-TOU Stipulation, and requiring parties to respond to the Joint Stipulations in Reply Briefs. (First Interim Order at 2-3). CAUSE-PA addressed the proposals in the Joint CAP/SOP in its Main Brief, and indicated strong support for approval of the terms contained in both Stipulations therein. To the extent any new arguments or facts not in the record are presented in the other parties' Reply Briefs in response to the Stipulations, CAUSE-PA reserves the right to file an appropriate Motion and asserts that the parties should be provided an opportunity to respond through a Supplemental Reply Brief.

III. LEGAL STANDARD / BURDEN OF PROOF

CAUSE-PA incorporates the legal standard and burden of proof contained in its Main Brief. (CAUSE-PA MB at 11).

IV. ARGUMENT

A. CUSTOMER ASSISTANCE PROGRAM SHOPPING

CAUSE-PA stands firmly on the conclusion reached in its Main Brief with regard to CAP shopping: The only CAP shopping proposal on the record that is supported by substantial record evidence is the proposal advanced by Duquesne, CAUSE-PA, and OCA in the Joint CAP/SOP Stipulation to maintain the status quo with regard to CAP shopping until these complex legal and

policy issues are fully litigated and resolved in the context of the ongoing PPL DSP proceeding. As explained at length therein, the Commission has the clear legal authority to continue the status quo, which prevents CAP customers from shopping while enrolled in CAP and receiving ratepayer supported bill assistance through the program. (CAUSE-PA MB at 15-17). To the contrary, there is no justification for adopting the CAP shopping proposals advanced by the EGS Parties which would expose economically vulnerable CAP customers to further financial harm, and are unsupported by data or record evidence in this proceeding. (CAUSE-PA MB at 32-35).

CAUSE-PA will not reiterate its lengthy arguments – or the overwhelming record evidence in support thereof. Rather, CAUSE-PA responds to the EGS Parties Main Brief for the limited purpose of explaining the legal fallacy of the EGS Parties' Constitutional arguments, and its unsupported conclusion that CAP shopping rules violate the Electricity Generation Customer Choice and Competition Act (Choice Act).

1. The EGS Parties' Constitutional arguments are legally unsound, lack merit, and are moot in light of the Joint CAP/SOP Stipulation.

In relevant part, the EGS Parties claim that the Commission is without authority to approve the proposal of CAUSE-PA to return customers to default service upon entry into CAP. (EGS Parties' MB at 10). The EGS Parties point to Article 1, Section 10 of the United States Constitution and Article I, Section 17 of the Pennsylvania Constitution, and argue:

> If a customer presently has a contract with a supplier, it would be a violation of the Pennsylvania and the United States Constitutions 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.

(EGS Parties MB at 10). As support for this contention, the EGS Parties point to a Pennsylvania Supreme Court decision from 1936 which invalidated the Mortgage Deficiency Judgment Act of 1934. (EGS Parties MB at 11).[2]

As a function of the Joint CAP/SOP Stipulation, CAUSE-PA's proposal to return CAP customers to default service upon enrollment in the program is withdrawn at this time – making the EGS Parties' Constitutional arguments moot. Nevertheless, given the EGS Parties' egregious oversimplification of Constitutional law, the legal inaccuracy inherent in the EGS Parties' argument, and the likelihood the EGS Parties may try to assert the same argument in response to the proposals in the Joint CAP/SOP Stipulation, CAUSE-PA believes it prudent to briefly respond.

For a constitutional question to be implicated under the Contracts Clause, there must first be a "substantial impairment of a contractual relationship."[3] When evaluating the extent of a claimed contractual impairment, the courts will "consider whether the industry the complaining party has entered has been regulated in the past."[4] A significant factor in this analysis is whether the parties are "operating in a heavily regulated industry" – where changes in regulation that affect a contractual relationship are foreseeable.[5] The sale of electricity is a heavily regulated industry, and changes to regulation are plainly foreseeable. This is especially the case here, where CAP structure and participation are fully within Commission oversight responsibilities and the issue of CAP shopping – and the imposition of rules that may restrict CAP customer shopping – has been

[2] The EGS Parties cite to Beaver County Building & Loan Ass'n v. Winowich et ux., 187 A. 481, 488-499 (Pa. 1936).
[3] Energy Reserves Group v. Kan. Power & Light Co., 459 US 400, 411 (1983). The standard applied in challenges raised under Article I, Section 17 of the Pennsylvania Constitution is the same applied under Article I, Section 10 of the federal Constitution. See S. Union Twp. v. Pa. DEP, 839 A.2d 1179 (Pa. Commw. Ct. 2003).
[4] Energy Reserves Group, 459 US at 411-412.
[5] Id. at 413-414; see also Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff, 669 F.3d 359, 369 (3d Cir. 2012) ("When a party enters an industry that is regulated in a particular manner, it is entering subject to further legislation in the area, and changes in the regulation that may affect its contractual relationships are foreseeable.").

litigated in multiple proceedings over the last decade and is currently subject to an ongoing (though not final) statewide policy proceeding.[6]

Even if a regulation is found to substantially impair a contractual relationship (which is not the case here given the highly regulated environment and the clearly foreseeable nature of CAP shopping rules), it will still pass constitutional muster if the state has "a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem."[7]

Energy poverty is both a social and economic problem that universal service programs, such as CAP, are designed to address. (CAUSE-PA St. 1 at 31-33; CAUSE-PA MB at 17-18). Strong rules to protect economically vulnerable CAP customers and other residential ratepayers who subsidize CAP are a critical necessity to prevent certain, substantial, and continuing financial harm that has proven to result from CAP shopping – even when strong CAP shopping restrictions are already in place. (CAUSE-PA MB at 18-29). It is an explicit policy of the Commonwealth to ensure that universal service programs are accessible, appropriately funded, and cost effective to ensure that all Pennsylvania consumers can access and maintain affordable electric service to their home.[8] Thus, even if a proposed CAP rule were found to substantially impair a suppliers' contractual rights, the Commission nevertheless would fall squarely within its authority to implement rules and restrictions that serve a significant public purpose; namely, to remedy

[6] See CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018); Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order, Docket M-2018-3006578 (Feb. 28, 2019).

[7] Energy Reserves Group, 459 US at 412 (citing Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978)).

[8] 66 Pa. C.S. § 2802 (9), (10), (17) (Declaration of policy). **The Choice Act declared explicitly – as a matter of policy – that "electric service should be available to all customers on reasonable terms and conditions" and that "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low income to afford electric service."** 66 Pa. C.S. § 2802 (9)-(10) (emphasis added).

substantial, persistent, and well-documented financial harm to low income CAP participants and other residential ratepayers.

Finally, even if the constitutional provisions governing the impairment of contracts were to apply in this case, which is not the case, the Commission could still avoid the issue entirely by adopting a short-term transition plan. It is well settled that constitutional protections against the impairment of contracts applies to contracts in existence at the time a law is passed – not on future contracts. Adopting a short-term transition plan – with a date certain for when such a transition would end – would enable suppliers to adjust their contract terms to account for and accommodate CAP rules on a forward going basis. But again, such a plan is not necessary, given that the issue in this case is now moot and the Contracts Clause of the US and Pennsylvania Constitutions do not prohibit the Commission from setting CAP rules necessary to protect economically vulnerable low income consumers and the residential ratepayers who pay for the program – even if those rules would interfere with an existing supplier contract.

2. The Choice Act does not prohibit CAP shopping rules.

The EGS Parties claim that CAP shopping rules violate "the clear mandate" of the Choice Act "that requires that all customers [sic] classes have the ability to choose a supplier." (EGS Parties MB at 9 (citing 66 Pa. C.S. § 2806(a)).

Here, the EGS Parties raise a tired argument that has been addressed and dismissed by the Commonwealth Court of Pennsylvania on multiple occasions.[9] On each occasion, the Commonwealth Court has concluded that – pursuant to the co-extensive obligations of the

[9] See CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018); see also PPL Industrial Customer Alliance v. Pa. PUC, 780 A.2d 773, 782 (Pa. Commw. Ct. 2001).

Commission within the Choice Act – the Commission may restrict access to the competitive market:

> So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service, the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits.[10]

As explained at length in CAUSE-PA's Main Brief, this includes a ban on CAP shopping if there is otherwise no reasonable alternative on the record that would protect CAP customers and other ratepayers from financial harm – in direct contravention of the universal service provisions of the Choice Act. (CAUSE-PA MB at 15-29).

CAP provides critical rate assistance to economically vulnerable consumers, but enrollment and participation in this ratepayer supported program is voluntary. (CAUSE-PA St. 1-R at 8:11-21). If a CAP customer wishes to withdraw from the program in order to shop in the competitive market, they remain free to do so at any time. As Mr. Geller explained in rebuttal testimony:

> The Commonwealth Court has already recognized "the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits." The Court recognized that CAP customers are able to leave CAP at any time to participate in the competitive market without restriction. The obligation to provide low income programs falls on the public utility under the Choice Act, not the EGSs. Duquesne Light is required to administer its CAP in an efficient and cost effective manner, and must ensure that its programming is accessible to those in need. Rules to prohibit or otherwise restrict the offers that a CAP customer may select are imposed to reduce the financial harm to program participants and other ratepayers. **To participate in**

[10] CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015).

> [W]e conclude that the PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any other offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both [CAP and non-CAP participants].

Id. at 1103-04.

the program, the consumer must follow the rules, but they are under no obligation to participate in the program.

(CAUSE-PA St. 1-R at 8:11-21 (emphasis added) (quoting CAUSE-PA et al., 120 A.3d at 1104)).

Here, the proposal contained in the Joint CAP/SOP Stipulation would continue the current status quo and prohibit CAP customers from shopping in the competitive market while pertinent issues of law and public policy are resolved in the ongoing PPL DSP proceeding. Given the substantial evidence of harm contained in the record, even in jurisdictions that have imposed robust CAP shopping rules, it is squarely in the public interest and consistent with the Choice Act to approve the Joint CAP/SOP Stipulation and maintain the status quo.

B. STANDARD OFFER PROGRAM

In its Main Brief, the EGS Parties argue that the Commission should require Duquesne to force all new and moving customers to participate in the SOP. (EGS Parties MB at 8). As explained by the EGS Parties' witness Christopher Kallaher, the EGS Parties' proposal would require new and moving customers to be transferred to AllConnect (Duquesne's proposed third party SOP administrator) to select a participating supplier during the initial call to establish service – and before the customer would otherwise be solicited for enrollment in the SOP. (EGS Parties St. 1 at 16:7-8).

As support, the EGS Parties' Main Brief offers little more than a passing reference to the EGS Parties' direct testimony, in which the EGS Parties' witness Christopher Kallaher asserted that Duquesne may be violating anti-trust laws by starting new and moving customers on default service if they do not opt to participate in the SOP. (EGS Parties St. 1 at 15:16-17). The EGS Parties briefly explain that requiring new and moving customers to participate in the SOP "provides an immediate opportunity for customers to experience the competitive market, at a guaranteed rate." (EGS Parties MB at 8). According to the EGS Parties, "the competition act never

envisioned that after nearly 25 years, the vast majority of customers would still be receiving default service." (EGS Parties MB at 8-9). The EGS Parties assert that forcing new and moving customers into the competitive market through the SOP would rectify this claimed injustice. (EGS Parties MB at 9). These arguments are plainly without merit, and must be rejected.

First, Mr. Kallaher's assertion that Duquesne is in violation of antitrust laws for offering default service to customers in its service territory must be rejected. Such arguments are wholly unsupported by law or fact, and in any event would fall outside of the Commission's jurisdiction. (See CAUSE-PA St. 1-R at 9:18-20).

Moreover, CAUSE-PA disagrees with the assertion of the EGS Parties that the legislature ever contemplated a certain percentage or full participation in the market by residential consumers. To the contrary, the legislature designed competitive shopping as one option for consumers and specified default service to be another option for consumers in its own right – providing a stable, least-cost alternative for those who do not wish to shop in the competitive market. As Mr. Geller explained in rebuttal testimony:

> **Competitive suppliers have never been promised or guaranteed any specific share of the market.** I believe the slow-down in the growth of residential shopping rates – which Mr. Kallaher characterizes as "stagnation" – is more likely the result of approximately twenty years of consumers experiencing the effects of the competitive market on their pocketbooks as a result of persistent excessive pricing. **Consumers have the right to choose to remain in the security of default service, to venture into the market, or to go back and forth. Each of these affirmative choices is their statutory right.** It seems to me that this is precisely what the Choice Act intended.

(CAUSE-PA St. 1-R at 3:20-4:3 (emphasis added)).

Contrary to the EGS Parties' contention that the market is underperforming, and therefore requires the Commission to force new and moving customers to participate in the SOP, the evidence in the record in this proceeding makes it clear that consumers are affirmatively choosing to remain with default service (which is their statutory right to do) because of the very real risk of

encountering excessive prices in the competitive market. (CAUSE-PA St. 1-R at 5:1-4). As highlighted in CAUSE-PA's Main Brief, the record is replete with evidence of excessive charges in the competitive market that have cost shopping customers at least $102.9 million more than the price to compare from January 2017 to May 2020. (CAUSE-PA St. 1 at 8-9). Just in the first three months of the pandemic, from March through May, 2020, residential shopping customers in Duquesne's service territory were charged $8,208,121.09 more than they otherwise would have been charged for default service. (CAUSE-PA St. 1-R at 4:8-11; see also CAUSE-PA St. 1 at Exhibit 1 and 2). As Mr. Geller explained in rebuttal testimony,

> [M]any residential consumers are choosing not to shop out of concern they may be burned by a high cost contract. In light of this data and evidence, I am not at all surprised that shopping numbers have declined in recent years. This is a rational economic response of consumers to repeated and prolonged overcharging in the competitive market.

(CAUSE-PA St. 1-R at 5:1-4). Indeed, it is not surprising that market participation has declined over time, as this is a "rational economic response" to excessive charges and misleading contract terms.

The EGS Parties' proposal to force new and moving customers to enroll in Duquesne's SOP may in fact raise anti-competitive issues, as it would funnel new and moving customers to suppliers that are actively participating in the SOP or otherwise contract with AllConnect to offer their services – to the exclusion of suppliers that choose not to participate in the program or to otherwise contract with AllConnect. (See CAUSE-PA St. 1-R at 10:16-20).

CAUSE-PA is also concerned that the EGS Parties' proposal to force new and moving customers to participate in the SOP lacks critical details, and – if approved – may in fact function to circumvent Duquesne's current SOP. As proposed in the EGS Parties' direct testimony, the EGS Parties' SOP proposal was designed as "a robust alternative to the proposed SOP for new and

moving customers" (EGS Parties St. 1 at 16:7-8). Contrary to the EGS Parties' assertion in its Main Brief, the EGS Parties' SOP proposal was for Duquesne to transfer all new and moving customers to AllConnect (Duquesne's proposed SOP administrator, which also offers other services for moving customers) to select a supplier *during* initial service enrollment, *and prior to being offered SOP enrollment at the conclusion of the call*. (EGS Parties St. 1 at 16:7-8; CAUSE-PA St. 1-R at 10:5-15). As a practical matter, Mr. Geller explained: "If all new and moving customers are required to select a supplier during the initial service enrollment, then no residential customer would be eligible to receive a discount through the SOP because they would have already selected a supplier by the time the SOP is offered at the conclusion of the call." (CAUSE-PA St. 1-R at 10:11-15).

Finally, and critically, CAUSE-PA opposes the EGS Parties' attempt to strip consumers of their statutory right to remain on default service if they so choose. Default service is statutorily required to be offered at the least cost over time – "a fact which many consumers find appealing." (CAUSE-PA St. 1-R at 10:23-11:1-5). As Mr. Geller explained, the EGS Parties desire to change Pennsylvania's statutory default service mandate to one that seeks to replicate the less protective Texas provider of last resort model. However, regardless of their desire, they cannot avoid the plain language of Pennsylvania's law:

> While Mr. Kallaher perceives the Lone Star State model as the gold star standard, the Pennsylvania statutory and regulatory scheme governing the competitive market generally – and default service specifically – are quite different, and have never accepted the wild west approach as a substitute for the Pennsylvania structure which values default service as an option for consumers who choose not to engage in the market.

CAUSE-PA St. 1-R at 11:1-5). The EGS Parties' attempts to undermine and uproot default service, shifting Pennsylvania to a Texas-based model, must be denied. Pennsylvania's default

service structure is very different from the provider of last resort model used in Texas, [11] and provides critically important protections for those who do not wish to participate in the competitive electric markets.[12] These critical protections for Pennsylvanians must be preserved.

For these reasons, CAUSE-PA urges the Commission to reject the EGS Parties' vague, unsupported, and legally unsound proposal to force new and moving customers to affirmatively select a supplier. Instead, the Commission should approve the reasonable and evidence-based proposals contained in the Joint CAP/SOP Stipulation.

C. FERC MINIMUM OFFER PRICE RULE (MOPR)

In its Main Brief, the EGS Parties argued that CAP shopping rules which restrict the ability of low income residential customers to shop in the competitive market while enrolled in CAP may violate FERC's pending Minimum Offer Price Rule (MOPR). (EGS Parties MB at 15-16). This argument should be summarily dismissed. As noted above, CAP participation is voluntary, and CAP customers may withdraw from CAP at any time in order avail themselves of offers in the competitive market. (CAUSE-PA St. 1-R at 7:15-8:21).

In addition, the EGS Parties further argued that default service is not "market based" and that "[t]ruly 'market based' compensation would be established through a market mechanism such as a retail auction" – asserting broadly that Duquesne's default service may violate FERC's pending MOPR. (EGS Parties MB at 16). The EGS Parties assert that the Commission's approved allocation of default service costs is "misguided" – and argue that the price of default service

[11] See 16 Tex. Admin. Code § 25.43 (Provider of Last Resort); see also Rulemaking to Amend TPUC Subst. R. 25.43, TPUC Project 41277, at 34-36 (Jan. 23, 2014), http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.43/41277adt.pdf (amending the Texas Provider of Last Resort rule to provide month-to-month product with a 25% adder for residential customers receiving service from the designated provider of last resort).

[12] See generally 66 Pa. C.S. §§ 2802, 2804, 2807 (e)(3.4).

should be inflated to more accurately reflect prevailing market prices. (Id.) Again, these arguments should be roundly rejected.

First, there is no support in the record to shift Duquesne's default service to a retail auction model. To the contrary, as Mr. Geller explained in rebuttal testimony:

> Removing Duquesne from its role as default service provider would disrupt the critical safety net that default service was intended to provide – allowing all those who do not shop in the competitive market to continue to obtain stable, regulated electric service at the least cost over time. Duquesne has no stake in the provision of competitive supply, as it no longer makes a profit from the sale of generation. Shifting the role of default service provider to a supplier, who is motivated by profit and is actively competing for market share, would infuse competition and its inherent risks into the default service model - undermining the strength and stability of the default service safety net.

(CAUSE-PA St. 1-R at 5, 8-15).

The EGS Parties' suggestion that default service should be inflated to better reflect retail costs is likewise without support in the record.

> Even if one accepts the premise that making default service more expensive for residential consumers would drive more people into the market, such a goal (to increase the cost of service to drive market adoption) is nowhere to be found in the Choice Act, and the result would nevertheless conflict with, and not advance, the clear statutory objectives of the Choice Act to reduce electricity costs.

(CAUSE-PA St. 1-R at 6).[13] Important to this discussion, the Choice Act previously provided that EDCs were required to serve non-shopping customers at "prevailing market prices," but this standard was explicitly repealed – with the legislature opting to instead adopt the more prudent "least cost to customers over time" standard and to require utilities to procure a "prudent mix" of contracts to achieve this balance.[14]

[13] See 66 Pa. C.S. § 2802 (4)-(7).
[14] See 66 Pa. C.S. § 2807 (e)(3.4).

The premise of the EGS Parties' arguments with regard to Duquesne's compliance with FERC's MOPR are fundamentally flawed and, as such, its proposals in this regard should be summarily rejected.

D. ELECTRIC VEHICLE TIME OF USE RATE PROPOSAL (EV-TOU)

The proposals contained in the Joint EV-TOU Stipulation provide a reasonable balance of the issues presented in this proceeding, and should be approved without modification. Specifically, the Joint EV-TOU Stipulation requires Duquesne to regulatory report on net customer bill impacts, by customer class, and to specifically track participation of low income customers and multi-family residential buildings (Joint EV-TOU Stipulation at 1, para. a.i-ii). It also requires Duquesne to work with the parties to develop outreach and education materials, and obligates Duquesne to include specific language in its outreach materials informing customers that the rate may not be the least-cost option and providing information about various customer assistance programs and consumer protections that may assist economically vulnerable consumers to access service. (Joint EV-TOU Stipulation at 2, para. b.ii). Finally, the Joint EV-TOU stipulation requires Duquesne to host a collaborative meeting to discuss expansion of EV-TOU rates for mass transit and fleet electric vehicles.

Time varying usage rates pose unique issues for low income and other vulnerable consumers. In addition to being incompatible with CAP, time varying usage rates also pose a general risk for economically vulnerable households that have very little discretionary usage and often live in smaller homes with less efficient heating and cooling spaces. (CAUSE-PA St. 1 at 22-23). As Mr. Geller explained, these factors make it difficult for low income households to shift load during peak periods. (Id.) While Duquesne's initial EV-TOU proposal protected CAP customers from the potential negative impacts associated with time varying usage rates, it did not fully protect other vulnerable customers who may not have the ability to meaningfully shift or

reduce electric load through the day. (CAUSE-PA St. 1 at 23:13-16). While Mr. Geller recognized that "it is highly unlikely that a low income consumer would own, lease, or even rent a plug-in electric vehicle given the current cost of such vehicles", he nevertheless asserted through testimony that it was prudent to adopt protections for low income customers now, as part of the proposed pilot EV-TOU, to gain experience with implementation in the event the program is further expanded in future years. (CAUSE-PA St. 1 at 24:14-20).

In addition to preserving Duquesne's proposal to exclude CAP customers from the EV-TOU rate, the Joint EV-TOU Stipulations provides a number of additional protections – through education, outreach, and reporting – that will help to ensure the Commission and stakeholders are able to monitor any potential impacts on low income consumers or other vulnerable consumers. It also opens the door to discussions for an EV-TOU rate to serve mass transit and fleet vehicles, which may more directly benefit low income consumers who more routinely rely on mass transit – and who are highly unlikely to own an EV anytime soon.

CAUSE-PA asserts that, in balance, the terms of the Joint EV-TOU Stipulation are in the public interest, address the concerns raised by the parties, and should be approved.

V. CONCLUSION

Consistent with the discussion above and the robust legal and policy arguments advanced in its Main Brief, CAUSE-PA urges ALJ Hoyer and the Commission to reject the arguments advanced by the EGS Parties, to approve the terms contained in the Joint CAP/SOP Stipulation and the Joint EV-TOU Stipulation, and to adopt the proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs contained in Appendix A through C of CAUSE-PA's Main Brief.

Respectfully submitted,

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