


COMMONWEALTH OF PENNSYLVANIA



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October 13, 2020

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

Dear Secretary Chiavetta:

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

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

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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

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

Dated this 13<sup>th</sup> day of October 2020.

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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 of June 1, 2021 through May 31, 2025 :

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REPLY BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

On April 20, 2020, Duquesne Light Company (Duquesne or Company) filed with the Public Utility Commission (Commission) its Petition for Approval of Default Service Plan (Petition) for the Period June 1, 2021 Through May 31, 2025. The proposed plan is Duquesne's Ninth Default Service Plan (DSP IX or Plan). In addition to its proposal for procuring and pricing default service supply to serve its non-shopping customers over the four-year course of DSP IX, Duquesne's Plan also seeks approval of these other elements of its Plan: 1) Electric Vehicle Time-of-Use Pilot Program (EV-TOU), 2) Long-Term Solar Power Purchase Agreement (Solar PPA) Plan, 3) Standard Offer Program (SOP), 4) Customer Assistance Program (CAP) Shopping Program, and 5) proposal to recover cash out payments to customer generators.

Notice of Duquesne's filing was published in the May 9, 2020 issue of the *Pennsylvania Bulletin* with direction that any protests, petitions to intervene or answers were to be filed by June 5, 2020. The case was assigned to Administrative Law Judge Mark A. Hoyer and a prehearing conference was set for June 12, 2020.

Pursuant to the procedural schedule established in this proceeding, the Office of Consumer Advocate (OCA) filed a Main Brief on September 30, 2020. As discussed in the OCA's Main Brief, Duquesne entered into settlement discussions with the parties during the course of the proceeding, and has been successful in reaching settlement with parties on a number of issues, including procurement plans and rates, the residential reconciliation period, an expanded role for its procurement process monitor, recovery of net metered excess generation costs, the inclusion of the Price to Compare (PTC) on Duquesne consolidated bills for shopping customers to facilitate comparison with supplier charges, and a change to its Supplier Coordination Tariff which will allow Duquesne to seek certification from suppliers that they are only billing residential customers

for basic electric supply through Duquesne's consolidated bill. All of these matters are addressed in the Joint Petition for Partial Settlement being filed concurrently with Reply Briefs.

In addition, on September 30, 2020, two Joint Stipulations were submitted for entry into the record. On October 6, 2020, ALJ Hoyer issued an Interim Order admitting both stipulations. The first Joint Stipulation concerned modifications to the Company's proposed Electric Vehicle Time of Use Pilot Program (EV TOU). The second Joint Stipulation concerned modifications to the proposed Standard Offer Program (SOP) and CAP shopping plan. In the Interim Order, ALJ Hoyer directed the parties to address both of these stipulations in their Reply Briefs. The OCA is a signatory to both of these Joint Stipulations and their merits were initially addressed in its Main Brief filed September 30, 2020. The OCA further addresses these stipulations in this Reply Brief, as well as concerns with the Solar PPA as proposed to be implemented by the Company.

## II. JOINT STIPULATION ON ELECTRIC VEHICLE-TIME OF USE PILOT PROGRAM

### A. OCA Support for EV-TOU Pilot Program Stipulation

In its DSP filing, Duquesne proposed to establish an optional EV TOU rate for default service residential and non-residential customers with under 200kW of demand that either own or lease a plug-in electric vehicle. Duquesne St. 5 at 19. The Company submitted that such a proposal would encourage EV adoption, with a particular benefit for fleet operators. Duquesne St. 5 at 21-22.

OCA witness Ogur reviewed the Company's EV-TOU pilot program and summarized the proposal as follows:

The Company is proposing an EV-TOU for residential, small C&I and medium C&I customers, available exclusively to those customers who own or lease a plug-in electric battery vehicle or a plug-in hybrid electric vehicle (collectively "EV") or offer charging



to employees or visitors. DLC proposes to supply EV-TOU loads from the same wholesale supply products as the rest of the default service customers in the corresponding customer class. DLC is proposing three distinct time periods for EV-TOU supply rates. The peak period is between 1 pm and 9 pm; off-peak period is between 11 pm and 6 am; and the shoulder period is the rest of the hours (6 am to 1 pm, and 9 pm to 11 pm). These TOU hours are valid for every day of the year, whether it is a weekday, Saturday, Sunday or a holiday.

OCA St. 1 at 12. Of particular importance, the Company proposed to supply EV-TOU from the same wholesale supply products as for all default service customers.

Upon review of the program, Dr. Ogur made three recommendations to improve the pilot program and ensure a more efficient use of existing default supply:

First, DLC should recalculate TOU rate factors each year based on rolling four-year average LMPs, customer class loads, and PJM capacity prices applicable to the DY, to prevent the rate factors from getting “stale.” Second, DLC should clearly state and justify any direct assignment of EV-TOU implementation costs to customer classes, and allocate non-direct assignment costs to customer classes on the basis of customer class default service loads, as measured in total kilowatt-hours (“kWh”). Third, DLC should present a detailed report on the performance of the EV-TOU in four years as part of its petition for the approval of its subsequent default service plan, and propose revisions to the design of the program based on its experience with EV-TOU as well as the experiences of other Pennsylvania utilities, and utilities nationwide with comparable programs. Potential improvements to the program may include redefining the TOU periods, and revising the DLC method used to calculate the supply rate factors.

OCA St. 1 at 15.

Under the EV-TOU stipulation, Duquesne agrees to annually reset the EV-TOU supply rate factors as part of its tariff supplements updating Default Service Supply rates, thus resolving the OCA’s first recommendation. EV-TOU Stipulation at ¶ d. In addition, the stipulation requires detailed reporting in the Company’s next default service plan. EV-TOU Stipulation at ¶ a. These reporting requirements address the OCA’s concerns regarding future utilization of EV-TOU rates

and help ensure a more current relationship with the supply contracts being utilized by customers taking the EV-TOU rate option.

Importantly, the EV-TOU stipulation further provides for a collaborative meeting with the parties around the midpoint of DSP IX to discuss the EV-TOU Pilot Program implementation and results available to date. EV-TOU Stipulation at ¶ e. The OCA submits that such a review will allow the parties to assess the implementation costs and allocation of such costs. For these reasons, the EV-TOU Joint Stipulation should be adopted by the ALJ and approved by the Commission.

### III. SOP AND CAP ISSUES

#### A. Duquesne's Proposed Standard Offer Program and OCA Recommendations

As explained in the OCA's Main Brief, Duquesne currently offers an SOP to residential customers who are not shopping for their electric supply and who contact the Company to initiate or move service, discuss choice questions, resolve high bill concerns, or inquire about the SOP. After the customer's specific inquiry is resolved, a Duquesne customer service representative provides the customer with information about the SOP utilizing an established script. If the customer indicates interest in participating in the SOP, the customer is transferred to a participating EGS for program details and potential enrollment. The SOP provides a fixed price of 7% below the Company's then-effective PTC for a period of 12 months. See, OCA M.B. at 9-10.

For DSP IX, Duquesne proposed to outsource the SOP presentation and referral function to a third-party, AllConnect. The Company argued that outsourcing will lead to increased SOP participation by increasing referral rates and potentially referral-to-enrollment rates. Id.

OCA witness Barbara Alexander performed a careful review of the SOP and Duquesne's proposed changes. On the basis of her review, Ms. Alexander made several recommendations with respect to the SOP. See, OCA M.B. at 10-12. First, she concluded that there was no reason for a

change to utilizing a third-party vendor. Second, Ms. Alexander recommended that the Company should conduct a study of the prices charged by the SOP suppliers after the 12-month fixed price contract for customers who remain with the supplier as a result of not having taken any action at the conclusion of the SOP contract and being rolled over into a new contract with the SOP supplier. Third, Duquesne should undertake a survey or focus group with participating SOP customers to determine their opinion of the program and to test their knowledge of the operation of the initial discounted price with the movements in the PTC during the term of the contract. Further, Duquesne should explore why customers who were solicited to do so have not enrolled in the program. The survey should also explore customer understanding of the EGS renewal notices and opt-out terms of service that customers may have experienced.

B. OCA Support for the Joint Stipulation Regarding SOP

The OCA is a signatory to this Joint Stipulation which generally provides for the implementation of the Company's SOP proposal, subject to certain modifications. With regard to SOP, the Joint Stipulation provides that Duquesne will outsource administration of the program to its designated third-party, AllConnect and that the costs associated with retaining AllConnect will be recovered from participating EGSs. Joint Stip. at ¶ a. As part of its transition to AllConnect, Duquesne will develop customer education scripts that are consistent with the practices of Pennsylvania EDCs that currently utilize third party SOP administrators. The Company will provide these scripts to the parties for review and comment. *Id.* Upon implementation of such scripting, Duquesne will monitor Allconnect's adherence to the scripts at regular intervals to ensure compliance and will provide a report of its efforts at the midpoint of DSP IX, including a random sampling of call recordings of monitored solicitations, as part of such report. *Id.* In addition, Duquesne will provide a report in its next Default Service filing that will document the

third party administrator's compliance with the Company's SOP directives. *Id.* Further, the Joint Stipulation provides that Duquesne will conduct an analysis of SOP participants' supply rates following their initial 12-month SOP period and will present the results annually beginning in 2022. Joint Stip. at ¶ e.

The OCA initially opposed the retention of a third-party administrator for the SOP. Given that Duquesne remains the only major default service provider in Pennsylvania that does not utilize a third-party administrator for their SOP, the OCA engaged Duquesne in discussions regarding ways to ensure best practices are followed given the OCA's experience reviewing the operations of SOPs throughout the Commonwealth. Under the stipulation, parties will have the opportunity to review and comment on the scripts to be used by Duquesne and AllConnect relative to the SOP as well as to require regular monitoring by Duquesne of AllConnect's adherence to these scripts and to provide reports to the parties of the Company's monitoring. To the extent concerns over scripting and AllConnect's adherence to that scripting were specifically raised by OCA witness Alexander, the inclusion of these provisions in the Joint Stipulation are in the interests of Duquesne's customers who may be solicited to participate in SOP.

The Joint Stipulation's provision for conducting a survey of SOP participants' supply rates after their initial 12-month contract has expired provides important data to assess the ongoing efficacy of the program. This provision is directly responsive to Ms. Alexander's second recommendation for the SOP.

For these reasons, the OCA submits that the Joint Stipulation is in the public interest and should be adopted by the ALJ and approved by the Commission and that other SOP proposals such as those put forward by the EGS Parties' and addressed in the OCA's Main Brief (at 14-15) should be rejected.

C. EGS Parties' Position on SOP

In their Main Brief, the EGS Parties' argue that Duquesne's SOP is functioning well. EGS Parties' M.B. at 8. The EGS Parties' support changing the program to utilize the services of a third-party vendor for performing the presentation and referral function. Id. The EGS Parties' further propose that all new or moving customers who call Duquesne to initiate service be automatically enrolled in SOP. Id. at 9.

Responding to Mr. Kallaher's proposal related to new or moving customers, OCA witness Alexander stated:

This proposal would result in slamming new or moving customers into a contract with a supplier that they have not affirmatively agreed with. DLC already automatically presents information about the SOP to these customers after their transaction is completed. Those customers who choose to enroll with an EGS do so with an affirmative agreement. Any other approach would be improper and conflict with all the prior policies and precedent in Pennsylvania.

OCA St. 2-R at 5. For these reasons, and those explained in the OCA's Main Brief, the proposals and arguments of the EGS Parties lack merit and should be rejected.

D. OCA Support for the Joint Stipulation Regarding CAP Shopping

Under the proposed stipulation, the Company's CAP Shopping proposal will be withdrawn and replaced by a filing to be made within six months of the conclusion of PPL Electric's Default Service proceeding. Issues related to CAP Shopping are being litigated by the parties to that proceeding, which include the OCA, CAUSE-PA and the EGS Parties.

Regarding CAP Shopping, despite the OCA's support for the CAP Shopping program proposed by Duquesne, the OCA recognizes that going forward with litigation on that proposal will inevitably lead to litigation of most of the very same issues that are currently being tested in

the PPL Electric Default Service proceeding. The OCA regards the withdrawal of Duquesne's proposal and waiting for a decision in the PPL case as an exercise in administrative economy. Better to litigate these issues once before the Commission, not twice. Duquesne will then have the benefit of the PPL decision in fashioning its revised CAP Shopping plan.

The OCA submits that approach taken by the Joint Stipulation is superior to the CAP Shopping proposals put forward by the EGS Parties, which fall short of adequately protecting the vulnerable population that is CAP customers. For this reason, the Joint Stipulation should be adopted by the ALJ and approved by the Commission.

E. EGS Parties' Position on CAP Shopping Program

Currently, customers enrolled in Duquesne's Customer Assistance Program (CAP) do not have the option to shop for their electricity generation supply. In its initial DSP filing, the Company proposed to make that option available. As discussed above, the Company is a signatory of the Joint Stipulation calling for the withdrawal of the Company's CAP Shopping proposal until six months after there is a final, unappealable order in PPL Electric's ongoing Default Service proceeding at which time Duquesne will make a filing with the Commission that is consistent with the Company's CAP Shopping design and is informed by the results of the PPL proceeding.

In developing its initial proposal, the Company cited the Commission's Proposed Policy Statement Order on CAP Shopping that was entered February 28, 2019 at Docket No. M-2018-3006578 in which the Commission set forth guidelines for CAP Shopping that provided: (1) that a contract between an EGS and a CAP participant is to have a rate that is at or below the EDC's PTC in effect during the entire duration of the contract; (2) that a contract between an EGS and a CAP participant may contain no early termination or cancellation fees, or other fees unrelated to the provision of electric generation service; and (3) that upon expiration of a contract with an EGS that a CAP participant be allowed to enter into another contract with the same EGS that meets the requirements outlined in (1) and (2), enter into a contract with another EGS that meets the requirements of (1) and (2), or enroll in default service. Petition at 20.

Duquesne initially proposed to implement a CAP Shopping program for DSP IX that meets the guidelines of the Proposed Policy Statement. In order for an EGS to qualify to serve CAP customers, the EGS must agree to certain conditions: (1) to provide service subject to the conditions set forth in the Proposed Policy Statement; (2) to use “rate ready” consolidated EDC billing; and (3) to file an annual affidavit affirming that the EGS intends to enroll CAP participants and that it will comply with all aspects of the Company’s CAP customer shopping program. Petition at 20.

OCA witness Alexander expressed support for Duquesne’s CAP Shopping program design. She stated that, “The program appears to reflect the key consumer protections outlined by the Commission in its prior orders.” OCA St. 2 at 18.

In their Main Brief, the EGS Parties’ recommend two modifications to Duquesne’s initial CAP Shopping proposal. First, he proposes that at the end of the initial contract term, if a CAP customer makes no affirmative choice to change suppliers or return to default service that they continue to be served by their existing supplier at a program-compliant price. EGS Parties’ M.B. at 9-10. Second, the EGS Parties’ propose that CAP customers be permitted to participate in SOP, provided they are served under a CAP-compliant product by the participating EGS. EGS Parties’ M.B. at 10.

Ms. Alexander responded to each of these proposals. With regard to allowing a CAP customer to remain with their existing supplier at a program-compliant price in the absence of affirmative action at the end of their initial contract, Ms. Alexander stated:

First, I do not understand Mr. Kallaher’s “program compliant price.” This offer might be the same in terms of the savings offered to the CAP customer in the original contract or it might be a different or lower level of savings compared to the original contract. If the EGS is offering a different pricing term, I recommend that the more appropriate action is to return the customer to default service and allow the CAP customer to sign up with one of the approved EGSs for this program. DLC’s proposal to return CAP customers to default service at the end of the contract term with a participating EGS is the reasonable approach to take at this point and allow the CAP customers more experience in shopping and various EGS offers prior to considering Mr. Kallaher’s proposal.

OCA St. 2-R at 5-6.

On Mr. Kallihier's proposal to allow CAP customers to participate in SOP, Ms. Alexander expressed strong opposition:

[SOP] is not compliant with the Commission's CAP Shopping program guidelines because there is no guarantee that the customer will be given a price equal to or lower than the Price to Compare during the 12-month term of the SOP contract. The SOP contract starts out with a 7% discount from the current PTC and is fixed for 12 months. This 7% discount could disappear completely or be significantly lower during the 12-month term depending on the movement of the PTC. The SOP is not compliant with a CAP shopping program.

OCA St. 2-R at 6. Neither of the EGS Parties' proposals related to CAP Shopping are adequately protective of this very vulnerable segment of customers. The OCA submits that they should be rejected.

#### IV. SOLAR PURCHASED POWER AGREEMENT PROPOSAL

##### A. Duquesne's Proposal and OCA Proposed Modification.

In its Main Brief, Duquesne argues that it is in the process of evaluating the benefits of executing long-term PPAs (more than four years and less than twenty years) to support development of utility-scale solar energy projects in Pennsylvania, with a preference for projects within the Duquesne service territory. Duquesne M.B. at 24-35. Duquesne did not submit a detailed plan to procure solar power through long-term PPAs, but it presented some basic concepts that would form the basis of a more detailed filing. *Id.* at 25; Duquesne St. 1 at 14. In aggregate, the projects are proposed to be limited to not more than 7 MW. Duquesne anticipates buying the energy and alternative energy credits (AECs) from the solar project(s) as part of the PPA(s), with the possibility that the Company would also purchase capacity and ancillary services attributes of the project(s). Duquesne proposes to use the alternative energy credits resulting from the project(s) to satisfy, in part, the solar requirements of the Company's default service loads. Duquesne plans



to monetize the energy by selling it in PJM's real-time energy market, rather than netting this energy from default service loads. Id. at 24-25.

As addressed in the OCA's Main Brief, the OCA recommended that in order to properly evaluate the proposed solar solicitation, it is a necessary consumer protection to conduct an analysis of the future benefits of the long term solar contracts. By utilizing the most current and best available market data, an assessment can be made as to the reasonableness of the Company's solar proposal. Specifically, OCA witness Ogur testified that the addition of a long term solar contract should not be approved if it would increase the price of default service over time. Dr Ogur explained:

DLC should demonstrate that any solar PPA that DLC will propose should be at least revenue-neutral over the term of the contract (i.e. sum of the projected revenues from all attributes should not be lower than PPA payments made to the developer on a discounted cash flow basis) based on forward price projections. As part of its solar PPA filing, DLC should provide price projections for each attribute (energy, alternative energy credits, capacity, ancillary services) of the solar PPA(s) over the term of the contract(s) and demonstrate that the projects are either revenue-neutral or revenue-positive for the default service customers.

OCA St. 1 at 18-19.

In its Main Brief, Duquesne argues that is not possible to accurately predict whether a long-term contract will be revenue neutral over the term of the contract. Duquesne M.B. at 34. Duquesne notes that Company witness Davis testified that the solar proposal could not be assessed against future market pricing, as such pricing was speculative. Duquesne M.B. at 34; Duquesne St. 1R at 5. The Company further explained that, because price projections beyond three years are speculative, an analysis of the revenue-neutrality of the proposed solar PPA would be subjective. Id. Mr. Davis concluded that the PPA will be competitively bid, and as a

result, the Commission “will be in a better position” to decide whether or not “to enter into the contract.” Id.

The OCA addressed these arguments in its Main Brief and submits that the Company’s objection to Dr. Ogur’s recommendation to assess whether or not the solar PPA will be revenue neutral is misplaced. The OCA does not dispute that future market projections are by their very nature speculative. In his Rebuttal testimony to arguments furthered by the EGS Parties, OCA witness Ogur explained the benefits of a long term solar PPA despite the uncertainty of the costs of such contracts relative to future pricing:

[W]hile it is certainly possible that long-term contracts may turn out to be uneconomic over the course of the delivery period relative to then-prevailing market prices, it is just as possible that the contracts turn out to be below market over the course of the delivery period. What is relevant here is that the future market prices for energy, solar AECs, or capacity are not known. Therefore, long-term solar PPAs for energy and AECs, and possibly for capacity and ancillary services attributes as well, operate as a hedge against large price increases during the term of the contract, not necessarily as a means to secure the lowest possible price at any particular time. In fact, the Commission supports this view by giving EDCs the flexibility to include long-term products in their default service product portfolios.

OCA St. 1R at 9. As Dr. Ogur testified, long term contracts can provide a valuable hedge against future unexpected price increases during the life of a contract.

Despite the uncertainty surrounding long term market projections, it is important to analyze the costs and benefits of long term contracts based on the best available current data. The Company argues that such an analysis “would provide no value.” Duquesne M.B. at 35. The OCA submits however that by conducting such analysis, the Company is better suited to meet the requirements of Act 129 of 2008 and the Commission’s Regulations, where Duquesne must provide a service that is “least cost over time.” 66 Pa.C.S. §2807(e)(3.1)-(3.7).

Dr. Ogur testified that there is ample support in the current market data to evaluate the benefits and potential harm that the Company's solar proposal may entail. Dr. Ogur testified as follows:

While I agree that price projections beyond a few years depend on the assumptions used in the analysis and thus are subjective, they are still an invaluable part of project evaluation. The purpose of price projections is not to forecast future energy, capacity or solar alternative energy credit ("AEC") prices with accuracy, but to inform the decision maker on how the project (the solar PPAs in this instance) can be expected to perform financially under a reasonable set of assumptions regarding future prices, costs, and fundamental market developments affecting supply and demand. This is a standard way of evaluating electric generating projects used by utilities as well as by large end-use customers.

OCA St. 1S at 6-7. As Dr. Ogur explained, market projections are just projections but sound and reasonable planning require a utility to utilize the best available data to make a judgment as to how to move forward with a PPA. If the best available data says that this contract will negatively impact rates, then it should not be entered into.

The Company argues that the fact that the solar contract solicitation will be competitively bid does not ensure that the result is in ratepayers' best interests. As Dr. Ogur testified:

There may be various reasons for even the most attractive bid to be "too high" at that time, such as challenges in access to credit by the developers or disruptions in supply chains that make fixed-price commitments too risky for vendors or developers. There needs to be a threshold price to serve as a benchmark against which the reasonableness of the PPA can be assessed to make a determination as to whether it represents a reasonable commitment to be entered into on behalf of default service customers. The price projections that DLC would generate would help all stakeholders, including the Commission, to determine that threshold PPA price level.

OCA St. 1S at 7.

The Commission should have an assessment of the revenue neutrality recommended by OCA witness Ogur of any long term solar PPA when determining whether to approve the contract or not. With this consumer protection in place, the OCA supports the Company's planned solar procurement as detailed in its filing.

## V. CONCLUSION

The OCA submits that Duquesne's Default Service Plan, as modified in the OCA's Main and Reply Briefs, should be adopted. With the proposed modifications, including those contained in the Joint Stipulations filed in this proceeding and the partial unopposed Settlement filed concurrently with Reply Briefs, the DSP will provide a reasonable service to non-shopping customers, and help ensure that SOP and CAP program offerings meet minimum consumer protections.

Respectfully Submitted,

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