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November 30, 2020

VIA FEDERAL EXPRESS

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

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

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Duquesne Light Company are the Replies to Exceptions in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,

Michael W. Gang

Michael W. Gang

MWG/kls
Enclosure

cc: Honorable Mark A. Hoyer *(via email; w/enc.)*
Office of Special Assistants *(via email; w/enc.)*
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: November 30, 2020

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLIES TO EXCEPTIONS OF DUQUESNE LIGHT COMPANY

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Date: November 30, 2020

Counsel for Duquesne Light Company

I. INTRODUCTION

On November 12, 2020, the parties in the above-captioned proceeding were served the Recommended Decision ("RD") of Deputy Chief Administrative Law Judge Mark A. Hoyer (the "ALJ"). In the RD, the ALJ recommends approval of the Unopposed Partial Settlement in the proceeding. The ALJ also makes recommendations on issues reserved for litigation by parties in the proceedings.

Exceptions to the RD have been filed by the EGS Parties[1] and by MAREC-Action ("MAREC").

Duquesne Light Company ("Duquesne Light") files these Replies to Exceptions in response to the Exceptions of MAREC and the EGS Parties. For the reasons explained herein, the RD is well-reasoned and supported by applicable law and the record evidence in this proceeding. Therefore, the exceptions should be rejected and the RD should be approved by the Pennsylvania Public Utility Commission ("Commission").

II. REPLIES TO EXCEPTIONS

For the convenience of the Commission, Duquesne Light will respond to the exceptions of MAREC and the EGS Parties as to Duquesne Light's proposed long-term Solar Purchased Power Agreement ("Solar PPA") in one section.

A. REPLIES TO EXCEPTIONS TO THE RD RELATED TO DUQUESNE LIGHT'S PROPOSED LONG-TERM SOLAR PPA (MAREC EXCEPTIONS NOS. 1-4 AND EGS PARTIES EXCEPTIONS NO. 3)

Duquesne Light proposes to solicit bids for a long-term (4-20 years) Solar PPA to meet a portion of the Solar AEPS Act requirements of its default service customers. Duquesne Light MB, pp. 24-25; Section 2807(e)(3.2). Under the currently effective DSP VIII procurement plan,

[1] 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.

wholesale suppliers under fixed price contracts provide all of this requirement to Duquesne Light for its default service customers. Duquesne Light St. No. 2, p. 5. The Solar PPA would provide about half of the solar requirement for default service customers. Duquesne Light MB, p. 30.

MAREC contends that Duquesne Light should be using more long-term renewable contracts in its proposed DSP IX procurement plan and that the plan, including the Solar PPA, does not meet the prudent mix standard of Act 129. In contrast, the EGS Parties contend that no long-term solar PPA should be approved. The ALJ properly rejected both MARECs and the EGS Parties objections. RD, pp. 51.

1. MAREC's Proposal to Require Duquesne Light to Convene a Stakeholder Group to Reconsider the DSP IX Procurement Plan Should Be Rejected.

In four separate exceptions, MAREC advances reasons why a stakeholder group should be mandated to reconsider the procurement plan for DSP IX and to adopt more long-term contracts for renewable generation than proposed by the Company. RD, p. 45.

The Company submits that the primary purpose of this proceeding was to establish the DSP IX procurement plan. MAREC had a full and fair opportunity to advance and justify its proposed long-term renewable procurements. However, it failed to advance any specific proposal, offering only its vague and undefined proposal that the Company should employ an "all-resource request for proposals followed by Integrated Resource Modelling to determine the procurement plan." MAREC Exceptions p. 3; RD, p. 45. With regard to these contentions, the ALJ, relying on Duquesne Light's expert testimony, correctly concluded as follows:

> MAREC's proposal is to employ an "all-resource Request for Proposals followed by Integrated Resource Modelling to determine the least-cost mix of resources that meet the Company's other requirements including its AECs obligation.[2] MAREC's proposal does not address requirements for Commission approval in its

[2] MAREC M.B., p. 5.

> presentation. MAREC's recommendation is vague and lacks the necessary specificity for it to be actionable or to address issues it may entail. For example, MAREC failed to address the RFP design, the types of eligible resources, the products that would be solicited, the contract terms, the basis for selection of the winning bidders, how definitional differences between the different types of products would be considered, or how the process would be designed and implemented before the start of DSP IX on June 1, 2021.[3] The evidence presented by MAREC in this proceeding does not justify a change in the DSP proposed by Duquesne Light.
>
> MAREC also proposes a collaboration on long-term contracts with a possibility for requesting to reopen this DSP IX proceeding to change the plan. I conclude there is no basis to believe that further consideration of additional long-term renewable contracts would provide a basis for reconsideration of the supply mix ultimately approved by the Commission in this case. RD, p. 48.

The ALJ correctly concluded that MAREC had not presented sufficient evidence to justify its proposed development of a procurement plan for DSP IX in this proceeding. Further, the ALJ correctly concluded that there is no basis to give MAREC a second chance to do that in a subsequent stakeholder process.

MAREC's statement in its exceptions that the RD ignores the Commission's directive with respect to long-term contracts is neither fair to the ALJ nor reasonable. MAREC Exceptions p. 2. As the RD observes, the Commission directed consideration of long-term contracts in DSP proceedings. RD, p. 47. The Company was responsive and proposed a long-term solar PPA, which most other parties either support or do not oppose. There has been such consideration, and it has produced a constructive solution.

Finally, MAREC concludes that the record in this proceeding does not support a conclusion that the Company's plan achieves a prudent mix of contracts for DSP IX. MAREC Exceptions p.

[3] Duquesne Light St. Nos. 3-R, pp. 28-30; 3-RJ, pp. 1-3; Duquesne Light R.B., p. 8.

3. The ALJ appropriately rejected this contention, based on competent record evidence of the Company, concluding as follows:

> To summarize, Duquesne Light provided explanations of how its DSP meets the prudent mix standard. This evidence explains how the mix of contracts, which also includes products and terms previously employed and approved by the Commission, is designed to ensure least cost over time, taking into account the benefits of price stability and including prudent steps to obtain least cost generation supplies. Duquesne Light also supplied an extensive quantitative analysis regarding price stability benefits of the supply products in the plan. The Company also explained how it considered Commission guidance on the prudent mix to be employed. Except with respect to MAREC's and the EGS Parties' specific concerns related to the solar PPA, no party objected to the prudency of Company's proposed contract mix, which is accordingly memorialized in the Partial Settlement. The arguments of MAREC and the EGS Parties opposing the Solar PPA as part of the prudent mix in this DSP IX proceeding were not persuasive. RD, p. 51.

For these reasons, MAREC's exceptions should be rejected and the ALJ's well-reasoned RD should be adopted.

2. The EGS Parties' Objections to the Solar PPA Were Properly Rejected by the ALJ.

The EGS Parties raised objections to the Company's proposed Solar PPA, all of which were rejected by the ALJ. RD, pp. 44, 51. These objections are repeated in their Exceptions.

The EGS Parties contend that a Solar PPA will somehow interfere with products they offer to retail customers. EGS Parties Exceptions p. 4. However, as the ALJ recognized, Duquesne Light would be procuring some of its solar requirements for default service customers through a long-term contract instead of as it does currently from wholesale suppliers who provide all requirements, including solar requirements. The ALJ noted as follows in rejecting the EGS Parties' claim of interference with EGS products:

> The Company is proposing to acquire a long-term contract for about half of its default service solar AEC requirements. The Company is

> not offering a solar rate or product. Therefore, the issue is only whether a long-term solar PPA is an appropriate component of a prudent mix strategy for default service customers. The only argument the EGS Parties make in this regard is that the price under the PPA may deviate from the market in some future years. I agree with Duquesne Light with respect to this argument. If that were a basis for objecting, then all long-term contracts should be prohibited. However, the Choice Act specifically permits contracts of 4 to 20 years. RD, p. 48.

The EGS Parties also contend, without record evidence or any citation to pending legislation, that the solar PPA could crowd out community solar projects under a hypothetical future statutory regime. This is speculative; there is no basis in the record to conclude that acquiring a long-term contract to meet a portion of solar requirements of default service customers would interfere with potential future community solar legislation.

The ALJ also properly rejected the EGS Parties' unsupported contention that a solar PPA would interfere with solar development in PJM, citing OCA's witness' testimony on the PJM market:

> The EGS Parties also contend that a 7 MW solar contract could crowd out other solar contracts in the PJM market.[4] As OCA's procurement witness Dr. Ogur pointed out, that is highly unlikely with over 269 solar projects in the PJM interconnection queue, representing more than 9,000 MW.[5] Moreover, the EGS Parties' witness Mr. Kallaher admitted in discovery that he was not aware of any specific potential solar projects that might be displaced by the Company's proposed solar PPA.[6] RD, p. 50.

The EGS Parties also reiterate their contention that the Company's sale of energy from the solar contract into the market, for the convenience of managing load, would violate a prohibition concerning ownership of generation. The ALJ considered and properly rejected this argument in the RD:

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[4] EGS Parties M.B., p. 6.
[5] OCA St. No. 1-R, p. 9.
[6] Duquesne Light St. No. 1-R, pp. 3-4; Duquesne Light R.B., p. 13.

> I agree with Duquesne Light that, contrary to the EGS Parties' contention, the sale of this energy does not put the Company in the generation business. The Company will not own the solar generating facility. It is simply a process to balance supply and demand and obtain for default service customers additional value from the solar PPA. The Commission has previously permitted a Default Service Supplier to sell excess energy into the market when default service supply purchased under a block product exceeds the demands of default service customers. Sales of energy purchased to serve default service load are not prohibited by the Choice Act, as contended by the EGS Parties.[7]
>
> The EGS Parties also contend that capacity from the solar PPA if sold into PJM would potentially make Duquesne Light subject to FERC's proposed MOPR. The Company responded that it is not committed to acquiring capacity and further that it would not enter into a solar PPA, or acquire or sell capacity, if doing so would invoke such rule as ultimately adopted. RD, p. 49-50.

Notably, the EGS Parties' exceptions do not acknowledge, much less rebut, prior instances in which the Commission has authorized default service providers to sell excess energy into the market for purposes of managing load.

Finally, the EGS Parties state in exceptions that it would be acceptable for the Company to enter into a long-term contract for solar credits. EGS Parties Exceptions p. 5. The ALJ correctly recognized the evidence of record that the Company had tried this and had not been able to obtain a competitive contract that was solely for solar AECs. RD, p. 49.

> In its last DSP proceeding, DSP VIII, Duquesne Light sought a PPA to purchase only SAECs. It found that solar developers were not interested in disaggregating the credits from the energy supply. The proposed solar PPA in this case is designed to resolve that problem and provide long-term solar AECs required by the Choice Act for default service customers.[8]

The solar PPA is the next step in the process.

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[7] *Petition of PECO Energy for Approval of Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered April 16, 2009), pp. 6-7, 9; Duquesne Light R.B., p. 11.
[8] Duquesne Light St. No. 1, p. 16; Duquesne Light R.B., p. 12.

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For these reasons, the ALJ properly rejected the EGS Parties' objections to the solar PPA. The solar PPA appropriately adds a mechanism to add a market-based (7MW) long-term contract to the already previously approved and successful DSP VIII procurement plan.

B. REPLY TO EGS PARTIES' EXCEPTION TO THE ALJ'S RECOMMENDED APPROVAL OF THE COMPANY'S ELECTRIC VEHICLE TIME OF USE RATE PILOT (EGS PARTIES EXCEPTIONS NO. 1)

As explained in Duquesne Light testimony, the Company proposed an Electric Vehicle Time of Use Rate Pilot ("EV-TOU Pilot"). The EV-TOU Pilot is a default service TOU Rate for EV owners/lessees and operators of EV chargers. It is designed to provide appropriate price signals for EV users and encourage EV adoption, improve usage of the Company's distribution system and provide environmental benefits to customers. Duquesne Light St. No. 5, pp. 20-22. Numerous parties in this proceeding commented on the EV-TOU Pilot, including the National Resource Defense Council ("NRDC") and Office of Consumer Advocate. All parties other than the EGS Parties entered into or did not oppose the EV-TOU stipulation, which the ALJ has recommended for approval by the Commission. RD, p. 39.

The EGS Parties except to the ALJ's recommended approval of EV-TOU Pilot as reflected in the EV-TOU stipulation. Their principal objection is that default services should be "plain vanilla" and offer only basic service. The EGS Parties add that they believe that EV-TOU service should be provided only by EGSs at their discretion when the market requires it and when EGSs can make a profit serving that market. EGS Parties Exceptions pp. 1-2.

As the ALJ has recognized, the EGSs Parties' contentions are flawed and must be rejected for several reasons. The ALJ, noting that the Commission's January 23, 2020, Secretarial Letter specifically concluded that it is the obligation of the default supplier to provide TOU service and that the record in this proceeding demonstrated that no EGS is providing such service, concluding as follows:

> The Commission has acknowledged that it is the obligation of the Default Service Provider to provide the TOU program. Therefore, there is no basis for an argument that the Company cannot provide EV-TOU service, particularly in the circumstance where there is no other supplier of such service in its market.[9]
>
> I agree with the position of the stipulating parties regarding the EV-TOU pilot and recommend that the Commission approve the EV-TOU pilot set forth in the Default Service Plan as modified by the stipulation of Duquesne Light, CAUSE-PA, NRDC, OCA and OSBA. The EV-TOU pilot, as modified by the stipulation, services the public interest, is consistent with the statutory mandates and policy goals of the Choice Act and the Commissions' regulations. RD, p. 42.

There is no basis to overturn the ALJ's conclusions.[10]

The EGS Parties have also argued in this proceeding that the EV-TOU Rate Pilot would improperly compete with potential services by EGSs and that if it is approved, it will prevent EGSs from entering the market. EGS Exceptions, p. 2. This argument should be rejected. The Company has no incentive to compete with EGSs, and EGSs are free to offer EV-TOU or any other TOU service and offer alternative terms including different on/off peak rates and time periods than the Company. In addition, the EGSs statement is speculative. They offer no evidence that support their conclusion. EGSs will be able to offer EV-TOU supply on the same basis as they offer

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[9] *See also, Dauphin Cnty. Indus. Dev. Auth. v. Pub. Util. Comm'n.,* 123 A.3d 1124 (Pa. Cmwlth. 2015); Duquesne Light M.B., p. 23. The EGS Parties state in Exceptions for the first time in the case that the EV-TOU Pilot a demand management rate that can only be provided on approval of the Commission. The EV-TOU Rate Pilot is not a demand management rate but is a rate for time of use service. Even if it were a demand management rate, the Commission can grant the approval requested in this proceeding.

[10] The EGS Parties state that the Commission's regulations require a single rate offering. EGS Parties Exceptions, p. 2 footnote 1. The Commission's regulations cannot override the statutory obligation that the EDC provide TOU service. The EGS Parties also state in exceptions, for the first time in this proceeding, that the Commission's approval of the EV-TOU Rate Pilot can only be approved if the Commission mandates demand side management rates citing the AEPS Act generally. 73 Pa.C.S. §§1648.1 et seq. This unexplained and belated argument provides no basis to reverse the ALJ's conclusion that it is the obligation of the default supplier to provide TOU service. In any event, the Company has requested the Commission's approval.

other products as an alternative to default service. In this regard, the Company also explained its previous unbundling of procurement costs from base rates into default service rates and explained that in the Company's Exhibit Nos. DBO-3 and DBO-5 to Company witness Ogden's testimony, unbundled procurement costs are included in the proposed EV-TOU rate, just as they are in designing other default service rates. Duquesne Light St. No. 4.

The EGS Parties also state that there is no current need for the EV-TOU Rate Pilot. EGS Parties Exceptions p. 2. This statement is also contrary to the record evidence testimony from both the Company and NRDC demonstrating the increasing actual and projected number of EVs in the Companies' service territories. The testimony also explains the need for an EV-TOU rate to encourage EV adoption and to produce benefits to users, the Company, and its customers resulting from greater off-peak use of its distribution grid and public benefit from environmental improvements. These are all reasons to encourage EV use through an EV-TOU rate. Duquesne Light St. No. 5, pp. 20-22. The evidence demonstrates that there is a need now and benefits to be obtained by meeting that need now.

Moreover, the EGS Parties' arguments disregard the Commission's guidance in the January 2020 Secretarial Letter, which urged all parties to consider how specific TOU rate offerings could be made available to customers. See Request No. 2. Duquesne Light has responded with a specific rate proposal. Denying approval of the Company's EV-TOU Pilot, while waiting to see if EGSs decide to offer an EV-TOU rate, would harm the EV market and delay the benefits that EV expansion will produce for all customers and the public.

The EGS Parties' exception to the ALJ's recommended to the EV-TOU Pilot as modified by the EV-TOU stipulation should be rejected by the Commission.

C. THE ALJ CORRECTLY REJECTED THE EGS PARTIES' CONTENTION THAT THE COMPANY SHOULD BE REQUIRED TO CHARGE EGS CUSTOMERS FOR PJM NITS CHARGES.

The record in this case clearly establishes that NITS charges are a PJM transmission charge billed to Duquesne Light for default service customers and to EGSs for their customers, and that the Company and each EGS are load serving entities under the PJM tariff. Duquesne Light St. No. 4-R, pp. 18-24. Nevertheless, the EGS Parties contend that the Company should be required to bill all NITS charges – including those incurred by the Company and EGSs to obtain interstate transmission service for their respective supply customers – through a new non-bypassable charge on all customers. EGS Parties Exceptions, pp. 2-3.

The ALJ correctly rejected the EGS Parties' proposal, noting that the same proposal has been rejected in two prior Duquesne Light DSP proceedings. RD, p. 32-33, 36. The ALJ also quoted the Company's testimony explaining the reasons why EGSs should be required to recover NITS charges from their customers directly. RD, p. 33-34.

In the EGS Parties' exceptions, they repeat their contention that the Company is discriminating by not recovering NITS charges from the EGSs' customers. EGS Exceptions, p. 3. In their briefs, the EGS Parties relied on the *Columbia* case concerning the voluntary billing by Columbia of non-basic service charges for some but not all vendors, and arguing that Duquesne Light must provide service to EGSs as the monopoly biller. *PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577 (December 16, 2018) ("Columbia"). These contentions are erroneous. First, Duquesne Light is not a monopoly biller on its system because EGSs have the option to separately bill their own services to customers. *See* Duquesne Light St. 5-R, p. 22. Second, the *Columbia* case concerns the billing of non-basic service charges and does not concern the billing of unbundled basic service transmission costs that are required to be separately stated to customers for generation, transmission and distribution. Requiring a default service provider to collect EGS transmission charges with default service transmission charges would rebundle those charges and clearly violate the unbundling requirements of the Competition Act. Duquesne Light MB, pp. 13-14, quoting Duquesne Light St. 4-R, pp. 22-24. In this regard, Calpine, an EGS participating separately in this proceeding, objected to the EGS Parties' proposal precisely on the basis that this rebundling violates the Competition Act and would deprive it of distinguishing its service from other EGSs by requiring all EGSs to pay the same transmission costs irrespective of the load characteristics of their customers. RD, p. 35. The EGS Parties' exceptions make no effort to rebut this argument.[11]

The EGS Parties also contend that the ALJ erred in concluding that EGSs can recover NITS charges the way the Company does, contending for the first time in this proceeding that the Commission regulations prevent an EGS from changing fixed price contracts. EGS Parties Exceptions, p. 3-4. The EGS Parties argue that they are not able to recover NITS charges on a dollar-for-dollar basis because they cannot change fixed prices. This argument is clearly erroneous. EGSs may offer fixed prices for generation and use a variable price for transmission charges. In fact, requiring the Company to charge EGS customers for NITS charges would have exactly that effect. Moreover, the EGS Parties are clearly able to mitigate or eliminate the risk of NITS price variations in their contracts with customers. Calpine Retail MB, p. 2.

For all these and other reasons noted in the RD, the ALJ correctly rejected the EGS Parties' proposal.

[11] Duquesne Light is not discriminating among EGSs on how it bills NITS charges, while Columbia did discriminate among vendors. In addition, Columbia did not involve the creation of a non-bypassable surcharge to all customers.

D. THE ALJ CORRECTLY REJECTED THE EGS PARTIES' OPPOSITION TO THE CAP SHOPPING STIPULATION

In this proceeding, Duquesne Light provided a good faith proposal to expand shopping to its Customer Assistance Plan ("CAP") customers in accordance with the guidelines set forth by the Commission and quoted by the ALJ. RD, pp. 56-57. In its proposal, the Company noted its concern the EGSs might not make offers under the conditions set forth by the Commission and proposed a requirement that five EGSs commit to provide compliant offers before the Company incurred the costs necessary to operate the program under the Commission guidelines. RD, p. 57.

During the course of this proceeding, CAUSE-PA and OCA expressed significant concerns about CAP shopping under the Commission's guidelines. RD, p. 57. These concerns also were expressed in the PPL DSP proceeding, and it became clear that the Commission would address these issues in the PPL DSP case prior to reviewing the Duquesne Light DSP IX plan. For this reason, the parties other than the EGS Parties entered into the CAP Shopping Stipulation, which is quoted by the ALJ. RD, p. 58.

The ALJ correctly recognized the judicial efficiency of this approach for the parties and the Commission and properly recommended that approval of the CAP Shopping Stipulation.

The EGS Parties except to approval of the CAP Shopping Stipulation, but do not state what relief they are seeking at this point. The ALJ's approval of the CAP Shopping Stipulation should be confirmed by the Commission.

Finally, the EGS Parties state in their exceptions that the Competition Act requires the Commission to permit CAP customers to shop. The Company does not agree with this statement. CAP customers can choose to withdraw from CAP if they wish to shop, and the Commission can set conditions for participating in CAP. *See also, CAUSE-PA v. PUC*, 130 A.2d 1087 (Commw.

Ct. 2015). The Company reserves its right to provide further argument on such contention at an appropriate future time.

Respectfully submitted,

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