

DUQUESNE LIGHT STATEMENT NO. 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Of Duquesne Light Company :
For Approval Of Default Service Plan : **Docket No. P-_____**
For The Period June 1, 2013 Through :
May 31, 2015 :

**DIRECT TESTIMONY OF
JAMES E. WILSON**

Dated: April 27, 2012

1 **Q. Please state your name and business address.**

2 A. My name is James E. Wilson. My business address is 411 Seventh Avenue, Pittsburgh,
3 Pennsylvania 15219.

4

5 **Q. Please discuss your professional background.**

6 A. I have been employed by Duquesne Light Holdings and its various subsidiaries in various
7 capacities since 1989, including: Vice President of Corporate Development from 2001;
8 Corporate Controller from 1999 to 2001; Subsidiary Controller from 1995 to 1999; and
9 Supervisor of Regulatory Reporting from 1993 to 1995. Prior to 1989 I was employed by
10 Arthur Andersen & Company.

11

12 **Q. Please discuss your educational background.**

13 A. I graduated from St. Vincent College with a Bachelor of Science in Accounting in 1987.
14 I also received a Masters of Business Administration (MBA) from the University of
15 Pittsburgh in 1993. I am a Certified Public Accountant.

16

17 **Q. Please discuss your professional qualifications as they relate to power procurement.**

18 A. I have been the officer responsible for the group supplying Duquesne Light Company's
19 Default Service obligations since 2004. During that time we have served in excess of 37
20 million MWH of retail default service load. In addition I serve on Duquesne Light
21 Holdings' Executive Risk Management Committee which, among other responsibilities,
22 provides executive management oversight for the company's energy commodity risk

1 management activities.

2
3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to provide support for Duquesne Light Company's
5 ("Duquesne Light" or "the Company") default service plan ("Default Service Plan" or
6 "Plan") for delivery of supply over the June 1, 2013 through May 31, 2015 period,
7 particularly with respect to the power procurement methods to be utilized. I will provide
8 an overview of the Plan as it relates to power procurement, and I will discuss the
9 reasonableness of the procurement methods and supply product portfolios for Duquesne
10 Light's various customer classes. I will also evaluate the consistency of the Plan's
11 procurement methods with Act 129 and associated Commission guidance.

12
13 **Q. Are you sponsoring any exhibits in conjunction with this testimony?**

14 A. Yes. I am sponsoring the following exhibits:

- 15 • Exhibit 1, Duquesne Light Company Supply Master Agreement;
- 16 • Exhibit 2, Request for Proposal Letter
- 17 • Exhibit 3, Non-Disclosure Agreement
- 18 • Exhibit 4, Procurement Schedule for Residential and Lighting customers;
- 19 • Exhibit 5, Procurement Schedule for Small C&I customers;
- 20 • Exhibit 6, Procurement Schedule for Medium C&I customers; and
- 21 • Exhibit 7, Supplier Load Cap.

1 **Q. Please explain how these exhibits were prepared.**

2 A. All exhibits were prepared either by me or at my direction, and in the case of templates
3 and agreements, I can attest to their accuracy and validity. To the best of my knowledge,
4 they were prepared in accordance with Commission requirements and practice.

5
6 **Q. How is your testimony organized?**

7 A. Section I is an Introduction. Section II provides an overview of the Default Service Plan
8 with regard to its power procurement methods. Section III includes a review of Act 129,
9 and explains how the Plan satisfies Act 129 and is consistent with associated Commission
10 guidance.

11

12 **OVERVIEW OF DUQUESNE LIGHT'S PROPOSED PROCUREMENT PLAN**

13 **Q. Briefly summarize Duquesne Light's proposed procurement plan for default service**
14 **customers.**

15 A. The Plan provides for 100% of default service power supply needs during the 24-month
16 period from June 1, 2013, through May 31, 2015.¹ The Plan includes tailored and
17 separate default service supply portfolios for each of the various customer classes, and all
18 supply that is not procured in the spot markets will be procured through competitive
19 solicitations. Importantly, a unique and tailored portfolio of supply products is being
20 proposed for each of the four different customer classes, as Figure 1 below shows:

¹ A two-year plan is consistent with guidance provided on page 11 of the Commission's December 16, 2011, Retail Markets Order (Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Docket No. I-2011-2237952) ("*December 16 Retail Markets Order*"), which states, "[T]he Commission continues to recommend that the next phase of default service plans run for two years."

1

2

3

Figure 1 Overview of Supply Portfolios by Customer Class

Residential and Lighting²	Small C&I (<25 kW)	Medium C&I (≥25 kW and <300 kW)	Large C&I (≥300 kW)
<ul style="list-style-type: none"> • One-year full requirements contracts obtained from competitive solicitations at different points in time with annual price adjustments 	<ul style="list-style-type: none"> • Laddered one-year full requirements contracts obtained from competitive solicitations with semi-annual price adjustments 	<ul style="list-style-type: none"> • Six-month full requirements contracts obtained from competitive solicitations with semi-annual price adjustments 	<ul style="list-style-type: none"> • 100% spot-market purchases

4

5 **Q. Why does the Plan include tailored and separate default service supply portfolios for**
6 **each of the various customer classes?**

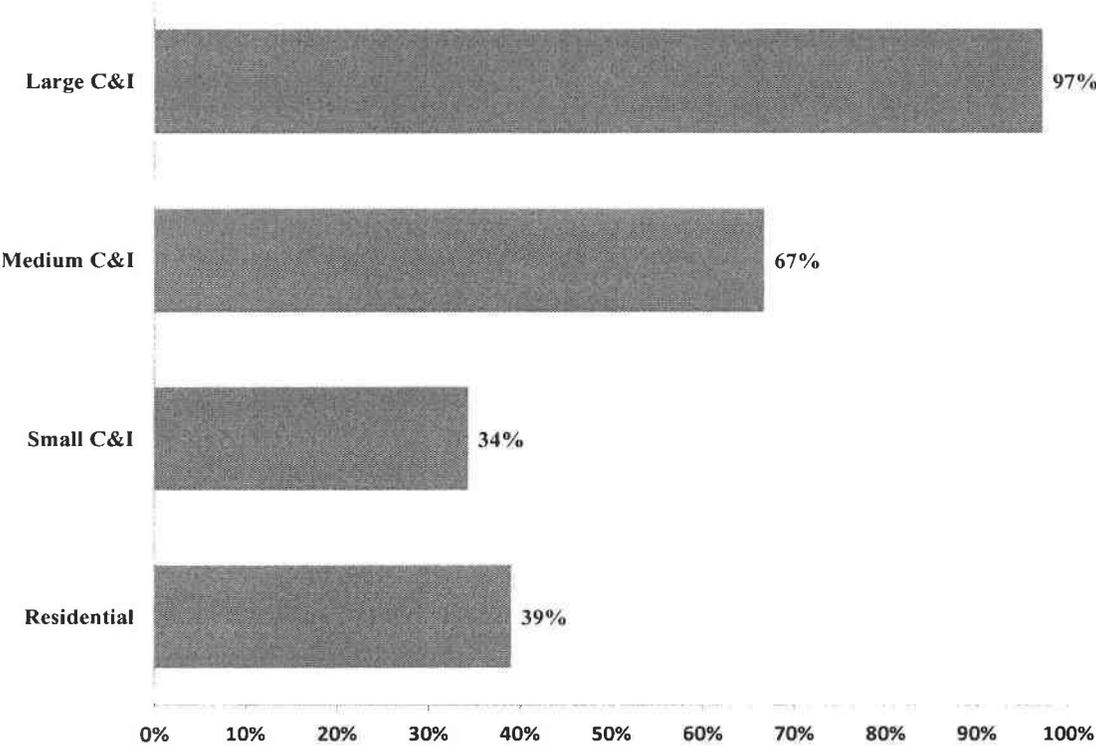
7 A. First, having tailored and separate supply portfolios is consistent with recent Commission
8 guidance. I will explain this in greater detail later in this testimony. Second, by
9 including tailored and separate supply portfolios for each of the various customer classes,
10 the Plan reflects the different needs and market situations that various types of customers
11 face, and helps to ensure proper assignment of costs and risks. A key question for
12 policymakers is how stable default service rates should be. Some parties may argue that
13 customers should be provided stable default service rates to protect them from market
14 price volatility and to provide them with assurances, for budgeting and planning

² While the Residential class also includes Lighting customers, in this testimony I often refer to this class in aggregate as the Residential class.

1 purposes, about the rates that they will pay. Other parties may argue that default service
2 rates should reflect shorter-term market price volatility in order to encourage more
3 customers to participate in the competitive retail market, and to ensure that significant
4 deviations between default service rates and market prices do not occur. Duquesne
5 Light's Plan balances these considerations by tailoring the supply portfolio for each
6 customer class to that customer class' sophistication about the retail electricity market, its
7 willingness to shop, and the competitive retail supply offerings that are likely to be
8 available to the particular customer class.

9 For example, there is a wide distribution of shopping levels across Duquesne
10 Light's customer procurement groups:

11 **Figure 2 Shopping Levels Within Duquesne Light's Service Area**
12 **(Percent of Load As of March 2012)**



1 As a result, we can infer that the various classes have varying degrees of opportunities
2 and/or varying levels of market familiarity, purchasing sophistication, and propensities to
3 elect competitive service options from Electric Generation Suppliers (“EGS”), and this
4 suggests that the different classes require different levels of price stability in their default
5 service rates. In addition, we have considered the current frequency of price changes
6 experienced by each class in designing the procurement plan for each class.

7
8 **Q. What are the basic changes that Duquesne Light is proposing in this procurement
9 plan, as compared to its existing POLR plan (“POLR V”)?³**

10 A. While Duquesne Light is continuing its current basic forms of default service
11 procurement for all non-Residential customers, the overall POLR VI supply portfolio for
12 these customers involves generally shorter-term products than in POLR V, and rates are
13 reset more frequently for some of these customers in POLR VI, allowing rates to more
14 consistently track changes in market prices. With regard to the Residential class, changes
15 between POLR V and POLR VI include both the method by which default service supply
16 will be obtained, and the degree to which rates will fluctuate during the Plan time period.

17
18 **Q. How is the method by which default service supply will be obtained for Residential
19 customers different than that employed in POLR V?**

20 A. In POLR V, a fixed Residential rate for full requirements service for a 29-month period
21 was developed based on market prices at the time of Duquesne Light’s filing, and then
22 Duquesne Light assumed the responsibility of satisfying that fixed-price full requirements

³ Petition Of Duquesne Light Company For Approval Of Default Service Plan For The Period January 1, 2011 Through May 31, 2013, Docket No. P-2009-2135500 (Order entered June 21, 2010).

1 commitment. In POLR VI, supply will be procured through open competitive wholesale
2 Request for Proposals (“RFP”) with winning bidders determined on the basis of lowest
3 price, similar to the procurement process Duquesne Light currently uses to supply Small
4 C&I and Medium C&I customers on default service. The fixed price bids will be for full
5 requirements default service supply, including ancillary services.⁴ See Exhibit JEW-1 for
6 Duquesne Light’s proposed form of Supply Master Agreement. This Agreement is
7 substantially the same as the Commission-approved Supply Master Agreement currently
8 being used for Duquesne Light’s Small C&I and Medium C&I customer classes.⁵
9 Duquesne Light will fully reconcile its costs at each price reset.

10
11 **Q. How is the degree to which Residential rates will fluctuate during the Plan time**
12 **period different than that under POLR V?**

13 A. In POLR V, the fixed Residential rate was determined at the time of the Commission’s
14 Order approving the plan, and the fixed rate applied for the entire 29-month plan period.
15 For Residential customers in POLR VI, Duquesne Light proposes to procure one-year
16 products with delivery periods corresponding to June 1, 2013 –May 31, 2014, and June 1,
17 2014 –May 31, 2015, and adjust the Residential rates each year accordingly. See Exhibit
18 JEW-2. For the June 1, 2013 – May 31, 2014 delivery period, Duquesne Light will

⁴ The full requirements default service supply product obligates the seller of the product to satisfy a specified percentage of all of the default service customers’ supply requirements in every hour of the delivery period, regardless of the default service customers’ instantaneous changes in energy consumption, regardless of how frequently customers switch to or from default service, and regardless of how the seller’s cost to satisfy its supply obligation may change. The seller is paid a predetermined price per megawatt-hour for this service. As a result, full requirements products can provide significant price stability benefits for customers.

⁵ The primary differences are for clarification and correction of errors, along with the inclusion of ancillary services in the product definition.

1 procure 50% of its default service supply in November 2012 and 50% of its default
2 service supply in April 2013. For the June 1, 2013 – May 31, 2014 delivery period,
3 Duquesne Light will procure 50% of its default service supply in April 2013, 25% in
4 November 2013, and 25% in April 2014. By procuring 50% of the default service supply
5 for the second plan year at the same time that 50% of the supply for the first plan year is
6 procured, the Plan incorporates a hedge against energy price movements which otherwise
7 could result in large unanticipated increases in Residential customers' rates starting June
8 2014. The use of consecutive one-year contracts tied to the PJM planning year is similar
9 to buying power under a two-year contract in terms of an energy hedge, but also permits
10 the adjustment of retail rates to reflect known changes in PJM capacity prices on June 1
11 of each year, which in turn provides for annual rates that better reflect contemporaneous
12 market price levels in each year than a normal two-year contract. In sum, the switch from
13 a fixed Residential rate set at the time of the Commission's Order as was done in POLR
14 V to rates that are reset annually based on competitive supply procurements will result in
15 Residential rates that are more closely aligned with market conditions at the time of
16 delivery.

17 Duquesne Light has maintained one of the highest levels of residential shopping
18 in Pennsylvania. Duquesne Light's residential customers currently have opportunities to
19 elect competitive service options from more than 20 EGSs and have shown a propensity
20 to do so, thereby suggesting that this class of customers does not require as much price
21 stability in its default service rates as it may have in the past. The shorter-term pricing in
22 POLR VI (annual pricing) is designed to offer prices more reflective of the actual market

1 price while still providing rate stability to this class.

2
3 **Q. Please provide more detail regarding the proposed procurement plan for**
4 **Residential default service customers.**

5 A. Each full requirements supply tranche procured will represent approximately 4.2% of the
6 default service load with 24 tranches in total serving the entire Residential default service
7 load at any given time.⁶ To maximize bidder interest, these solicitations will be
8 conducted at the same time as the solicitations for default service supply to the Small
9 C&I and Medium C&I classes. However, each solicitation will seek separate bids for the
10 Residential, Small C&I, and Medium C&I customer classes, to ensure no cross-
11 subsidization. All winning bids will be submitted to the Commission for approval prior
12 to award.

13
14 **Q Why are you not offering a separate RFP for street lighting customers?**

15 A. I do not believe that the load of these customers is significant enough to attract
16 meaningful bidder interest. Furthermore, two thirds of that load has elected service from
17 an EGS. While the supply for Residential and street lighting customers will be procured
18 together, the default service rates for these groups will be different. In Duquesne Light
19 St. No. 4, Duquesne Light witness William Pfrommer describes how the rates will be
20 determined from the winning supply bid prices.

21

⁶ The size of each tranche will depend on actual shopping levels, but was equivalent to approximately 55 MW of eligible total system residential peak load in 2011.

1 **Q. Does the plan for Residential customers provide for some rate stability once the**
2 **POLR VI plan period ends on May 31, 2015?**

3 **A.** Yes. This is achieved by the procurement of a limited amount of one-year full
4 requirements supply for delivery after the POLR VI plan period ends on May 31, 2015.
5 This supply will be procured in April 2014, at the same time that a portion of the supply
6 for the last year of the POLR VI plan period is also procured.⁷ This RFP is proposed
7 because it will avoid subjecting Residential customers to a “hard stop” with regard to
8 their supply products which can result in rate volatility associated with replacing a large
9 portion of default service supply in a short period of time at the end of the POLR VI
10 period. In light of the Commission’s recommendation in the Retail Markets
11 Investigation⁸ that EDCs limit or eliminate short-term energy contracts that extend
12 beyond a default service plan period,⁹ Duquesne Light has limited the quantity of the
13 contracts with delivery after May 31, 2015, to provide for only 25% of the necessary
14 supply to Residential default service customers. While the RFP for this overhanging
15 supply is scheduled to occur in April 2014, in the event that legal or regulatory
16 developments result in Duquesne Light no longer serving as the default service provider
17 for its service territory after May 31, 2015, this solicitation could be adjusted by the
18 Commission as necessary. Duquesne Light’s Supplier Master Agreement also includes
19 provisions under which its obligations may be assigned. This procurement design does

⁷ On pages 20-21 of the *December 16 Retail Markets Order*, the Commission recognized that rate stability concerns associated with a “hard stop” of supply contracts at the end of default service plan may be legitimate.

⁸ Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952. (“Retail Markets Investigation”)

⁹ *December 16 Retail Markets Order*, pp. 20-21.

1 not presume any particular outcome to the Commission's current Retail Markets
2 Investigation. Instead, it is a prudent approach, given the desire to provide these
3 customers with some level of rate stability moving from one default service plan to
4 another.

5
6 **Q. Please describe the proposed procurement plan for Small C&I default service**
7 **customers in more detail.**

8 A. For customers in the Small C&I customer class, in other words non-Residential
9 customers with peak demands less than 25 kW, one-year full requirements load following
10 contracts will be obtained from open and competitive RFP solicitations.¹⁰ See Exhibit
11 JEW-1 for Duquesne Light's proposed form of Supply Master Agreement. This
12 Agreement is substantially the same as the Commission-approved Supply Master
13 Agreement currently being used for Duquesne Light's Small C&I and Medium C&I
14 customer classes.¹¹ The default service supply contracts will be "laddered" contracts, in
15 that they will have delivery periods that overlap, with 50% of the supply products having
16 delivery periods from June through May, and 50% of the supply products having delivery
17 periods from December through November.¹² Correspondingly, rates will be reset twice
18 per year, and Duquesne Light will reconcile costs for these customers on an annual basis.
19 Given that the rates for Small C&I customers under the Company's current default
20 service plan are reset annually, the proposed semi-annual resetting of rates will allow

¹⁰ Unmetered customers (UMS/MTS) have also been included in this procurement group.

¹¹ The primary differences are for clarification and correction of errors, along with the inclusion of ancillary services in the product definition.

¹² Six-month contracts representing 50% of the supply for the June 2013 – November 2013 period will be procured in November 2012 in order to begin the cycle of 12-month overlapping supply contracts.

1 rates to more consistently track changes in market prices. See Exhibit JEW-3. This
2 proposed procurement approach for Small C&I customers is similar to that being used for
3 Medium C&I customers in POLR V and is part of the Company's transition to more
4 frequent rate adjustments for smaller customers.

5 Each full requirements supply tranche procured will represent 25% of the default service
6 load, or about 39 MW of equivalent eligible load, with four tranches in total serving the
7 entire Small C&I default service load at any given time. To maximize bidder interest,
8 these solicitations will be conducted at the same time as the solicitations for default
9 service supply to the Residential and Medium C&I classes. However, each solicitation
10 will seek separate bids for the Residential, Small C&I, and Medium C&I customer
11 classes, to ensure no cross-subsidization. All winning bids will be submitted to the
12 Commission for approval prior to award.

13
14 **Q. Does the plan for Small C&I customers provide for some rate stability once the**
15 **POLR VI plan period ends on May 31, 2015?**

16 **A.** Yes. Like the plan for Residential customers, the plan for Small C&I customers involves
17 the procurement of full requirements supply contracts for delivery after the POLR VI
18 plan period ends on May 31, 2015. Specifically, the procurement methodology provides
19 for the acquisition of 50% of its supply for Small C&I customers to extend through
20 November 30, 2015, six months past the POLR VI plan period, for rate stability reasons
21 similar to those explained for the Residential customers.¹³ While the RFP for this

¹³ On pages 20-21 of the *December 16 Retail Markets Order*, the Commission recognized that a "hard stop" of supply contracts at the end of default service plan may be legitimate concern with regard to rate stability.

1 overhanging supply is scheduled to occur in November 2014, in the event that legal or
2 regulatory developments result in Duquesne Light no longer serving as the default service
3 provider for its service territory after May 31, 2015, this solicitation could be adjusted by
4 the Commission as necessary. Duquesne Light's Supplier Master Agreement also
5 includes provisions under which its obligations may be assigned. This procurement
6 design does not presume any particular outcome to the Commission's current Retail
7 Markets Investigation. Instead, it is a prudent approach, given the desire to provide these
8 customers with some level of rate stability moving from one default service plan to
9 another.

10
11 **Q. Please describe the proposed procurement plan for Medium C&I default service**
12 **customers in more detail.**

13 A. For customers in the Medium C&I customer class, in other words customers with peak
14 demands greater than or equal to 25 kW but less than 300 kW, six-month full
15 requirements load following contracts will be obtained from open and competitive RFP
16 solicitations. See Exhibit JEW-1 for Duquesne Light's proposed form of Supply Master
17 Agreement. This Agreement is substantially the same as the Commission-approved
18 Supply Master Agreement currently being used for Duquesne Light's Small C&I and
19 Medium C&I customer classes.¹⁴ The competitive solicitations will be conducted in
20 April and November of each year, with each April solicitation involving the procurement
21 of 100% of the default service supply needs for the upcoming June – November period,
22 and with each November solicitation involving the procurement of 100% of the default

¹⁴ The primary differences are for clarification and correction of errors, along with the inclusion of ancillary services in the product definition.

1 service supply needs for the upcoming December – May period.¹⁵ With this procurement
2 approach, retail default service rates will change every six months. See Exhibit JEW-4.
3 The switch from procuring 12-month contracts in POLR V to six-month contracts in
4 POLR VI will result in Medium C&I rates that are more closely aligned with market
5 conditions at the time of delivery.

6 Each full requirements supply tranche procured will represent 12.5% of the
7 default service load, or about 64 MW of equivalent eligible load, with eight tranches in
8 total serving the entire Medium C&I default service load at any given time. To maximize
9 bidder interest, these solicitations will be conducted at the same time as the solicitations
10 for default service supply to the Residential and Small C&I classes. However, each
11 solicitation will seek separate bids for the Residential, Small C&I, and Medium C&I
12 customer classes, to ensure no cross-subsidization. All winning bids will be submitted to
13 the Commission for approval prior to award.

14
15 **Q. Why is Duquesne Light proposing to satisfy the energy needs of its Residential,**
16 **Small C&I, and Medium C&I default customers using full requirements products,**
17 **instead of procuring block products and making spot purchases to reconcile the**
18 **difference between the block quantities and the actual load?**

19 A. Full requirements load following products like those that Duquesne Light is proposing to
20 procure provide greater price stability and transparency, and reduce the potential for
21 significant cost deferrals that can distort default service rates. In contrast, the “block-

¹⁵ The exception to this is the April 2013 RFP. Under its current default service plan, Duquesne Light will procure in November 2012 50% of its Medium C&I customer supply for the first six months of POLR VI, June 1, 2013 – November 30, 2013. Duquesne Light proposes to acquire the remaining 50% of default supply for Medium C&I customers for this period through the RFP that will be conducted in April 2013.

1 and-spot” approach (procuring block products, and making spot purchases and sales to
2 reconcile the difference between the block quantities and the actual load) would expose
3 customers to unnecessary risks in POLR VI, especially given the highly developed
4 competitive retail market that has been achieved in Duquesne Light’s service area.
5 Furthermore, these risks could be further magnified to the degree that the competitive
6 retail market continues to develop and new enhancements are put in place to promote
7 retail competition in Duquesne Light’s service area.

8 When a default service portfolio is supplied in part or in full by block products
9 and spot purchases (to reconcile the difference between the block quantities and the
10 actual load), in any given hour the utility pays a fixed-price on a fixed quantity (the
11 quantity specified in the block contract) that may be much less or much more supply than
12 it actually needs. As default service load deviates from forecasted quantities, the utility
13 would either take corrective actions to rebalance its portfolio or rely on the volatile spot
14 market to purchase supply when needed and/or sell excess supply when not needed.

15 Block products involve fixed-cost commitments that do not vary with the load
16 obligation. If Duquesne Light were to adopt the block-and-spot approach, and market
17 prices decline and customers exercise their option to switch to an EGS, Duquesne Light
18 could be left with excess supply that it would be forced to sell at a loss to be recovered
19 from increasingly fewer default service customers. Default service customers could also
20 find that an unexpectedly high portion of their default service supply portfolio is
21 composed of above-market contracts, resulting in higher default service rates. In fact,
22 default service rates could tend to increase as market prices decline. In the extreme, it
23 could become difficult to recover the costs solely from default service customers, and this

1 would raise issues regarding how the burden of the cost recovery would be shared among
2 all customers. On the flip side, if market prices were to increase and customers then
3 switched back to default service, then Duquesne Light would need to make supply
4 purchases in the now high-priced market in order to meet its load requirements, and this
5 would drive up default service rates. Load following contracts place these risks on the
6 suppliers.

7 Finally, it should be noted that full requirements product solicitations are the most
8 prevalent form of default service procurement for smaller customers (i.e., other than large
9 industrial and commercial customers) in restructured jurisdictions.¹⁶
10

11 **Q. Please describe the proposed procurement plan for Large C&I default service**
12 **customers in more detail.**

13 A. For customers in the Large C&I customer class, in other words customers with peak
14 demands of 300 kW or higher, the current method of supply procurement will be
15 continued. Day-ahead energy purchases will be made directly from PJM, with residual
16 energy requirements being satisfied through PJM real-time energy purchases and sales.
17 Capacity will be procured from PJM through its Reliability Pricing Model auction
18 construct. Alternative energy credits required to meet the Pennsylvania Alternative
19 Energy Portfolio Standard will be purchased by Duquesne Light Company through
20 bilateral agreements.

¹⁶ Examples of specific jurisdictions in which full requirements supply products are procured include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, Rhode Island, and Washington D.C.

1 Almost all of the Large C&I customer load in Duquesne Light's service area
2 (97%) is supplied by EGSs. Large C&I customers have significant opportunities to elect
3 competitive service options from EGSs and have a high propensity to do so. As a result,
4 there is no need for Large C&I default service to incorporate a greater level of rate
5 stability than it currently does. Furthermore, the proposed default service rate structure
6 provides such customers with the opportunity to engage in conservation efforts and to
7 ramp up industrial activities at times when the prices are lowest.

8
9 **Q. Is Duquesne Light proposing any restriction on the maximum percentage of load
10 that any one supplier can serve through the RFP process?**

11 A. Yes. Duquesne Light proposes that no one supplier should be awarded more than 50% of
12 the tranches available for any procurement class (Residential, Small C&I or Medium
13 C&I) in any RFP, and seeks the Commission's approval for this provision as part of this
14 proceeding. See Exhibit JEW-5. This limitation is designed to encourage participation in
15 the solicitations, and to reduce the impact if any single supplier were to default on its
16 obligation.

17
18 **Q. Is Duquesne Light proposing to engage a third party to assist in the RFP processes
19 for Residential, Small C&I, and Medium C&I supply?**

20 A. Yes. Consistent with past practice, Duquesne Light proposes to engage an independent
21 third party to assist in qualifying bidders, conducting bidder information sessions,
22 receiving all bids, ranking qualifying bids, and determining winning bidders. This will
23 help ensure that the bid process is fair and information is provided in a non-

1 discriminatory manner to all prospective bidders.

2
3 **Q. What is the contingency plan, if an RFP fails to garner a sufficient volume of bids,**
4 **the Commission does not approve the submitted bids, or a winning bidder defaults**
5 **on its obligation?**

6 A. If for any reason an RFP fails to garner a sufficient volume of bids, the Commission does
7 not approve the submitted bids, or a winning bidder defaults on its obligation, Duquesne
8 Light acknowledges that it has the obligation to provide the associated portion of the
9 default service supply. In this circumstance, Duquesne Light proposes to meet this
10 obligation on an interim basis through purchases in the PJM spot market, and to be
11 permitted to recover all of the costs of such purchases and all reasonable administrative
12 costs from the default service customers in the affected customer class. Duquesne Light
13 agrees that it will submit to the Commission within ten days after any such occurrence
14 more information on its contingency plan to handle any default service supply shortfall.

15
16 **DUQUESNE LIGHT COMPANY'S DEFAULT SERVICE PLAN SATISFIES ACT 129**

17 **AND IS CONSISTENT WITH ASSOCIATED COMMISSION GUIDANCE**

18 **Q. Mr. Wilson, have you reviewed Act 129's provisions regarding default service**
19 **procurement?**

20 A. Yes. The Act amends Section 2807(e)(3) of the Public Utility Code (66 Pa. C.S.
21 §2807(e)(3)) by adding requirements to be applied to default service procurement. These
22 provisions include the use of "competitive procurement processes" to obtain a "prudent
23 mix" of contracts that is designed to ensure "adequate and reliable service" at the "least

1 cost to customers over time.”¹⁷ In approving a default service provider’s plan, the
2 Commission is required to make specific findings that “the default service provider’s plan
3 includes prudent steps necessary to negotiate favorable generation supply
4 contracts...[and] includes prudent steps necessary to obtain least cost generation supply
5 contracts on a long-term, short-term and spot market basis.”¹⁸ The Act also specifies that
6 the Commission shall make a finding that “neither the default service provider nor its
7 affiliated interest has withheld from the market any generation supply in a manner that
8 violates federal law.”¹⁹ The Act also gives the default service provider the right to
9 recover on a full and current basis all reasonable costs incurred under a Commission-
10 approved competitive procurement plan²⁰ and allows the default service provider to
11 acquire power using auctions, requests for proposals, and/or bilateral agreements.²¹

12
13 **Q. Briefly describe the Act’s requirement to obtain a prudent mix of generation supply**
14 **contracts at the least cost over time.**

15 A. As amended by the Act, Section 2807(e)(3.2) provides that the generation supply to be
16 procured by default service providers through competitive processes must consist of a
17 “prudent mix” of supply products. The Act itself does not define “prudent mix;”
18 however, Section 2807(e)(3.4) provides that a default service provider’s prudent mix of
19 contracts “shall be designed to ensure” adequate and reliable service at the least cost to

¹⁷ 66 Pa.C.S. § 2807(e)(3.1)-(3.2) & (3.4).

¹⁸ 66 Pa.C.S. § 2807(e)(3.7).

¹⁹ 66 Pa.C.S. § 2807(e)(3.7).

²⁰ 66 Pa.C.S. § 2807(e)(3.9).

²¹ 66 Pa.C.S. § 2807(e)(3.1).

1 customers over time. In adopting the Act, the General Assembly recognized that
2 consideration of “least cost” should “[take] into account any benefits of price stability.”²²

3 Furthermore, as amended by the Act, Section 2807(e)(3.6) makes clear that
4 “[c]osts incurred through an approved competitive procurement plan shall be deemed to
5 be the least cost over time as required under paragraph (3.4) (II).” That is, once the plan
6 is approved by the Commission, the generation supply subsequently procured in
7 accordance with that plan will be deemed to be procured at the least cost over time.

8
9 **Q. What do you believe are the key implications of these requirements?**

10 **A.** I believe that there are four main implications:

- 11 1. Obtaining a prudent mix of supply contracts at least cost over time should take
12 into account the benefits, if any, of providing price stability to customers over
13 time. Further, the benefits of price stability in the provision of default service
14 may differ for each customer class.
- 15 2. The Commission’s determination regarding whether the least cost standard has
16 been met must be made, for the most part, on an ex-ante basis and should not be
17 subject to an ex-post review.²³
- 18 3. The Act continues to provide substantial discretion to a default service provider in
19 formulating its procurement plan and to the Commission when evaluating
20 proposed procurement plans.

²² See Act 129 of 2008 (Preamble).

²³ In this context, “ex-ante” refers to a time before the Commission approves a plan, and “ex-post” refers to a later time. The Act does allow the Commission to modify contracts or disallow costs in limited circumstances.

1 4. The Act provides the default service provider with the “right” to request full
2 reconciliation.

3
4 **Q. Please explain in greater detail the first key implication of the Act that you describe,**
5 **which relates to the factors that should be considered in obtaining a prudent mix of**
6 **supply contracts at least cost over time.**

7 A. First, the Act’s explicit requirement that electric supply be procured through a “prudent
8 mix” of contracts indicates that the risks to customers associated with a proposed
9 procurement plan must be considered. This conclusion is also supported by the General
10 Assembly’s recognition that consideration of “least cost” should take into account any
11 benefits of price stability.²⁴ It is also supported by various statements made by the
12 Commission in its Second Default Service Rulemaking Order, issued on October 4,
13 2011.²⁵

14 In implementing default service standards, the Commission must be
15 concerned about rate stability as well as other considerations such as
16 ensuring a “prudent mix” of supply and ensuring safe and reliable service.
17 In our view, a default service plan that meets the “least cost over time”
18 standard should not have, as its singular focus, the achievement of the
19 absolute lowest cost over the default service plan time frame but rather a
20 cost for power that is both relatively stable and also economical relative to
21 other options.²⁶

22
23 Price stability benefits are very important to some customer groups, so an
24 interpretation of “least cost” that mandates subjecting all default service
25 customers to significant price volatility through general reliance on short
26 term pricing is inconsistent with Act 129’s objectives.²⁷

²⁴ See Act 129 of 2008 (Preamble).

²⁵ Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Order entered October 4, 2011) (“Second Default Service Rulemaking Order”).

²⁶ Second Default Service Rulemaking Order, p. 40.

²⁷ Second Default Service Rulemaking Order, p. 41.

1 Second, it is important to recognize that the “prudent mix” of contracts may differ
2 for each customer class. What is considered prudent for Residential customers might not
3 be considered prudent for Large C&I customers, given the different circumstances of
4 each customer group. Using tailored and separate supply procurement for each of the
5 customer classes is also consistent with the Commission’s Second Default Service
6 Rulemaking Order, in which it states:

7 The Commission notes there was substantial unanimity on this point and
8 agrees with the parties that the “prudent mix” standard should be
9 interpreted to allow for a class-specific product mix that best matches the
10 needs of each DSP customer class.²⁸
11

12 Third, the prudent mix of contracts may vary in future procurement plans as
13 wholesale and retail markets evolve and technologies that allow customers to respond to
14 hourly market price signals become further developed and deployed. For example, to the
15 extent that wholesale markets for a given type of product are not well-developed today,
16 heavy reliance on such a product would not be prudent at this time, but, depending upon
17 future market conditions, it may make sense to alter the contract lengths and/or the
18 proportion of spot market-priced purchases offered to each customer class in future
19 default service plans.

20
21 **Q. Please explain in greater detail the second key implication of the Act, the**
22 **importance of the Commission applying the least cost standard on an ex-ante basis**
23 **and not subjecting this determination to an ex-post review.**

²⁸ Second Default Service Rulemaking Order, p. 69.

1 A. As a threshold matter, I note that the Act clearly envisions ex-ante consideration of the
2 least cost standard in evaluating procurement plans and not ex-post review.²⁹ Section
3 2807(e)(3.6) provides that once a plan is approved by the Commission, the costs incurred
4 pursuant to such a plan are deemed to be the least cost over time.

5 An ex-ante review is appropriate especially since supply products that provide
6 rate stability are often designed to protect customers from risks that could increase rate
7 levels. These price stability benefits are not captured in an after-the-fact analysis, to the
8 degree that such an analysis focuses on the actual market outcome instead of all of the
9 market scenarios that could have occurred. If an abnormally hot summer had occurred
10 and wholesale prices had spiked, then customers being provided default service supply
11 with some degree of rate stability would have been provided some protection against the
12 associated electricity price volatility. The fact that wholesale prices did not spike in a
13 particular year does not mean that it was not valuable to have protection in place against
14 that risk. If we don't get sick in a particular year, we don't look back and say, "We
15 shouldn't have bought health insurance last year; that was a bad decision." While we
16 may not have been sick last year or the year before, what is relevant is what we know at
17 the time of the decision. Many of us prudently make the decision to pay the cost of
18 health or homeowner's insurance despite the fact that we did not get sick or our home did
19 not suffer a loss in prior years.

20

²⁹ It should be noted that Act 129 does allow the Commission to modify contracts or disallow costs when the party seeking recovery of the costs of a procurement plan is, after hearing, found to be at fault for not complying with the Commission-approved procurement plan; or has committed fraud, collusion or market manipulation with regard to default service contracts.

1 **Q. Please explain in greater detail the third key implication, that the Act provides**
2 **discretion to the default service provider and to the Commission when developing**
3 **and evaluating proposed procurement plans.**

4 A. Simply put, a single mix of default service supply resources is not likely to be appropriate
5 for all service areas in Pennsylvania. Circumstances may vary across service areas and
6 customer types, and furthermore there may be benefits associated with adopting different
7 default service supply strategies in different service areas.

8 The Act does not define the terms “prudent mix of contracts” or “least cost over
9 time.” The Act does not mandate a single method of procurement to obtain least cost
10 supply, and instead allows for auctions, requests for proposals, and/or bilateral
11 agreements. The Act also does not specify the percentage share of each type of product
12 to be included in the portfolio,³⁰ nor does it mandate the types of contracts to be entered
13 into or the specific durations of the contracts.³¹ Furthermore, the Act does not discuss
14 how the prudent mix of contracts may differ by customer class or as market conditions
15 change. Nor does the Act define precisely how the benefits of price stability or other
16 factors such as adequacy and reliability should be considered in the determination of least
17 cost.

18 Instead, the Act provides discretion to default service providers to propose, and
19 the Commission to consider, different methods of procurement and mixes of products on
20 a case-by-case basis given the circumstances at the time of approval. Notably, this is also

³⁰ The Act does limit the percentage of long-term contracts to not more than 25% of the default service provider’s projected default service load unless the Commission, after a hearing, determines for good cause that a greater portion of load is necessary to achieve least cost procurement.

³¹ The Act does state that “long-term” contracts are those of more than four and not more than twenty years.

1 consistent with guidance provided by the Commission in its Second Default Service
2 Rulemaking Order:

3 [T]he [“least cost”] standard must give the DSP sufficient latitude to select
4 contracts that constitute a “prudent mix” which includes a sufficient
5 variety of products that adequately take into consideration price volatility,
6 changes in generation supply, customer usage characteristics and the need
7 to assure safe and reliable service.³²
8

9 We agree with the majority of parties that the “prudent mix” of contracts
10 be interpreted in a flexible fashion which allows the DSPs to design their
11 own combination of products that meets the various obligations to achieve
12 “least cost to customers over time,” ensure price stability, and maintain
13 adequate and reliable service.³³
14

15 We do reject the positions of those parties that “prudent mix” be defined
16 to always require a specific mix or percentage of types of contract
17 components in each default service plan or a minimum of two types of
18 products.³⁴
19

20 **Q. Describe the fourth implication of the Act, the right to request full reconciliation of**
21 **reasonable costs.**

22 A. Duquesne Light proposes full reconciliation of all reasonable costs incurred under its
23 POLR VI procurement plan for all of its customers.
24

25 **Q. Does Duquesne Light’s Plan satisfy Section 2807(e)(3.1) of the Act, which requires**
26 **that supply be acquired through competitive procurement processes?**

27 A. Yes, Duquesne Light’s Plan satisfies this requirement. Section 2807(e)(3.1) provides that
28 the default service provider shall acquire electric power through competitive procurement
29 processes including one or more of the following: auctions, RFPs, and/or bilateral

³² Second Default Service Rulemaking Order, p. 38.

³³ Second Default Service Rulemaking Order, p. 60.

³⁴ Second Default Service Rulemaking Order, p. 60.

1 agreements entered into at the sole discretion of the default service provider. Duquesne
2 Light's Plan satisfies Section 2807(e)(3.1) by relying on a) supply products for Large
3 C&I default service customers procured from the competitive PJM spot markets, and b)
4 open and competitive solicitation processes utilizing RFPs for full requirements supply
5 contracts to obtain its default service supply for Residential, Small C&I, and Medium
6 C&I customers.

7
8 **Q. Do you believe that Duquesne Light's Plan includes prudent steps necessary to**
9 **negotiate favorable generation supply contracts, as required by Section 2807(e)(3.7)**
10 **of the Act?**

11 A. Yes. For Large C&I customers, Duquesne Light will procure supply products directly
12 from the competitive spot markets operated by PJM. For Residential, Small C&I, and
13 Medium C&I customers, Duquesne Light's Plan requires bidders to compete with each
14 other, on the basis of lowest price, in an RFP process to provide default service supply at
15 the least cost.

16
17 **Q. Do you believe that Duquesne Light's Plan is consistent with the requirements of the**
18 **Act, given that Section 2807(e)(3.2) contemplates inclusion of "long-term" contracts**
19 **with a term of more than four years?**

20 A. Yes. While I am not an attorney, my understanding is that Act 129 requires a prudent
21 mix of spot, short-term and long-term contracts, but does not necessarily mandate the use
22 of long-term contracts in all situations. I do not believe that it would be prudent at this
23 time in Duquesne Light's service area to enter into long-term contracts to supply default

1 service customers. There is currently significant uncertainty about the amount of load
2 that Duquesne Light will supply in the future as the Default Service Provider, which is
3 driven by the substantial development of the competitive retail market in Duquesne
4 Light's service area, the retail market enhancements that are included in Duquesne
5 Light's Plan, and the outcome of the pending Retail Markets Investigation. As a result, I
6 do not believe that long-term default service supply commitments should be made.

7 Long-term contracts also pose several challenges in today's wholesale markets.³⁵
8 Wholesale markets for electricity products with longer delivery periods are less liquid, so
9 solicitations for longer-term supply products may attract fewer bidders. Furthermore, the
10 collateral required from suppliers under such contracts to adequately reduce customers'
11 financial exposure could become very large and costly,³⁶ and these contracts may
12 increase the likelihood of supplier default. The lack of transparent long-term forward
13 market prices adds additional uncertainty for suppliers in developing price offers, for
14 regulators in evaluating price offers, and for default service providers in developing
15 collateral requirements to protect customers from financial exposure associated with
16 supplier default. In addition, inclusion of contracts with longer delivery periods increases
17 the risk that contract costs (and retail rates) will be well above future market price levels,
18 potentially for long periods of time.^{37,38}

³⁵ These challenges are attributable to both longer-term, fixed-price full requirements contracts and longer-term, block contracts.

³⁶ This is especially important given the recent state of the credit markets.

³⁷ Implementation of the Public Utilities Regulatory Policy Act ("PURPA") during the 1980s and 1990s burdened electric utilities and their customers with a huge overhang of long-term contracts established at prices well above their actual avoided cost.

³⁸ The California Department of Water Resources in early 2001 signed ten-year contracts to purchase power worth approximately \$43 billion. Futures prices hovered in the range of \$350-\$550 per MWH

1 Furthermore, long-term contracts that do not provide a fixed-price guarantee for
2 load following service (as the full requirements supply products proposed by Duquesne
3 Light do), such as block energy products, involve magnified risks to customers,
4 especially given the customer migration risk due to the level of development of the
5 competitive retail market that has been achieved in Duquesne Light's service area, the
6 retail market enhancements that will be implemented as part of Duquesne Light's Plan,
7 and the pending Retail Markets Investigation. The longer the term of a fixed-price
8 supply product that does not match supply quantities with loads, the more likely it is that
9 loads will deviate substantially from expectations at the time that the product was
10 procured, resulting in costly scenarios for customers, such as those in which excess
11 supply must be sold at a loss, or those in which the product price is ultimately above
12 market levels and the product constitutes an unexpectedly high portion of the default
13 service supply portfolio.

14 Finally, it is worth noting that in a December 16, 2011, Commission Order in the
15 Retail Markets Investigation, the Commission recommended that the use of long-term
16 contracts be limited in default service plans:

17 [T]he Commission continues to recommend the following:...that EDCs
18 limit the proportion of long-term contracts that make up their default
19 service plan energy portfolios, and consider using already existing long-
20 term contracts from previous or presently effective default service plans.³⁹
21

during the time that the contracts were negotiated, but by August 2001, futures prices had dropped below \$100 per MWH. Thus, the state has been obligated to pay rates well above market prices for a long period of time. Source: The Electric Energy Market Competition Task Force's Report to Congress on Competition in Wholesale and Retail Markets for Electric Energy, at page 90.

³⁹ *December 16 Retail Markets Order*, p. 19.

1 Given all of these considerations, Duquesne Light does not believe that it would
2 be prudent to enter into new long-term contracts to serve default service load at this time.

3
4 **Q. Do you believe that Duquesne Light’s Plan is designed to ensure adequate and**
5 **reliable service, as required by Section 2807(e)(3.4) of the Act?**

6 A. Yes. First of all, the supply contracts contain protections to provide reliability with
7 respect to the sellers’ ability to satisfy the terms and conditions of the contracts. Under
8 Duquesne Light’s Plan, suppliers must satisfy certain requirements (including being a
9 member in good standing of PJM) that help ensure that they are able to perform their
10 obligations.

11 Furthermore, since all load served under the contracts will be supplied through
12 PJM, regardless of whether the winning default service supply bidders own or control
13 generation, reliable and adequate service is further ensured. PJM is a FERC-approved
14 regional transmission organization with a central responsibility to ensure the reliability of
15 its regional electricity grid of which Duquesne Light is a part, and has numerous
16 mechanisms in place to meet this responsibility. PJM helps to ensure service adequacy
17 because all of the fundamental components of electricity supply can be purchased
18 through PJM. In the event that a default service supplier defaults on its contract,
19 Duquesne Light can procure the physical supplies necessary to ensure adequate and
20 reliable service to satisfy its default service obligations.

21
22 **Q. Are there any other findings that the Company is requesting the Commission to**
23 **make?**

1 A. Yes. The Act specifies that the Commission shall make a finding that “neither the default
2 service provider nor its affiliated interest has withheld from the market any generation
3 supply in a manner that violates federal law.”⁴⁰ Duquesne Light owns no generation
4 resources, and has not withheld from the market any generation supply in a manner that
5 violates federal law. The affiliates of Duquesne Light own in the aggregate less than
6 0.07% of the generation capacity in PJM. Under applicable codes of conduct of the
7 Federal Energy Regulatory Commission, Duquesne Light does not discuss generation
8 market-related issues with its affiliates. However, Duquesne Light can affirmatively state
9 that there has been no determination by a court or regulatory agency of competent
10 jurisdiction that any of its affiliates have withheld from the wholesale energy market any
11 generation supply in a manner that violates federal law. Consequently, the Company
12 requests that the Commission make such finding.

13

14 **Q. Does this conclude your direct testimony at this time?**

15 A. Yes.

⁴⁰ 66 Pa.C.S. § 2807(e)(3.7).

Duquesne Light Exhibit JEW – 1

DEFAULT SUPPLY MASTER AGREEMENT
Medium C & I Service

by and between

DUQUESNE LIGHT COMPANY

and

[_____]

Dated as of _____

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Exhibits

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- Exhibit B Alternative Energy Portfolio Standards Obligation
- Exhibit C Performance Assurance Letter of Credit
- Exhibit D Sample PJM Invoice
- Exhibit E Methodology of Mark to Market (MTM) Exposure
- Exhibit F Form of Guaranty
- Exhibit G Form of Notice
- Exhibit H PJM Declaration of Authority

DEFAULT SUPPLY MASTER AGREEMENT

THIS DEFAULT SUPPLY MASTER AGREEMENT (“Agreement” or “DSMA”), is made and entered into as of _____ by and between _____, a _____, (“Seller”)(and Duquesne Light Company, a Pennsylvania corporation (“Buyer” or “Company”)) (each hereinafter referred to individually as “Party” and collectively as “Parties”).

WITNESSETH:

WHEREAS, Buyer has an obligation as the Default Service Provider to provide default service (Energy, Capacity and related incidences as defined below) for its retail customers;

WHEREAS, Buyer has solicited offers for serving Medium C&I Customers with respect to default service pursuant to a Request for Proposal (all as defined below) and the Seller is a winning bidder in that solicitation; and

WHEREAS, Seller desires to sell Full Requirements Service (as defined below), which may include Time-of-Use Load, and Buyer desires to purchase such Full Requirements Service to supply a Specified Percentage (as defined below) of the default service requirements of Buyer’s retail Medium C&I customers for a certain period of time, as provided herein, on a firm and continuous basis;

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE I DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

““AEP” Dayton Hub” means the aggregated Locational Marginal Price (“LMP”) nodes defined by PJM.

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Aggregate Buyer’s Exposure” means all Buyer’s Exposure for Aggregate Transactions.

“Aggregate Transactions” means all Transactions under this Agreement and all other transactions under Supply Master Agreements executed between the Parties pursuant to the PUC Orders.

“Alternative Energy Portfolio Standards (“AEPS”)” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Alternative Energy Portfolio Standards (“AEPS”) Obligation” shall have the meaning ascribed to it in Section 4.5 (Alternative Energy Portfolio Standards Obligation).

“Auction Revenue Rights” or “ARR” means the current or any successor congestion management mechanism or mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARRs are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM OATT.

“Ancillary Services” shall have the meaning ascribed thereto in the PJM Agreements.

“Bankrupt” means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

“Bid Block” means a fixed percentage share of load for a Service Type that is awarded to Seller in accordance with Buyer's RFP as set forth in a Transaction Confirmation. The fixed percentage defines the Bid Block size for each of the Company's Service Types.

“Bid Price” means the price for Full Requirements Service bid by Seller in its response to the RFP and accepted by Buyer, on a cents per kWh basis.

“Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. EPT.

“Buyer Downgrade Event” means that Buyer's (or Buyer's Guarantor's) Credit Rating is less than the Buyer Minimum Rating for each of the Ratings Agencies by which Buyer is rated.

“Buyer Minimum Rating” means BBB- by S&P, BBB- by Fitch and Baa3 by Moody's.

“Buyer’s Exposure” during the term of a Transaction shall be deemed equal to the positive difference between: (i) the MtM Exposure pursuant to a Transaction under this Agreement; less (ii) the sum of any unpaid or unbilled amounts owed by Buyer to Seller pursuant to a Transaction under this Agreement. With respect to the preceding sentence, “unbilled amounts owed by Buyer” shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by Seller under a Transaction.

“Capacity” shall mean “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM, including capacity as a product of PJM’s Reliability Pricing Model.

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions for Buyer's retail customers, as determined by Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM from time to time to determine the Seller’s capacity obligation for each Transaction.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, PJM charges, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its Full Requirements Service obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or Fitch.

“Current Capacity PLC Per Bid Block” means, on any given Business Day, for each Transaction, the product of: (i) the aggregate Capacity PLC for an entire Service Type; and (ii) the quotient of (x) the Specified Percentage and (y) the number of Bid Blocks.

“Declaration of Authority” shall have the meaning ascribed to it in Section 4.9 (Declaration of Authority).

“Default Damages” means, for the period of time specified in Article 12 (Remedies) any direct damages and Costs, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs with respect to the Specified Percentage as a result of an Event of Default. Direct damages may include, but are not limited to: (i) the positive difference (if any) between the price of Full Requirements Service hereunder and the price at which the Buyer or Seller is able to purchase or sell (as applicable) Full Requirements Service (or any components of Full Requirements Service it is able to purchase or sell) from or to

third parties, including PJM; (ii) Emergency Energy charges; and (iii) additional transmission or congestion costs incurred to purchase or sell Full Requirements Service.

“Default Service” shall mean the electric generation supply provided by a default service provider as described in the Electricity Generation Customer Choice and Competition Act and PUC Orders enacted thereunder.

“Default Service Load” means the total sales at the retail meter, plus any losses and Unaccounted For Energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM’s derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements), expressed in MWh of retail customers in a particular Customer Supply Group being served by Buyer pursuant to the PUC Orders, as such sales vary from hour to hour, in Buyer’s Pennsylvania franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. The Default Service Load is net of any reduction in load as a result of Energy Efficiency and Demand Side Response Programs offered by Buyer, PJM, Curtailment Service Providers, or other third parties, or any Retail Market Programs. For avoidance of doubt, Default Service Load shall not include (i) the amount of load that would otherwise have been served in the absence of such Energy Efficiency or Demand Side Response Programs or Retail Market Programs; or (ii) sales resulting from changes in the Buyer’s Pennsylvania service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Pennsylvania. Default Service Load may include Default Service Time-of-Use Load.

“Default Service Supply Estimate” means, for each hour during the term of this Agreement, Buyer’s estimate of the Full Requirements Service associated with the Default Service Load, as provided to PJM in accordance with Section 3.2 hereof.

“Default Service Time-of-Use Load” means the portion of load used to supply TOU customers. Default service TOU Load may include separate on- and off-peak rates or other time-varying rates that are based on the time of day a customer uses electricity.

“Default Service Time-of-Use Price” means the unique Time-of-Use On-Peak and Time-of-Use Off-peak Price per MWh.

“Delivery Period” means the period of delivery for a Transaction as specified in a Transaction Confirmation.

“Delivery Point” means the Duquesne Zone as may be designated by PJM.

“Duquesne Zone” means the PJM defined load zone for Buyer.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Effective Date” shall mean the date of both parties having executed this Agreement.

“Emergency Energy” shall have the meaning ascribed to it in the PJM Agreements.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“FERC” means the Federal Energy Regulatory Commission or its successor.

“Fitch” means Fitch Investor Service, Inc. or its successor.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not foreseen as of the date a Transaction is entered into, which is not within the reasonable control of, or the result of the negligence or intentional conduct of the affected party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of Seller’s supply; (ii) Seller’s ability to sell the Full Requirements Service at a price greater than that received under any Transaction; (iii) curtailment by a Transmitting Utility; (iv) Buyer’s ability to purchase the Full Requirements Service at a price lower than paid under any Transaction; or (v) Labor stoppage or lockout.

“Full Requirements Service” means all necessary Energy, Capacity, transmission other than Network Integration Transmission Service, Ancillary Services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the Specified Percentage except for distribution service. This may include Default Service Time-of-Use Load.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

“Governmental Authority” means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party or this Agreement.

“Grid Management Charges” means the grid management charges defined in the PJM OATT as they may change from time to time,

“Guarantor” means any party who agrees to guaranty Seller’s financial obligations under this Agreement pursuant to the guaranty agreement, attached hereto as Exhibit F,

recognizing that such a party will be obligated to meet or exceed Buyer's credit requirements for Seller and that the acceptability of such guaranty will be determined at Buyer's sole discretion.

"Interest Rate" means, for any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and (ii) the maximum rate permitted by applicable law.

"Invoice" shall have the meaning ascribed to it in Section 7.1 (Billing).

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable, evergreen, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued (for clarification, the form of Letter of Credit attached as Exhibit C hereto shall be considered an acceptable form). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; or if the issuing bank's Current, Quick, Return on Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, at its sole discretion that the issuing bank's position has deteriorated, then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"Line Losses" means those losses set forth in Buyer's Supplier Tariff.

"Load Serving Entity" or "LSE" has the meaning ascribed to it in the PJM Agreements.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction(s), determined in a commercially reasonable manner.

"Medium C&I Customer" means any commercial or industrial retail customer of Buyer receiving Default Service from Buyer under a Default Service GS/GM or GMH Rate Schedule that has a demand equal to or greater than 25 kw and less than 300 kw.

"Mark to Market Exposure" or "MtM Exposure" means, with respect to each month remaining in each Transaction Delivery Period, the sum of: (i) the relevant month On Peak Forward Price minus the relevant month On Peak Initial Mark Price, multiplied by the relevant month On Peak Estimated Energy Quantity; and (ii) the relevant month Off-Peak Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by

the relevant month Off-Peak Estimated Energy Quantity. The method and an example for calculating the MtM Exposure are included in Exhibit E.

“Monthly Settlement Amount” means with respect to any calendar month during the Delivery Period, the sum of: (i) the product of the applicable Monthly Settlement Price and Monthly Settlement Load; and (ii) any other adjustments as set forth in this Agreement.

“Monthly Settlement Price” means price for Monthly Settlement Load for the applicable month of the Delivery Period as set forth in a Transaction Confirmation.

“Monthly Settlement Date” means, with respect to any calendar month of a Delivery Period, the date(s) determined to be the PJM Settlement Date(s) pursuant to the PJM Agreements.

“Monthly Settlement Load” means, with respect to any calendar month during an applicable Delivery Period, the product of Specified Percentage and Default Service Load.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MWh” means one megawatt of electric power used over a period of one hour which shall be rounded in a manner consistent with standards in the PJM Agreements. The current rounding standards are to the nearest one-thousandth of a megawatt hour.

“MW-Measure” means the estimated megawatt measure of Capacity Peak Load Contribution corresponding to a single Bid Block identified in the Transaction Confirmation as of the Transaction Date.

“NERC” means the North American Electric Reliability Council or any successor organization thereto.

“Network Integration Transmission Service” has the meaning ascribed to it in the PJM Agreements.

“Non-Defaulting Party” means the Party not responsible for an Event of Default, as set forth in Article 12.

“Officer” is an individual empowered to undertake contracts and bind the Seller and/or Buyer. All representations in this Agreement must be made by an Officer of Seller and/or Buyer.

“Off-Peak Estimated Energy Quantity” means, for each month in each Transaction, the product of: (i) the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction

Confirmation; and (iv) the percentage of Off-Peak Hours remaining (excluding current day) in each month.

“Off-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“Off-Peak Forward Price” means the price, as provided by the Buyer, for Off-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

“Off-Peak Hours” means those hours which are not On-Peak Hours.

“Off-Peak Initial Mark Price” means the Off-Peak Forward Price as of the Transaction Date.

“On-Peak Estimated Energy Quantity” means, for each month in each Transaction, the product of: (i) the relevant month On-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction Confirmation; and (iv) the percentage of On-Peak Hours remaining (excluding current day) in each month.

“On-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“On-Peak Forward Price” means the price, as provided by the Pricing Agent, for On-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

“On-Peak Hours” means Hour Ending (“HE”) 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and NERC holidays.

“On-Peak Initial Mark Price” means the On-Peak Forward Price as of the Transaction Date.

“Performance Assurance” means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

“Photo-voltaic (“PV”) shall have the meaning ascribed in Tier 1 Alternative Energy Sources.

“PJM” means the PJM Interconnection, LLC or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM West RAA, and any other applicable PJM manuals or documents, or any successor, superceding or amended versions that may take effect from time to time.

“PJM Control Area” has the meaning ascribed to it in the PJM Agreements.

“PJM OATT” or “PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superceding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Operating Agreement of PJM or the successor, superceding or amended versions of the Operating Agreement that may take effect from time to time.

“PJM Planning Period” has the meaning ascribed to it in the PJM Agreements. Currently, the PJM Planning Period is the twelve months beginning June 1 and extending through May 31 of the following year.

“PJM RAA” means the PJM Reliability Assurance Agreement or any successor, superceding or amended versions of the PJM Reliability Assurance Agreement that may take effect from time to time.

“PJM Settlement Date” means the date on which payments are due to PJM for services provided by PJM in accordance with the PJM Agreements. Such date currently occurs on the first Business Day after the nineteenth (19th) calendar day of the month following service.

“PUC” means the Pennsylvania Public Utility Commission and any successor agency thereto.

“PUC Orders” means the orders issued by the PUC including but not limited to the Electricity Generation customer Choice and Competition Act, 66 Pa. C. S. Sections 2801-2812, including the Order authorizing the parties to enter into this Agreement.

“Ratings Agencies” means Fitch, Moody’s and S&P.

“Reference Market-Maker” means any broker in energy products who is not an Affiliate of Buyer or Seller.

“Retail Market Program” means any program, action, or offer arising out of or relating to the PUC’s *Investigation of Pennsylvania’s Retail Electricity Market* (Docket No. I-2011-2237952) (as such proceeding may be amended, supplemented or superseded, in whole or in part) to encourage Default Service customers to obtain electric generation service from one or more Electric Generation Suppliers or to transfer Default Service customers from an Electric Distribution Company (including Buyer) to one or more Electric Generation Suppliers for purposes of obtaining electric generation service supply, whether or not any such program, action or offer is introduced or endorsed by Buyer or undertaken in compliance with any Requirement of Law. Such programs, actions and offers include, but

shall not be limited to, any PUC or Buyer customer education program relating to Default Service, any program in which Default Service customers are referred by Buyer to one or more Electric Generation Suppliers, and any program under which Default Service customers are transferred (or elect to be transferred) individually or in aggregate to one or more Electric Generation Suppliers on any basis.

“Request for Proposal” or “RFP” means the request for proposals issued by Buyer for the provision of Full Requirements Service that is necessary to supply Medium C&I Service.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

“Service Type” means the customer class, partial customer class and/or group of customer classes, as set forth in a Transaction Confirmation.

“Specified Percentage” means, the percentage of Default Service Load as set forth in a Transaction Confirmation.

“Supplier Tariff” means Buyer’s Electric Generation Supplier Coordination Tariff, or its successor, filed with and approved by the PUC.

“Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 12 (Events of Default; Remedies). The calculation of a Settlement Amount for a Terminated Transaction shall exclude any Default Damages calculated pursuant to Section 12.2 (Remedies) for the same Terminated Transaction. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

“Step-Up” shall have the meaning ascribed to it in Section 4.13 (Seller Step-Up Rights).

“Tangible Net Worth” or “TNW” means an entity’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission or similar Governmental Authority or governing body in such jurisdiction of incorporation, organization or formation. Should there arise a discrepancy between this definition of TNW and the provisions of Article 14, Article 14 shall govern.

“Terminated Transaction(s)” means any Transaction which has been terminated in accordance with Section 12.2.

“Tier 1 Alternative Energy Sources” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Tier 2 Alternative Energy Sources” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Time-of-Use” or “TOU” shall be a time-varying rate option offered by the Buyer to meet its obligations under 66 Pa. C.S. § 2807(f).

“Time-of-Use Monthly Billed Load” means the customer usage that is billed on a monthly basis to those eligible customers accepting service on a TOU program that has been approved by the PUC.

“Time-of-Use Off-Peak Hours” means all hours that are deemed by the PUC to be Off-Peak Hours under a PUC approved TOU program.

“Time-of-Use On-Peak Hours” means all hours that are deemed by the PUC to be On-Peak Hours under a PUC approved TOU program.

“TNW Amount” shall equal the product of the applicable TNW Percentage and an entity’s Tangible Net Worth.

“TNW Percentage” means the percentage determined pursuant to Section 14.3 (Unsecured Credit) that is multiplied by an entity’s Tangible Net Worth to determine that entity’s TNW Amount.

“Transaction” means a particular agreement by which Buyer purchases and Seller sells Full Requirements Service pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation.

“Transaction Confirmation” shall have the meaning ascribed to it in Section 2.9 (Transaction Confirmation).

“Transaction Date” means the date on which a Transaction under this Agreement is executed by Buyer and Seller as set forth in the Transaction Confirmation.

“Transmitting Utility” means the utility or utilities, and their respective control area operators and their successors, transmitting all or any portion of the Full Requirements Service.

“Unaccounted For Energy” means the difference between the Buyer’s hourly system load and the sum of: (i) the estimated hourly customer loads (interval metered and profiled); and (ii) electrical losses, and Unaccounted For Energy as determined in the Buyer’s load settlement process for the Monthly Settlement Load.

“Unsecured Credit” means an amount that is the lower of: (i) the relevant Unsecured Credit Limit as determined pursuant to Section 14.3 (Unsecured Credit); (ii) the relevant TNW Amount, as determined pursuant to Section 14.3 (Unsecured Credit); or (iii) the Guaranty Amount from Seller’s Guarantor as set forth in the Guaranty Agreement.

“Unsecured Credit Limit” shall have the meaning ascribed to it in Section 14.3 (Unsecured Credit).

ARTICLE II

TERMS AND CONDITIONS OF FULL REQUIREMENTS SERVICE

- 2.1 Seller’s Obligation to Provide Service. With respect to a Transaction, Seller shall provide Full Requirements Service on a firm and continuous basis such that the Specified Percentage is supplied at the Delivery Point during the Delivery Period. For those Full Requirements Contracts with assigned Default Service Time-of-Use Load, Seller shall, at Buyer’s request, provide Full Requirements Service on a firm and continuous basis, meeting the assigned obligation amount.
- 2.2 Buyer’s Obligation to Take Service. With respect to a Transaction, Buyer shall accept Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Monthly Settlement Amounts for such Full Requirements Service on the applicable Monthly Settlement Date in accordance with Section 7.3 (Payments of the Invoice). With respect to Seller’s TOU Obligation, Buyer shall accept, if requested, Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Buyer’s revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for TOU Monthly Billed Load.
- 2.3 Network Integration Transmission Service and Distribution Service. With respect to a Transaction, Buyer shall be responsible, at its sole cost and expense, for the provision of Network Integration Transmission Service and distribution service necessary to serve the Specified Percentage. Buyer is responsible, at its sole cost and expense, for future PJM charges assessed to network transmission customers for PJM-required transmission system enhancements pursuant to the PJM Regional Transmission Expansion Plan (as defined in the PJM Agreements) and for future PJM charges assessed to network transmission customers, including for transition costs related to the elimination of through-and-out transmission rates, and for Grid Management Charges. Seller shall be responsible for transmission charges to deliver power to the Duquesne Zone.
- 2.4 Congestion and Congestion Management. Seller is responsible for any congestion costs incurred to supply the Specified Percentage. Buyer shall transfer or assign to Seller Buyer’s rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, provided that such rights are related to the service being provided to the Specified Percentage and for the applicable term hereunder. All rights and obligations associated with such ARRs will accrue to the Seller through the transfer or assignment from Buyer to Seller including the responsibility and ability of Seller to request and nominate such ARRs when applicable. Seller shall have the right to request and nominate ARRs if: (i) all Transactions for Default Service Load have been executed and are in

full force and effect; and (ii) the Delivery Period under each Transaction Confirmation is inclusive of the PJM Planning Period for which the ARR's are being requested or nominated. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARR's for the upcoming PJM Planning Period and such ARR's will be allocated to Seller in accordance with the PJM Agreements based upon its Specified Percentage.

- 2.5 Other Changes in PJM Charges. Except as provided in Section 2.3 (Network Integration Transmission Service and Distribution Service), Seller bears the risk of any other changes in PJM products and pricing during the term of this Agreement.
- 2.6 Status of Seller. Seller, for purposes of this Agreement, is not a Load Serving Entity and nothing contained herein shall be deemed to cause Seller to be a Load Serving Entity.
- 2.7 Sales for Resale. All Full Requirements Service provided by Seller to Buyer shall be sales for resale, with Buyer reselling such Full Requirements Service to certain of its retail customers that are receiving Medium C&I Service from Buyer under a Default Service Rate Schedule pursuant to this Agreement. At Seller's request, Buyer shall provide Seller with mutually agreeable resale certificates related to the Full Requirements Service provided pursuant to this Agreement.
- 2.8 Governing Terms. Each Transaction shall be governed by this Agreement. This Agreement, including all schedules and exhibits hereto, any designated collateral, credit support, margin agreement or similar arrangements and all Transaction Confirmations shall form a single integrated agreement between Buyer and Seller. Any inconsistency between terms in this Agreement and terms in a Transaction Confirmation shall be resolved in favor of the terms of this Agreement.
- 2.9 Transaction Confirmation. A Transaction shall be documented in a Transaction Confirmation in the form attached hereto as Exhibit A. On the next Business Day following the Business Day on which Seller is selected as a provider of Full Requirements Service, Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a partially executed Transaction Confirmation(s) and shall send by overnight delivery one (1) original. Except as otherwise provided in the RFP, by 2:00 p.m. EPT on the next Business Day following Seller's receipt of such facsimile of partially executed Transaction Confirmation(s), Seller shall return by e-mail, facsimile, or other immediate means acceptable to both Parties, to Buyer a fully executed Transaction Confirmation(s), and shall send by overnight delivery one (1) original. In addition, if such Transaction(s) is the initial Transaction(s) with the Seller under the current RFP solicitation, then Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a fully executed Agreement, and shall send by overnight delivery one (1) original. By close of the same Business Day on which Buyer is in receipt of the bids, Buyer shall submit all the

bids, including the winning bids, to the Pennsylvania PUC for review and approval. Unless it orders otherwise, the PUC will approve the winning bids no later than two days following submittal.

**ARTICLE III
SCHEDULING, FORECASTING, AND
INFORMATION SHARING**

- 3.1 Scheduling. Seller shall schedule Full Requirements Service pursuant to the PJM Agreements. Buyer will provide to PJM all information required by PJM, for the purpose of calculating Seller's Full Requirements Service obligations.
- 3.2 Load Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to Seller the Default Service Supply Estimates for the following calendar day in accordance with the terms of the Supplier Tariff. Buyer may provide updates to any Default Service Supply Estimates delivered to Seller by delivering to Seller a subsequent real-time Default Service Supply Estimate. In addition, Buyer shall deliver to Seller, as often as is practicable but in no event later than the end of each month, a report listing known changes in the Default Service Load. Buyer does not make any representation or warranty, and expressly disclaims any representation or warranty, regarding the accuracy or completeness of the Default Service Supply Estimates, or any information contained in such Default Service Supply Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to PJM Buyer's estimate of the Energy associated with the Default Service Load for the preceding calendar day in accordance with the terms of the PJM Agreements. Buyer shall provide any necessary updates to PJM in accordance with the PJM Agreements.
- 3.3 Information Sharing. On each Business Day, Buyer shall provide to Seller on a reasonable efforts basis, Buyer's estimation of the Capacity information related to Seller's obligations under this Agreement that Buyer provides to PJM daily. Buyer does not warrant the accuracy of such information.

**ARTICLE IV
SPECIAL TERMS AND CONDITIONS**

- 4.1 Load Response Programs. Buyer will manage its load response programs in accordance with PJM Agreements as amended from time to time and the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the PUC from time to time, or Buyer customer contracts, as amended by the Buyer from time to time. Buyer will retain all of the benefits associated with its load response programs, including but not limited to all associated wholesale revenues from PJM for Capacity, Energy and Ancillary Services. Unless specifically prohibited by its retail electric service tariffs,

Default Service customers may, at their election, participate in demand response programs offered under the PJM Agreements.

- 4.2 Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs. Seller acknowledges that Default Service customers may participate in Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs offered by Buyer or by third parties, including Curtailment Service Providers, which are available on the Effective Date or may become available during the Delivery Period, and that such participation may reduce or change Default Service Load that might otherwise be served in the absence of such programs and, accordingly, the Monthly Settlement Amount received by Seller. To the extent that PJM imposes charges on Buyer as LSE associated with PJM Demand Response programs, those charges will be allocated by Buyer to Seller in proportion to Seller's Specified Percentage. Except as provided in the preceding sentence, Buyer shall retain all of the benefits associated with its Demand Side Response Programs and/or Energy Efficiency Programs.
- 4.3 Time of Use. In accordance with PUC statutes, regulations and Orders, Buyer may provide Time of Use rates to its customers when Smart Meters are installed. At that time, Buyer may request TOU supply from Seller pursuant to the terms and conditions included in this Agreement. Buyer will charge TOU customers the rates that are approved by the PUC for TOU service, and Seller will be paid the revenues that Buyer receives for TOU service for that portion of supply used by TOU customers, netted to reflect any other adjustments set forth herein. Seller assumes the risk that these TOU revenues may be higher or lower than the fixed price provided for under Exhibit A. Buyer reserves the sole right to bid TOU supply out separately from this Agreement, and if that occurs, that amount of TOU supply will not be included in this Agreement.
- 4.4 PJM e-Accounts. Buyer and Seller shall work with PJM to establish any PJM e-Accounts (as defined in the PJM Agreements) necessary for Seller to provide Full Requirements Service. In a timely manner, Buyer shall establish PJM e-Account contract(s) for the entire duration of the Transaction(s) and Seller shall confirm the PJM e-Account contract(s) for the entire duration of the Transaction(s).
- 4.5 Pennsylvania Disclosure Requirements. Subject to any applicable confidentiality requirements, Seller shall provide to Buyer, to the best of its knowledge, the generation resources used to supply Full Requirements Service, in order to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information. All information provided pursuant to this Section 4.5 (Pennsylvania Disclosure Requirements) shall be provided in a timely manner and in an appropriate form to enable Buyer to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information.
- 4.6 Alternative Energy Portfolio Standards Obligation.

- (a) Seller shall provide Buyer with AECs required to comply with the Alternative Energy Portfolio Standards, including regulations adopted thereunder, (together the “AEPS Obligation”) in proportion to Seller’s Specified Percentage.
- (b) Seller and Buyer shall work together to establish the proper accounts within the GATS. Seller shall be a subscriber to GATS and is responsible for paying its annual subscription fee. Seller shall transfer all AECs to Buyer using GATS. Seller shall transfer certificates into the Buyer’s account(s) on a timely basis in the amount necessary to fulfill Seller’s AEPS Obligation under this Agreement. Seller shall be responsible for paying the volumetric fees associated with LSE GATS fee requirements in proportion to Seller’s Full Requirements Service. Seller warrants that all AECs transferred to Buyer during an AEPS Reporting Period (or during the twenty calendar days thereafter) shall be eligible for Buyer’s use for compliance during such AEPS Reporting Period.
- (c) Seller shall provide to the Buyer all information regarding its share of the AEPS Obligation that may be required by the PUC rules governing reporting and auditing of Buyer’s compliance with the AEPS Obligation.
- (d) The Buyer will provide the Seller with a version of Exhibit B to this Agreement at the same time that it provides the Transaction Confirmation. Exhibit B at that time will incorporate the AEPS percentage obligations for the applicable delivery year covered by the Transaction Confirmation(s) in effect on the day the bid was submitted. Exhibit B as provided with the Transaction Confirmation(s) will apply during the term of the Agreement and will be used to determine the Seller’s AEPS Obligation.
- (e) If Seller fails to fulfill Seller’s AEPS Obligation for any AEPS Reporting Period as provided in Section 4.7(b), Buyer shall invoice Seller and Seller shall pay liquidated damages equal to the AEC Non-Solar Penalty or the AEC Solar Penalty for such Transaction, as applicable, for each AEC Seller failed to provide for that AEPS Reporting Period. If the PUC subsequently establishes an alternative compliance payment under the AEPS Act for non-compliance with the Tier I (solar) requirements in excess of the AEC Solar Penalty for such AEPS Reporting Period, Seller shall also pay Buyer the amount in excess of the AEC Solar Penalty; if the tier I (solar) alternative compliance payment is less than AEC Solar Penalty, Buyer shall refund the difference to Seller. Moreover, the Seller will be liable for any costs directly or indirectly related to the procurement of AECs by the Buyer or related to any penalties or costs associated with non-compliance of the AEPS Act in the event that the Seller defaults in its obligations under this Section.

- (f) Seller shall provide Buyer all information Buyer may require to comply with the AEPS Act and its implementing regulations and other Requirements of Law, including but not limited to the price paid per AEC required by 73 Pa.C.S. § 1648.3(e)(8).
- 4.7 Title Transfer. Seller shall cease to have title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyers Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Seller warrants that it has good title to the Full Requirements Service sold and delivered hereunder and that it has the right to sell such Full Requirements Service. The word "loss" in this Section (Title Transfer) does not encompass electrical transmission losses and distribution losses. As between Buyer and Seller only, Buyer shall take title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyer's Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of Buyer to any third party beyond such liability, if any, that would otherwise exist under the PJM Agreements or under applicable law if Buyer had not taken title.
- 4.8 Reliability Guidelines and Compliance Requirements. Each Party agrees to adhere to the applicable operating policies, criteria and/or guidelines of the NERC, PJM, their successors, and any regional or sub regional requirements. Each Party agrees to provide in a timely manner all required information to the other Party, as necessary, to assure Seller's and Buyer's compliance with all applicable reliability standards.
- 4.9 Declaration of Authority. For the period of time that this Agreement is in effect, both Buyer and Seller shall have executed the Declaration of Authority in the form attached as Exhibit H.
- 4.10 PJM Membership; Integration. On the Effective Date and continuing through the term of this Agreement, Seller shall be (i) a member in good standing of PJM; and (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements.
- 4.11 FERC Authorization. Beginning on the Effective Date and continuing through the term of this Agreement, Seller shall have FERC authorization to make sales of energy, and capacity at market based rates.
- 4.12 Disclosure in Event of Seller Default. If Seller defaults and this Agreement is terminated pursuant to Article 12 (Events of Default; Remedies), Buyer may disclose the terms of this Agreement and any Transaction Confirmation to all other non-defaulting wholesale suppliers providing Medium C&I Service to Buyer in connection with Full Requirements Service associated with the Default

Service Load. Such disclosure by Buyer shall be made for the purpose of allowing each non-defaulting wholesale supplier to make its Step-Up elections described in Section 4.13 (Seller Step-Up Rights) below.

- 4.13 Seller Step-Up Rights. Buyer may ask other sellers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any seller shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up.” Buyer would only exercise this pursuant to a Commission approved plan to address defaults. For the avoidance of doubt, in the event that Seller does not respond to Buyer’s Step-Up request within the relevant timeframe, Seller shall be deemed to have rejected the Buyer’s request in full.

ARTICLE V TERM AND SURVIVAL

- 5.1 Term. Unless otherwise agreed upon by Buyer and Seller, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to Article 12 (Events of Default; Remedies) of this Agreement.

ARTICLE VI DETERMINATION OF DELIVERED QUANTITIES

- 6.1 Monthly Settlement Load. The amount of Monthly Settlement Load with respect to any calendar month during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy. The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller’s Specified Percentage obligation by Buyer to PJM with deration adjustments for marginal losses.

ARTICLE VII BILLING AND SETTLEMENT

- 7.1 Billing. Unless otherwise agreed to by the Parties, on or before the sixth (6th) Business Day of each month, Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice (“Invoice”) that sets forth the total amount due for the previous calendar month for all Transactions. The Invoice shall detail for each Transaction, where applicable, the following:
- (a) Monthly Settlement Load
 - (b) Monthly Settlement Price
 - (c) Monthly Settlement Amount

- (d) PJM Billing Adjustments
- (e) Any other adjustments set forth in this Agreement.

7.2 PJM Billing.

- (a) Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement, as set forth in Exhibit D attached hereto and made a part hereof. If PJM is unable to invoice charges or credits in accordance with Exhibit D, Buyer shall rectify such PJM invoice discrepancy in the Invoice sent pursuant to Section 7.1 (Billing).
- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with Exhibit D will be determined pursuant to Sections 2.3 (Network Integration Transmission Service and Distribution Service), 2.5 (Other Changes in PJM Charges), and 16.11 (PJM Agreement Modifications) of this Agreement.

7.3 Payments of the Invoice.

- (a) Except as may otherwise be provided in this Agreement, on the Monthly Settlement Date, Buyer will pay to Seller, or Seller will pay to the Buyer, as the case may be, the total amount due in the applicable Invoice. All payments due hereunder shall be made to the Party owed such payments by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), unless otherwise agreed to by the Parties, to a bank designated in writing by such Party, by 8:00 p.m. EPT on the Monthly Settlement Date. Should an invoice not be received by Seller by the 10th day of the month, then the invoice shall be paid 10 days after receipt. Payment of Invoices shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement (other than the obligation to make such payment) nor shall such payment constitute a waiver of any claims arising hereunder.
- (b) For Time-of-Use Load, Buyer shall make payment to Seller based upon the revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for the Time-of-Use Monthly Billed Load. Buyer shall initiate payment based upon the terms set forth in Section 7.3(a) of this Agreement.

7.4 Netting of Payments. The Parties shall discharge mutual debts and payment obligations due and owing to each other under this Agreement, as of the Monthly Settlement Date, such that all amounts owed by each Party to the other Party shall be reflected in a single amount due to be paid by the Party who owes it and received by the other Party, provided that the calculation of the net amount shall

not include any disputed amounts being withheld pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices).

7.5 Billing Disputes and Adjustments of Invoices.

- (a) Within twelve (12) months of the date on which an Invoice is issued, Buyer may, in good faith, adjust the Invoice to correct any errors. The adjustment shall include interest calculated at the Interest Rate from the original due date to the date of payment. Buyer shall provide Seller a written explanation of the basis for the adjustment.
- (b) Within twelve (12) months of the date on which an Invoice is issued or an Invoice is adjusted pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices), Seller may, in good faith, dispute the correctness of such Invoice or adjustment, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that Seller has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.
- (c) Within twelve (12) months of the date on which a PJM bill is issued, Buyer or Seller may, in good faith, dispute the correctness of any such PJM bill, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that the disputing Party has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.

7.6 Interest on Unpaid Balances. Interest on delinquent amounts, other than amounts in dispute as described in Section 7.5 (Billing Disputes and Adjustment of Invoices), shall be calculated at the Interest Rate from the original due date to the date of payment.

**ARTICLE VIII
TAXES**

8.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Taxes.

- (a) As between the Parties: (i) The payment of any Governmental Authority taxes ("Governmental Charges") imposed on or with respect to Seller's wholesale sales of Full Requirements Service to the Delivery Point shall be the responsibility of Seller; and (ii) The payment of any Governmental Charges on or with respect to the retail sales of Full Requirements Service shall be the responsibility of Buyer. The payment of any Pennsylvania gross receipts taxes attributable to Buyer's sale of Energy to its retail customers shall be the responsibility of Buyer.

- (b) Any Party paying taxes that should have been paid by the other Party pursuant to Section 8.2(a) (Taxes) shall be reimbursed by such other Party in the next Invoice issued under this Agreement pursuant to Section 7.1 (Billing).

ARTICLE IX INDEMNIFICATION

- 9.1 Seller's Indemnification for Third-Party Claims. Seller shall indemnify, hold harmless, and defend Buyer and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Buyer and a third party or Seller for damage to property of unaffiliated third parties, injury to or death of any person, including Buyer's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Seller's performance under this Agreement, Seller's exercise of rights under this Agreement, or Seller's breach of this Agreement.
- 9.2 Buyer's Indemnification for Third-Party Claims. Buyer shall indemnify, hold harmless, and defend Seller and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Seller and a third party or Buyer for damage to property of unaffiliated third parties, injury to or death of any person, including Seller's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement, or Buyer's breach of this Agreement.
- 9.3 Indemnification Procedures. If either Party intends to seek indemnification under Sections 9.1 (Seller's Indemnification for Third-Party Claims) or 9.2 (Buyer's Indemnification for Third-Party Claims), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the

failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X LIMITATIONS ON LIABILITY

EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE XI FORCE MAJEURE

11.1 Force Majeure. Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for

damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Section 11.2 (Notification).

- 11.2 Notification. A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

ARTICLE XII EVENTS OF DEFAULT; REMEDIES

- 12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;
 - (b) any representation or warranty made by such Party herein or in response to the RFP that is false or misleading in any material respect when made or when deemed made or repeated;
 - (c) the failure of a Party to comply with the requirements of Section 4.10 (PJM Membership; Integration) and 4.11 (FERC Authorization) if such failure is not remedied within three (3) Business Days after written notice;
 - (d) PJM has declared a Party to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;
 - (e) except to the extent constituting a separate Event of Default, the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;
 - (f) such Party becomes Bankrupt;
 - (g) such Party consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, or assigns the Agreement or any rights, interests, or obligations hereunder without the prior written consent of the other Party when such consent is required, and, at the time of such consolidation, merger, transfer or assignment, the resulting,

surviving, transferee, or assignee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (h) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than \$50,000,000 which results in such indebtedness becoming immediately due and payable; or (ii) a default by such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than \$50,000,000 under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);
- (i) the failure of a Party to comply with its obligations pursuant to Article 14 (Performance Assurance/Accelerated Payments) if such failure is not remedied within three (3) Business Days after written notice;
- (j) with respect to Seller's Guarantor:
 - (i) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of the Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) the failure of the Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party;
 - (iv) the Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty; or
 - (v) conditions described with respect to a Party in subparagraph (f) of this Section 12.1 (Events of Default) occurs with respect to its Guarantor.

12.2 **Remedies.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party"), shall

provide written notice to the Defaulting Party and shall have the right to temporarily suspend performance pursuant to Section 12.2(a) or implement all of the following remedies pursuant to Section 12.2(b):

- (a) If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Section 12.2(b). In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all the following remedies:
 - (i) designate a day, in such notice, no earlier than the day such notice is effective and no later than twenty (20) (calendar) days after such notice is effective, as an early termination date (“Early Termination Date”), for the purposes of determining the Settlement Amount;
 - (ii) calculate and receive from the Defaulting Party, payment for any Default Damages the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of: (i) the Early Termination Date (if applicable); or (ii) the Event of Default has been cured by the Defaulting Party; or (iii) the Non-Defaulting Party waives such Event of Default;
 - (iii) withhold any payments due to the Defaulting Party under this Agreement as an offset to any Default Damages or Termination Payment, as defined in Section 12.3 (Calculation and Net Out of Settlement Amounts); and
 - (iv) permanently suspend performance.
- (b) If an Event of Default has occurred and the Non-Defaulting Party is the Buyer, then:
 - (i) unless the Event of Default was a failure by Seller to meet any or all of its Full Requirements Service obligations, Buyer may elect, at its sole discretion, to offer to waive the default on such terms and conditions as Buyer, at its sole discretion, may deem appropriate to propose (“Special Remedy”) provided that;
 - (ii) Any such Special Remedy can only be offered to Seller if it first is specifically approved by the PUC in accordance with PUC Orders.

12.3 Calculation and Net Out of Settlement Amounts.

- (a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. For purposes of calculating the Settlement Amount, the Non-Defaulting Party shall reflect the net impact of the exercise of the option on the part of other wholesale suppliers as described in Section 4.13 (Seller Step-Up Rights) of this Agreement. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single liquidated amount (the “Termination Payment”) by netting out: (i) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security, if any, then available to the Non-Defaulting Party pursuant to Article 14 (Performance Assurance/Accelerated Payments), plus any or all other amounts due to the Defaulting Party under this Agreement, against (ii) all Settlement Amounts that are due to the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party, including but not limited to Default Damages, under this Agreement. The Termination Payment shall be due to or from the Non-Defaulting Party as appropriate. When the Buyer is the Non-Defaulting Party and replaces Seller’s full requirements obligation under this Agreement, the result of that procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount.
- (b) Seller may, in its sole discretion, add the following subsection 12.3(b) by checking this box. If Seller does not check this box, subsection 12.3(b) will not be deemed to be included as part of the Parties’ Agreement.
- (b) In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Settlement Amount by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under the DSMA for the period following the Early Termination Date (the “Termination Quantity”) shall be deemed those quantity amounts that would have been delivered on an hourly basis had the DSMA been in effect during the previous calendar year, adjusted for such Default Service load changes as have occurred since the previous calendar year. Nothing in this section shall limit the right of the Buyer when Seller is the Defaulting Party to replace Seller’s full requirements obligation and the result of any Commission approved procedure will be deemed to be commercially reasonable for purposes of calculating the

Settlement Amount and will be deemed to have been determined by reference to the Termination Quantity.

- 12.4 Notice of Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide written notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The owing Party shall make the Termination Payment within five (5) Business Days after such notice is effective.
- 12.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a notice that it intends to dispute the calculation of the Termination Payment ("Termination Payment Dispute Notice"), pursuant to the provisions of Article 12 (Dispute Resolution), and provided, however, that, if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party with the Termination Payment Dispute Notice.
- 12.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 12.3 (Calculation and Net Out of Settlement Amounts), if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to: (i) set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party; and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 12.2 (a), withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Article shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If any obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.
- 12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
- 12.8 Return of Auction Revenue Rights. When the Seller is the Defaulting Party, the Seller shall transfer or reassign to the Buyer on the Early Termination Date, any

and all of Buyer's rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, which were transferred or assigned to Seller under Section 2.4 (Congestion and Congestion Management).

ARTICLE XIII DISPUTE RESOLUTION

- 13.1 Informal Dispute Resolution. Before pursuing resolution of any dispute arising out of this Agreement, the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 13.1 (Informal Dispute Resolution) shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Rate from the original due date through the date of payment.
- 13.2 Formal Dispute Resolution. After the requirements of Section 13.1 (Informal Dispute Resolution) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Notwithstanding anything set forth in this Article 13 (Dispute Resolution) to the contrary, any dispute concerning new PJM charges will be resolved in accordance with the procedures set forth in Section 2.4 (Other Changes in PJM Charges).

ARTICLE XIV PERFORMANCE ASSURANCE/ACCELERATED PAYMENTS

- 14.1 Requirement for Performance Assurance. With respect to Aggregate Transactions, if at any time and from time to time during the term of this Agreement, Aggregate Buyer's Exposure exceeds the Unsecured Credit on any Business Day, then Buyer may request that Seller post Performance Assurance in an amount equal to the amount by which Aggregate Buyer's Exposure exceeds the Unsecured Credit (rounding upwards to the nearest \$100,000), less any Performance Assurance already posted with Buyer. Notwithstanding the above, Seller shall only be required to post the required Performance Assurance to the extent the amount of required Performance Assurance is equal to or greater than \$250,000. Subsequent and incremental requests for Performance Assurance shall be in \$100,000 increments. Buyer's request for Performance Assurance shall not be disputed by Seller
- 14.2 Performance Assurance Transfers/Returns. If the request for Performance Assurance is made by Buyer before 1:00 p.m. EPT on a Business Day, then if Seller is posting cash as the form of Performance Assurance Collateral, Seller

shall be required to deliver the Performance Assurance cash to Buyer on the Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the second Business Day following the date of such request. If a request for Performance Assurance is made by Buyer at or after 1:00 p.m. EPT, then if Seller is posting cash as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the second Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the third Business Day following the date of such request. Telephone, facsimile, or other communication means mutually acceptable by the Parties, are suitable means for the Buyer to make requests for Performance Assurance. Buyer shall be entitled to hold Performance Assurance in the form of Cash, provided that the following conditions are satisfied: (1) it has not defaulted; (2) Buyer has a Credit Rating of (a) at least BBB- from S&P and Baa3 from Moody's, if Buyer is rated by both S&P and Moody's but not by both; and (3) cash shall be held only in any jurisdiction within the United States. To the extent the Buyer is entitled to hold Cash, the interest payable to Seller shall be calculated by multiplying the amount of cash held times the Federal Funds Effective Rate for that day as set forth in the weekly statistical release designated as H.15.(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Buyer shall not be entitled to hold Performance Assurance in the form of cash under other circumstances than those above. Rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U. S. branch office, (which is not the Buyer or an affiliate of the Buyer), and has assets of at least \$10 billion and a credit rating of at least "A" by Standard and Poor's, or "A2" by Moody's Investor Services ("Qualified Institution"). Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller. The interest amount or portion thereof not returned to Seller pursuant to this Section 14.2 (Performance Assurance Transfers>Returns) will constitute Performance Assurance and will be subject to the provisions of Article 14 (Performance Assurance) of this Agreement.

On any Business Day (but no more frequently than weekly with respect to Letters of Credit or other security acceptable to Buyer, and daily with respect to cash), Seller, at its sole cost, may request that the Performance Assurance be reduced correspondingly to reflect the decrease in Buyer Exposure or an increase in Seller's Unsecured Credit, if any (rounding upwards for any fractional amount to the nearest \$100,000). Buyer shall be required to return the amount of Performance Assurance due in accordance with the timeframes set forth in the preceding paragraph. Telephone, facsimile, or other communication means

mutually acceptable by the Parties are suitable means for the Seller to make requests for return of Performance Assurance.

In the event that Seller fails to provide Performance Assurance or Buyer fails to return Performance Assurance pursuant to the terms of this Article 14 (Performance Assurance/Accelerated Payments) within the applicable timeframes, then an Event of Default pursuant to Section 12.1(i) (Events of Default) shall be deemed to have occurred with respect to the non-performing Party and the other Party will be entitled to the remedies set forth therein.

In instances caused by the timing of the requests for both the return of Performance Assurance and placement of Performance Assurance, a situation may arise where the Parties are both sending and receiving transactions on the same day. In these instances, the Parties may net the requested amounts and proceed with only one transaction. Netting is only permitted for Performance Assurance purposes if it is mutually agreed to by both Parties in advance and confirmed in advance.

- 14.3 **Unsecured Credit.** During the term of this Agreement, Buyer shall extend, solely with respect to the Performance Assurance set forth in Section 14.1 (Requirement for Performance Assurance), Unsecured Credit to Seller in an amount initially determined on the Effective Date and re-determined each Business Day thereafter pursuant to this Section 14.3.

The relevant Unsecured Credit Limit shall be the Unsecured Credit Limit listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's. The relevant TNW Amount shall be calculated using the TNW Percentage listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

<u>Credit Rating</u>				
<u>S&P</u>	<u>Fitch</u>	<u>Moody's</u>	<u>TNW Percentage</u>	<u>Unsecured Credit Limit</u>
A- or above	A-or above	A3 or above	16%	\$60,000,000
BBB+	BBB+	Baa1	10%	\$40,000,000
BBB	BBB	Baa2	7%	\$30,000,000
BBB-	BBB-	Baa3	3%	\$20,000,000
BB+ or below	BB+ or below	Ba1 or below	0%	\$0

- 14.4 Credit Rating. If during the term of the Agreement, Seller's or Seller's Guarantor's Credit Rating changes, by either being upgraded or downgraded by any of the rating agencies referenced in Section 14.3 (Unsecured Credit) of the Agreement, the Seller shall be required to provide written notice to Buyer of such Credit Rating change no later than two (2) Business Days after the date of such change.
- 14.5 Tangible Net Worth. During the term of the Agreement, Seller, or Seller's Guarantor shall be required to provide Buyer written financial information to determine the Seller's, or Seller's Guarantor's Tangible Net Worth. Financial information shall include an audited "Annual Report", containing, but not limited to, a balance sheet prepared in accordance with generally accepted accounting principles, a schedule of long term debt including maturity dates, and all notes to the financial statement that apply to long term debt, short term borrowing, and liquidity and capital resources. The Seller or Seller's Guarantor, shall also provide the Buyer written financial information on a quarterly basis containing a balance sheet prepared in accordance with generally accepted accounting principles. However, if Seller's, or Seller's Guarantor's equity is publicly traded on the New York Stock Exchange, NASDAQ National Market, or American Stock Exchange, the Buyer will waive the requirement to provide written financial information.
- 14.6 Foreign Entities. The following standards shall apply to Seller, or Seller's Guarantor, that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States. For Sellers who cannot meet the following requirements, the posting of cash or letter of credit in an acceptable form (see standard format in Exhibit C) for the Aggregate Buyer's Exposure shall be required.
- (a) The Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Buyer shall have full and sole discretion, without liability or recourse to the Seller, to evaluate the evidence of creditworthiness submitted by such Seller; or
 - (b) The Guarantor of a Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Guarantors of Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. Buyer shall have full and sole discretion, without liability or recourse to the Guarantor or the Seller, to evaluate the evidence of creditworthiness submitted by such Guarantor.

All Sellers or Guarantors of Sellers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States shall, in addition to all documentation required elsewhere in this Section 14.6 (Foreign Entities), supply the following as a condition of being granted Unsecured Credit, up to a maximum level, for the purpose of covering the Aggregate Buyer's Exposure:

(c) For Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Seller is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Seller in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the person executing this Agreement on behalf of the Seller has the authority to execute the Agreement and that the governing board of such Seller has approved the execution of this Agreement; and
- (iii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the Seller has been authorized by its governing board to enter into agreements of the same type as this Agreement.

Buyer shall have full and sole discretion, without liability or obligation to the Seller, to evaluate the sufficiency of the documents submitted by the Seller.

(d) For Guarantor of a Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and

- (iii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

Buyer shall have full and sole discretion, without liability or obligation to the Guarantor or the Seller, to evaluate the sufficiency of the documents submitted by such Guarantor.

14.7 Aggregate Buyer's Exposure. In order to determine the amount of Performance Assurance during the term of this Agreement, Buyer shall calculate the Aggregate Buyer's Exposure under Aggregate Transactions once per Business Day, pursuant to the process and methodology described in Exhibit E. On a Transaction Date, the Buyer's Exposure for that Transaction shall be deemed equal to zero. To the extent that the calculations of the Aggregate Buyer's Exposure for a given date result in a negative number, the Aggregate Buyer's Exposure for such date shall be deemed equal to zero.

- (a) Buyer shall provide Seller with the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, Buyer shall use reasonable efforts to provide Seller with the On-Peak Forward Price and the Off-Peak Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Forward Price or Off-Peak Forward Price for a given month Buyer shall be permitted to use information and/or quotes relevant to such month for which information/and quotes are available in order to provide Seller the required On-Peak Forward Price and Off-Peak Forward Price for such month. Exhibit E presents in more detail the methodology to be used by Buyer in determining the Off-Peak Initial Mark Price, the On-Peak Initial Mark Price, the On-Peak Forward Price and the Off-Peak Forward Price.
- (b) Buyer shall use reasonable efforts to provide Seller with the Aggregate Buyer's Exposure on each Business Day, subject to the Confidentiality provisions of this Agreement.
- (c) Pursuant to Section 14.1 (Requirement for Performance Assurance) above, Seller shall not dispute any request by Buyer for Performance Assurance. Notwithstanding such provision, Seller may dispute Buyer's determinations of the On-Peak Initial Mark Price, Off-Peak Initial Mark Price, On-Peak Forward Price and Off-Peak Forward Price if Seller can demonstrate that Buyer has been grossly negligent or has exhibited willful misconduct in such determinations, or that Buyer is making determinations in a manner that is arbitrary, capricious or erroneous on its face. Such dispute of Buyer's determinations by Seller shall not be cause for any delay by Seller in posting any Performance Assurance requested by Buyer.

**ARTICLE XV
REPRESENTATIONS AND WARRANTIES**

- 15.1 Representations and Warranties. On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
 - (d) this Agreement constitutes a legally valid and binding obligation of such Party enforceable against it in accordance with its terms; subject to any Equitable Defenses;
 - (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
 - (f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;
 - (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
 - (h) with respect to Buyer, it is acting to fulfill its obligations under and in accordance with PUC Orders to enter into this Agreement;
 - (i) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement;
 - (j) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute “settlement payments” as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or

transfer of Performance Assurance is a “margin payment”, “settlement payment” or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code;

- (k) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of the Full Requirements Service as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act.

15.2 Additional Understandings. This Agreement is for the purchase and sale of Full Requirements Service that will be delivered in quantities expected to be used or sold over a defined period(s) in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement and each Transaction hereunder that the Agreement will result in physical delivery and not financial settlement, and the quantity of Full Requirements Service that Seller must deliver and Buyer must receive will be determined by the requirements of the Default Service Load served by Buyer, and, as such, the Agreement does not provide for an option by either Party with respect to the quantity of Full Requirements Service to be delivered or received during performance of the Agreement. Notwithstanding any other provision of this Agreement, Seller acknowledges that Buyer makes no representation as to any amount of Default Service Load that may or may not be required during this Agreement. This Agreement has been drafted to effectuate Buyer's and Seller's specific intent so that in accordance with Financial Accounting Standards Board Statement No. 133 (“FAS 133”), as amended, Buyer would be able to elect to use accrual accounting for its purchases under this Agreement, while Seller would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Buyer or Seller determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of FAS 133, as amended, or otherwise, then Buyer and Seller agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

ARTICLE XVI MISCELLANEOUS

- 16.1 Notices. Unless otherwise specified herein, all notices shall be in writing and delivered by hand, overnight or facsimile (provided a copy is also sent by overnight mail). Notice shall be effective on the next Business Day after it is sent. A Party may change its address by providing notice of the same in accordance with this Section 16.1 (Notices). Notice information for Buyer and Seller is shown on Exhibit G.
- 16.2 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of

negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or any Transaction. Any provision declared or rendered unlawful will not otherwise affect the remaining lawful obligations that arise under this Agreement; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

16.3 Rules of Interpretation. The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) in carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) if any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

16.4 Audit. Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Sections 7.1 (Billing) and 7.6 (Interest on Unpaid Balances) of this Agreement.

16.5 Confidentiality.

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation or (v) such disclosure is made to PJM and is necessary in order for the transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.
- (b) Notwithstanding any other provision of this Section 16.5, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of the Section 16.5, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.
- (c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.
- (d) Any independent auditor performing an audit on behalf of a Party pursuant to Section 16.4 (Audit) shall be required to execute a confidentiality agreement with the Party being audited. Such audit information shall be treated as confidential pursuant to this Section 16.5.
- (e) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.5. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.5, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

- 16.6 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 16.7 Assignment/Change in Corporate Identity. Neither Party shall assign this Agreement, its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder),
- (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements,
 - (b) after written notice, transfer or assign this Agreement to an Affiliate of such Party if (i) such Affiliate's creditworthiness is equal to or greater than that of such Party; or (ii) in the case of the Seller, where such Affiliate's creditworthiness is not equal to or higher than that of such Party, such Affiliate provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld
 - (c) after written notice, transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose (i) creditworthiness is equal to or higher than that of such Party, or (ii) in the case of the Seller, where such entity's creditworthiness is not equal to or higher than that of such Party, such entity provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld, and
 - (d) provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.
- 16.8 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 16.9 Jurisdiction and Venue. Except for matters jurisdictional to FERC, the PUC or the appellate courts having jurisdiction over the PUC or FERC matters, all disputes hereunder shall be resolved in the Federal or State courts of Pittsburgh, Pennsylvania and each Party hereby irrevocably submits to the in personam jurisdiction of such courts. Each Party hereby waives its respective rights to any

jury trial with respect to any litigation arising under or in connection with this Agreement.

16.10 Amendments. Except as provided in Section 16.11 (PJM Agreement Modifications), this Agreement shall not be amended, modified, terminated, discharged or supplemented, nor any provision hereof waived, unless mutually agreed, in writing, by the Parties. Except as provided in Section 16.11 (PJM Agreement Modifications), the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U. S. 348 (1956) (the “*Mobile-Sierra*” doctrine).

16.11 PJM Agreement Modifications.

- (a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.
- (b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; provided that no such changes shall alter the economic benefits of this Agreement between the Parties.

16.12 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to the respective Parties hereto upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

16.13 Regulatory Approvals. Seller agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the DSMA and/or Transaction Confirmations hereunder. The commencement of the

Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Buyer of all Buyer required regulatory approvals, (ii) the receipt or waiver by Seller of all Seller required regulatory approvals, and (iii) Pennsylvania PUC approval. Unless ordered otherwise, the PUC will approve the transactions no later than four days following the full execution of the transactions. In the event such required regulatory approvals are not received or waived, the DSMA and/or applicable Transaction Confirmations will be non-enforceable.

- 16.14 Survival. The termination of all or a part of this Agreement or Transaction Confirmations thereto shall not affect the survival of any clauses or provisions necessary to enforce the remedies in the event of default and those provisions shall continue in full force and effect until all amounts due hereunder, including all obligations, have been paid or performed in full.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered, as of the date first written above, by their respective duly authorized officers.

ATTEST:

DUQUESNE LIGHT COMPANY

Title: _____

By: _____
Name:
Title:

ATTEST:

[SELLER]

Title: _____

By: _____
Name:
Title:

EXHIBIT A

TRANSACTION CONFIRMATION

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Default Supply Master Agreement (“DSMA”) dated _____ between Duquesne Light Company (“Company” or “DLC”) and _____ (“Seller”). Terms used but not defined herein shall have the meanings ascribed to them in the DSMA. This Transaction Confirmation shall confirm the following terms of the transaction (“Transaction”) agreed to on _____ (“Transaction Date”).

Product: Full Requirements Service
 Service Type: [Small Commercial & Industrial/ Medium Commercial & Industrial]
 Delivery Point: Duquesne Zone
 Delivery Period: [MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]
 Bid Blocks: [INSERT]
 Specified Percentage: [INSERT]% of DEFAULT SERVICE Load
 MW-Measure: [INSERT] MW

Monthly Settlement Price: *[MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]*

Energy (\$ / MWh)

\$ XX.XX

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											
Off-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between Seller and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to DLC at [INSERT FAX NUMBER] in accordance with Section 2.8 – Transaction Confirmation of the DSMA. The signatories to this Transaction must have the authority to enter into this Transaction.

Duquesne Light Company

SELLER

By: _____

Name: _____

Title: _____

EXHIBIT B

ALTERNATIVE ENERGY PORTFOLIO STANDARDS OBLIGATION

This Exhibit B shall confirm the Alternative Energy Portfolio Standards Obligation of the transaction (“Transaction”) agreed to on _____ (“Bid Proposal Due Date”).

Alternative Energy Portfolio Standards Obligations for the period beginning [MONTH] [DAY], [YEAR] based on the total MWh supplied by Seller:

<u>Compliance Period</u>	<u>Tier 1</u>	<u>PV</u>	<u>Tier 2</u>
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%

The percentages set forth above are those applicable for the first RFP and may be revised for future RFPs to reflect changes in law or other applicable regulatory requirements.

The above amounts are estimates and will vary based on actual load served. Seller will need to true-up, higher or lower, actual credits needed based on Monthly Settlement Amount.

If Alternative Energy Portfolio Requirements change by law or any other reason, Seller shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

EXHIBIT C

PERFORMANCE ASSURANCE LETTER OF CREDIT

{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE _____

EXPIRY DATE _____

APPLICANT
[NAME]
[ADDRESS]

BENEFICIARY
[NAME]
[ADDRESS]

CURRENCY
USD *****\$

AMOUNT

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO: _____ FOR THE ACCOUNT OF _____ (APPLICANT) FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS _____ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE BANK OF _____ (“ISSUER”) _____ (ADDRESS), EFFECTIVE _____ AND EXPIRING AT OUR COUNTERS ON _____ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

“THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF _____ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE BENEFICIARY’S PENNSYLVANIA FULL REQUIREMENTS SERVICE AGREEMENT(S) DATED _____ BETWEEN _____ AND _____.”

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY’S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER’S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM “BUSINESS DAY” AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 (“ISP98”) OR SUCH LATER REVISIONS(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF PENNSYLVANIA. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: _____

TITLE: _____

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:

[BANK NAME, ADDRESS AND PHONE NUMBER]

EXHIBIT D
SAMPLE PJM INVOICE

PJM Operating Agreement

	Day Ahead	Balancing	Real Time
Charges			
Spot Market Energy	Seller	Seller	
Transmission Congestion	Seller	Seller	
Transmission Losses	Seller	Seller	
Inadvertent Interchange			Seller
Economic Load Response	Seller		Seller
Planning Period Congestion Uplift			Seller
Emergency Load Response			Seller
Meter Error Correction			Seller
Emergency Energy			Seller
Operating Reserve for Load Response	Seller	Seller	
Regulation and Frequency Response Service			Seller
Synchronized Reserve			Seller
Day-ahead Scheduling Reserve			Seller
Operating Reserves	Seller	Seller	
Synchronous Condensing			Seller
PJM Customer Payment Defaults			Buyer & Seller
Load Reconciliation for Spot Market Energy			Seller
Load Reconciliation for Transmission Congestion			Seller
Load Reconciliation for Transmission Losses			Seller
Load Reconciliation for Inadvertent Interchange			Seller
Load Reconciliation for Regulation and Frequency Response Service			Seller
Load Reconciliation for Synchronized Reserve			Seller
Load Reconciliation for Day-ahead Scheduling Reserve			Seller
Load Reconciliation for Balancing Operating Reserve			Seller
Load Reconciliation for Synchronous Condensing			Seller
Financial Transmission Rights Auction			Seller
Credits:			
Transmission Congestion			Seller
Planning Period Excess Congestion			Seller
Planning Period Congestion Uplift			Seller
Transmission Losses			Seller
Load Reconciliation for Transmission Losses			Seller
Financial Transmission Rights Auction			Seller
Auction Revenue Rights			Seller

PJM OATT

		Real Time
Charges		
PJM Scheduling, System Control and Dispatch Service (Schedule 9-1 thru 9-5))		Seller
Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)		Seller
Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)		Seller
FERC Annual Recovery (Schedule 9-FERC)		Seller
Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)		Seller
Reactive Supply and Voltage Control from Generation Sources Service		Seller
Black Start Service		Seller
Network Integration Transmission Service		Buyer
North American Electric Reliability Corporation (NERC) (Schedule 10- NERC)		Seller
Firm Point-to-Point Transmission Service		Seller
Non-Firm Point-to-Point Transmission Service		Seller
Reliability First Corporation (RFC) (Schedule 10-RFC)		Seller
Expansion Cost Recovery (Schedule 13)		Buyer
Transmission Enhancement (Schedule 12)		Buyer
Load Reconciliation for PJM Scheduling, System Control and Dispatch Service (Schedule 9-1, 9-3)		Seller
Load Reconciliation for Schedule 9-6 - Advanced Second Control Center (Schedule 9-1, 9-3)		Seller
Load Reconciliation for Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)		Seller
Load Reconciliation for FERC Annual Recovery (Schedule 9-FERC)		Seller
Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)		Seller
Load Reconciliation for North American Electric Reliability Corporation (NERC) (Schedule 10-NERC)		Seller
Load Reconciliation for Reliability First Corporation (RFC) (Schedule 10-RFC)		Seller
Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)		Seller
Locational Reliability		Seller
Credits:		
Capacity Resource Deficiency		Seller
Load Management Test Failure		Seller
Non-Firm Point-to-Point Transmission Service		Seller

EXHIBIT E

METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM) EXPOSURE

Parameters

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak Initial Mark Price
3. MW-Measure
4. On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
6. Number of awarded Bid Blocks

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

Determination of On-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub On-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available (“Aggregate Quotes”), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that On-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the On-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the On-Peak Forward Price for the given month may be updated based on the changes in On-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day

Determination of Off-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub Off-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly Off-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available (“Aggregate Quotes”), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from the average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that Off-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the Off-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the Off-Peak Forward Price for the given month may be updated based on the changes in Off-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

Example of Disaggregating Aggregate Quotes

The following is an example of the process to be used for disaggregating Aggregate Quotes:

- a. Aggregate Quote only available for January – March: \$60/MWh.
- b. Immediate Prior Calendar year quotes for January, February, and March as follows:

January: \$42/MWh

February: \$45/MWh

March: \$40/MWh

- c. Calculations as follows:

1. Calculate Average price in (b) = \$42.33/MWh

2. Calculate monthly deviation from Average:

January: 99.2% ($\$42/\42.33)

February: 106.3% ($\$45/\42.33)

March: 94.5% ($\$40/\42.33)

3. Disaggregate the Aggregate Quote by applying percentages from c.(2) to the available aggregate quote:

January: \$59.53 ($\$60 \times 99.2\%$)

February: \$63.78 ($\$60 \times 106.3\%$)

March: \$56.69 ($\$60 \times 94.5\%$)

Mark-To-Market Example

Necessary Information from a Transaction Confirmation:		
Delivery Period	June 1, 2011 - May 31, 2012	
Bid Blocks	3 (j)	
Estimated Energy Quantity Per MW-Measure		
	On-Peak MWh (k)	Off-Peak MWh (l)
Jan	11800	8300
Feb	13000	9100
Mar	9100	6400
Apr	7200	5000
May	8800	6200
Jun	12900	9000
Jul	15200	10600
Aug	16000	11200
Sep	9500	6700
Oct	8300	5800
Nov	9800	6900
Dec	10900	7600

Business Day on which MtM is Calculated:	June 24, 2011
MW-Measure:	50.0 MW (m)
Current Capacity PLC Per Bid Block:	40.0 MW (n)
Percent of On-Peak Hours Remaining in Current Month:	18.2% (o)
Percent of Off-Peak Hours Remaining in Current Month:	21.7% (p)

MtM Exposure Calculation									
	a	b	c	d	e=c-a	f=d-b	g=k*n/m*j*o	h=l*n/m*j*p	i=(e*g)+(f*h)
	On-Peak Initial Mark Price \$/MWh	Off-Peak Initial Mark Price \$/MWh	On-Peak Forward Price \$/MWh	Off-Peak Forward Price \$/MWh	Change In On-Peak Price \$/MWh	Change In Off-Peak Price \$/MWh	Estimated On-Peak Energy Quantity MWh	Estimated Off-Peak Energy Quantity MWh	MtM Exposure
Jun-11	57.04	27.95	58.48	28.65	1.44	0.70	5,629	4,696	\$ 11,393
Jul-11	72.81	31.31	75.26	32.36	2.45	1.05	36,480	25,440	\$ 116,088
Aug-11	72.81	34.23	74.28	34.91	1.47	0.68	38,400	26,880	\$ 74,726
Sep-11	45.56	24.15	47.31	25.08	1.75	0.93	22,800	16,080	\$ 54,854
Oct-11	43.23	23.34	46.09	24.89	2.86	1.55	19,920	13,920	\$ 78,547
Nov-11	43.23	25.50	46.40	27.38	3.17	1.88	23,520	16,560	\$ 105,691
Dec-11	43.23	26.36	44.86	27.36	1.63	1.00	26,160	18,240	\$ 60,881
Jan-12	50.73	38.55	54.45	41.39	3.72	2.84	28,320	19,920	\$ 161,923
Feb-12	50.73	39.06	53.61	41.29	2.88	2.23	31,200	21,840	\$ 138,559
Mar-12	45.23	30.75	47.64	32.39	2.41	1.64	21,840	15,360	\$ 77,825
Apr-12	45.23	25.78	48.01	27.36	2.78	1.58	17,280	12,000	\$ 66,998
May-12	47.06	24.94	49.06	26.00	2.00	1.06	21,120	14,880	\$ 58,013
									\$ 1,005,499

EXHIBIT F
FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this “Guaranty”) is made and entered into as of this day of _____, by _____ (the “Guarantor”), with an address at _____, in favor of Duquesne Light Company (the “Creditor”), with an address at [INSERT ADDRESS], in consideration of the Default Supply Master Agreement(s) (the “DSMA(s)”) between Duquesne Light Company and _____ (the “Seller”) dated _____, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Guarantor is the _____ of Seller.

1. Whereas, Supplier _____ is an affiliate of _____, _____ will therefore benefit by Supplier entering into the DSMA with Creditor and _____ desires Creditor to enter into the DSMA with Supplier and to extend credit to Supplier thereunder. (May be revised if guarantor is not a parent or affiliate of supplier.)

1. Guaranty of Obligations.

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not a surety with effect from date hereof, the prompt and complete payment when due of all of Seller’s payment obligations under the DSMA (to the extent such payment obligations exceed the amount of any Performance Assurance provided to the Creditor by Seller as defined in and in accordance with the DSMA), whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the DSMA and giving effect to any applicable grace period, and, provided only that the Creditor is the prevailing party in any judicial suit, action or proceeding arising out of, resulting from, or in any way relating to this Guaranty, or if by mutual agreement by Guarantor and Creditor, all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor’s obligations or collection under this Guaranty, including reasonable attorney’s fees and expenses (collectively, the “Obligations”). [Optional provision: Notwithstanding anything to the contrary herein, the liability of the Guarantor under this Guaranty and Creditor’s right of recovery hereunder for all Obligations is limited to a total aggregate amount of \$ _____, (“Guaranty Amount”), where Guaranty Amount shall be no less than Five Hundred Thousand US Dollars (\$500,000).]
- (b) The limitations on liabilities of the Seller set forth in Article 10 of the DSMA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

- (a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the DSMA or this Guaranty.
- (b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the DSMA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the DSMA resulting from the conduct of the Creditor) or any part thereof.
- (c) Except as to any claims, defenses, rights of set-off or to reductions of Seller in respect of its obligations under the DSMA, (all of which are expressly reserved under this Guaranty), the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Seller or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or the Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the DSMA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the DSMA (other than any law or regulation that eliminates or nullifies the obligations under the DSMA).
- (d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Seller or their assets or any other guarantor or person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any

other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Seller in respect of its obligations under the DSMA.

- (e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the DSMA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the DSMA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as the Creditor deems appropriate at its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

- (a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;
- (b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;
- (c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;
- (d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);

- (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and
 - (f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.
4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Seller and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.
5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.
6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, the Guarantor postpones and subordinates in favor of the Creditor any and all rights which the Guarantor may have to (a) assert any claim against the Seller based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of the Seller, including participation in any marshalling of the Seller's assets. Upon payment of such due and unpaid Obligations, Creditor

agrees that Guarantor shall be subrogated to the rights of Creditor against Seller to the extent of Guarantor's payment to Creditor.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:
Phone:
Fax:
With a copy to:

Phone:
Fax:

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:
Phone:
Fax:

or such other address as the Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power. The Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Creditor may have under other agreements with the Guarantor, at law or in equity.
9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and

enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.
11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.
12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the DSMA in accordance with Section 16.7(b) of the DSMA, and except that this Section 12 shall not limit the Guarantor's right to assign this Guaranty, along with substantially all of the Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than the Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB, as rated by S&P or Fitch, or Baa2, as rated by Moody's, and (ii) the Seller is in compliance with Article 14 of the DSMA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, the Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.
13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this

Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the .Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the Commonwealth of Pennsylvania, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the Pennsylvania state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the DSMA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the DSMA is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the DSMA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

ATTEST:

[Guarantor]

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

Buyer:

Seller:

All Notices:

All Notices:

Street:

Street:

City/State/Zip:

City/State/Zip

Attn:

Attn:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Scheduling:

Scheduling:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Wire Transfer:

Wire Transfer

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

Credit and Collections:

Attn:
Phone:
Facsimile:

With additional Notices of an

Event of Default to:

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn:
Phone:
Facsimile:

With Additional Notices of an

Event of Default to:

Attn:
Phone:
Facsimile:

EXHIBIT H

PJM DECLARATION OF AUTHORITY

This Declaration of Authority (“Declaration”) is a statement and certification made this _____ day of _____, by Duquesne Light Company (“PARTY A”) and [Seller] (“PARTY B”) for the benefit of PJM Interconnection, LLC.

RECITALS

WHEREAS, PJM is a Regional Transmission Organization (“RTO”) subject to the jurisdiction of the Federal Energy Regulatory Commission, (“FERC”);

WHEREAS, PJM administers centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members’ transmission facilities whereby PJM provides control area functions, including economic dispatch, the scheduling of transmission service and emergency response to ensure reliability across an integrated transmission system; and

WHEREAS, in capacities more fully described below, PARTY A and PARTY B seek to participate either directly or indirectly in the markets administered by PJM or engage in operations that use or affect the integrated transmission system operated by PJM.

DECLARATION

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the statements made below, PARTY A and PARTY B, as indicated below, provide the following certifications:

1. Certification.

- (a) PARTY B hereby certifies that in all activities with PJM regarding PARTY B’s provision of energy, capacity, scheduling and procurement of transmission service, congestion management and all other required products and services necessary to serve the load obligation assumed by PARTY B, PARTY B shall be billed and be primarily liable to PJM for all costs associated in its procurement of such products and services; provided, however, that charges for Duquesne Light Company for Network Integration Transmission Service, Expansion Cost Recovery assessed to Network Integration Transmission Service customers, Transmission Enhancement assessed to Network Integration Transmission Service customers, credits for Non-firm Point-to-Point Transmission, and ancillary services shall be billed to PARTY A and remain the sole and primary responsibility of PARTY A.

2. Reliance By PJM On Certifications.

- (a) Each of PARTY A and PARTY B recognizes and accepts that PJM is relying on the truth, accuracy and completeness of the certifications herein made in making its assessments as to creditworthiness and in assuring PJM's own compliance with its tariff, operating agreement, reliability agreement and business practices.
- (b) Each of PARTY A and PARTY B recognizes and accepts that each has a continuing duty to notify PJM if and when the certifications herein made cease to be accurate or complete. Until such time as PJM receives written notification of any changes to such certifications, signed by both PARTY A and PARTY B, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with PARTY A and PARTY B as to the subject matter of this Declaration. Any written notice of changes to the certifications herein made must be provided to PJM at least thirty days in advance of their effectiveness.
- (c) Each of PARTY A and PARTY B recognize and acknowledge that PJM will receive and rely on individually modeled Seller accounts that contain only zonal-specific DEFAULT SERVICE load to manually adjust the accounts to move the applicable billing line items' amounts in their entirety from the applicable Seller's account to the applicable EDC's account.
- (d) PARTY A and PARTY B recognize and acknowledge that they have entered into a Default Supply Master Agreement (DSMA) and that this Certification is not intended in any way to change, revise or redistribute the rights and obligations of the PARTY A or PARTY B under the DSMA. If this Certification is determined to be inconsistent with any provision of the DSMA, with respect to the rights and obligations of PARTY A and PARTY B under the DSMA, the provisions of the DSMA shall be controlling on PARTY A and PARTY B.

3. Duration. Each of PARTY A and PARTY B acknowledge and agree that this Declaration shall terminate upon the termination of the DSMA in accordance with its terms. To this end, within 30 days prior to the termination of the DSMA in accordance with its terms or as soon thereafter as is practicable, each of PARTY A and PARTY B will provide written notice to PJM of the termination of this Declaration.

IN WITNESS WHEREOF, PARTY A and PARTY B execute this Declaration to be effective as of the date written above.

PARTY A
Duquesne Light Company,

PARTY B

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

SUBSTITUTIONS TO SMALL C&I CUSTOMER AND RESIDENTIAL CUSTOMER CONTRACTS

The term “Small C&I” will replace the term “Medium C&I” in the Small C&I Default Supply Master Agreement, and the following definition will be substituted for the definition of “Medium C&I Customer”:

“Small C&I Customer” means any commercial or industrial retail customer of Buyer receiving POLR service from Buyer that has a demand less than 25 kw.

The term “Residential” will replace the term “Medium C&I” in the Residential Default Supply Master Agreement, and the following definition will be substituted for the definition of “Medium C&I Customer”:

“Residential Customer” means any residential customers using the Company’s standard low voltage service for lighting, appliance operation and general household purposes supplied at 240 volt (or less) single phase service, as well as lighting customers who use the service for street lighting, architectural lighting and other equipment such as traffic signals.

Duquesne Light Exhibit JEW – 2



**DUQUESNE LIGHT COMPANY,
REQUEST FOR PROPOSALS FOR
FULL REQUIREMENTS WHOLESALE ELECTRIC POWER SUPPLY**

March 28, 2012

Ladies and Gentlemen:

Duquesne Light Company (“Duquesne Light”) provides electric supply default service to Pennsylvania customers through tariffs offered by Duquesne Light pursuant to orders issued by the Pennsylvania Public Utility Commission (“Commission”). In Docket No. P-2012-_____, pursuant to the Petition of Duquesne Light Company For Approval of Its Default Service Plan for the Period June 1, 2013 through May 31, 2015, the Commission approved requests for proposals solicitations to be conducted for suppliers interested in providing power for Duquesne Light’s Medium Commercial & Industrial customers with demand from 25 kW up to, but not including, 300 kW maximum peak demand, for Duquesne Light’s Small Commercial & Industrial customers with demand less than 25 kW maximum peak demand and for Duquesne Light’s Residential and Lighting customers. The solicitations are for default supply rates for various delivery periods in multiple solicitations pursuant to approved Supply Master Agreements. The current solicitation seeks separate proposals for default supply power for ___% of the full requirements service for the delivery period _____ through _____ for Medium C&I customers, ___% of the full requirements service for the delivery period _____ through _____ for Small C&I customers and ___% of the full requirements service for the delivery period _____ through _____ for Residential and Lighting customers.

Bid due date for this solicitation is _____ between 1-4 pm EST, by electronic submission. For the Medium C&I solicitation, a total of __ blocks of up to ___ MW each will be available. For the Small C&I solicitation, a total of __ blocks of up to ___ MW each will be available. For the Residential and Lighting Solicitation, a total of __ blocks of up to ___ MW each will be available. Pursuant to the Commission’s Order in Docket No. P-2012-_____, no one supplier will be awarded more than 50% of the blocks for each solicitation.

The bidding process will be conducted by [MARKET MONITOR]. All bids submitted, including the actual opening and evaluation of all bids, will be administered by [MARKET MONITOR]. All bidders will be notified of their results on bid day, _____, _____.

The public details of the RFP, including RFP rules and the Default Supply Master Agreements, are available on the [MARKET MONITOR] web site. This web site will be operational by the close of business on _____, _____. If you are interested in participating in the RFP, you must express your interest to [MARKET MONITOR] via the

[MARKET MONITOR] web site, by requesting a username and password. This username and password will allow you to have access to the load data. Such access will not be granted until a Non-Disclosure Agreement is executed, which is both attached to this letter and located on the [MARKET MONITOR] website. If you executed a Non-Disclosure Agreement for one of the Default Supply Plan solicitations for the delivery periods commencing on and after June 1, 2013, you do not need to execute another agreement to participate in this solicitation. The RFP web site is located at www._____com. A credit application must be submitted by _____, and approved by Duquesne Light before a potential bidder will be qualified to bid.

Additionally, Duquesne Light will hold a pre-bid conference on _____, at _____ by webinar and conference call to review the general RFP structure, process, and requirements. [MARKET MONITOR] will provide the access information several days in advance of the pre-bid conference. The [MARKET MONITOR] will post the presentation on its website for review by bidders that cannot attend the webinar. Additionally, any questions raised by potential bidders throughout this process, as well as Duquesne Light answers, will be posted regularly.

All questions related to this RFP should be submitted through the [MARKET MONITOR] website or directly to the [MARKET MONITOR] contact listed below.

The [MARKET MONITOR] representative is _____. He/she can be contacted for information or with questions using the following contact information:

Tel: _____
Cell _____
Fax: _____
E-mail: _____
E-mail: _____
Web Site: _____

We look forward to your participation in this solicitation.

Sincerely,

[MARKET MONITOR]

Duquesne Light Company

Duquesne Light Exhibit JEW – 3

Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

NON-DISCLOSURE AGREEMENT

_____, 2012

[INSERT NAME OF COMPANY]
[INSERT ADDRESS OF COMPANY]

Ladies and Gentleman:

This letter agreement (“Agreement”) is a non-disclosure agreement between Duquesne Light Company (“Utility” or “Duquesne Light”) and _____ (“the Company”) in connection with the Company’s intent to participate in the Utility’s Request for Proposals (“RFP”) to provide full requirements service for Duquesne Light’s Medium Commercial & Industrial default service customers with demand from 25 kW up to, but not including, 300 kW maximum peak demand, Duquesne Light’s Small Commercial & Industrial default service customers with demand less than 25 kW maximum peak demand and Duquesne Light’s Residential and Lighting default service customers. This Agreement also pertains to the rights and obligations of Utility and the Company in the event that the Company is selected as a winning bidder in the RFP process to execute with Utility a Default Supply Master Agreement (“SMA”), as approved by the Pennsylvania Public Utility Commission at Docket No. P-2012-_____ in an Order dated _____. In consideration of the mutual covenants and agreements set forth herein, Utility and the Company hereby agree to accept, and to be legally bound by, the terms of this Agreement. Utility and the Company are each referred to herein as a “Party” and collectively as the “Parties.”

1. Definition of Confidential Information. For the purposes of this Agreement, “Confidential Information” shall mean any information, including information regarding subsidiaries or affiliates, disclosed by one Party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with evaluating the RFP, whether disclosed orally or by way of observation, or in written, graphic, machine-readable or any other tangible medium. Confidential information in the case of information provided by the Utility to the Company shall include, without limitation, all data, load data regarding customer consumption, pricing, reports, interpretations, models, forecasts or other records relating to the RFP process, Utility and/or its customers, and any other document created by Utility or others which directly or indirectly relates to all or any portion of the bid evaluation information provided by Utility to the Company. Confidential Information in the case of information provided by the Company to Utility shall include, without limitation, all data, reports, interpretations, models, forecasts, bids, credit information, credit collateral amounts, bidder identity, and any other document created by the Company or others that directly or indirectly relates to all or any portion of the bid evaluation information provided by the Company to Utility.

2. Exceptions. Notwithstanding the provisions of Paragraph 1 of this Agreement, Confidential Information shall not include information that:

- a. is or becomes available in the public domain through no act of the Receiving Party;
- b. is independently developed by or on behalf of the Receiving Party without any use of Confidential Information of the Disclosing Party; or
- c. was acquired by the Receiving Party from other than the Disclosing Party prior to the time of its disclosure by the Disclosing Party, as shown by files of the Receiving Party in existence at the time of disclosure, and at a time when the Receiving Party was under no obligation to the Disclosing Party to keep such information confidential.

3. Obligations. Except as provided in Paragraph 4 of this Agreement, each Party:

- a. shall treat Confidential Information of the other Party with the same degree of confidentiality with which it treats its own Confidential Information (except that it shall not release such Confidential Information pursuant to this or any other agreement), and in no case less than a reasonable degree of confidentiality;
- b. shall use Confidential Information only for the purpose of evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP, and/or executing the SMA, and not for any other purpose; in furtherance of the foregoing, neither Party shall disclose to third parties (other than its Representatives (as defined below)) any information about Utility's or the Company's participation in the RFP process or execution of the SMA, or the terms or conditions or any other facts relating thereto, including the fact that discussions are taking place with respect thereto, the status of those discussions, or the fact that Confidential Information has been made available by or to Utility or the Company or their Representatives (as defined below);
- c. shall not copy Confidential Information, in whole or in part, except as required in furtherance of the uses thereof permitted by this Agreement, and except with accurate reproduction of all proprietary legends and notices located in the originals;
- d. shall limit dissemination of Confidential Information received from the Disclosing Party to only those of its officers, directors, employees, advisors and other persons, who are actively and directly participating in evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP (collectively "Representatives"); provided, however, that under no circumstances shall the Receiving Party or any of its Representatives disclose any Confidential Information regarding the Disclosing Party's retail customers to any retail affiliate of the Receiving Party (including, for the avoidance of doubt, any retail affiliate of the Receiving Party that would otherwise constitute a Representative of the Receiving Party); and provided, further, that the Receiving Party shall in all events be responsible to the Disclosing Party for any action or inaction of the Receiving Party's

Representatives that would violate this Agreement, as if the action or inaction had been that of the Receiving Party directly; and

e. upon the request of the Disclosing Party, shall destroy or return to the Disclosing Party any Confidential Information received in written or other tangible media, including all copies and records thereof, upon any request by the Disclosing Party.

4. Legally Required Disclosure. If the Receiving Party or any of its representatives becomes legally compelled to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with prompt notice of such requirement and shall cooperate with the Disclosing Party in seeking to obtain a protective order or other arrangement pursuant to which the confidentiality of the Confidential Information is preserved. If such an order or arrangement is not obtained, the Receiving Party agrees that it and its Representatives will disclose only that portion of the Confidential Information as is legally required. Any legally compelled disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement. In addition, notwithstanding any other provision of this Agreement to the contrary, Utility may share any Confidential Information with the Pennsylvania Public Utility Commission or its staff. Any such information will be designated as confidential, and Utility will ask the Pennsylvania Public Utility Commission to hold and use such information on a confidential basis. Finally, notwithstanding any other provision of this Agreement to the contrary, in the event Utility and the Company execute and deliver the SMA, Utility may disclose Confidential Information under the circumstances, and in the manner, specified in Section 16.5 of the SMA.

5. Errors and Omissions. Nothing in this Agreement shall be construed to impose on the Disclosing Party any liability or responsibility for errors or omissions in, or any business decisions made by the Receiving Party in reliance on, any Confidential Information disclosed under this Agreement.

6. Term. This Agreement shall be effective as of the date hereof and shall continue for a period of three (3) years, unless the Parties mutually agree in writing to extend the term hereof.

7. Ownership of Confidential Information. Each of the Parties acknowledges that the Confidential Information of the Disclosing Party is and shall remain the exclusive property and a valuable trade secret of the Disclosing Party and that such information is disclosed subject to the Disclosing Party's ownership rights. Nothing herein shall grant either Party, explicitly or implicitly, any ownership right in, or license to use, the Confidential Information.

8. No Agency. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention by either Party to enter into a partnership, agency, employment or joint venture relationship with the other Party, to make or purchase any products or services or to make any commitment by any Party with respect to the present or future marketing of any product or service.

9. No Assignment. No Party may assign any of its rights or delegate any of its obligations under this Agreement, except upon the prior written consent of the other Party.

10. Equitable Relief. Each Receiving Party acknowledges that the Disclosing Party would be irreparably injured by a breach of this Agreement by the Receiving Party, and that the Disclosing Party, in addition to any other remedies available at law or in equity, shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by the Receiving Party.

11. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement.

12. Notices. Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery or via overnight mail at the following addresses:

If to Duquesne Light Company: (including affiliates and subsidiaries)	411 Seventh Ave., Suite 1600 Pittsburgh, PA 15219 Attn: Legal
--	---

If to _____: (including affiliates and subsidiaries)	_____ _____
---	----------------

or to any such other address as a Party may designate by notice duly given to the other Party in accordance with the requirements of this Paragraph 13. Such notices or other communications shall be deemed given when actually delivered or, if earlier, three business days after mailing.

13. Integration. This Agreement supersedes all previous oral and written agreements, if any, between the Parties regarding the confidentiality of information disclosed to each other during the term hereof and for the purposes described herein.

14. Governing Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the Commonwealth of Pennsylvania, without reference to its conflicts of laws principles. Any litigation shall be filed and pursued solely in state or federal court in Pittsburgh, Pennsylvania.

15. Counterparts. This Agreement may be executed in two or more counterparts, all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Non-Disclosure Agreement as of the Effective Date.

DUQUESNE LIGHT COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Duquesne Light Exhibit JEW – 4

Duquesne Light Exhibit JEW – 5

Duquesne Light Exhibit JEW – 6

Medium C&I Procurement Plan

Procurement Dates	2013												2014												2015				
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May					
Nov-12 (50%)	From POLR V (6 months)																												
Apr-13 (50%)	6 months																												
Nov-13 (100%)													6 months																
Apr-14 (100%)																			6 months										
Nov-14 (100%)																									6 months				

Duquesne Light Exhibit JEW – 7

Total Number of Tranches Per Solicitation				
<u>Solicitation</u>	<u>Residential</u>	<u>Small C&I</u>	<u>Medium C&I</u>	<u>Total</u>
Nov-12	12	2	6 (c)	20
Apr-13	24 (a)	2	4 (d)	30
Nov-13	6	2	8	16
Apr-14	24 (a)	2	8	34
Nov-14	na (b)	2	8	10

Supplier Caps (# of Tranches)				
<u>Solicitation</u>	<u>Residential</u>	<u>Small C&I</u>	<u>Medium C&I</u>	<u>Total</u>
Nov-12	6	1	3	10
Apr-13	12	1	2	15
Nov-13	3	1	4	8
Apr-14	12	1	4	17
Nov-14		1	4	5

Notes:

- (a) 12 tranches for the first year and 12 tranches for the second year.
- (b) Residential tranches could be offered in November 2014 if Duquesne continues to provide POLR service after 5/31/15.
- (c) This supply is being purchased per the POLR V plan.
- (d) The number of tranches is being resized from 6 to 4 tranches for 50% of the Medium C&I load due to the increase in shopping in this class. Only 50% of supply is needed at start of POLR VI.